

Exhibit I – Draft Contract

	<p>PROFESSIONAL SERVICES CONTRACT for Fully Insured and/or Self- Insured Group Vision Plans</p>	<p>HCA Contract Number: K Resulting from Solicitation Number (If applicable: RFP 2722 Contractor/Vendor Contract Number:</p>
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THIS CONTRACT is made by and between Washington State Health Care Authority, (HCA) and _____, (Contractor).

CONTRACTOR NAME		CONTRACTOR DOING BUSINESS AS (DBA)		
CONTRACTOR ADDRESS	Street	City	State	Zip Code
CONTRACTOR CONTACT		CONTRACTOR TELEPHONE	CONTRACTOR E-MAIL ADDRESS	
Is Contractor a Subrecipient under this Contract? <input type="checkbox"/> YES <input type="checkbox"/> NO		CFDA NUMBER(S): 93.778;	FFATA Form Required <input type="checkbox"/> YES <input type="checkbox"/> NO	

HCA PROGRAM	HCA DIVISION/SECTION
HCA CONTACT NAME AND TITLE	HCA CONTACT ADDRESS Health Care Authority 626 8th Avenue SE PO Box _____ Olympia, WA 98504-_____
HCA CONTACT TELEPHONE (360) 725-	HCA CONTACT E-MAIL ADDRESS

CONTRACT START DATE	CONTRACT END DATE	TOTAL MAXIMUM CONTRACT AMOUNT
PURPOSE OF CONTRACT: Contractor agrees to provide services and covered benefits, as specified herein, for Members enrolled in the School Employees Benefits Board (SEBB) Program.		

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 HCA.

CONTRACTOR SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED
HCA SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED

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Attachments

- Attachment 1: Confidential Information Security Requirements *(if applicable)*
- Attachment 2: Federal Compliance, Certifications and Assurances *(if applicable)*
- Attachment 3: Federal Funding Accountability and Transparency Act Data Collection Form *(if applicable)*

Schedules

Schedule A: Statement of Work (SOW) Services

Exhibits

Exhibit A: HCA RFx for 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.

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Contract #K for Administrative Services

Recitals

The state of Washington, acting by and through the Health Care Authority (HCA), issued a Request for Proposals (RFP) dated June 29, 2018, (Exhibit 1 – *HCA RFP 2722*) for the purpose of purchasing Fully Insured and/or Self-Insured Group Vision Plan Services for the School Employees Benefits Board (SEBB) Program in accordance with its authority under chapters 39.26 and 41.05 RCW.

[Contractor Name] submitted a timely Response to HCA's RFP 2722 (Exhibit 2 – *Bidder Response to HCA RFP 2722*).

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

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

NOW THEREFORE, HCA awards to [Contractor Name] this Contract, the terms and conditions of which will govern Contractor's providing to HCA the administrative services and covered benefits defined herein.

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

1. STATEMENT OF WORK (SOW)

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

2. DEFINITIONS

All Payer Claims Database or APCD – Washington's statewide all-payer health care claims database to support transparent public reporting of health care information as described in RCW 43.371.020.

Annual Open Enrollment – An annual event set aside for a period of time when Subscribers may make changes to their plan enrollment and salary reduction elections for the following Plan Year. During the Annual Open Enrollment, Subscribers may transfer from one plan to another, enroll or remove Dependents from coverage, or enroll or waive enrollment in SEBB Program medical benefits. School Employees eligible to participate in the salary reduction plan may enroll in or re-enroll under the dependent care assistance program (DCAP) or the medical flexible spending arrangement (FSA). They may also enroll in or opt-out of the premium payment plan.

Appeal – A written or oral request for reconsideration of a decision to deny, modify, reduce, or terminate payment, coverage, or provision of vision care services.

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

Benefits Start Date – The day Contractor will begin providing benefit coverage and services under this Contract. This date is currently scheduled for January 1, 2020.

Book-of-Business – All commercial business of the Bidder, including all fully insured and self-insured products within the Bidder's accounts.

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

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

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

Centers for Medicare and Medicaid Services or CMS - The federal office under the Secretary of the United States Department of Health and Human Services, responsible for the Medicare and Medicaid programs.

Certificate of Coverage or COC – A summary of the essential features of the group coverage contract produced and made available to each covered person. The COC is in effect during a given benefit year in which the date of service(s) received by the Member, falls.

Code of Federal Regulations or CFR – The annual codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government. All references in this Contract to CFR chapters or sections include any successor, amended, or replacement regulation. The CFR may be accessed at www.ecfr.gov.

Charter School – Per Chapter 241, Laws of 2016 (E2SSB 6194), a "Charter School" is a public school that is established in accordance with this chapter, governed by a charter school board, and operated according to the terms of a charter school contract executed under this chapter.

Claim – The written notice on a form acceptable to the Contractor for reimbursement for any covered vision service or supply pursuant to the terms of the applicable Certificate of Coverage.

Common Measure Set – A set of statewide measures for Washington State that provide the foundation for health care accountability and measuring performance. The Performance Measures Coordinating Committee, which was created by legislation (RCW 41.05.690), approved a “starter set” of measures in December 2014 that are intended to evolve over time as the science of measurement and state priorities evolve.

Complaint (Grievances) – An oral or written expression of dissatisfaction submitted by or on behalf of a Member regarding: (i) the denial of vision care services or payment for vision care services; (ii) issues other than denial of or payment for vision care services, including dissatisfaction with vision care services, delays in obtaining vision care services, conflicts with carrier staff or providers; or (iii) dissatisfaction with UMP Plan practices or action unrelated to vision care services.

Confidential Information – Means information that may be exempt from disclosure to the public or other unauthorized persons under chapter 42.56 RCW or chapter 70.02 RCW or other state or federal statutes 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, driver license numbers, financial profiles, credit card numbers, financial identifiers and any other identifying numbers, law enforcement records, HCA source code or object code, or HCA or State security information.

Consolidated Omnibus Budget Reconciliation Act or COBRA – Is the federal law administered by a governmental plan under Title XXII of the Public Health Service (PHS) Act, 42 U.S.C. 300bb-1 through 300bb-8.

Continuation Coverage – The temporary continuation of Health Plan coverage available to Enrollees after a qualifying event occurs as administered under COBRA, the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Secs. 4301 through 4335, or SEBB insurance coverage extended by the SEB Board.

Contract – Means this Contract document and all schedules, exhibits, attachments, incorporated documents and amendments.

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

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.

Covered Lives – Means the number of people enrolled in a particular insurance plan.

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

Day – Any calendar day, including weekends and holidays. All statements referring to a number of Days mean calendar days, regardless of the number of Days, unless something different is explicitly specified. If the time when something must be performed falls on a weekend, a day observed as a holiday by the State of Washington as an employer, or a day when HCA is officially closed for other reasons, then that action is due on the next Business Day. Day one is the Day after receipt, unless something different is explicitly specified.

Dependent – A spouse, state-registered domestic partner, or child of the Subscriber, who meets SEBB Program eligibility requirements as described in the SEB Board policy resolutions SEBB 2018-01, SEBB 2018-02, and SEBB 2018-03.

Educational Service District (ESD) – A regional education unit Washington State. There are nine (9) ESDs; each ESD serves multiple school districts. ESD are established under RCW 28A.310.020 to provide cooperative and information services to local school districts; assist superintendents in the performance of their duties, and provide services to the school districts and the Washington State center for childhood deafness and hearing loss and the school for the blind to assure equal education opportunities.

Effective Date – The first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

Enrollee – Enrollee means a person who meets all eligibility requirements defined in chapter 182-31 WAC, who is enrolled in SEBB benefits, and for whom applicable premium payments have been made.

Explanation of Benefits or EOB – A statement sent to covered individuals explaining what vision treatments and/or services were paid on their behalf.

Health Care Authority or HCA – Means the Washington State Health Care Authority, any division, section, office, unit or other entity of HCA, or any of the officers or other officials lawfully representing HCA.

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

Health Insurance Portability and Accountability Act or HIPAA – The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended from time to time, and its corresponding federal regulations.

Member – Subscribers and their Dependents who are enrolled in a SEBB Program contracted Vision Plan with a carrier that results from this RFP, and for whom applicable premium contributions and any applicable premium surcharges have been made.

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

PEBB – The Public Employees Benefits Board, which is authorized to design benefits and determine the terms and conditions for participation in insurance benefits for eligible public employees and Retirees under chapter 41.05 RCW.

PEBB Program – The program administered by HCA that purchases and coordinates benefits for eligible public employees and Retirees.

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 or 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).

Response – Means Contractor’s Response to HCA’s RFP 2722 for SEBB Program Vision Plans. Included by reference in **Error! Reference source not found.**

Retiree(s) – Has the same meaning as contained in RCW 41.05.011 (18) and (24).

Revised Code of Washington or RCW – The compilation of all permanent laws now in force. All references in this Contract to RCW chapters or sections include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at <http://apps.leg.wa.gov/rcw/>.

School Employee – Has the same meaning as 41.05.011(6)(b).

School Employees Benefits Board or SEB Board – A board made up of members appointed by the Governor that is authorized to design and approve insurance benefit plans for School Employees and to establish eligibility criteria for participation in benefit plans under RCW 41.05.740.

SEBB Vision Plan or Vision Plan – A vision plan approved by the SEB Board that is offered under the SEBB Program.

School Employees Benefits Board or SEBB Program – The program administered by HCA that purchases and coordinates benefits for eligible School Employees.

SmartHealth – The PEBB Program’s wellness incentive program initiated by the Governor’s Executive Order 13-06.

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

Subscriber – The School Employee, Retiree, Continuation Coverage enrollee, or survivor who has been determined eligible by the SEBB Program, school district, ESD, or Charter School and is the individual to whom the SEBB Program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of Members.

United States Code or USC – The consolidation and codification by subject matter of the general and permanent laws of the United States. All references in this Contract to USC chapters or sections shall include any successor, amended, or replacement statute. The USC may be accessed at <http://uscode.house.gov/>.

Washington Administrative Code or WAC – The administrative rules and regulations by which state agencies operate to execute the laws enacted by the Legislature. The WAC codifies the regulations and arranges them by subject or agency. All references to WAC chapters or sections will include any successor, amended, or replacement regulation. Pertinent WACs may be accessed at: <http://app.leg.wa.gov/wac/>.

3. SPECIAL TERMS AND CONDITIONS

3.1 TERM

- A. The initial term of the Contract will commence in early November 2018 as of the last signature date and continue through December 31, 2023, unless terminated sooner as provided herein. Implementation will begin immediately following Contract execution. The Contractor will support the SEBB Annual Open Enrollment activities in the fall of 2019 for the 2020 Plan Year as specified and approved by HCA. Benefits, Claims processing and other administrative services will not begin until January 1, 2020.
- B. This Contract may be extended for increments HCA deems appropriate for no more than five (5) additional years. No change in terms and conditions will be permitted during these extensions unless specifically agreed to in writing.
- C. Work performed without a contract or amendment signed by the Authorized Representatives of both parties will be at the sole risk of the Contractor. HCA will not pay any costs incurred before a contract or any subsequent amendment(s) is fully executed.

3.2 Deliverable Acceptance

- A. Upon receipt of a Deliverable submitted by Contractor, HCA will have an initial period of ten (10) Days to review and evaluate the Deliverable for deficiencies, unless a longer timeframe is mutually agreed to by the parties. The HCA will provide

written acceptance of the Deliverable if, in HCA's sole reasonable discretion, it has no deficiencies.

- B. If a deficiency is found, the HCA will notify the Contractor of any deficiencies in writing. Contractor will have five (5) Business Days to correct any deficiencies, unless a longer timeframe is mutually agreed to by the parties, and submit the corrected Deliverable to HCA. Upon receipt of the corrected Deliverable, HCA will have five (5) Business Days to review and evaluate the Deliverable for deficiencies. This process will be repeated until the HCA provides written acceptance of the Deliverable.
- C. Once a Deliverable has been accepted by HCA, the obligations described in the Deliverable will be enforceable subject to HCA's rights and remedies contained in this Contract for Contractor's failure to perform.

3.3 Contractor and HCA Contract Managers

- A. Contractor's Contract Manager will have primary responsibility and final authority for the services provided under this Contract and be the principal point of contact for the HCA Contract Manager for all business matters, performance matters, and administrative activities.
- B. HCA's Contract Manager is responsible for monitoring the Contractor's performance and will be the contact person for all communications regarding contract performance and Deliverables. The HCA Contract Manager has the authority to accept or reject the services provided and must approve Contractor's invoices prior to payment.
- C. The contact information provided below may be changed by written notice of the change (email acceptable) to the other party.

CONTRACTOR Contract Manager Information	Health Care Authority Contract Manager Information
Name:	Name:
Title:	Title:
Address:	Address:
Phone:	Phone:
Email:	Email:

3.4 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 either delivered in person, 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.

- A. In the case of notice to the Contractor:

[Contractor Contact Information]

- B. 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

- C. Notices are effective upon receipt or four (4) Business Days after mailing, whichever is earlier.
- D. The notice address and information provided above may be changed by written notice of the change given as provided above.

3.5 Incorporation of Documents and Order of Precedence

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

- A. Applicable Federal and State of Washington statutes and regulations;
- B. Data Share Agreement, HCA Contract Number _____ ;
- C. Special Terms and Conditions;
- D. HCA Responsibilities;
- E. Contractor Obligations;
- F. General Terms and Conditions;
- G. Attachment 1: Confidential Information Security Requirements;
- H. Schedule A: Statement(s) of Work;

- I. Exhibit 1: *HCA RFP 2722 for SEBB Program Fully Insured and Self-Insured Group Vision Plans*, dated June 27, 2018;
- J. Exhibit 2: *Contractor's Response* dated ; and
- K. Any other provision, term or material incorporated herein by reference or otherwise incorporated.

3.6 Insurance

Contractor must provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of Contractor or Subcontractor, or agents of either, while performing under the terms of this Contract. Contractor must provide insurance coverage that is maintained in full force and effect during the term of this Contract, as follows:

- A. Commercial General Liability Insurance Policy - Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1 million per occurrence/\$2 million general aggregate. Additionally, Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
- B. Business Automobile Liability. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned, hired, or non-owned by the Contractor, automobile liability insurance is required covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.
- C. Professional Liability Errors and Omissions – Provide a policy with coverage of not less than \$1 million per claim/\$2 million general aggregate.
- D. The insurance required must be issued by an insurance company/ies authorized to do business within the state of Washington, and must name HCA and the state of Washington, its agents and employees as additional insured's under any Commercial General and/or Business Automobile Liability policy/ies. All policies must be primary to any other valid and collectable insurance. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor must provide written notice of such to HCA within one (1) Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at HCA's sole option, result in this Contract's termination.

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

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

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

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

4. HCA RESPONSIBILITIES

4.1 Responsibility

While determination of eligibility criteria is the statutory responsibility of the SEB Board, the HCA retains administrative responsibility for individual eligibility determinations for SEBB Program benefits, and handles individual benefits eligibility Appeals. In addition, the HCA reserves the right to authorize audits by third parties.

4.2 COMPENSATION

- A. The Maximum Compensation payable to Contractor for the performance of all things necessary for or incidental to the performance of work as set forth in Schedule A: *Statement of Work* is \$ _____, and includes any allowable expenses.
- B. Contractor's compensation for services rendered will be based on the following rates or in accordance with the following terms.
- C. Day-to-day expenses related to performance under the Contract, including but not limited to travel, lodging, meals, and incidentals, will not be reimbursed to Contractor. If Contractor is required by HCA to travel, any such travel must be authorized in writing by the HCA [Position Title] and reimbursement will be at rates not to exceed

the then-current rules, regulations, and guidelines for State employees published by the Washington State Office of Financial Management in the Washington State Administrative and Accounting Manual (<http://www.ofm.wa.gov/policy/10.htm>); reimbursement will not exceed expenses actually incurred.

To receive reimbursement, Contractor must provide a detailed breakdown of authorized expenses and receipts for any expenses of \$50 or more.

4.3 INVOICE AND PAYMENT

- A. Contractor must submit accurate invoices to the following address for all amounts to be paid by HCA via e-mail to: Acctspay@hca.wa.gov. Include the HCA Contract number in the subject line of the email.
- B. Invoices must describe and document to HCA's satisfaction a description of the work performed, the progress of the project, and fees. If expenses are invoiced, invoices must provide a detailed breakdown of each type. Any single expense in the amount of \$50.00 or more must be accompanied by a receipt in order to receive reimbursement. All invoices will be reviewed and must be approved by the Contract Manager or his/her designee prior to payment.
- C. Contractor must submit properly itemized invoices to include the following information, as applicable:
 - a. HCA Contract number K ;
 - b. Contractor name, address, phone number;
 - c. Description of Services;
 - d. Date(s) of delivery;
 - e. Net invoice price for each item;
 - f. Applicable taxes;
 - g. Total invoice price; and
 - h. Payment terms and any available prompt payment discount.
- D. 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.
- E. In order to receive payment for services or products provided to a state agency, Contractor must register with the Statewide Payee Desk at <http://des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>. Payment will be considered timely if made by HCA within thirty (30) 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.

- F. Upon expiration of the Contract, any claims for payment for costs due and payable under this Contract that are incurred prior to the expiration date must be submitted by the Contractor to HCA within sixty (60) Days after the Contract expiration date. HCA is under no obligation to pay any claims that are submitted sixty-one (61) or more 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.
- G. Privacy Breach Response Coverage. Contractor must maintain insurance to cover costs incurred in connection with a Breach, or potential Breach, including:
1. Computer forensics assistance to assess the impact of the Breach or potential Breach, determine root cause, and help determine whether and the extent to which notification must be provided to comply with Breach notification laws.
 2. Notification and call center services for individuals affected by a Breach.
 3. Breach resolution and mitigation services for individuals affected by a Breach, including fraud prevention, credit monitoring and identity theft assistance.
 4. Regulatory defense, fines and penalties from any claim in the form of a regulatory proceeding resulting from a violation of any applicable privacy or security law(s) or regulation(s).

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

5. GENERAL TERMS AND CONDITIONS

5.1 ACCESS TO DATA

In compliance with RCW 39.26.180 (2) and federal rules, the Contractor must provide access to any data generated under this Contract to HCA, the Joint Legislative Audit and Review Committee, the State Auditor, and any other state or federal officials so authorized by law, rule, regulation, or agreement at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor’s reports, including computer models and methodology for those models.

5.2 ADVANCE PAYMENT PROHIBITED

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

5.3 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.

5.4 ASSIGNMENT

- A. Contractor may not assign or transfer all or any portion of this Contract or any of its rights hereunder, or delegate any of its duties hereunder, except delegations as set forth in Section 5.37, *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 A of the Contract will be null and void.
- B. 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) Days to Contractor.
- C. This Contract will inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

5.5 ATTORNEYS' FEES

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

5.6 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) Days after such a change takes effect.

5.7 CONFIDENTIAL INFORMATION PROTECTION

- A. Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell,

disclose, or otherwise make the information known to any other party without HCA's express written consent or as provided by law. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information (See Attachment 1: *Confidential Information Security Requirements*).

- B. 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).
- C. 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.
- D. The obligations set forth in this Section will survive completion, cancellation, expiration, or termination of this Contract.

5.8 CONFIDENTIAL INFORMATION SECURITY

The federal government, including the Centers for Medicare and Medicaid Services (CMS), and the State of Washington all maintain security requirements regarding privacy, data access, and other areas. Contractor is required to comply with the Confidential Information Security Requirements set out in Attachment 1 to this Contract and appropriate portions of the Washington OCIO Security Standard, 141.10 (<https://ocio.wa.gov/policies/141-securing-information-technology-assets/14110-securing-information-technology-assets>).

5.9 CONFIDENTIAL INFORMATION BREACH – REQUIRED NOTIFICATION

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

- C. 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 Secretary (DHHS) Secretary, and to the media, or direct Contractor to make them or any of them.
 2. In any case, Contractor will pay the reasonable costs of notification to individuals, media, and governmental agencies and of other actions HCA reasonably considers appropriate to protect HCA clients (such as paying for regular credit watches in some cases).
 3. Contractor will compensate HCA clients for harms caused to them by any Breach or possible Breach.
- D. Any breach of this clause may result in termination of the Contract and the demand for return or disposition (Attachment 1, Section 6) of all Confidential Information.
- E. 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.

5.10 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.

5.11 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.

5.12 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.

5.13 DISPUTES

The parties will use their best, good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Contract. Both parties will continue without delay to carry out their respective responsibilities under this Contract while attempting to resolve any dispute. When a genuine dispute arises between HCA and the Contractor regarding the terms of this Contract or the responsibilities imposed herein and it cannot be resolved between the parties' Contract Managers, either party may initiate the following dispute resolution process.

- A. 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.
- B. 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;
- C. 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.

5.14 ENTIRE AGREEMENT

HCA and Contractor agree that the Contract is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Contract and supersedes all letters of intent or prior contracts, oral or written, between the parties relating to the subject matter of the Contract, except as provided in Section 5.44 *Warranties*.

5.15 FEDERAL FUNDING ACCOUNTABILITY & TRANSPARENCY ACT (FFATA)

[Use if applicable]

- A. This Contract is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.
- B. To comply with the act and be eligible to enter into this Contract, Contractor must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If Contractor does not already have one, a DUNS® number is available free of charge by contacting Dun and Bradstreet at www.dnb.com.
- C. Information about Contractor and this Contract will be made available on www.uscontractorregistration.com by HCA as required by P.L. 109-282. HCA's Attachment 3: *Federal Funding Accountability and Transparency Act Data Collection Form*, is considered part of this Contract and must be completed and returned along with the Contract.

5.16 FORCE MAJEURE

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

5.17 FUNDING WITHDRAWN, REDUCED OR LIMITED

If HCA determines in its sole discretion that the funds it relied upon to establish this Contract have been withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding after the effective date of this contract but prior to the normal completion of this Contract, then HCA, at its sole discretion, may:

- A. Terminate this Contract pursuant to Section C, *Termination for Non-Allocation of Funds*;
- B. Renegotiate the Contract under the revised funding conditions; or

- C. 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.
1. During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
 2. When HCA determines in its sole discretion that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to HCA informing HCA whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.
 3. If the Contractor's proposed resumption date is not acceptable to HCA and an acceptable date cannot be negotiated, HCA may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.

5.18 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.

5.19 HCA NETWORK SECURITY

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.

Contractor will have access to the HCA visitor Wi-Fi Internet connection while on site.

5.20 INDEMNIFICATION

Contractor must defend, indemnify, and save HCA harmless from and against all claims, including reasonable attorneys' fees resulting from such claims, for any or all injuries to persons or damage to property, or Breach of its confidentiality and notification obligations under Section 5.7 *Confidential Information Protection* and Section 5.8 *Confidentiality Breach-Required Notification*, arising from intentional or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents, in the performance of this Contract.

5.21 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.

5.22 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.

5.23 LEGAL AND REGULATORY COMPLIANCE

- A. 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.
- B. 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.
- C. Failure to comply with any provisions of this section may result in Contract termination.

5.24 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 of any clause or condition of this

Contract is not effective or binding unless made in writing and signed by the HCA Authorized Representative.

5.25 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.

5.26 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 Termination for Default sections, and Contractor may be declared ineligible for further contracts with HCA.

5.27 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 shall refund the full amount to HCA within thirty (30) Days of the notice. If Contractor fails to make timely refund, HCA may charge Contractor one percent (1%) per month on the amount due, until paid in full. If the Contractor disagrees with HCA's actions under this section, then it may invoke the dispute resolution provisions of Section 5.13 *Disputes*.

5.28 PAY Equity

- A. Contractor represents and warrants that, as required by Washington state law (Laws of 2017, Chap. 1, § 147), 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.
- B. 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.
- C. 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.

- D. 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.
- E. 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.

5.29 PUBLICITY

- A. 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.
- B. 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.

5.30 RECORDS AND DOCUMENTS REVIEW

- A. 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].
- B. The Contractor must retain such records for a period of six (6) years after the date of final payment under this Contract.
- C. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved.

5.31 REMEDIES NON-EXCLUSIVE

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

5.32 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.

5.33 RIGHTS IN DATA/OWNERSHIP

- A. 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.
- B. 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.
- C. 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.
- D. 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 shall 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.
- E. 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.

- F. 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.

5.34 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.

5.35 SEVERABILITY

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

5.36 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.

5.37 SUBCONTRACTING

- A. 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.

- B. Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are included in any subcontracts.
- C. If at any time during the progress of the work HCA determines in its sole judgment that any Subcontractor is incompetent or undesirable, HCA will notify Contractor, and Contractor must take immediate steps to terminate the Subcontractor's involvement in the work.
- D. 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.
- E. 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.

5.38 SUBRECIPIENT

[Use if applicable]

A. General

If the Contractor is a subrecipient (as defined in 45 CFR 75.2 and 2 CFR 200.93) of federal awards, then the Contractor, in accordance with 2 CFR 200.501 and 45 CFR 75.501, shall:

1. Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;
2. Maintain internal controls that provide reasonable assurance that the Contractor is managing federal awards in compliance with laws, regulations,

and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;

3. Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
4. Incorporate OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501 audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;
5. Comply with any future amendments to OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501 and any successor or replacement Circular or regulation;

6. Comply with the applicable requirements of OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501 and any future amendments to OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, and any successor or replacement Circular or regulation; and
7. Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39. (Go to <http://oip.gov/about/offices/ocr.htm> for additional information and access to the aforementioned Federal laws and regulations.)

B. Single Audit Act Compliance

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

1. Submit to the Authority contact person the data collection form and reporting package specified in OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;
2. Follow-up and develop corrective action for all audit findings; in accordance with OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, prepare a "Summary Schedule of Prior Audit Findings."

C. Overpayments

1. If it is determined by HCA, or during the course of a required audit, that Contractor has been paid unallowable costs under this or any Program

Agreement, Contractor shall refund the full amount to HCA as provided in Section 5.27 *Overpayments to Contractors*.

5.39 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.

5.40 TAXES

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

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

5.41 TERMINATION

A. TERMINATION FOR DEFAULT

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

In the event of termination for default, Contractor will be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising, and staff time.

If it is determined that Contractor: (i) was not in default, or (ii) its failure to perform was outside of its control, fault or negligence, the termination will be deemed a "Termination for Convenience."

B. 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) 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.

C. TERMINATION FOR NONALLOCATION OF FUNDS

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

D. TERMINATION FOR WITHDRAWAL OF AUTHORITY

In the event that the authority of HCA to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, HCA may immediately terminate this Contract by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. HCA agrees to notify Contractor of such withdrawal of authority at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this section is exercised.

E. TERMINATION FOR CONFLICT OF INTEREST

HCA may terminate this Contract by written notice to the Contractor if HCA determines, after due notice and examination, that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, HCA will be entitled to pursue the same remedies against the Contractor as it could pursue in the event Contractor breaches the contract.

5.42 TERMINATION PROCEDURES

- A. 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.
- B. HCA will pay Contractor the agreed-upon price, if separately stated, for completed work and services accepted by HCA and the amount agreed upon by the Contractor and HCA for (i) completed work and services for which no separate price is stated; (ii) partially completed work and services; (iii) other property or services that are accepted by HCA; and (iv) the protection and preservation of property, unless the termination is for default, in which case HCA will determine the extent of the liability. Failure to agree with such determination will be a dispute within the meaning of Section 5.13 *Disputes*. HCA may withhold from any amounts due the Contractor such sum as HCA determines to be necessary to protect HCA against potential loss or liability.
- C. After receipt of notice of termination, and except as otherwise directed by HCA, Contractor must:
 - 1. Stop work under the Contract on the date of, and to the extent specified in, the notice;
 - 2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;
 - 3. Assign to HCA, in the manner, at the times, and to the extent directed by HCA, all the rights, title, and interest of the Contractor under the orders and subcontracts so terminated; in which case HCA has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 - 4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of HCA to the extent HCA may require, which approval or ratification will be final for all the purposes of this clause;
 - 5. Transfer title to and deliver as directed by HCA any property required to be furnished to HCA;
 - 6. Complete performance of any part of the work that was not terminated by HCA; and
 - 7. 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.

5.43 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.

5.44 WARRANTIES

- A. 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.
- B. Contractor represents and warrants that it shall comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services.
- C. 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.

Approved as to Form:

This contract format was approved by the
Office of the Attorney General.
Approval on file.

Attachment 1

Confidential Information Security Requirements

1. Definitions

In addition to the definitions set out in Section 2 of this Contract K for Fully Insured and Self-Insured Group Vision Plans, the definitions below apply to this Attachment.

- a. "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.
 - i. Passwords for external authentication must be a minimum of 10 characters long.
 - ii. Passwords for internal authentication must be a minimum of 8 characters long.
 - iii. Passwords used for system service or service accounts must be a minimum of 20 characters long.
- b. "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).
- c. "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.
- d. "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.
- e. "Transmitting" means the transferring of data electronically, such as via email, SFTP, webservices, AWS Snowball, etc.
- f. "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.

- g. "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.

2. Confidential Information Transmitting

- a. 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.
- b. When transmitting HCA's Confidential Information via paper documents, the Receiving Party must use a Trusted System.

3. Protection of Confidential Information

The Contractor agrees to store Confidential Information as described:

- a. Data at Rest:
 - i. 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.
 - ii. Data stored on Portable/Removable Media or Devices:
 - Confidential Information provided by HCA on Removable Media will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the Data.
 - HCA's data must not be stored by the Receiving Party on Portable Devices or Media unless specifically authorized within the Data Share Agreement. If so authorized, the Receiving Party must protect the Data by:
 1. Encrypting with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data;

2. Control access to the devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics;
 3. Keeping devices in locked storage when not in use;
 4. Using check-in/check-out procedures when devices are shared;
 5. Maintain an inventory of devices; and
 6. Ensure that when being transported outside of a Secured Area, all devices with Data are under the physical control of an Authorized User.
- b. 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.

4. Confidential Information Segregation

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

- a. The HCA Confidential Information must be kept in one of the following ways:
 - i. on media (e.g. hard disk, optical disc, tape, etc.) which will contain only HCA Data; or
 - ii. in a logical container on electronic media, such as a partition or folder dedicated to HCA's Data; or
 - iii. in a database that will contain only HCA Data; or
 - iv. within a database and will be distinguishable from non-HCA Data by the value of a specific field or fields within database records; or
 - v. when stored as physical paper documents, physically segregated from non-HCA Data in a drawer, folder, or other container.
- b. 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.

5. 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.

6. 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>).

- a. 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.