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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| C:\Users\ANDERM\Desktop\HCA-logo.png | | INFORMATION TECHNOLOGY  CONTRACT for  Washington HCA Fraud and Abuse Detection Solution (FADS) | | | | | | | | | HCA Contract Number: K  Resulting from Solicitation Number (If applicable: 2020HCA14  Contractor Contract Number: | | | | |
| **THIS CONTRACT** is made by and between the 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 | | | | | | | 93.778 | | | | | | YES NO | | |
|  | | | | | | | | |  | | | | | | |
| HCA PROGRAM | | | | | | | | | HCA DIVISION/SECTION | | | | | | |
|  | | | | | | | | | Program Integrity | | | | | | |
| HCA CONTACT NAME AND TITLE | | | | | | | | HCA CONTACT ADDRESS | | | | | | | |
| Ming Wu, Deputy Program Integrity Administrator | | | | | | | | Health Care Authority  626 8th Avenue SE  PO Box 45503  Olympia, WA 98504-5503 | | | | | | | |
| HCA CONTACT TELEPHONE | | | | | | | | | HCA CONTACT E-MAIL ADDRESS | | | | | | |
|  | | | | | | | | |  | | | | | | |
|  | | |  | | | | | | |  | | | | | |
| CONTRACT START DATE | | | CONTRACT END DATE | | | | | | | TOTAL MAXIMUM CONTRACT AMOUNT | | | | | |
| Design Development and Implementation (DDI) Start Date:  Go-Live Start Date: | | |  | | | | | | |  | | | | | |
| PURPOSE OF CONTRACT: | | |  | | | | | | |  | | | | | |
| To obtain a fraud and abuse detection solution (FADS) to assist HCA in identifying and preventing fraud, waste and abuse (FWA) in Medicaid and other medical assistance programs. | | | | | | | | | | | | | | | |
|  | | |  | | | | | | |  | | | | | |
| 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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# Overview of Attachments and Exhibits

Attachments

Attachment A: Confidential Information Security Requirements

Attachment B: Statement of Work (SOW)

Attachment C: BAA/DSA

Attachment D: Performance Standards and Guarantees

Attachment E: Performance Reports

Exhibits

Exhibit A: HCA RFP 2020HCA14 for an HCA Fraud Abuse Detection Solution (FADS) and associated services.

Exhibit B: [Bidder Name] Response to HCA RFP

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

# RECITALS

The State of Washington, acting by and through the Health Care Authority (HCA) issued a Request for Proposals (RFP) dated XXX, (Exhibit A) for the purpose of purchasing a fraud and abuse detection solution in accordance with its authority under chapters 39.26 and 41.05 RCW.

[Contractor Name] submitted a timely Response to HCA’s RFP 2020HCA14 (Exhibit B)

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 [Contractor Name] this Contract, the terms and conditions of which will govern Contractor’s providing to HCA the goods and services as described in this Contract.

# DEFINITIONS

**Acceptance:** The Contractor has satisfactorily provided the services and Deliverables to implement the FADS. Acceptance shall be formalized in a written notice from HCA to the Contractor.

**Acceptance Criteria**: Terms by which Deliverables are reviewed and approved by HCA.

**Acceptance Date:** The date upon which the HCA accepts a Deliverable and confirms in writing that the submitted Deliverable meets Acceptance criteria.

**Acceptance Testing:** The process for ascertaining that the materials, supplies, services, and/or equipment meets the standards set forth in this Contract.

**Addendum or Amendment**: An agreed, written, signed change to a legal document.

**Authorized Representative:** An individual designated by the Bidder to act on its behalf with the authority to legally bind the Bidder concerning the terms and conditions set forth in the Solicitation and Proposal documents.

**Business Days and Hours:** Monday through Friday, 6:00 a.m. to 6:00 p.m., Pacific Time, except for holidays observed by the State of Washington.

**Case:** A fraud, waste or abuse lead becomes a Case when the lead has been assigned to and accepted by an auditor, all preaudit work has been done, the case identification has been assigned and the Case’s transaction control numbers (TCNs) have been scrubbed to remove TCNs that have already been recovered.

**Case Management**: Case Management is an application that provides workflow management and allows users to document, track, report, and electronically maintain closed and current Program Integrity activities. It is a comprehensive and integrated tracking system for the purpose of administrating Program Integrity activities. Case Management is also an all-in-one application for staff to track workflow and allow management to review their staff’s workload.

**Change Order:** Formal instructions to amend the Contract based on an approved Change Request.

**Change Request:** A written form used to modify, delete, or add to the Deliverables or Services, in whole or in part, made in accordance with the contract. In an abundance of caution and not by way of limitation, the definition of Change Request does not apply to any changes Contractor already is obligated to provide under the contract, including without limitation changes to correct Deficiencies and changes to the Solution as part of the Operations and Maintenance Services identified in the contract.

**Correction:** Use of reasonable commercial efforts to resolve a Defect/Deficiency in the Software and/or other Deliverables to HCA’s satisfaction as evidenced by explicit acceptance in writing.

**Contract:** This signed agreement, which includes all schedules, exhibits and amendments for the procurement of items of tangible property, and services derived from RFP 2020HCA14.

**Contractor:** Individual or company whose proposal has been accepted by HCA and is awarded a fully executed, written contract.

**Commercial Off-The-Shelf (COTS):** A collection of computer source and/or object code that, with modifications defined by HCA, shall meet the system requirements and specifications set forth in this RFP. HCA shall have the right to use the modified software and all purchased modules in accordance with the licensing provisions contained in the executed Contract.

**Confidential Information:** Information that may be exempt from disclosure to the public or other unauthorized persons under chapter 42.56 RCW, chapter 70.02 RCW or other state or federal statutes or regulations. Confidential Information includes, but is not limited to, any information identifiable to an individual that relates to a natural person’s health (see also Protected Health Information); finances, education, business, use or receipt of governmental services, names, addresses, telephone numbers, social security numbers, e-mail addresses, driver license numbers, financial profiles, credit card information, financial identifiers and any other identifying numbers, medical data, law enforcement records, personnel information, HCA source code or object code, HCA or State security information, or information identifiable to an individual that relates to any of these types of information.

**Covered entity:** A health plan, a health care clearinghouse or a health care provider who transmits any health information in electronic form to carry out financial or administrative activities related to health care, as defined in 45 CFR 160.103.

**Data:** All information recorded for purposes of this Contract including all models, diagrams and dictionaries necessary to use said information. Data also includes all data converted pursuant to this Contract.

**Data Dictionary:** Centralized repository of information about data such as meaning, relationships to other data, origin, usage, and format.

**DDI**: Design, Development and Implementation of the FADS.

**Data Transformations - The process of changing the format, structure, or values of data.**

**Defect:** A defect, deficiency, flaw, anomaly, failure, omission, error, incident, interruption of service, or other problem of any nature whatsoever with respect to the Software, including, without limitation, any failure of the Software to conform to, meet, or function in accordance with an applicable specification or requirements of KXXXX. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of the Software.

**Deliverable:** Any measurable, tangible, verifiable outcome, result, or item that shall be produced to complete a project or part of a project and to receive payment. A Deliverable may be composed of one or more interrelated project Work Products.

**Deliverable Expectation Document:** A document created by the Contractor and mutually agreed to by both parties that provides a description of a Deliverable and the Acceptance Criteria by which the Deliverable will be reviewed and accepted by HCA.

**Disaster:** A catastrophic event that is caused by acts beyond the Contractor’s reasonable control and that result in significant or potentially significant downtime or disruption of the production environment and requires Contractor to invoke their Disaster Recovery Plan. A Disaster is not defined as Unscheduled Downtime for the purpose of the Performance Guarantee and KPI table (*Attachment D Performance Standards and Guarantees*).

**Documentation:** All operations, technical or user manuals and guides used in conjunction with the Solution, including manuals provided by licensors of Third Party software. Additionally, Documentation refers to all materials required to support and convey information about the Services required by this Contract. It includes, but is not restricted to, written reports and analyses, diagrams, maps, logical and physical designs, system designs, computer programs, flow charts, disks, and/or other machine-readable storage media.

**Effective Date:** The first date the 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.

**Enhancements:** Any releases, versions (including releases or versions that operate on a different or new platform or version of the operating system of the equipment or any database or other equipment) improvements, updates, upgrades, additions, fixes and modifications to, and new releases of, the Software not related to the resolution of a Defect.

**Error:** See Defect.

Executive Sponsor: The HCA “owner” of all Deliverables.

Fraud and Abuse Detection Solution (FADS) – A data solution that extends the capabilities of a traditional surveillance and utilization review subsystem by permitting broad search, selection, drill-down functionality, data mining, links including social networking, and geospatial analyses to identify and analyze fraud, waste, and abuse. See also Project.

Fraud and Abuse – As defined in 42 CFR §455.2 and applicable federal and state statutes.

Final Acceptance: As defined in *Section 18.2 Implementation and Final Acceptance*.

Go-live: the transfer of the solution, in whole or in part, from test to live operation and integration of a solution following its Acceptance.

Graphical User Interface (GUI) – User interface with graphical indicators and/or visual indicators.

**HCA Contract Manager**: The individual identified on the cover page of this Contract who will provide oversight of the Contractor’s activities conducted and monitor deliverables completed and accepted under this Contract.

**Health Care Authority (HCA):** 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.

**Health Insurance Portability and Accountability Act (HIPAA):** The Health Insurance Portability and Accountability Act of 1996, as codified at 42 USC 1320d-d8, as amended, and its attendant regulations as promulgated by the U.S. Department of Health and Human Services (HHS), the Centers for Medicare and Medicaid Services (CMS), the HHS Office of the Inspector General (OIG), and the HHS Office for Civil Rights (OCR).

**Help Desk:** A service provided by Contractor for the support of Contractor’s Software.

**Incident:** See Defect.

**Implementation:** All activities supporting the Installation and DDI of the FADS.

**Inspection:** An examination of delivered material, supplies, services, software and/or equipment prior to Acceptance by HCA, aimed at forming a judgment as to whether such delivered items are what was ordered, were properly delivered and ready for Acceptance. Inspection may include a high level examination or a more thorough detailed examination as is customary to the type of purchase as agreed between the parties. Inspection may be acknowledged by an authorized signature of the Agency. Inspection may include testing of the Software.

**Installation:** Transferring the electronic media to computer systems so that Software will provide the features and functions generally described in the user documentation.

**Installation Date:** The date by which all Software shall be in place, in good working order and ready for Acceptance Testing.

**Interfaces:** A shared boundary across which two or more separate components exchange information, including but not limited to Custom Software that is developed by Contractor for transmitting Data between the Solution and other systems.

**Key Staff:** Staff specifically named by the Contractor as providing the Services. The Contractor shall take all reasonable steps to avoid changes of Key Staff. HCA deems the following staff titles for this project as “key”: Lead Business Analyst, Technical Lead, and Project Manager.

**Lead**: A referral to Program Integrity of potential claims fraud, waste or abuse through various avenues. All cases are Leads first, but not all Leads become cases.

**Licensee:** A person or persons granted a software license by a Licensor.

**Link Analysis:** A data-driven analysis technique use to evaluate relationship among organizations, people and transactions.

**Machine Learning:** An application that provides a system the ability to automatically learn and improve from experience without being explicitly programmed.

**Medicaid:** The federal/state medical assistance program as described in Title XIX of the Social Security Act, CMS regulations, CMS subregulatory guidance, Washington state statutes, and HCA regulations.

**Medicaid Management Information System (MMIS):** The federally certified system used by the Washington Medicaid program, known as ProviderOne, to pay claims and managed care payments authorized under the State Plan. The MMIS is certified by CMS and is the mechanized claims processing and informational retrieval system used by HCA.

**Milestone:** A significant event in a project, usually the completion of a major Deliverable**.**

**Module:** A fully functioning part of the total system that is targeted to a specific business function.

**Neural Network:** Specialized machine learning software that produces non-linear models of complex interactions. This software identifies and recognizes patterns where large amounts of data are gathered and the relationships are not thoroughly understood. The software can display the data in a meaningful GUI from undefined data.

**Office of the Chief Information Officer** (**OCIO):** Washington State Office of the Chief Information Officer. The Office of the Chief Information Officer (OCIO) sets information technology (IT) policy and direction for the State of Washington.

**Online File Storage Service:** A file hosting service, cloud storage service, or online file storage provider that hosts user files via the Internet. Users can upload files that can be accessed over the Internet from other computers and mobile devices, by the same user or other designated users. Examples include but are not limited to: Box.com, OneDrive for Business.

**Operational:** The condition when the Solution is completely functional in accordance with Specifications and usable for its purposes in the daily operations of HCA, and all of the Data has been loaded into the Solution and is available for use by the HCA.

**Predictive Models** – Process using data mining and probability to predict future influences and result.

**Price:** Charges, costs, rates, and/or fees charged for the Products and Services under the resulting Contract and shall be paid in United States dollars.

**Product:** The Software source or object code, system technical Documentation, user Documentation, training material or other items of tangible property developed by or delivered from the Contractor to HCA under the terms and conditions of the Contract.

**Project**: The development and implementation of a Fraud and Abuse Detection Solution (FADS), collectively referred to as Project or FADS.

**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).

**ProviderOne (P1)**: HCA’s MMIS.

**Request for Proposal (RFP):** Formal solicitation document to establish this Contract, including all its amendments and modification and is Exhibit A hereto.

**Requirements:** HCA’s expectations for the Solution and all other goods and services delivered by the Contractor under the terms of the Contract.

**Response:** A Contractor’s submission to the RFP to implement and ensure ongoing operations and maintenance of the FADS.

**Revised Code of Washington (RCW):** All references in this Contract to RCW chapters or sections include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at: <https://apps.leg.wa.gov/rcw/>.

**Schedule**: The dates described in the Work Plan for performance of services and other Project events and activities, including scheduled dates, projected dates, and actual dates.

**Scheduled Downtime:** The total amount of time during any service year during which the Solution’s core features and functions are unavailable for the majority of users due to planned Solution maintenance performed by Contractor, as set forth below. Contractor will provide reasonable notice, not shorter than two (2) hours, for all Scheduled Downtime. Contractor will exercise reasonable efforts to perform scheduled Solution maintenance outside of standard Business Days and Hours. Generally, these scheduled Solution maintenance activities occur once a month.

**Social Network:** A network of individuals such as friends, acquaintances, and coworkers connected by interpersonal relationships.

**Software:** The object code version of computer programs that are the subject of the Contract. Software also means the source code version and related utilities, provided by Contractor. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

**Software as a Service:** A method of software delivery and licensing in which software is accessed online via Subscription Services, rather than bought and installed on individual computers.

**Software Assurance:** The level of confidence that software is free from vulnerabilities, either intentionally designed into the software or accidentally inserted at any time during its lifecycle, and that the software functions in the intended manner.

**Solution:** The fraud and abuse detection solution.

**Specifications:** The technical and other written specifications that define the requirements and Acceptance Criteria, as described in the RFP, the Response, and subsequent Deliverables which have received Acceptance, the Performance Standards, and the Documentation. Such Specifications shall include and be in compliance with all applicable State and federal policies, laws, regulations, usability standards.

**Stratified Sample**: A sample in which a number of distinct categories are identified. The categories are then organized into separate strata. The sample is then selected from each stratum separately producing a stratified sample.

**State:** The State of Washington.

**Statement of Work (SOW):** A detailed 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 *Attachment B Statement of* Work hereto.

**Subcontractor:** A person or persons not in the employment of the Contractor who is performing all or part of the business activities under this Contract under a separate contract with the Contractor. The term “Subcontractor” means Subcontractor(s) of any tier.

**Subscription Services:** Services rendered by Contractor to HCA to support SAAS Implementation of the FADS.

**Supervised Models**:Model developed with the input and customization of subject matter experts.

**Third Party:** A person or entity (including, but not limited to any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Contract.

**Unscheduled Downtime:** The total amount of time in minutes during any Service Year during which the Solution’s core features and functions are unavailable for HCA’s access, other than Scheduled Downtime.

**Unsupervised Models**: Relies upon machine learning to detect and predict fraud, waste and abuse.

**Update:** Any and all updates, upgrades, patches, additions, modifications, releases, or other changes made by Contractor with respect to the Software, and all changes to the Documentation of the application programming interface (API).

**Uptime:** The time that the Solution is Operational, as measured 24 hours per day, Monday through Sunday, on a monthly basis, except for mutually agreed upon scheduled maintenance activities.

**Warranty Period**: For this Contract, Warranty also means the Subscription Services period unless otherwise defined.

**Work Plan**: The overall plan and living document of activities for the Project, and the delineation of tasks, activities and events to be performed and Deliverables. The Work Plan shall be incorporated into the contract as part of the Response. Each revision of the Work Plan shall be incorporated into the contract upon Acceptance by HCA.

**Work Product**: The documented results of the *Attachment B Statement of Work* activities developed and reviewed per the requirements stated within the RFP and developed or prepared by the Contractor in carrying out the obligations and Services of this Contract. One or more Work Products collectively form a Deliverable. Work Product includes data and products produced under this Contract including but 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.

# PURPOSE

* 1. The Washington State Health Care Authority (HCA) is tasked with providing high quality health care through innovative health policies and purchasing strategies. The Division of Program Integrity (PI) within HCA oversees the safeguarding of Washington Apple Health and state-only program expenditures from potential fraud, waste, and abuse. The purpose of this contract is to obtain a fraud and abuse detection solution (FADS) to assist HCA in identifying and preventing fraud, waste and abuse (FWA) in Medicaid and other medical assistance programs.

# TERM

Note: Dates published below are subject to change per RFP 2020HCA14.

## The period of performance of any contract will be divided into two (2) phases:

**Phase 1 Design Development and Implementation (DDI):**

The period of performance of the DDI phase is tentatively scheduled to begin on or about September 1, 2021 and to end on or about June 30, 2022. The term of DDI is subject to change and will be updated accordingly in the resulting contract.

**Phase 2 Operations and Maintenance:**

The Operations and Maintenance (O&M) phase begins when HCA accepts the Go-Live of the vendor’s FADS on or about June 30, 2022.

## The O&M period is tentatively scheduled to begin July 1, 2022 and to end on June 30, 2027.

## HCA reserves the right to extend the Contract for up to three (3) additional years in any increments at its sole discretion.

## Notwithstanding anything in this Contract to the contrary, and at HCA’s sole discretion, the initial term of this Contract will be amended at Go-Live to allow for five (5) full years of O&M services without affecting HCA’s ability to use the optional renewal years. For example, if Go-Live occurred August 1, 2022, the initial term may, at HCA’s sole discretion be amended to July 31, 2027.

## This Contract is contingent on CMS approval. If HCA receives approval earlier than anticipated, HCA reserves the right to adjust the Contract start date. If CMS does not approve the contract, then it will be immediately terminated.

# ORDER OF PRECEDENCE

* + 1. Each of the Attachments listed below is hereby incorporated into this Contract. In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:
       1. Applicable Federal and State of Washington statutes and regulations;
       2. Attachment C – Data Share Agreement/Business Associate Agreement;
       3. Special Terms and Conditions;
       4. General Terms and Conditions;
       5. Change Orders under this Contract;
       6. Attachment A – Confidential Information Security Requirements;
       7. Attachment B – Statement of Work
       8. Attachment D – Performance Standards and Guarantees
       9. Attachment E – Performance Reports
       10. Exhibit A – HCA RFP 2020HCA14 for fraud and abuse detection solution and associated services, dated XXX
       11. Exhibit B – Contractor’s Response to RFP 2020HCA14, dated X; and
       12. Any other provision, term or material incorporated herein by reference or otherwise incorporated.

# CONTRACT ADMINSTRATION

* 1. Any authorized communication regarding this Contract shall occur between the Contractor’s Authorized Representative or designee and the HCA Contract Administrator or designee.

|  |  |  |  |
| --- | --- | --- | --- |
| **CONTRACTOR’s Authorized Representative** | | **Health Care Authority Contract Manager Information** | |
| **Name:** |  | **Name:** | Ming Wu |
| **Title:** |  | **Title:** | Deputy Program Integrity Administrator |
| **Address:** |  | **Address:** | 626 8th Avenue  Olympia, WA 98501 |
| **Phone:** |  | **Phone:** | 360-725-1946 |
| **Email:** |  | **Email:** | ming.wu@hca.wa.gov |

# 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:

**Attention:** XXX

## In the case of notice to HCA:

**Attention:** Contracts Administrator

Health Care Authority

Division of Legal Services

Post Office Box 42702

Olympia, WA 98504-2702

contracts@hca.wa.gov

## Notices are effective upon receipt.

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

# LOCATION

The work will not be completed at HCA until such time as HCA designates its offices as open to Contractors to work on site at HCA.

# COMPENSATION

NOTE: This section will identify all costs mutually agreed to by Contractor and HCA pursuant to successful negotiations of RFP K.

* 1. HCA will withhold 10% of all deliverable payments. These monies will be paid when the FADS is fully delivered, certified by CMS, and accepted by HCA.

* 1. Payment on Services or a Deliverable shall not be construed as Acceptance of the service or Deliverable. HCA reserves the right to conduct further testing and Inspection after payment, but within a reasonable time after performance, and to reject the Service or Deliverable if such post-payment testing or Inspection discloses a defect or a failure to meet specifications. In such event, HCA reserves the right to credit the amount paid for the rejected service or Deliverable against any future payments made to Contractor or demand a refund.
  2. For O&M in years 2-5, $100,000 will be set aside for HCA’s change order contingencies. The Contractor will only receive any of this funding if HCA chooses to execute a changes order with the Contractor.
  3. After the O&M period, if optional renewal years or portions thereof are executed, the escalation of O&M costs for renewal year 1, year 2 and year 3 cannot exceed 3% per year.

# INVOICE AND PAYMENT

* 1. The Contractor must submit accurate invoices to the following address for all amounts to be paid by HCA: [Acctspay@hca.wa.gov](mailto:Acctspay@hca.wa.gov). Include the HCA Contract Number in the subject line of the email.
  2. Invoices must describe and document to HCA’s satisfaction a description of the work performed, the progress of the project, and fees. All invoices will be reviewed and must be approved by the Contract Manager or his/her designee prior to payment.
  3. The Contractor must submit properly itemized invoices to include the following information, as applicable:
     1. HCA Contract number K     ;
     2. Contractor name, address, phone number;
     3. Description of services and/or Deliverable;
     4. Date(s) of delivery;
     5. Net invoice price for each item;
     6. Applicable holdbacks;
     7. Applicable taxes;
     8. Total invoice price; and
     9. Payment terms and any available prompt payment discount.
  4. 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.
  5. The 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.
  6. The Contractor warrants that the costs charged for services under this Contract do not exceed of those charged to any other client for the same services performed by the same individuals.
  7. The Contractor will provide the Products and Services at the Prices set forth in this Contract, and no other Prices shall be payable to Contractor for implementation of Contractor’s Response. Prices shall not be increased during the term of the Contract unless otherwise provided herein. If Contractor reduces its Prices for any of the Services provided to additional clients during the term of this Contract, HCA shall have the immediate benefit of such lower Prices for new purchases. Contractor shall send notice to the HCA with the reduced Prices within fifteen (15) Business Days of the reduction taking effect.
  8. 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’s responsibilities

## Statement of Work

* + 1. All services shall be performed pursuant to the terms of this Contract and shall be documented in a Statement of Work established by mutual agreement between HCA and Contractor. The Statement of Work is located under *Appendix B Statement of Work* (SOW).
    2. The terms and conditions of any SOW cannot conflict with the terms and conditions of this Contract. In the event of any conflict, the Contract shall prevail.

## Commencement of Work

* + 1. No work shall be performed by Contractor until this Contract is fully signed and executed by the Authorized Representatives and each party is in receipt of a signed contract.

# CMS certification warranty period

## The CMS Certification Warranty Period under Operations and Maintenance (O&M) lasts for a period of three (3) months, starting from the point HCA accepts the Go-Live of the FADS (Warranty Period). During the Warranty Period, the Contractor will produce artifacts documenting that the FADS continuously meets the CMS requirements, outcomes, and measures.

## The Contractor will not charge HCA for O&M conducted by the vendor during the Warranty Period. At the Warranty Period, the vendor may begin charging HCA for O&M on a monthly basis, starting at the end of the fourth month from the point of HCA’s Go-Live acceptance of the FADS.

# SOFTWARE

* 1. Reauthorization code not required

Software must not require a reauthorization code in order for the software to remain functional upon the HCA’s movement of the software to another computer system or location.

* 1. Representations and warranties
     1. General
        1. The Contractor represents and warrants that all software will possess and perform the functions and features (such as functionality, response times, transaction throughput rates, and database update speeds) described in the Documentation and specifications provided to HCA.
        2. The Contractor represents and warrants that all Software, materials, equipment, and/or services provided under this Contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to stipulated requirements and specifications. Customizations, including configuration completed as part of implementation, to the software created specifically for the HCA will be warranted throughout the term of this Contract and any extensions. This warranty includes migration to any subsequent version of the software that might become available during the life of the subscription.
     2. Solution Functionality
        1. The Contractor represents and warrants:
           1. The Solution shall possess all the functional capabilities described in:

The HCA Solution Requirements; and

The Documentation.

* + - * 1. Shall perform all functions described subsections 13.2.2.1.1.1 and 13.2.2.1.1.2. without any Level 1 or Level 2 Defects, or operate with workarounds acceptable to HCA.
        2. The various components of the Solution:

Are designated to and shall not require multiple user sign-ons and forced sign-offs within, across and among all product lines, including Solutions provided to HCA from and after the Effective Date;

Shall have the same “look and feel” within a product line; and

Either share a common database used across components of the Solution, or if there are multiple databases, the data among such databases is coordinated, synchronized or otherwise managed by the Solution without the need of a separate interface.

* + - * 1. To the extent the Solution meets the HCA’s accessibility standards. The terms of this Section are effective on the Effective Date and shall remain in effect with respect to the particular Solution for as long as HCA is paying for Operations and Maintenance services.
    1. Disabling Codes
       1. The Contractor represents and warrants that the Software and any Deliverables provided by Contractor do not contain – and HCA shall not receive from any Contractor data transmission – any viruses, worm, trap door, back door, timer, clock, counter, or other limiting routine, instruction or design that would erase data or programming or otherwise cause any system to become inoperable or incapable of being used in the full manner for which it was designed and created, including any limitations that are triggered by, as applicable (a) any Solution being used or copied a certain number of times, or after the lapse of a certain period of time; (b) the Software being installed on or moved to a central processing unit or system that has a serial number, model number or other identification different from the central processing unit or equipment on which the Software was originally installed; or (c) the occurrence or lapse of any similar triggering factor or event. If Contractor introduces a disabling code into the Solution, at its sole cost and expense, Contractor shall, as applicable (d) take all steps necessary to test for the presence of disabling codes; (e) furnish to HCA a new copy of the Solution without the presence of a disabling code; (f) install and implement such new copy of the Solution; (g) restore any and all data and programming lost by HCA as a result of such disabling code.

This representation and warranty shall survive the expiration or termination of the Contract.

* + 1. Intellectual Property Warranty
       1. The Contractor represents and warrants that, as of the Effective Date, the Solution and HCA’s use of the Solution does not infringe upon any patent, trademark, copyright, trade secret or other intellectual property or proprietary right of any Third Party.
       2. The Contractor further represents and warrants that, as of the Effective Date there is, and there shall be, no actual or threatened lawsuit or other legal proceeding against the Contractor by any Third Party based on an alleged violation of any right specified in the preceding sentence. This representation and warranty shall survive the termination of the Contract.
    2. Offshoring
       1. The Contractor represents and warrants that the Contractor shall not: (a) perform any of its obligations under the Contract from locations, or using employees, contractors and/or agents, situated outside of the United States; (b) directly or indirectly (including through the use of subcontractors) transmit any State Data outside the United States; or (c) allow any State Data to be accessed by Contractor employees, contractors and/or agents from locations outside of the United States or transmitted to locations outside the United States. Notwithstanding the foregoing, with respect to Hosting Services, the Contractor represents and warrants that the primary, backup, disaster recovery and other data center sites for the Hosting Services will be located in the United States.
  1. Software To Be Free Of Viruses and Destructive Programming
     1. The Contractor represents and warrants that the Software will not contain any viruses, destructive programming, or mechanisms designed to disrupt the performance of the Software or contain any Self-Help Code nor any Unauthorized Code as defined below.
     2. The Contractor further represents and warrants that it will not introduce any code or mechanism that electronically notifies of any fact or event, or any key, node, lock, time-out, or other function, implemented by any type of means or under any circumstances, that may restrict HCA’s use of or access to any program, data, or equipment based on any type of limiting criteria, including frequency or duration of use for any copy of the Software provided to HCA under this Contract. This representation and warranty is referred to in this Contract as the “No Surreptitious Code Warranty.”
     3. “Self-Help Code” means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee’s computer system(s) (e.g., remote access via modem) solely for purposes of maintenance or technical support.
     4. “Unauthorized Code” means any virus, Trojan Horse, worm or other software routines or equipment components designed to permit unauthorized access, to disable, erase, or otherwise harm Software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.
  2. Compatibility of System Software Components
     1. The Contractor represents and warrants that all system components, including any replacement or upgraded system Software components provided by the Contractor to correct deficiencies or as an enhancement through the request of HCA and/or initiated by the Contractor, shall operate with the rest of the system without loss of any functionality, performance or security.
     2. The Contractor must implement and maintain practices that are consistent with national and state data security and confidentiality guidelines.
  3. Date Warranty
     1. The Contractor represents and warrants that all Software provided under this Contract: (i) does not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by HCA that may deliver date records from the Software, or interact with date records of the Software (“Date Warranty”). If HCA reports a Date Warranty problem to the Contractor and such problem remains unresolved after three (3) calendar days, then at the HCA’s discretion, the Contractor shall send, at Contractor’s sole expense, at least one (1) qualified and knowledgeable representative to resolve the issue for HCA. The Contractor’s representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity for HCA until the matter is resolved to HCA’s satisfaction. This Date Warranty shall survive termination of this Contract.

# HOSTING

## Hosting Facility Management

## The Contractor will:

## Provide the cloud environment in the FADS;

## Manage all aspects of the cloud environment;

## Perform all operating systems maintenance and updates;

## Monitor system performance;

## Isolate performance issues;

## Implement and test fixes to performance issues;

## Plan, implement and manage capacity based on Performance Guarantees and Standards;

## Identify the need for, and analyze the impact of, infrastructure changes;

## Apply security and other patches for operating systems and all Third Party software in the cloud environment. Patch management includes security patches, version updates, and service packs provided by Third Party vendors for all hardware and software used to support the Solution and/or the Contractor’s environment. Patch management shall include regular monthly patch vulnerability scanning to verify that no security patches are missing from any component of the Solution or Contractor environment. Contractor shall proactively monitor all Third Party vendors who provide components of the Solution and the Contractor environment for patch alerts and update notices;

## Test patches and the interaction of such patches to the components to which they are applied; and

## Provide HCA with monthly evidence that patch management was accomplished, including providing vulnerability assessments of any components that were not patched.

## Backup/Restore and Data Recovery

* + 1. Backup Operations

The Contractor will perform the following backup operations:

|  |  |  |
| --- | --- | --- |
| Backup Type | Description | Frequency |
| Baseline | Pre-Production (go-live) image | For each solution module, one (1) baseline backup prior to any scheduled module maintenance. |
| Daily Incremental Files | Any element (including all files, application data and objects) in the Solution that changes during the period. | Daily |
| Applications | All application executables and configuration files and source code for software operating the solution. | Weekly |

All backed up data shall be encrypted, and upon request, the Contractor shall provide HCA with the names of the individuals who are authorized to recover and decrypt backup files.

As part of its backup procedures, the Contractor shall perform automated verification of each backup to confirm that complete data, software and other files have been successfully backed up. The results of the automated verification shall be placed in backup logs that shall be made available and accessible to HCA staff. In addition, the Contractor, each quarter, shall perform manual checks to verify that the backup procedures are working properly and the then-current set (at the time of manual verification) of backups have all the required data, software and other files properly backed up.

## Backups and Retention

During the Subscription Services, the Contractor shall transfer, maintain and retain backup copies at a physically secure location in the United States at least two hundred and fifty (250) miles from the primary data center. The Contractor shall disclose the location of the offsite location to HCA. The Contractor shall ensure that there is limited access to the backup media. If Contactor uses a Third Party for their backup solution, then the Contractor shall have a written agreement with such Third Party incorporating appropriate handling of media safeguards, consistent with industry practices, and limiting the number of Third Party personnel having access to the media. The Contractor shall be responsible for any and all damages relating to the use, misuse and/or loss of media, whether caused by the Contractor or a Third Party handler.

## Incident Data Restoration

For incidents not involving a Disaster, the Contractor shall perform data restoration services as described in *Attachment D – Performance Standards and Guarantees*.

# NON-DISCLOSURE

## Covered Information

The Contractor understands that HCA has or may disclose employee or Licensee information and other related information which to the extent previously, presently, or subsequently disclosed to the Contractor is hereinafter referred to as Proprietary Information or Confidential Information, and collectively referred to as “Covered Information”.

## Definition of Proprietary Information

For the purpose of this section, "Proprietary Information" refers to any information which has commercial value and is either (i) technical information, including patent, copyright, trade secret, and other proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae related to the current, future and proposed products and services of HCA, or (ii) non-technical information relating to HCA's products, including without limitation pricing, margins, merchandising plans and strategies, finances, financial and accounting data and information, suppliers, customers, customer lists, purchasing data, sales and marketing plans, future business plans and any other information which is proprietary and confidential to HCA.

## Non – Disclosure

In consideration of the disclosure of Covered Information by HCA, the Contractor hereby agrees: (1) to hold the Covered Information in strict confidence and to take all reasonable precautions to protect such Covered Information (including, without limitation, all precautions the Contractor employs with respect to its own confidential materials), (2) not to disclose any such Covered Information or any other information derived therefrom to any third person, (3) not to make any use whatsoever at any time of such Covered Information except for the purposes set forth in this Contract, and (4) not to copy or reverse engineer any such Covered Information. There will be no obligation of confidentiality with respect to any Covered Information that (a) is publicly available, other than through a breach of this Contract by Contractor; (b) is developed by Contractor independently of, or was known by Contractor prior to, any disclosures made by HCA to Contractor of such information; (c) is disclosed with written consent of HCA; (d) is disclosed by Contractor as may be required by law, regulation, judicial or administrative process in accordance with applicable professional standards or rules pursuant to an order of a court of competent jurisdiction or administrative agency, a validly enforceable subpoena, or any other legal or administrative process; (e) is disclosed in response to governmental inquiries, or in accordance with applicable professional standards or rules pursuant to an order of a court of competent jurisdiction or administrative agency, a validly enforceable subpoena, or any other legal or administrative process; or (f) is disclosed by Contractor in connection with any judicial or other proceeding involving either Party relating to this Contract. With respect to subparagraphs (d), (e), and (f) the Contractor will, to the extent permitted by applicable law, advise HCA of the disclosure requirement within one (1) Business Day of its knowledge of the requirement and request confidential treatment for the Covered Information disclosed.

## Reporting of Unauthorized Disclosure

The Contractor shall report to HCA any use or disclosure of Covered Information not authorized by this Contract or in writing by HCA to be used or disclosed. The Contractor shall make the report to HCA not more than one (1) Business Day after Contractor learns of the unauthorized use or disclosure. The Contractor’s report shall include: (1) the nature of the unauthorized use or disclosure, (2) the Covered Information used or disclosed, (3) who made the unauthorized use or received the unauthorized disclosure, (4) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized disclosure, and (5) what corrective action Contractor has taken or shall take to prevent similar unauthorized use or disclosure.

HCA reserves the right to monitor, audit, or investigate the use of Covered Information collected, used, or acquired by Contractor through this Contract.

## Return or Destruction of Covered Information

Immediately upon the written request of HCA, the Contractor will return to HCA all Covered Information and all documents or media containing any such Covered Information and any and all copies or extracts thereof; except that where such Covered Information is a form incapable of return or has been copied or transcribed into another document, it shall be destroyed or erased as appropriate. The Contractor shall provide HCA and Affidavit of Destruction if the foregoing sentence applies with respect to copied or transcribed information.

## Injunctive Relief and Indemnity

The Contractor acknowledges that any publication or disclosure of any Covered Information may cause immediate and irreparable harm to HCA. If the Contractor publishes, uses or discloses such Covered Information without authorization, HCA shall be entitled to immediate injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. The Contractor shall indemnify and hold harmless HCA from all damages, costs, liabilities and expenses (including without limitation reasonable attorneys’ fees) to the extent caused by or arising from Contractor's failure to fulfill its obligations related to the Covered Information.

# Service Level Agreement (SLA)

## Purpose

In accordance with the terms of any SLA, Contractor shall furnish the development, delivery and implementation as well as the installation, support, and error-correction services and perform all things necessary to maintain a fully functioning Solution.

## Maintenance Services

Contractor will continuously maintain the Solution to optimize availability that meets or exceeds the requirements outlined within *Attachment B Statement of Work* and the *Attachment D Performance Standards and Guarantees*. Such maintenance services shall include providing HCA all such services and repairs, as needed, to maintain the Solution that are ancillary, necessary, or otherwise related to HCA’s access to, or use of, the Solution, so that the Solution operates properly in accordance with this SLA.

## 

## Support Services

Contractor will (i) provide unlimited support to HCA users and third party commercial providers during business hours, and (ii) respond to and resolve support requests.

Support shall include: (a) clarification of functions and features of the Solution, (b) clarification of the Documentation, (c) guidance in operation of the Solution (i.e., tips, suggestions and workarounds), and (d) additional Services that are outside of the scope of the SLA, provided that HCA approves in writing any such Service request, and any such Services shall be provided at the service rates.

Contractor will provide a support request for HCA to use when requesting support. This will be a web-based customer support/help desk application allowing the initiation, modification and tracking of service requests and/or support request tickets. It will offer an easy-to-use, one-stop for ticket resolution.

Contractor will ensure that tickets can be initiated through the Solution via email. This special email address shall be managed by “trouble ticket” software, which tracks problem progress on an incident-by-incident basis to ensure timely turn-around in accordance with the severity classification described below. Contractor will provide a standard support email address for HCA staff.

## System Monitoring and Measurement

Contractor will provide monitoring of the Solution performance on an ongoing basis per *Attachment E Performance Reports.* All measurements of Solution Availability will be calculated on the Service Year period during the term. This monitoring will be performed through a combination of monitoring services of Contractor’s choice. These monitoring services are intended to serve as an initial alert to Contractor that the Solution may be unavailable. Contractor will then conduct a series of tests to confirm Solution Availability.

If the monitoring services report that the Solution is unavailable and Contractor confirms the Solution to be unavailable, then Unscheduled Downtime will be calculated as the amount of time between the initial notification and when Contractor confirms the Solution is available.

If the monitoring services report that the System is unavailable, but Contractor’s tests and assessments confirm that the Solution is available, then Unscheduled Downtime will be calculated as the time between when the initial notification was received until Contractor confirms the Solution is available. If Contractor is able to confirm that the Solution was, in fact, available during the period between the initial notification and the point at which Contractor determined that the Solution was available, then Contractor will remove the Unscheduled Downtime calculated.

## Enhancements

Contractor shall provide Enhancements to HCA and shall develop and provide to HCA all Enhancements necessary to: (a) maintain compatibility with all third party software, (b) maintain compatibility with current, generally available versions of, Mozilla Firefox, Google Chrome, Microsoft Edge, and other browsers to which Contractor then maintains compatibility (as described in the Documentation) or that are specified in the business and technical requirements contained in this Contract, and (c) maintain compatibility with changes to database, operating systems and other software used by HCA in conjunction with the System.

To the extent technically feasible and functionally compatible, Contractor shall maintain compatibility between the System and the latest releases of software by third party vendors. Contractor shall ensure that all Enhancements, including Regulatory Modifications, successfully complete the testing process set forth in *RFP 2020HCA14 Appendix A Statement of Work 3.0 Testing* prior to delivery to HCA.

## Quality Assurance Testing

Contractor shall create and maintain one (1) or more test environments as appropriate or advisable to adequately test any Enhancements. Contractor shall test each Enhancement in the test environment prior to delivery to HCA in accordance with Contractor’s quality assurance process which, at a minimum, shall test for: (a) vulnerabilities and compliance with security obligations which test results shall be provided to HCA, (b) operation and performance of the Enhancement, (c) browser compatibility, (d) database and operating system compatibility, and (e) any regression problems using HCA usage and test cases and test data that were developed during the Project and that do not involve manual Intervention or involve connectivity to any system other than the System.

Contractor shall correct any Defects and other non-conformities discovered during such testing and shall deliver each Enhancement to HCA only after such Enhancement has been approved by Contractor’s quality assurance lead. Contractor shall also deliver to HCA along with delivery of each Enhancement detailed Documentation describing such Enhancement. With respect to any Enhancement labeled in writing by Contractor as an emergency fix intended to correct a Level 1 or Level 2 Defect, Contractor shall exercise all commercially reasonable efforts to test such emergency fix in accordance with the requirements of this Section, and in all events shall conduct sufficient and adequate regression testing.

If, after Contractor delivers the Enhancements to HCA, HCA experiences Level 1 or Level 2 Incidents and Defects in an Enhancement (“Enhancement Defects”) that have not been resolved in a reasonable time by Contractor’s standard Support and Maintenance procedures, then, upon HCA’s reasonable request given the severity of the Defect, Contractor shall provide the following personnel and shall comply by the following terms, at no additional cost to HCA (including weekends) until the Enhancement Defects are fully debugged and corrected:

1. Contractor shall provide one (1) appropriate technical representative from Contractor’s development/engineering group on a continuous basis to assist HCA in correcting any Enhancement Defects.
2. Contractor will assign a Senior Project Director to oversee and assist in the testing and debugging of any Enhancement Defects. The Senior Project Director and the appropriate additional technical personnel Contractor assigns will be referred to as the “Enhancement Correction Team.”
3. HCA and the Enhancement Correction Team shall have daily status update conference calls until the Enhancement Defects are resolved.
4. If Enhancement Defects exist and cannot be resolved for a period of one (1) week or more, the matter shall be escalated to daily conference calls to Contractor’s head of engineering, to facilitate closure of such items.
5. If required to debug and correct the Enhancement Defects, Contractor shall provide additional onsite engineering and technical services.

## Special Provisions Pertaining to Deliverables Including Interfaces

At the request of HCA, Contractor shall retrofit any then-existing Deliverables, including custom-developed Interfaces, to ensure that such then-existing Deliverables will be compatible with any Enhancements provided by Contractor, and continue to function and operate as originally designed. Retrofit work shall be performed pursuant to a time and materials-based Change Order at the Services Rate, and the cost to retrofit shall be shared equally by HCA and Contractor.

## Reductions in Functionality

If Contractor removes, reduces or disables any feature or functionality of the System that is then being used by HCA and that existed prior to such Enhancement or modification, then at HCA’s request and at no additional cost to HCA, Contractor shall either: (a) provide substantially equivalent replacement functionality to HCA that is reasonably acceptable to HCA, or (b) modify, adjust or customize such solution for HCA’s use, and continue to provide Support and Maintenance for such modified or customized solution, so that the applicable feature or functionality remains available to HCA along with all of the other features and functionality of the enhanced or modified solution, provided such replacement or modified or customized solution shall be treated as an Enhancement under the terms of the Contract. HCA acknowledges that Contractor may introduce an Enhancement that changes how a feature or function is expressed or used in the solution, and, provided that the feature to function is not removed, reduced or disabled, such Enhancement may require that HCA expend additional costs or expenses to implement such Enhancement.

## Regulatory Modifications

Contractor shall provide Regulatory Modifications to HCA whenever such modifications are mandated or required to meet any Regulatory Requirements and are related generally to the then-existing features or functionality of the System. HCA shall notify Contractor of any new state or local Regulatory Requirements affecting HCA after becoming aware of such Regulatory Requirements. Regulatory Modifications shall be at no additional cost to HCA (beyond the Support and Maintenance Service Fees). Contractor shall provide to HCA fully-tested Regulatory Modifications so as to enable HCA to adequately test and deploy such Regulatory Modifications.

## Support and Maintenance Services History Tracking System

Contractor shall maintain an HCA-specific Support and Maintenance Services history. Contractor shall provide HCA and state auditors with access to and the ability to extract all such data , which shall provide, at a minimum, the following information: (a) the number of HCA calls received by Contractor’s customer support center during the reporting period; (b) the date, time and the subject matter of each call; (c) the severity and urgency of the reported incident or request; and (d) the resolution of each matter, including date and time resolved. All data history and other data related to HCA, an agency and their authorized users residing in Contractor’s online issue management system or other support tools or trouble ticketing systems shall constitute data owned by HCA.

## Multi-Vendor Sourced Environment

Contractor acknowledges that the Solution is being deployed as one of several components of HCA’s total technology environment. As such, Contractor shall cooperate with HCA and all third parties that have services and/or products in HCA’s technology environment to minimize the disruptions, Incidents and Defects within HCA’s technology environment and interfaced third party systems.

## Liquidated Damages

In addition to the SLAs documented in this *Section 16 Service Level Agreement*, Contractor and HCA agree to the Performance Standards and Liquidated Damages outlined in *Attachment D Performance Standards and Guarantees*. The remedy of Liquidated Damages is in addition to any remedy for any other breach of this Contract by Contractor. Credits properly claimed by HCA will be applied to the Contractor’s next payment. Contractor’s invoice will reflect any credit owed to HCA.

## Performance Reporting

Contractor will document performance demonstrating how the Solution meets the Performance Standards in *Attachment D Performance Standards and Guarantees*. The list of reports necessary to document the performance is detailed in *Attachment E Performance Reports*. HCA at its sole discretion may ask for verification or supporting information for information in these reports.

# HOSTING AGREEMENT

## Hosting Migration / Transition

## A hosting migration/transition plan will be written as part of closing activities of the initial DDI of the software. Upon termination or expiration of the Hosting Agreement, the Contractor will ensure that all HCA and Solution data is transferred to the HCA or a Third Party designated by the HCA securely, within a reasonable period of time, and without significant interruption in service. The Contractor will work closely with its successor to ensure a successful transition to the new equipment, with minimal downtime and impact on the HCA. All such transition work must be coordinated and performed in advance of the formal, final transition date. The Contractor will ensure that such migration uses facilities and methods that are compatible with the relevant systems of the transferee, and to the extent technologically feasible, that the HCA will have reasonable access to HCA and End User Data during the transition.

NOTE: The resulting contract shall incorporate in this Section the Hosting Agreement mutually agreed to by HCA and Contractor.

# TRAINING

## General

## Contractor agrees to provide training during the DDI phase or for any system enhancements as set forth in *Attachment B Statement of Work*. HCA shall have the right, so long as the Software licensed or purchased hereunder is in use by HCA, to give instruction to HCA personnel in all courses without charge, using materials supplied by Contractor. Such use by HCA of Contractor’s materials shall include the right to reproduce the same, which use shall and reproduction shall not be a violation of or infringement upon any patent, copyright, or other proprietary right of Contractor. Contractor grants to HCA the right to make derivative works, update, modify, copy, or otherwise reproduce the Documentation furnished pursuant to this Section at no additional charge for training purposes only.

## Re-Performance of Training Classes

## If a specific training course is not performed to HCA’s reasonable satisfaction, whether because the instructor for the training course did not perform to HCA’s reasonable satisfaction, the training materials supplied by Contractor were not relevant to HCA’s environment and/or training was otherwise not satisfactory to HCA, and HCA provides written notice to Contractor of such dissatisfaction during the pendency of the class or shortly after the class is concluded, then, at no additional tuition cost to HCA, Contractor shall promptly re-perform the training class with a different instructor who is qualified to teach the subject matter and/or correct the deficiencies or lack of relevancy in the training materials.

# PERSONNEL

Contractor will not initiate any change to contractor’s Key Staff without prior written approval of HCA’s Contract Manager.

# COMPLIANCE

Contractor must be able to adapt to changes in technology, legislation, and business practices throughout the term of this Contract, including during any extensions. Requirements listed herein may be subject to change due to legislative changes.

Contractor agrees that technology products and services delivered as part of this Contract shall comply with all OCIO technology standards including but not limited to *OCIO Standard No. 141.10 – Securing Information Technology Assets, OCIO Standard No. 161.04 – Geospatial Data Standards,* and *OCIO Standard No. 188.10 – Minimum Accessibility Standard*.

# DELIVERABLE EXPECTATION DOCUMENTS

## Deliverables represent completion of major Project milestones for development and delivery of services. Each Deliverable is comprised of Artifacts. A Deliverable is completed when all of its related Artifacts have been reviewed and accepted as a whole during the Deliverable Acceptance Process. Artifacts will be reviewed and evaluated against defined Acceptance Criteria as agreed upon in the Deliverable Expectation Document (DED).

## DEDs will be created for each Deliverable prior to the Contractor starting on the deliverable, and provided to HCA for review. HCA and Contractor will mutually agree on each DED.

# Artifact and Deliverable Acceptance

## By submitting an Artifact or Deliverable, Contractor represents that, to the best of its knowledge, it has performed the associated tasks in a manner that will, in concert with other tasks, meet the Requirements and objectives stated or referred to in this Contract and the Artifact or Deliverable’s associated DED. By approving an Artifact and/or giving Acceptance for a Deliverable, HCA represents only that it has reviewed the Artifact or Deliverable against the stated Artifact and/or Deliverable Acceptance criteria as stated in the Associated DED and has detected no Defects or Deficiencies of sufficient gravity to defeat or substantially threaten the attainment of those objectives and to warrant the withholding of Acceptance for work completed. Neither HCA Approval of a submitted Artifact nor the Acceptance of a submitted Deliverable will in any way infringe on the ability of HCA to identify and report Defects or Deficiencies to the Contractor for resolution under the terms of this Contract.

## The length of the Artifact and Deliverable review period shall be reasonable given the nature and complexity of the Artifact and or Deliverable as mutually determined by the Parties.

## HCA will provide Acceptance for a Deliverable if it is “successful” meaning it meets the expectations set out in the DED, has no material Deficiencies, error or failures, behaves as expected for normal operations of the Deliverable or is otherwise acceptable by, and at the sole discretion of HCA. A Deliverable is “unsuccessful” when the deficiencies, errors or failures are not what would be expected behavior for normal operations of the Deliverable or as defined in the Artifact and Deliverable Acceptance criteria set forth in the associated Deliverable Expectation Document. Where a material Deficiency is found, HCA will notify Contractor in writing, detailing the Deficiency and/or Acceptance criteria not met.

## Contractor shall correct material Deficiencies and resubmit a corrected Artifact or Deliverable to HCA, who will then review or perform Acceptance tests to verify whether the Artifact or Deliverable meets requirements and/or lacks material Deficiencies and in writing shall either give its Acceptance or reject it following such review.

## If Contractor is unable to correct all material Deficiencies within the time period indicated within the DED, or if no such date is in the DED, within 30 calendar days within the scheduled Artifact or Deliverable Acceptance Date, HCA may, at is option: (a) continue reviewing or performing Acceptance Tests and require Contractor to continue until material Deficiencies are corrected or eliminated; (b) request Contractor to provide, at its expense, a replacement Deliverable for further review or Acceptance Tests; or (c) after completion of the process set forth in this Section and providing Notice of default to Contractor, terminate this Contract.

## Contractor shall continuously protect all Deliverables and backups for such Deliverables from damage, destruction or loss caused by the acts or omissions of Contractor and its Staff.

## HCA’s Acceptance of a Deliverable shall be final unless at the time of Final Acceptance, the Work Product or developed material does not meet the Acceptance Criteria set forth in the associated DED(s).

## If a Deliverable does not meet accessibility requirements, Contractor must provide written justification for its failure to meet the standard. The justification must provide specific details as to why the standard has not been met. HCA may either waive the requirement as not applicable or require the Contractor to provide an acceptable alternative. Any waiver of the accessibility requirement must be in writing.

## If, upon testing or other confirmation process, a Deliverable that was previously Accepted does not meet the intended functionality, then the corrections required will be provided at no additional cost to HCA.

## Any extensions of time permitted by HCA where the criteria are not met does not waive any rights or remedies HCA has with respect to an event or default for failure of Contractor to meet a critical milestone due date.

# TRANSITION OUT REQUIREMENTS

HCA shall own all right, title and interest in its data related to the Project and Services provided by this Contract. Data, databases and derived data products created, collected, manipulated, or directly purchased as part of this Contract shall become the property of HCA. HCA is considered the custodian of the data and shall determine the use, access, distribution, and other conditions based on Washington state statute and regulations, and HCA policy. Contractor shall ensure that all HCA data, databases and derived data products created, collected or manipulated is transitioned back to HCA prior to the termination of the Contract. This shall include all archived backups.

Additionally, Contractor must provide for reasonable transition assistance requested by HCA, to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to HCA or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. HCA shall pay the Contractor for any resources utilized in performing such transition assistance at the rates included in the Proposal. On expiration or termination of the Contract, Contractor shall provide or make available to HCA a copy of all Data with instructions and software necessary to decrypt the Data, if it is encrypted.

# CHANGE CONTROL PROCESS

NOTE: The resulting contract shall incorporate in this Section the Change Control Process mutually agreed to by HCA and Contractor.

# DOCUMENTATION

NOTE: The resulting contract shall incorporate in this Section the Documentation proposed by the Bidder and mutually agreed to by HCA and Contractor.

For each component of the Solution, Contractor shall provide to HCA Documentation that is reasonably detailed and complete and that accurately describes the functional and operational characteristics of the Solution. Contractor shall provide to HCA updated versions of all Documentation as soon as reasonably practicable followings its release, but in no event later than ten (10) Business Days following delivery of any Enhancements to HCA. Updated Documentation will be at least as detailed as the Documentation issued to HCA with any initial Solution delivery. Documentation shall include detailed user-level descriptions of the changes in a release and the impact of such changes, detailed, comprehensive and complete technical release notes that identify all changes in a release and/or Enhancement. Contractor agrees to continually work to improve and enhance the level of detail contained in its Documentation.

## The Contractor and HCA will abide by the following during DDI and post O&M phases of work under this Contract:

## Documentation standards will be mutually agreed upon, but must include a description of all changes, work estimates and full cost to HCA.

## Each Change Request documented, when authorized in writing by HCA and agreed to by the Contractor, will be deemed incorporated into and part of the Contract.

## The Contractor will only be compensated for Change Requests that are initiated by HCA and that from which HCA will solely benefit. Solution changes incorporated into the core Solution, and that are included in Subscription Services functionality accessible by other Contractor customers, will not be made at the expense of HCA.

## Work must not commence on any new activities related to the Change Request until all parties agree in writing and the Contract amendment has been fully executed.

## All Change Orders will be logged and tracked.

## The Contractor will complete analysis and Documentation no more than twenty (20) Business Days after receiving an initial Change Request from HCA’s technical contact or Contract Manager.

## If the change is not accepted by HCA or Contractor, HCA or Contractor will provide written feedback as to the reason or reasons for non-acceptance. Acceptance will not be unreasonably withheld.

## If a Change Request is not accepted, the Contractor will continue performing the services in accordance with the original Contract unless otherwise agreed upon by HCA.

## It is the sole responsibility of the Contractor to identify downstream impacts of a Change Request. If existing functionality is changed unsatisfactorily by the agreed upon Change Request, it shall be treated as a software defect and resolved by the Contractor at no additional cost to HCA.

## If HCA and Contractor are unable to mutually agree to accept or withdraw a Change Request after a second submittal and within the timeframes listed in this Section either party may invoke the “disputes” provision of the contract. If the parties cannot reach agreement on a proposed change order 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.

## During the course of the Contract, if the Contractor determines or could reasonably determine any HCA actions or directions constitute a requirement to perform additional work, the Contractor shall notify HCA within thirty (30) days that HCA has requested Contractor to perform additional work in the form of a documented Change Request utilizing the procedures above. The Contractor understands that it waives the right to request additional time and reimbursable costs if the Contractor fails to notify HCA within thirty (30) days of determining or reasonably being able to determine that any HCA actions or directions constitute a requirement to perform additional work under the Contract. HCA reserves the right to reject or negotiate the Change Request.

# IMPLEMENTATION AND FINAL ACCEPTANCE

Contractor shall complete Solution DDI in accordance with the Work Plan and Schedule.

## Solution implementation shall include:

## Solution installation and production readiness testing;

## User Acceptance testing;

## Quality Assurance testing;

## Training (administrative and end user);

## Go-Live implementation;

## Solution stabilization;

## Final implementation documents;

## CMS Certification Warranty Period; and

## CMS Certification of Solution.

## “Final Acceptance” for the Solution in the DDI phase of this Contract means:

## HCA’s written confirmation by Contract Manager of the successful completion of all Deliverables as defined in the *Attachment B* [*Statement of Work*](#_bookmark99) and associated Deliverable Expectation Document(s); and

## CMS Certification.

# GENERAL TERMS AND CONDITIONS

## Access to Data

In compliance with RCW 39.26.180 (2) and any other applicable federal or state statute or regulation, 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. The access must be provided 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

HCA will not make any advance payment will be made for services furnished by Contractor.

## 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.

## Antitrust Violations

Contractor and HCA recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by HCA. Therefore, Contractor hereby assigns to HCA any and all claims for such overcharges as to goods and services purchased in connection with this Contract, except as to overcharges not passed on to HCA resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract.

## Assignment

* + 1. 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 27.48, 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 27.5 of the Contract will be null and void.
    2. 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.
    3. This Contract will inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

## Attorney’s Fee

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.

## Benefit of Upgrades

If Contractor upgrades or modifies its commercial product(s) provided to additional clients during the term of this Contract, HCA shall have the immediate benefit of the upgrades or modifications. Contractor shall send notice for major releases to the HCA Contract Manager with the upgrades or modifications within sixty (60) days of said modification or upgrade.

## 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.

## Clean Air Act

During the performance of this Agreement, Contractor shall comply with the federal Clean Air Act. In the event of Contractor’s conviction of any offense under section 113(c), this Agreement may be rescinded, canceled, or terminated in whole or in part by HCA under *Section 27.48.1 Termination for Default*, and Contractor may be declared ineligible for further contracts with HCA.

## Clean Water Act

During the performance of this Agreement, Contractor shall comply with the federal Clean Water Act. In the event of Contractor’s conviction of any offense under section 309(c), this Agreement may be rescinded, canceled, or terminated in whole or in part by HCA under *Section 27.48.1 Termination for Default*, and Contractor may be declared ineligible for further contracts with HCA.

## Confidential Information Protection

* + 1. Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without HCA’s express written consent or as provided by law. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information (See *Attachment A* *Confidential Information Security Requirements*).
    2. 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).
    3. HCA reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. Violation of this Section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.
    4. The obligations set forth in this Section will survive completion, cancellation, expiration, or termination of this Contract.

## Confidential Information Breach – Required Notification

* + 1. Contractor must notify the HCA Privacy Officer (PrivacyOfficer@hca.wa.gov) within five (5) Business Days of discovery of any Breach or suspected Breach of Confidential Information.
    2. 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.
    3. 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:
       1. HCA may choose to make any required notifications to the individuals, to the U.S. Department of Health and Human Services (DHHS) Secretary, and to the media, or direct Contractor to make them or any of them;
       2. 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); and
       3. Contractor will compensate HCA clients for harms caused to them by any Breach or possible Breach.
    4. Any breach of this clause may result in termination of the Contract and the demand for return or disposition (*Attachment A Confidential Information Security Requirements, Section 6*) of all Confidential Information.
    5. 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.

## Construction and Interpretation of License and Right to Use Terms

Contractor acknowledges that the intent of the scope of the Software license is to make HCA’s rights to use the Software as broad as possible and, accordingly, the language in this *Section 27.13* shall not be interpreted strictly or narrowly in favor of Contractor. Furthermore, in the even that Contractor develops future limitations, qualifications and/or restrictions in how it licenses the Software to its customers, such future limitations, qualifications and/or restrictions shall have no effect on the scope of the Software license granted herein to HCA, and Contractor expressly disclaims the right to claim otherwise.

## 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

* + 1. 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 and it cannot be resolved between the parties’ Contract Managers, either party may initiate the following dispute resolution process.
    2. 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 review the dispute. Any such request from the initiating party must be submitted in writing to the HCA Director within five (5) Business Days after receiving the response of the responding party. The HCA Director will have sole discretion in determining the procedural manner in which he or she will review the dispute. The HCA Director 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.
    3. A party's request for a dispute resolution must:
       1. Be in writing;
       2. Include a written description of the dispute;
       3. State the relative positions of the parties and the remedy sought;
       4. State the Contract Number and the names and contact information for the parties;
    4. 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.

## Drug Free Workplace Statement

* + 1. The federal government implemented the Drug Free Workplace Act of 1988 in an attempt to address the problems of drug abuse on the job. It is a fact that employees who use drugs have less productivity, a lower quality of work, and a higher absenteeism, and are more likely to misappropriate funds or services. From this perspective, the drug abuser may endanger other employees, the public at large, or themselves. Damage to property, whether owned by this entity or not, could result from drug abuse on the job. All these actions might undermine public confidence in the services this entity provides. Therefore, in order to remain a responsible source for government contracts, the Contractor certifies that the following guidelines have been adopted:
       1. The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the work place.
       2. Violators may be terminated or requested to seek counseling from an approved rehabilitation service.
       3. Employees must notify their employer of any conviction of a criminal drug statue no later than five days after such conviction.
       4. Although alcohol is not a controlled substance, it is nonetheless a drug. Abuse of this drug will also not be tolerated in the workplace.

## 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 27.57 Warranties*.

## Equal Employment Opportunity

Contractor shall comply with Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375, and as supplemented by the Department of Labor regulations (41 C.F.R. Part 60), which prohibits federal contractors and federally-assisted construction contractors and subcontractors who do over $10,000 in government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin, and which requires government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. In the event of Contractor’s noncompliance or refusal to comply with the rules listed in this *Section 27.20*, this Contract may be rescinded, canceled, or terminated in whole or in part by HCA under *Section 27.48.1 Termination for Default*, and Contractor may be declared ineligible for further contracts with HCA.

## 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 the party’s reasonable control, including, but not limited to, acts of God, war, terrorist attacks, strikes or labor disputes, embargoes, public health emergencies as declared by the federal government or any other force majeure event.

## Funding Withdrawn, Reduced, or Limited

* + 1. 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:
       1. Terminate this Contract pursuant to *Section 27.52.3 Termination for Non-Allocation of Funds*;
       2. Renegotiate the Contract under the revised funding conditions; or
       3. 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.

## 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.

## Grant of License

Subject to further terms and conditions in this Contract, Contractor grants to HCA a perpetual, non-exclusive, non-transferable, unlimited use, user and user type in connection with its business operations, non-assessable, irrevocable, worldwide, multi-state license for HCA, to: (a) use the Software and Documentation; (b) at no additional software license fee, to transfer and operate the Software on a different operating system and/or different equipment; (c) use the Software and Documentation as HCA deems necessary for production and non-production purposes, including testing, disaster recovery, backup, training and education, development and archiving.

## HCA Network Security

* + 1. Contractor agrees not to attach any Contractor-supplied computers, peripherals or software to the HCA Network without prior written authorization from HCA’s Chief Information Officer. Unauthorized access to HCA networks and systems is a violation of HCA Policy 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.
    2. Contractor will have access to the HCA visitor Wi-Fi Internet connection while on site.

## Indemnification

Contractor will 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 27.11 *Confidential Information Protection* and Section 27.12 *Confidential Information 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.

## Insurance

* + 1. Contractor shall, during the term of this Contract, maintain the insurance described in this Section in full force and effect. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington having a rating of A, Class VII or better, in the most recently published edition of Best’s Reports. In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Contractor shall provide written notice of such to HCA within five (5) Business Days 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.
    2. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.
    3. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor’s liability or responsibility.
    4. Contractor shall furnish to HCA copies of certificates of all required insurance within thirty (30) calendar days of this Contract’s Effective Date and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Section. Failure to provide evidence of coverage may, at HCA’s sole option, result in this Contract’s termination.
    5. By requiring insurance herein, HCA does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor’s liability under the indemnities and reimbursements granted to HCA in this Contract.
    6. For Professional Liability Errors and Omissions coverage and Crime Coverage, Contractor shall continue such coverage for two (2) years beyond the expiration or termination of this Contract and providing HCA with certificates of insurance on an annual basis.
    7. Contractor shall pay premiums on all insurance policies. Such insurance policies shall reference this Contract number and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to HCA by the insurer.
    8. Minimum Acceptable Limits

The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

* + - 1. Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than $1 million per occurrence/$2 million general aggregate;
      2. Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, with a combined single limit of not less than $1 million per accident;
      3. Employers Liability insurance covering the risks of Contractor’s employees’ bodily injury by accident or disease with limits of not less than $1 million per accident for bodily injury by accident and $1 million per employee for bodily injury by disease;
      4. Umbrella policy providing excess limits over the primary policies in an amount not less than $3 million;
      5. Professional Liability Errors and Omissions, with a deductible not to exceed $25,000, conditioned upon this Section, and coverage of not less than $1 million per occurrence or claim/$2 million general aggregate;
      6. Crime Coverage with a deductible not to exceed $100,000, conditioned upon this Section, and coverage of not less than $1 million single limit per occurrence, which shall at a minimum cover occurrence falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty; and
      7. Cyber-security insurance that includes but is not limited to coverage for first-party costs and Third Party claims from: (i) failure to protect data, including unauthorized disclosure, use or access, (ii) security failure or privacy breach, (iii) failure to disclose such breaches as required by law, regulation or contract, (iv) notifications, public relations, credit monitoring, postage, advertising, and other services to assist in managing and mitigating a cyber-incident, (v) interruptions of business operations, (vi) network security failure, (vii) cyber-extortion, (viii) cyber-terrorism, (ix) communications and media liability (e.g., infringement of copyright, title, slogan, trademark, trade name, trade dress, service mark or service name in the policyholder's covered material), (x) EFT, computer, and electronic transmissions fraud and theft, and (xi) other cyber-liability and cyber-crime expenses.
    1. 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.

* + 1. Legal and Regulatory Compliance
       1. 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.
       2. 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.
       3. 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.

## Lobbying Activities

Contractor shall comply with all certification and disclosure requirements prescribed by

Section 319, Public Law 101-121 (31 U.S.C. § 1352), and 45 C.F.R. Part 93. No federal

funds under this Contract may be used to influence or attempt to influence an officer

or employee of any agency, a member of Congress, an officer or employee of Congress,

or an employee of a member of Congress in connection with the awarding of any

federal contract, continuation, renewal, amendments other than federal appropriated

funds.

## Materials and Workmanship

The Contractor shall furnish all materials, supplies, equipment and/or services necessary to perform its contractual requirements. Materials, supplies and workmanship used in the construction of equipment for this Contract shall conform to all applicable federal, state, and local codes, regulations and requirements for such equipment, specifications contained herein, and the normal uses for which intended. Materials, supplies and equipment shall be manufactured in accordance with the best commercial practices and standards for this type of materials, supplies, and equipment.

## 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.

* 1. **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. §12101 et seq.; the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101 et seq., 28 CFR Part 35; and Title 49.60 RCW, Washington Law Against Discrimination. 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 *Section 27.48.1 Termination for Default* sections, and Contractor may be declared ineligible for further contracts with HCA.

* 1. **No Federal or State Endorsement**

The award of this Contract does not indicate an endorsement of the Contractor by the Centers for Medicare and Medicaid Services (CMS), any other unit of the federal government, or the state of Washington. No federal funds have been used for lobbying purposes in connection with this Contract.

## 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 27.17 Disputes*.

## Ownership of Interface and Extension Deliverables

All Interface and Extension Deliverables paid for by HCA and developed by Contractor shall be and remain the sole and exclusive property of HCA. If Contractor wants to make such Interfaces or Extensions available to any other customers, or wants to incorporate the Interface and/or Extension into their base software or service offering, then ownership will transfer to Contractor upon: (1) written approval and agreement by HCA; (2) Contractor shall include Support and Maintenance Services with respect to such items (whether or not such items were previously covered by Support and Maintenance Services); (3) any Support and Maintenance Service Fees or other fees relating to such items separately paid by HCA shall be eliminated or, if already paid to Contractor, shall be paid back to HCA; (4) HCA shall not be obligated to pay any license fees for such Interfaces or Extensions.

## Pay Equity

* + 1. Contractor represents and warrants that, as required by Washington state law (Engrossed House Bill 1109, Sec. 211(54)), 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.
    2. 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.
    3. 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.
    4. 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.
    5. 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

* + 1. 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.
    2. 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

* + 1. 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 [See 42 USC 1396a(a)(27)(B); 42 USC 1396a(a)(37)(B); 42 USC 1396a(a)(42(A); 42 CFR 431, Subpart Q; and 42 CFR 447.202].
    2. The Contractor must retain such records for a period of ten (10) years after the date of final payment under this Contract.
    3. If any litigation, claim or audit is started before the expiration of the ten (10) 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.

## Restrictions

Other than the rights granted to HCA herein, no intellectual property rights to the Software are transferred to HCA under this Contract. HCA shall not disassemble, reverse compile, reverse engineer or otherwise translate the Software; provided however, that HCA shall have the right to disassemble, reverse compile, reverse engineer or otherwise translate the Software for purposes of creating interoperable computer programs.

## 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

* + 1. 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.
    2. 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.
    3. 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.
    4. 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.
    5. 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.
    6. 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.
    7. Except for any pre-existing intellectual property rights, Contractor shall not acquire any right, titles or interest (including any intellectual property rights subsisting therein) in or to any goods, services, software, technical information, specifications, drawings, records, Documentation, data or any other materials (including derivative works therefrom) provided by HCA to the Contractor.
    8. Title to all property or Work Product furnished by the Contractor, for the cost of which the Contractor is entitled to reimbursement as a direct item of cost under this contract provided by the Contractor, shall pass to and vest in the HCA upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the HCA upon (i) issuance for use of such property in the performance of this contract, (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the HCA, in whole or in part, whichever occurs first
    9. Any Property or Work Product furnished to Contractor shall, unless otherwise provided herein, or approved in writing by the HCA Contract Manager, be used only for the performance of and subject to the terms of this Contract. Contractor's use of the Equipment shall be subject to HCA's security, administrative and other requirements.
    10. The parties shall use the information described in this Agreement solely for the purpose stated in this Agreement. All intellectual property rights to the hosted data shall remain the exclusive property of the HCA. The Contractor has limited access to the HCA’s data as provided in this Agreement solely for the purpose of performing its system hosting obligations.
    11. Contractor shall continuously protect and be responsible for any loss, destruction, or damage to Property which results from or is caused by Contractor's acts or omissions. Contractor shall repair or make good any damage, destruction, personal injury or loss at the Facility or Sites caused by Contractor's acts or omissions.
    12. Upon the loss of, destruction of, or damage to any of the Property, Contractor shall notify the Contract Manager thereof and shall take all reasonable steps to protect that Property from further damage.
    13. Contractor will ensure that the Property will be returned to HCA in like condition to that in which it was furnished to Contractor, reasonable wear and tear excepted. Contractor shall surrender to HCA all Property upon the earlier of expiration or termination of this Contract.

## Rights of State and Federal Governments

In accordance with 45 C.F.R. 95.617, all appropriate state and federal agencies, including but not limited to the Centers for Medicare and Medicaid Services (CMS), will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate, or otherwise use, and to authorize others to use for Federal Government purposes: (i) software, modifications, and Documentation designed, developed or installed with Federal Financial Participation (FFP) under 45 CFR Part 95, subpart F; (ii) the Custom Software and modifications of the Custom Software, and associated Documentation designed, developed, or installed with FFP under this Contract; (iii) the copyright in any work developed under this Contract; and (iv) any rights of copyright to which Contractor purchases ownership under this Contract.

## Risk of Loss; Transfer of Title

Risk of loss for conforming supplies, equipment and materials specified as deliverables to the HCA hereunder shall remain with the Contractor until the supplies, equipment, materials and are Deliverables are received and Accepted by HCA. Title to all Deliverables passes to HCA upon acceptance by HCA, subject to HCA’s payment for the same in accordance with the terms of this Contract.

## Severability

If any provision of this Contract or the application thereof to any person(s) or circumstances is held invalid by a court of competent jurisdiction, 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.

## Site Security

While on HCA premises, Contractor, its agents, employees, or Subcontractors must 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.

* 1. Subcontracting (when applicable)
     1. 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.
     2. Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are included in any subcontracts.
     3. If at any time during the progress of the work HCA determines in its sole discretion 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.
     4. 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.
     5. 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. 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.

## Technical Assistance and Knowledge Transfer

Contractor shall transfer any knowledge it possesses which is necessary to the day-to-day operation(s) of the Solution to HCA employees so that HCA will be able to operate and support the Solution on a going forward basis (“Knowledge”). The transfer of Knowledge shall consist of Contractor instructing, knowledge, educating and training HCA personnel with respect to the following:

• The Solution(s) and all Interfaces between and among the Solution(s) and Third Party software;

• Enhancements to the Solution and Interfaces;

• All data files, file and data definitions and relationships, data definition specifications, data models, program and logic, interfaces, algorithms, program architecture, design concepts, system designs, program structure, sequence and organization, screen displays and report layouts relating to the Solution;

• All available maintenance and support tools, utilities, diagnostic programs and supporting programs utilized by Contractor in the support and maintenance of the Solution, Interfaces and other Deliverables;

• Documentation;

• Security requirements and methodologies implemented under the terms of the Contract to prevent or detect unauthorized access, and any networking security tools;

• Maximizing the use of the Solution, Interfaces and other Deliverables to perform key operational functions, including data backups, program downloads and security checks and how to automate such functions to minimize manual intervention; and

• Any and all updated, changed or revised policies, practices, procedures, processes and/or techniques with respect to the Knowledge previously transferred to HCA hereunder.

## Termination

* + 1. Termination for Default

If HCA determines in its sole discretion that the Contractor has failed to comply with any of the terms and conditions of this Contract, HCA has the right to suspend or terminate this Contract. HCA will notify the Contractor in writing of the need to take corrective action. If the Contractor does not take corrective action within five (5) Business Days, or other time period agreed to in writing by both parties, the Contract may be terminated in whole or in part. 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 as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising, and staff time.

The termination will be deemed a Termination for Convenience 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.

* + 1. 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.

* + 1. Termination for Non-allocation of Funds

If funds are not allocated to continue this Contract in any future period, HCA may immediately terminate this Contract in whole or in part 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 will notify Contractor of such non-allocation at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this Section is exercised.

* + 1. Termination for Withdrawal of Authority

If HCA’s authority 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 in whole or in part 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 will 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.

* + 1. 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. If 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.

* + 1. Termination Due to Federal Impact

Notwithstanding any provision in this Contract to the contrary, if HCA does not receive Centers for Medicare and Medicaid Services (CMS) approval of this Contract, HCA shall provide at least thirty (30) calendar days’ prior written notice of termination of this Contract to the Contractor. The effective date of any such termination hereunder shall be the earliest date that is at least thirty (30) calendar days following the date the notice is sent and occurs on the last day of a calendar month. HCA shall not be relieved of its obligation under this Contract, including payment to the Contractor, for the period from the Contract effective date through the effective date of termination.

## Termination Procedures

* + 1. 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.
    2. 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 27.17 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.
    3. 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.

## Uniform Commercial Code (UCC) Applicability

Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.

To the extent this Contract entails delivery or performance of services, such services shall be deemed “goods” within the meaning of the UCC, except when to do so would result in an absurdity.

In the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

The Software, in whole and in part is considered a good under applicable provisions of the Uniform Commercial Code as promulgated in the State of Washington, for purposes of this Contract.

## Use of Name Prohibited

The Contractor shall not in any way contract on behalf of or in the name of the HCA, nor shall the Contractor release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this project without obtaining the prior written approval of the HCA.

## 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

* + 1. 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.
    2. 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.
    3. 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. (NOTE: use based on Contractor’s response to solicitation)
    4. 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 A

**Confidential Information Security Requirements**

Definitions

In addition to the definitions set out in Section 2 of this Contract KXXX for HCA Fraud Abuse Detection Solution (FADS), 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.

Confidential Information Transmitting

1. 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.
2. When transmitting HCA’s Confidential Information via paper documents, the Receiving Party must use a Trusted System.

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 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.

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 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.

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.

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.

# Attachment B

Statement of Work

*The parties will cooperate to provide an Attachment B that is substantially similar to the format below and consistent with information provided in the RFP Statement of Work Response Forms.*

Key Staff

Contractor’s ongoing Key Staff are listed in the table below.

Agreement Pricing

Maximum Amount

The maximum amount of the Agreement is $     .

DDI Amounts

The Total DDI + DDI Contingency amount is $     .

1. The Total DDI amount is $     .
2. The Total DDI Contingency amount is $     .

Operations and Maintenance Amount

The Operations and Maintenance amount in Year 1 is $     .

The Operations and Maintenance amount in Year 2 is $     .

The Operations and Maintenance amount in Year 3 is $     .

The Operations and Maintenance amount in Year 4 is $     .

The Operations and Maintenance amount in Year 5 is $     .

Operations and Maintenance Contingency Amount

The Operations and Maintenance contingency amount is $     .

Proration

For any and all Services that are priced at a monthly rate under the Agreement, if such Services are provided fewer than all calendar days in any calendar month, then the cost for such Services will be prorated as the daily portion of the monthly rate (calculated based upon a 30-day month) times the number of days on which Services are provided.

Similarly, for any and all Services that are priced at an annual rate under the Agreement, if such Services are provided fewer than all calendar days in any calendar year, then the cost for such Services will be prorated as the monthly portion of the annual rate (calculated based on 12 months) times the number of months on which Services are provided.

Note: Additional calculations will be included based on mutual agreement between Contractor and HCA.

The calculations for pro rata daily and monthly amounts identified also will be used to calculate any and all credits and price reduction amounts due to HCA under the Agreement for partial months of years.

Rates (Placeholder years)

During the initial DDI Project phase, the hourly rate that Contractor may charge HCA for additional work performed or to be performed by Contractor for the period through Go-Live is the Contractor’s Blended Hourly Rate: $     .

During the Operations and Maintenance phase, the hourly rate that Contractor may charge HCA for additional work performed or to be performed by Contractor for the periods Year 1 through Year 5 is the Contractor’s Hourly Blended Rate: $     .

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| --- | --- | --- | --- | --- | --- |
| O&M Year | 1 | 2 | 3 | 4 | 5 |
| Blended Rate |  |  |  |  |  |

Fixed Price Costs for Operations and Maintenance (O&M) Services (Placeholder years)

The table in this Section show the Fixed Price costs for O&M Services from the inception of Operations through Year 5:

Table 1

Fixed Price Costs for O&M Services       –

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| O&M Year | 1\* | 2 | 3 | 4 | 5 | Total |
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| Total Fixed Price |  |  |  |  |  |  |

\*Year 1 will only have O&M costs for months 4-12. Therefore the monthly payment for Year 1 will be 1/9th of the annual costs.

After the O&M period, if optional renewal years are executed, the escalation of O&M for renewal year 1, year 2 and year 3 cannot exceed 3% per year over the previous year.

For each year for Years 2 – 5, HCA will have $100,000 in contingency to use for change orders with the Contractor at HCA’s discretion. The $100,000 is in addition to the annual Total Fixed Price.

# Attachment C

Data Share Agreement /Business Associate Agreement

See Appendix E of RFP 2020HCA14 for the sample Data Share Agreement/Business Associate Agreement. This exhibit will be included and incorporated into this Agreement by reference, but is not attached herein due to page length.

# Attachment D

Performance Standards and Guarantees

Note: This Attachment D will be negotiated between HCA and Contractor; however, it will be substantially similar to what is presented below. HCA considers the Performance Standards and Guarantees and any applicable Liquidated Damages to be a minimum threshold for negotiation. HCA assumes Contractor will propose negotiating points that incorporate Contractor’s approach and processes into these standards and metrics.

* The phrase “inaccurate or incomplete” used within this *Attachment D Performance Standards and Guarantees* means the following:
  + Inaccurate or incomplete - information that is provided by Contractor that contains an error or omission, or does not comply with specifications or industry standards, or contains an inconsistency that may drive incorrect decisions or actions creating additional expenditures of time or money.
* In additional to reports required by the SOW, reports Contractor is required to submit to HCA are listed in *Attachment E Performance Reports*. Reports will be sent to the HCA Contract Manager at the email provided under *Section 6 Contract Administration.*
* Contractor submissions that contain numerous spelling, formatting, or grammar errors will be returned for corrections, but will not incur Liquidated Damages for missing a due date as long as the substance is accurate and complete. HCA reserves the right to waive administrative errors.

**DDI Performance Standards**

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| **Centers for Medicare and Medicaid Services (CMS) Certification** | |
| **Performance Standard – DDI #1** | **Liquidated Damages – DDI #1** |
| Contractor’s Solution will meet CMS Certification requirements, outcomes and measures in production continuously starting the day of the Solution’s Go-Live.  This will be confirmed via the CMS Certification Letter for the FADS that documents the Effective Date of the CMS certification. | If Contractor does not meet CMS certification requirements, for every Business Day between Go-Live and the effective date in the CMS certification approval of the Solution, the Contractor will be assessed $1,200 per day. |
| **Performance Standard - DDI #2** | **Liquidated Damages – DDI #2** |
| Contractor will deliver data/supporting documentation to HCA for use in CMS Certification that demonstrates six (6) continuous months in production of meeting CMS certification requirements, outcomes and measures within two (2) Business Days after six (6) months from the date of Go-Live.  Data/supporting documentation will be based on the CMS’ instructions for reporting CMS certification requirements, outcomes and measures and be delivered as determined under the Statement of Work (SOW) 5.2 Evaluation Criteria and Conditions for Enhanced Funding –CMS Certification Review. | If Contractor does not provide data/supporting documentation demonstrating six (6) continuous months in production of the Solution meeting CMS certification requirements, outcomes and measures within two (2) Business Days after six (6) months from the date of Go-Live, HCA will assess $100 per calendar day. |

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| **Security Design Review** | |
| **Performance Standard – DDI #3** | **Liquidated Damages – DDI #3** |
| Contractor’s Solution will pass the state of Washington Office of Cyber Security’s (OCS) Security Design Review that confirms the Solution complies with the state’s Office of the Chief Information Officer’s (OCIO’s) Security Standard.  This will be confirmed via communication from the state’s OCS. | Should the Contractor’s inability to pass the OCS Security Design Review result in a delay of the FADS project schedule, HCA shall assess $500 per calendar day for each calendar day the project is prolonged. |
| **Performance Standard – DDI #4** | **Liquidated Damages – DDI #4** |
| Contractor will provide documentation and participate in meetings for the FADS Security Design Review with HCA and/or OCS as scheduled.  Meeting participation will be confirmed via meeting minutes, and adequate documentation will be confirmed by OCS’s confirmation of receipt of adequate documentation. | HCA shall assess $500 per calendar day for each day Contractor does not participate in a Security Design Review.  HCA shall assess $500 per calendar day for each day Contractor does not meet the Security Performance Standard, unless Contractor is meeting the agreed-upon schedule in completing any follow-up action plan to bring the System into compliance with the OCIO Security Standards.  HCA shall assess $500 per calendar day for each day after the due date that a milestone in any follow-up action plan to bring the System into compliance with the OCIO Security Standards is not met, until that milestone is completed. |

**O&M Performance Standards**

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| **CMS Certification of the FADS** | |
| **Performance Standard – O&M #1** | **Liquidated Damages – O&M #1** |
| Contractor’s Solution will meet CMS Certification requirements, outcomes and measures continuously in production including new requirements.  This will be confirmed via CMS instructions with timely delivery of accurate Contractor data and documentation for the FADS. | HCA shall assess $1,000 per calendar day for each calendar day for which Federal Financial Participation is reduced as a result of failure by Contractor to maintain the System as required by CMS. |
| **Performance Standard – O&M #2** | **Liquidated Damages – O&M #2** |
| Contractor will provide data and supporting documentation on a monthly basis five (5) Business Days after the end of the previous month that supports and demonstrates the FADS continuously meets CMS certification requirements, outcomes and measures while in production.  This will be confirmed via timely delivery of accurate documentation. | HCA shall assess $500 per calendar day following the fifth Business Day of the month for which the Contractor does not provide data and documentation demonstrating that the FADS continuously meets CMS certification requirements, outcomes and measures while in production. |

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| **Security Compliance** | |
| **Performance Standard – O&M #3** | **Liquidated Damages – O&M #3** |
| Every two (2) years from the date that OCS states the Contractor’s Solution passed the OCS Security Design Review, or upon significant system change, as determined by HCA, the Contractor will provide updated documentation demonstrating the Solution still complies.  This will be confirmed via Contractor’s documentation. | HCA shall assess $500 per calendar day for each day after the due date, as agreed upon by the Contractor and HCA, that updated documentation supporting the OCS Security Design Review update is not provided to HCA, until such documentation is provided and accepted by HCA.  If the documentation is received on time but the information is inaccurate or incomplete, HCA will provide a written outline of the deficiencies and the contractor will provide a corrected report within four calendar days. If an acceptable report is not received within four calendar days,  HCA shall assess $200 per calendar day for each delinquent calendar day until an acceptable report is received.  HCA shall assess $500 per calendar day for each day Contractor does not meet the Security Performance Standard, unless Contractor is meeting the agreed-upon schedule in completing any follow-up action plan to bring the System into compliance with the OCIO Security Standards.  HCA shall assess $500 per calendar day for each day after the due date that a milestone in any follow-up action plan to bring the System into compliance with the OCIO Security Standards is not met, until that milestone is completed. |

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| **Data Accuracy** | |
| **Performance Standard – O&M #4** | **Liquidated Damages – O&M #4** |
| Contractor will demonstrate the accuracy of the data consumed by the Solution, including but not limited to the number of records and total dollar amounts. Contractor is not accountable for differences attributable to HCA.  This will be confirmed via the Contractor’s Data Accuracy Report. | If a disparity is identified and neither HCA nor the Contractor can identify an HCA action that caused the disparity, the Contractor will have seven (7) calendar days to account for the differences presumed to have occurred in their solution. After seven (7) calendar days, if the Contractor cannot account for the differences, HCA shall assess $500 per day, per instance.  For every disparity identified in the Solution’s:   * Core tables with transaction control numbers (TCNs) – this must be fixed within twenty-four (24) hours, after which HCA will assess damages of $1000 per day per instance for the first fifteen (15) calendar days, then $2000 per day per instance, until the disparity is fixed. * Reference tables – this must be fixed within two (2) Business Days, after which HCA will assess damages of $100 per day for the first fifteen (15) calendar days and then $200 per day. * All other tables – this must be fixed within seven (7) calendar days, after which HCA will assess damages of $33 per day per instance for the first fifteen (15) calendar days, then $66 per day. |

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| **FADS Response Time** | |
| **Performance Standard – O&M #5** | **Liquidated Damages – O&M #5** |
| For the FADS, the daily average screen response time must not exceed four seconds within business hours (M-F, 6:00 a.m. to 6:00 p.m. Pacific Time). This response time does not include query run time.  This will be confirmed via the Contractor’s FADS Response Time Report. | HCA shall assess liquidated damages for daily average screen response times that exceed the performance requirement during Business Days as follows:  >4 seconds to <=6 seconds will be $400 day  >6 seconds to <=8 seconds will be $800 day  >8 seconds will be $1,200 day |

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| **Unscheduled Downtime** | |
| **Performance Standard – O&M #6** | **Liquidated Damages – O&M #6** |
| The Solution’s Unscheduled Downtime shall not exceed 30 minutes per month during the business hours of M-F, 6:00 a.m. to 6:00 p.m. Pacific Time. Contactor will undertake commercially reasonable measures to make sure Solution Availability meets the Performance Standard. Any Unscheduled Downtime occurring as a result of circumstances beyond Contractor’s reasonable control including, but not limited to: (i) HCA’s breach of any provision of this Contract; (ii) non-compliance by HCA with any provision of this Contract; (iii) incompatibility of HCA’s equipment or software with the Solution; (iv) poor or inadequate performance of HCA’s systems; (v) HCA’s equipment failures; (vi) HCA’s network and internet service provider; (vii) public internet; (viii) security exposure; or (ix) force majeure, will not be considered toward any reduction in Solution availability measurements. In the event of a Disaster, Unscheduled Downtime service levels defined herein do not apply.  This will be confirmed via the Contractor’s Solution Downtime Report. | The Contractor agrees that it is not possible to gauge with certitude the precise impact of Unscheduled Downtime, but recognizes that HCA will suffer significant damages through lost productivity.  During Year 1 of O&M, for each thirty (30) minutes or portion thereof within the month of Unscheduled Downtime beyond the first thirty (30) minutes, HCA shall assess $300.  During Year 2 and beyond, for each thirty (30) minutes or portion thereof within the month of Unscheduled Downtime beyond the first thirty (30) minutes, HCA shall assess $625. |

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| **Incident Response and Resolution** | |
| **Performance Standard – O&M #7** | **Liquidated Damages – O&M #7** |
| **Incident Response and Resolution Matrix**   |  |  |  |  |  | | --- | --- | --- | --- | --- | | **Defect Severity** | **1** | **2** | **3** | **4** | | **Description** | Critical | Medium | Low | Low-Cosmetic | | **Definition** | System being substantially or completely nonfunctional or inoperative. Normal service has been disrupted. Business risk is high. | Affects the accuracy of production data and/or inhibits the ability for one or more licensee to comply with reporting requirements. | Data is accurate and the system is usable, but not functioning as designed. Business risk is moderate to low. | A cosmetic deficiency (e.g. misspelled word or color irregularity) not affecting the functionality of the System. | | **Initial Contractor Response Time** | One (1) hour during business hours and four (4) hours during non-business hours | Four (4) business hours | Eight (8) business hours | Twelve (12) business hours | | **Minimum frequency of status** | Hourly, not limited to business hours | Every eight (8) business hours | Once a week | Once a month. | | **Target Resolution Time** | Same Business Day | Within two (2) Business Days | Within ten (10) Business Days | Within sixty (60) calendar days |     Severity Levels – These levels are used to ensure that incidents are resolved in a timely manner with the least amount of inconvenience to the HCA users.  Response Times – Response Times to support requests will be measured from the time Contractor receives a support request until the time they have responded to the support request. The chart above depicts the timelines Contractor is required to adhere to when receiving a support request.  This will be confirmed via the Contractor’s Incident Response and Resolution Report. | The Contractor agrees that it is not possible to gauge with certitude the precise impact of non-responsiveness on Defects Severity 1 and Severity 2, but recognizes that HCA will suffer significant damages through lost productivity.  Response  Therefore, Contractor agrees that if Contractor does not adhere to the Response Times identified and described in the Incident Response and Resolution Matrix Table for   * Severity 1: Contractor will pay liquidated damages of $4,000.00 per hour for each hour of non-responsiveness beyond the Severity 1 Initial Contractor Response Times. * Severity 2: Contractor will pay liquidated damages of $4,000.00 per hour for each hour of non-responsiveness beyond the Severity 2 Initial Contractor Response Time. * Severity 3: Contractor will pay liquidated damages of $250 per hour for each hour of non-responsiveness beyond the Severity 3 Initial Contractor Response Time. * Severity 4: Contractor will pay liquidated damages of $50 per hour for each hour of non-responsiveness beyond the Severity 4 Initial Contractor Response Time.   Resolution  For Contractor’s failure to repair or correct a   * Severity Level 1 Defect within one (1) Business Day, Contractor will pay liquidated damages of $1,000 per day for the first fifteen (15) calendar days and $2,000 per day until the Defect is corrected. * Severity Level 2 Defect within two (2) Business Days, Contractor will pay liquidated damages of $100 per day for the first fifteen (15) calendar days and $200 per day until the Defect is corrected. * Severity Level 3 Defect within ten (10) Business Days, Contractor will pay liquidated damages of $33 per day for the first fifteen (15) calendar days and $66 per day until the Defect is corrected. * Severity Level 4 Defect within sixty (60) calendar days, Contractor will pay liquidated damages of $10 per day for the first fifteen (15) calendar days and $20 per day until the Defect is corrected.   A Disaster is considered a Severity 1 incident. Liquidated damages for a Disaster begin 24 hours after the start of a Disaster. A Disaster starts when HCA notifies Contractor of a Disaster or Contractor becomes aware of a disaster, whichever comes first. |

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| **Deliverables** | |
| **Performance Standard – O&M #8** | **Liquidated Damages – O&M #8** |
| Contractor must meet the Delivery milestones identified in the Annual O&M Schedule for all Deliverables, including but not limited to those listed under SOW Section 7.0, new and updated models and reports and Performance Reports. | For each day past the Contractor’s scheduled Delivery milestone, HCA shall assess $200 per Business Day for the first fifteen (15) calendar days and $400 per Business Day until the Deliverable is provided. |

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| **Key Staff** | |
| **Performance Standard – O&M #9** | **Liquidated Damages – O&M #9** |
| Contractor must replace Key Staff with individuals who are acceptable to HCA within sixty (60) calendar days of departure unless a longer period is approved in writing by HCA. Contractor must appoint an interim replacement Key Staff within one (1) Business Day of departure of the Key Staff. | If the Key Staff is not replaced within sixty (60) calendar days of Key Staff departure, or a longer period if approved by HCA, HCA shall assess $250 per Business Day for each day beyond sixty (60) days until an acceptable replacement has been made. |

Attachment E

Performance Reports

Note: These performance reports are documented in SOW 7.9 Solution Performance Monitoring and Reporting Services. Other reports are required in the SOW.

|  |  |  |  |
| --- | --- | --- | --- |
| **#** | **Name of Report** | **Supports the Following Performance Standard(s)** | **Due Date** |
| **1** | Solution Response Time Report | O&M #5 |  |
| **2** | Solution Downtime Report | O&M #6 |  |
| **3** | Incident Response and Resolution Report | O&M #7 |  |
| **4** | Solution Operations Monitoring Report | O&M #7 |  |
| **5** | Data Accuracy Report | O&M #4 |  |
|  |  |  |  |

# Exhibit A

RFP 2020HCA14

This exhibit is included and incorporated into this Contract by reference, but is not attached herein.

# Exhibit B

Contractor’s RFP Response

This exhibit will be included and incorporated into this Contract by reference but will not be attached herein.