|  |  |  |
| --- | --- | --- |
| C:\Users\ANDERM\Desktop\HCA-logo.png | PROFESSIONAL SERVICES CONTRACT forOrthodontic Consultation & Utilization Reviews | HCA Contract Number: K     Resulting from Solicitation Number: K3975Contractor/Vendor Contract Number:  |
| **THIS CONTRACT** is made by and between Washington State Health Care Authority, (HCA) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (Contractor). |
| CONTRACTOR NAME | CONTRACTOR doing business as (DBA) |
|       |       |
| CONTRACTOR ADDRESS | Street | City | State | Zip Code |
|       |       |       |       |
| CONTRACTOR CONTACT | CONTRACTOR TELEPHONE | CONTRACTOR E-MAIL ADDRESS |
|       |       |       |
| Is Contractor a Subrecipient under this Contract? | CFDA NUMBER(S): | FFATA Form Required |
|  [ ] YES [ ] NO |  |  [ ] YES [ ] NO |
|  |  |
| HCA PROGRAM  | HCA DIVISION/SECTION |
|       |       |
| HCA CONTACT NAME AND TITLE  | HCA CONTACT ADDRESS |
|      ,       | Health Care Authority626 8th Avenue SEPO Box \_\_\_\_ Olympia, WA 98504-\_\_\_\_ |
| HCA CONTACT TELEPHONE  | HCA CONTACT E-MAIL ADDRESS |
| (360) 725-      |       |
|  |  |  |
| CONTRACT START DATE | CONTRACT END DATE  | TOTAL MAXIMUM CONTRACT AMOUNT |
| July 1, 2020 | June 30, 2022 |       |
| PURPOSE OF CONTRACT: |  |  |
| To provide orthodontic consulting services for utilization review and medical necessity determinations for orthodontia services as defined by Washington Administrative Code (WAC) 182-501-0165 for Apple Health/Medicaid clients. |
|  |  |  |
| 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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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 Qualifications and Quotation (RFQQ) dated [date], (Exhibit A) for the purpose of purchasing Orthodontic Consultation & Utilization Review Services in accordance with its authority under chapters 39.26 and 41.05 RCW.

[Contractor Name] submitted a timely Response to HCA’s RFQQ #K3975 (Exhibit B).

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

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

NOW THEREFORE, HCA awards to [Contractor Name] this Contract, the terms and conditions of which will govern Contractor’s providing to HCA theOrthodontic Consultation & Utilization Review serices.

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

# STATEMENT OF WORK (SOW)

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

# DEFINITIONS

**“Authorized Representative”** means a person to whom signature authority has been delegated in writing acting within the limits of his/her authority.

**“Breach”** means the unauthorized acquisition, access, use, or disclosure of Confidential Information that compromises the security, confidentiality, or integrity of the Confidential Information.

**“Business Associate”** means 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 Days”** means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

**“Case Study”** meansa pre-orthodontic treatment visit which includes preparation of comprehensive diagnostic records (additional photos, study casts, cephalometric examination film, and panoramic file, formation of diagnosis and treatment plan from such records, and formal case conference.

**“Centers for Medicare and Medicaid Services”** or **“CMS”** means the federal office under the Secretary of the United States Department of Health and Human Services, responsible for the Medicare and Medicaid programs.

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

**“Client”** meansa person who is an applicant for, or recipient of, any Washington apple health program, including managed care and long-term care. See definitions for "applicant" and "recipient" in RCW [74.09.741](http://app.leg.wa.gov/RCW/default.aspx?cite=74.09.741).

**“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.

**“Contract”** means this Contract document and all schedules, exhibits, attachments, incorporated documents and amendments.

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

**“Covered entity”** means 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”** means information produced, furnished, acquired, or used by Contractor in meeting requirements under this Contract.

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

**“Handicapping Labio-Lingual Deviation Index” or “HLD”** means one of the tools used to measure medical necessity of orthodontic treatment.

**“HCA Contract Manager”** means the individual identified on the cover page of this Contract who will provide oversight of the Contractor’s activities conducted under this Contract.

**“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.

**“Medically Necessary”** is a term for describing a requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate, or prevent worsening of conditions in the client that endanger life, or cause suffering or pain, or result in an illness, or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction. There is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the client requesting the services. For the purposes of this section, “course of treatment” may include mere observation or, where appropriate, no treatment at all.

**“Orthodontics”** means treatment involving the use of any appliance, in or out of the mouth, removable or fixed, or any surgical procedure designed to redirect teeth and surrounding tissues.

**“Orthodontist”** means a dentist who specializes in orthodontics, who is a graduate of a postgraduate program in orthodontics that is accredited by the American Dental Association, and who meets the licensure requirements of the Department of Health.

**"Overpayment"** means 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.

**“Peer Review”** means the process by which a professional clinician reviews and resolves problems or misunderstands regarding orthodontic treatment with the requesting clinician.

**“Prior Authorization”** means the requirement that a provider must request, on behalf of a client and when required by rule or agency billing instructions, the agency or the agency's designee's approval to provide a health care service before the client receives the health care service, prescribed drug, device, or drug-related supply. The agency or the agency's designee's approval is based on medical necessity. Receipt of prior authorization does not guarantee payment. Expedited prior authorization and limitation extension are types of prior authorization**.**

**“Proprietary Information”** means 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”** means 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 RFQQ #K3975 for Orthodontic Consultation & Utilization ReviewServices and is Exhibit B hereto.

**“RCW”** means the Revised Code of Washington. 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/>.

 **“RFQQ”** means the Request for Qualifications and Quotation used as the solicitation document to establish this Contract, including all its amendments and modifications and is Exhibit A hereto.

**“Statement of Work”** or **“SOW”** means 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 Schedule A hereto.

**“Subcontractor”** means a person or entity that is 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 Contractor. The term “Subcontractor” means subcontractor(s) of any tier.

 **“Utilization Review”** means the process where requests for a health care service are evaluated against appropriate clinical criteria or treatment guidelines (“utilization”) for such services and includes the preparation of a recommendation based on that evaluation.

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

**“WAC”** means the Washington Administrative Code. 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/>.

# SPECIAL TERMS AND CONDITIONS

## PERFORMANCE EXPECTATIONS (Optional)

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

[Examples – add or delete as appropriate]

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

### Use of professional judgment;

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

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

### Timely, accurate and informed communications;

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

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

### Provision of high quality services.

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

## TERM

### The initial term of the Contract will commence on July 1, 2020, or date of last signature, whichever is later, and continue through June 30, 2022, unless terminated sooner as provided herein.

### This Contract may be extended through June 30, 2025 in one year (1) increments at the sole discretion of HCA. No change in terms and conditions will be permitted during these extensions unless specifically agreed to in writing.

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

## ON-SITE CONTRACTOR ORIENTATION

### Contractors who will be working on site at HCA must attend a Contractor Orientation within 30 Calendar Days of commencing work at HCA, must successfully complete any required elements of the orientation, and must abide by all applicable policies and procedures provided at orientation.

### Contractors who will be working on site will be assigned an identification card to access the building and will be granted use of one of the available Contractor Lounges. (Note: See Section 3.5 *On-Site Contractor’s Work Space* below if Contract will be assigned an HCA work space).

### If HCA determines in its sole discretion that the Contractor has violated any applicable policy or procedure while providing services under this Contract, or when HCA determines in its sole discretion that it is in the best interests of the state, HCA may terminate the Contractor’s access to the Contractor Lounge or the Contractor’s workstation, as applicable, upon ten calendar days’ written notice.

## ON-SITE CONTRACTOR’S WORK SPACE

[Use only if applicable. NOTE: Prior approval from the Chief Legal Officer is required before a Contractor can have a workstation. See Administrative Policy 8-03 ]

If the Contractor is being assigned one or more workstations at HCA, the following additional provisions will apply.

### HCA will assign the Contractor [#] workstation(s) and assess a workstation fee of $      per month per workstation.

### The Contractor must deduct the workstation fee as a separate line item from the amount due on its monthly invoices to HCA. If the Contractor has performed no billable work during a month, the Contractor will still be obligated to credit HCA the workstation fee for that month on its next invoice. If the Contractor has multiple contracts with HCA, the parties will agree and document which contract will be assessed the workstation fee.

### HCA will prorate the monthly workstation fee if work begins or ends in the middle of the month. The fee will be divided by the number of days in the month, then multiplied by the number of days the contract was in effect.

### If the Contractor fails to credit a monthly workstation fee to HCA, the parties specifically agree that HCA will deduct the workstation fee from the invoiced amount and authorize the corrected invoice for payment.

## COMPENSATION

### 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.

### Contractor’s compensation for services rendered will be based on the following rates or in accordance with the following terms.

### 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 Contract Manager 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.

### Federal funds disbursed through this Contract were received by HCA through OMB Catalogue of Federal Domestic Assistance (CFDA) Number: [Enter CFDA#], [Enter Federal Program Name], [Enter Grant Award#], [Enter Grant Award Name]. Contractor agrees to comply with applicable rules and regulations associated with these federal funds and has signed Attachment 2: *Federal Compliance, Certification and Assurances*, attached.

## INVOICE AND PAYMENT

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

### 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.

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

#### HCA Contract number K     ;

#### Contractor name, address, phone number;

#### Description of Services;

#### Date(s) of delivery;

#### Net invoice price for each item;

#### Applicable taxes;

#### Total invoice price; and

#### Payment terms and any available prompt payment discount.

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

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

### Upon expiration of the Contract, any claims for payment for costs due and payable under this Contract that are incurred prior to the expiration date must be submitted by the Contractor to HCA within sixty (60) calendar days after the Contract expiration date. HCA is under no obligation to pay any claims that are submitted sixty-one (61) or more calendar days after the Contract expiration date (“Belated Claims”). HCA will pay Belated Claims at its sole discretion, and any such potential payment is contingent upon the availability of funds.

## CONTRACTOR and HCA CONTRACT MANAGERS

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

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

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

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

## KEY STAFF

### Except in the case of a legally required leave of absence, sickness, death, termination of employment or unpaid leave of absence, Key Staff must not be changed during the term of the Statement of Work (SOW) from the people who were described in the Response for the first SOW or those Key Staff initially assigned to subsequent SOWs, without the prior written approval of HCA until completion of their assigned tasks.

### During the term of the Statement of Work (SOW), HCA reserves the right to approve or disapprove Contractor’s Key Staff assigned to this Contract, to approve or disapprove any proposed changes in Contractor’s Key Staff, or to require the removal or reassignment of any Contractor staff found unacceptable by HCA, subject to HCA’s compliance with applicable laws and regulations. Contractor must provide a resume to HCA of any replacement Key Staff and all staff proposed by Contractor as replacements for other staff must have comparable or greater skills for performing the activities as performed by the staff being replaced.

## LEGAL NOTICES

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

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

[Contractor Contact Information]

### In the case of notice to HCA:

**Attention:** Contracts Administrator

Health Care Authority

Division of Legal Services

Post Office Box 42702

Olympia, WA 98504-2702

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

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

## INCORPORATION OF DOCUMENTS AND ORDER OF PRECEDENCE

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

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

### Business Associate Agreement, HCA Contract Number      ; (if applicable, otherwise delete)

### Data Share Agreement, HCA Contract Number      ; (if applicable, otherwise delete)

### Recitals

### Special Terms and Conditions;

### General Terms and Conditions;

### Attachment 1: Confidential Information Security Requirements; (if applicable, otherwise delete)

### Attachment 2: Federal Compliance, Certifications and Assurances; (if applicable, otherwise delete)

### Attachment 3: Federal Funding Accountability and Transparency Act Data Collection Form; (if applicable, otherwise delete)

### Schedule A(s): Statement(s) of Work;

### Exhibit A: HCA RFQQ *#*K3975 *for Orthodonic Consultation & Utilization Reviews*, dated

### Exhibit B: *Contractor’s Response* dated      ; and

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

## INSURANCE

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

### Commercial General Liability Insurance Policy - Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than $1 million per occurrence/$2 million general aggregate. Additionally, Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

### Business Automobile Liability. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned, hired, or non-owned by the Contractor, automobile liability insurance is required covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability. The minimum limit for automobile liability is $1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

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

### The insurance required must be issued by an insurance company/ies authorized to do business within the state of Washington, and must name HCA and the state of Washington, 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.

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.

[Use if Applicable]

### The Receiving Party certifies that it is self-insured, is a member of a risk pool, or maintains the types and amounts of insurance identified above and will provde certificates of insurance to that effect to HCA upon request.

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.

[Use when there is sharing of PHI]

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

#### 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.

#### Notification and call center services for individuals affected by a Breach.

#### Breach resolution and mitigation services for individuals affected by a Breach, including fraud prevention, credit monitoring and identity theft assistance.

#### 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.

# GENERAL TERMS AND CONDITIONS

## ACCESS TO DATA

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

## ADVANCE PAYMENT PROHIBITED

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

## AMENDMENTS

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

## ASSIGNMENT

### Contractor may not assign or transfer all or any portion of this Contract or any of its rights hereunder, or delegate any of its duties hereunder, except delegations as set forth in Section 4.37, *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 4.4.1 of the Contract will be null and void.

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

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

## ATTORNEYS’ FEES

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

## CHANGE IN STATUS

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

## CONFIDENTIAL INFORMATION PROTECTION

### Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without HCA’s express written consent or as provided by law. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information (See Attachment 1: *Confidential Information Security Requirements*).

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

### HCA reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

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

## CONFIDENTIAL INFORMATION SECURITY

[Use if applicable]

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>).

## CONFIDENTIAL INFORMATION BREACH – REQUIRED NOTIFICATION

### 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.

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

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

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

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

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

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

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

## CONTRACTOR’S PROPRIETARY INFORMATION

Contractor acknowledges that HCA is subject to chapter 42.56 RCW, the Public Records Act, and that this Contract will be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, HCA will maintain the confidentiality of Contractor’s information in its possession that is marked Proprietary. If a public disclosure request is made to view Contractor’s Proprietary Information, HCA will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, HCA will release the requested information on the date specified.

## COVENANT AGAINST CONTINGENT FEES

Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. HCA will have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

## DEBARMENT

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

## DISPUTES

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

### The initiating party will reduce its description of the dispute to writing and deliver it to the responding party (email acceptable). The responding party will respond in writing within five (5) Business Days (email acceptable). If the initiating party is not satisfied with the response of the responding party, then the initiating party may request that the HCA Director 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.

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

#### Be in writing;

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

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

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

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

## ENTIRE AGREEMENT

HCA and Contractor agree that the Contract is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Contract and supersedes all letters of intent or prior contracts, oral or written, between the parties relating to the subject matter of the Contract, except as provided in Section 4.44 *Warranties*.

## FEDERAL FUNDING ACCOUNTABILITY & TRANSPARENCY ACT (FFATA)

[Use if applicable]

### 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.

### 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](http://www.dnb.com).

### Information about Contractor and this Contract will be made available on [www.uscontractorregistration.com](http://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.

## 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.

## FUNDING WITHDRAWN, REDUCED OR LIMITED

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

### Terminate this Contract pursuant to Section 4.41.3, *Termination for Non-Allocation of Funds*;

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

### Suspend Contractor’s performance under the Contract upon five (5) Business Days’ advance written notice to Contractor. HCA will use this option only when HCA determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor’s performance to be resumed prior to the normal completion date of this Contract.

#### During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.

#### When HCA determines in its sole discretion that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to HCA informing HCA whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, “written notice” may include email.

#### If the Contractor’s proposed resumption date is not acceptable to HCA and an acceptable date cannot be negotiated, HCA may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.

## GOVERNING LAW

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

## 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.

## 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 4.7 *Confidential Information Protection* and Section 4.8 *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.

## INDEPENDENT CAPACITY OF THE CONTRACTOR

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

## INDUSTRIAL INSURANCE COVERAGE

Prior to performing work under this Contract, Contractor must provide or purchase industrial insurance coverage for the Contractor’s employees, as may be required of an “employer” as defined in Title 51 RCW, and must maintain full compliance with Title 51 RCW during the course of this Contract.

## LEGAL AND REGULATORY COMPLIANCE

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

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

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

## LIMITATION OF AUTHORITY

Only the HCA Authorized Representative has the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this Contract is not effective or binding unless made in writing and signed by the HCA Authorized Representative.

## NO THIRD-PARTY BENEFICIARIES

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

## NONDISCRIMINATION

During the performance of this Contract, the Contractor must comply with all federal and state nondiscrimination laws, regulations and policies, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §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.

## 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 4.13 *Disputes*.

## PAY Equity

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

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

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

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

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

## PUBLICITY

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

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

## RECORDS AND DOCUMENTS REVIEW

### The Contractor must maintain books, records, documents, magnetic media, receipts, invoices or other evidence relating to this Contract and the performance of the services rendered, along with accounting procedures and practices, all of which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. At no additional cost, these records, including materials generated under this Contract, are subject at all reasonable times to inspection, review, or audit by HCA, the Office of the State Auditor, and state and federal officials so authorized by law, rule, regulation, or agreement [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].

### The Contractor must retain such records for a period of six (6) years after the date of final payment under this Contract.

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

## REMEDIES NON-EXCLUSIVE

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

## RIGHT OF INSPECTION

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

## RIGHTS IN DATA/OWNERSHIP

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

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

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

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

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

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

## 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.

## 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.

## 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.

## SUBCONTRACTING

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

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

### If at any time during the progress of the work HCA determines in its sole judgment that any Subcontractor is incompetent or undesirable, HCA will notify Contractor, and Contractor must take immediate steps to terminate the Subcontractor's involvement in the work.

### The rejection or approval by the HCA of any Subcontractor or the termination of a Subcontractor will not relieve Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to HCA.

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

## SUBRECIPIENT

[Use if applicable]

### 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:

#### 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;

#### 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;

#### Prepare appropriate financial statements, including a schedule of expenditures of federal awards;

#### 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;

#### 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;

#### Comply with the applicable requirements of OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501and 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

#### 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://ojp.gov/about/offices/ocr.htm> for additional information and access to the aforementioned Federal laws and regulations.)

### 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 will procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Contractor will:

#### 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;

#### 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.”

### Overpayments

#### 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 will refund the full amount to HCA as provided in Section 4.27 *Overpayments to Contractors*.

## SURVIVAL

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

## TAXES

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

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

## TERMINATION

### TERMINATION FOR DEFAULT

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

In the event of termination for default, Contractor will be liable for damages 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.”

### TERMINATION FOR CONVENIENCE

When, at HCA’s sole discretion, it is in the best interest of the State, HCA may terminate this Contract in whole or in part by providing ten (10) calendar days’ written notice. If this Contract is so terminated, HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty will accrue to HCA in the event the termination option in this section is exercised.

### TERMINATION FOR NONALLOCATION OF FUNDS

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

### TERMINATION FOR WITHDRAWAL OF AUTHORITY

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

### TERMINATION FOR CONFLICT OF INTEREST

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

## TERMINATION PROCEDURES

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

### HCA will pay Contractor the agreed-upon price, if separately stated, for completed work and services accepted by HCA and the amount agreed upon by the Contractor and HCA for (i) completed work and services for which no separate price is stated; (ii) partially completed work and services; (iii) other property or services that are accepted by HCA; and (iv) the protection and preservation of property, unless the termination is for default, in which case HCA will determine the extent of the liability. Failure to agree with such determination will be a dispute within the meaning of Section 4.13 *Disputes*. HCA may withhold from any amounts due the Contractor such sum as HCA determines to be necessary to protect HCA against potential loss or liability.

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

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

#### Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;

#### Assign to HCA, in the manner, at the times, and to the extent directed by HCA, all the rights, title, and interest of the Contractor under the orders and subcontracts so terminated; in which case HCA has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

#### Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of HCA to the extent HCA may require, which approval or ratification will be final for all the purposes of this clause;

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

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

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

## WAIVER

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

## WARRANTIES

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

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

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

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

Attachment 1

**Confidential Information Security Requirements**

1. Definitions

In addition to the definitions set out in Section 2 of this Contract K      for       Orthodontic Consultatin & Utilization Review services, the definitions below apply to this Attachment.

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

The Contractor agrees to store Confidential Information as described:

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

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

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

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

1. Confidential Information Disposition

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

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

Schedule A

Statement of Work

1. Contractor Responsibilities:

The Contractor must provide the services, staff, and do all things necessary for or incidental to the performance of work, as set forth below:

* 1. Within five (5) Business Days of receipt from HCA staff:
		1. Review initial Client orthodontia service prior to authorization requests and supporting material, such as photographs, x-rays, case studies, and study models.
		2. Evaluate whether or not each initial Client orthodontia service prior to authorization request meets the standard for being Medically Necessary based on criteria referenced in [WAC 182-535A](https://apps.leg.wa.gov/WAC/default.aspx?cite=182-535A).
		3. Via the Contractor’s access to ProviderOne, document their clinical decision to approve, deny, or pend for submittal of additional supporting material by the Client’s orthodontia provider for each initial orthodontia services prior-authorization request.
		4. Upon notification of additional information submitted to support a pended Prior Authorization (PA) request:
			1. Review supporting materials such as photographs, x-rays, case studies, and study models.
			2. Evaluate whether or not the supporting materials meet the standards for being Medically Necessary.
			3. Via the Contractor’s access to ProviderOne, document their clinical decision to approve, deny, or re-pend for additional supporting material by the Client’s orthodontia provider.
	2. If necessary, and as requested by HCA, review grievances files by Clients regarding the quality of care provided by enrolled orthodontia providers:
		1. Review each grievance and supporting material.
		2. Submit written recommendation to HCA staff as to the relative merit of each grievance.
	3. If necessary, and as requested by HCA, perform peer to peer contact:
		1. Train providers regarding completion of HLD scoring index.
		2. Discuss complicated client submittals.
		3. Discuss decision making process.
	4. Post orthodontic treatment records:
		1. Review post orthodontic treatment records and any supporting materials such as photographs, x-rays, case studies, and study models.
		2. Evaluate whether or not orthodontic services provided and paid by HCA meet the prevailing standards of care.
		3. Submit a written recommendation to HCA staff stating whether the orthodontic services provided and paid by HCA met the prevailing standards of care.
	5. New orthodontic treatments, techniques, modalities, or services:
		1. Review based upon evidence-based dental principles within the timeframe as requested by HCA staff.
		2. Evaluate as appropriateness for Clients.
	6. Program policies, procedures, billing instructions, numbered memoranda, bulletins, proposed forms, proposed new or amended regulations, medical determination, or authorization criteria:
		1. Review as requested by HCA against criteria and standards as provided by HCA staff.
		2. Submit recommendation to HCA staff.
	7. Fair hearing, site visit(s), and meeting participation:
		1. As requested by HCA staff; and
		2. As Contractor’s work schedule and availability permits.
	8. Communications regarding work done under this Contract must be directed to the HCA Contract Manager.
	9. Work hours and availability:
		1. Collaborate with the HCA Contract Manager to develop a work schedule.
		2. Proactively communicate changes in work schedule to the HCA Contract Manager, including but not limited to vacations and out of the office.
		3. Check work email every day the Contractor is scheduled to work.
	10. Comply with HCA WAC rules and billing guidelines regarding coverage and determining medical necessity.
1. HCA Responsibilities
	1. Establish a profile for the Contract and any subcontractor giving access to the ProviderOne system for the purpose of reviewing prior authorization requests and recording recommendations for clinical decisions.
	2. Orient the Contractor and any Subcontractor to ProviderOne.
	3. Provider up-to-date online manuals, tutorials, and reference links.
	4. Provide calibration workshops on as needed basis, as determined by HCA.

**Exhibit A**

HCA RFQQ K3975 for Orthodontic Consultation & Utilization Reviews

This RFQQ is hereby incorportated by reference and is available in full from HCA upon request.

**Exhibit B**

Contractor’s Response to HCA RFQQ K3975

This Response is hereby incorporated by reference and is available from HCA upon request.

# DATA SHARE AGREEMENT

# Purpose of the DSA

The purpose of this Data Share Agreement (DSA) is to identify, describe and protect the Medicaid data being provided by HCA from ProviderOne to the Receiving Party. The purpose for sharing the Data is for the Receiving Party to      .

# Justification and Authority for Data Sharing

The Data to be shared under this DSA are necessary to comply with

[Explain the justification for the data sharing and provide the statutory or rule authority for the data to be shared.]

# Definitions

**“Agreement”** means this Data Share Agreement.

**“Authorized User”** means an individual or individuals with an authorized business need to access HCA’s Confidential Information under this DSA.

**“Breach”** means the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the Protected Health Information, with the exclusions and exceptions listed in 45 CFR 164.402.

**“Business Associate”** means 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 Associate Agreement”** means the HIPAA Compliance section of this DSA (Section 13) and includes the Business Associate provisions required by the U.S. Department of Health and Human Services, Office for Civil Rights.

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

**“Client”** means an individual who is eligible for or receiving Medicaid services.

**“Confidential Information”** means information that is exempt from disclosure to the public or other unauthorized persons under Chapter 42.56 RCW or other federal or state laws. Confidential Information comprises both Category 3 and Category 4 Data as described in Section 6, *Data Classification*, which includes, but is not limited to, Personal Information and Protected Health Information. For purposes of this DSA, Confidential Information means the same as “Data.”

**“Contract Administrator”** means the individual designated to receive legal notices and to administer, amend, or terminate this DSA.

**“Contract Manager”** means the individual identified on the cover page of this DSA who will provide oversight of the activities conducted under this DSA.

**“Covered Entity”** means HCA, which is a Covered Entity as defined in 45 CFR 160.103, in its conduct of covered functions by its health care components.

**“Data”** means the information that is disclosed or exchanged as described by this DSA. For purposes of this DSA, Data means the same as “Confidential Information.”

**“Designated Record Set”** means a group of records maintained by or for a Covered Entity, that is: the medical and billing records about Individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or Used in whole or part by or for the Covered Entity to make decisions about Individuals.

**“Disclosure”** means the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information.

**“DSA”** means this Data Share Agreement.

**“Electronic Protected Health Information (ePHI)”** means Protected Health Information that is transmitted by electronic media or maintained in any medium described in the definition of electronic media at 45 CFR 160.103.

**“HCA”** means the state of Washington Health Care Authority, any section, unit or other entity of HCA, or any of the officers or other officials lawfully representing HCA.

**“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as amended by the American Recovery and Reinvestment Act of 2009 (“ARRA”), Sec. 13400 – 13424, H.R. 1 (2009) (HITECH Act).

**“HIPAA Rules”** means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and Part 164.

**“Individual(s)”** means the person(s) who is the subject of PHI and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

**“Minimum Necessary”** means the least amount of PHI necessary to accomplish the purpose for which the PHI is needed.

**“Personal Information”** means information identifiable to any person, including, but not limited to, information that relates to a person’s name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver’s license numbers, credit card numbers, any other identifying numbers, and any financial identifiers.

**“Protected Health Information”** or **“PHI”** means 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. 45 CFR 160 and 164. PHI includes demographic information that identifies the individual or about which there is reasonable basis to believe, can be used to identify the individual. 45 CFR 160.103. 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 Right and Privacy Act, as amended, 20 USC 1232g(a)(4)(b)(iv).

**“ProviderOne”** means the Medicaid Management Information System, which is the State’s Medicaid payment system managed by HCA.

**“RCW”** means the Revised Code of Washington. All references in this DSA to RCW chapters or sections will include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at: <http://apps.leg.wa.gov/rcw/>.

**“Regulation”** means any federal, state, or local regulation, rule, or ordinance.

**“Receiving Party”** means the entity that is identified on the cover page of this DSA and is a party to this DSA, and includes the entity’s owners, members, officers, directors, partners, trustees, employees, and Subcontractors and their owners, members, officers, directors, partners, trustees, and employees.

**“Security Incident”** means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.

**“Subcontract”** means any separate agreement or contract between the Receiving Party and an individual or entity (“Subcontractor”) to perform any duties that give rise to a business requirement to access the Data that is the subject of this DSA.

**“Subcontractor”** means a person or entity that is not in the employment of the Receiving Party, who is performing services or any duties that give rise to a business requirement to access the Data that is the subject of this DSA.

**“USC”** means the United States Code. All references in this DSA to USC chapters or sections will include any successor, amended, or replacement statute. The USC may be accessed at <http://uscode.house.gov/>

**“Use”** includes the sharing, employment, application, utilization, examination, or analysis, of PHI within an entity that maintains such information

**“WAC”** means the Washington Administrative Code. All references in this DSA to WAC chapters or sections will include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at: <http://apps.leg.wa.gov/wac/>.

# Description of Data to be Shared

The Data to be shared is set out in attached Schedule 1: *Description of Shared Data*.

The Data will be provided [how often and how shared – example: one time via an HCA Secure FTP site. HCA will provide access to the Receiving Party.]

# Data Classification

The State classifies data into categories based on the sensitivity of the data pursuant to the Security policy and standards promulgated by the Office of the state of Washington Chief Information Officer. (See Section 4, *Data Security*, of *Securing IT Assets Standards* No. 141.10 in the *State Technology Manual* at <https://ocio.wa.gov/policies/141-securing-information-technology-assets/14110-securing-information-technology-assets>. Section 4 is hereby incorporated by reference.)

The Data that is the subject of this DSA is classified as indicated below:

[ ]  Category 1 – Public Information

Public information is information that can be or currently is released to the public. It does not need protection from unauthorized disclosure, but does need integrity and availability protection controls.

[ ]  Category 2 – Sensitive Information

Sensitive information may not be specifically protected from disclosure by law and is for official use only. Sensitive information is generally not released to the public unless specifically requested.

[ ]  Category 3 – Confidential Information

Confidential information is information that is specifically protected from disclosure by law. It may include but is not limited to:

1. Personal Information about individuals, regardless of how that information is obtained;
2. Information concerning employee personnel records;
3. Information regarding IT infrastructure and security of computer and telecommunications systems;

[ ]  Category 4 – Confidential Information Requiring Special Handling

Confidential information requiring special handling is information that is specifically protected from disclosure by law and for which:

1. Especially strict handling requirements are dictated, such as by statutes, regulations, or agreements;
2. Serious consequences could arise from unauthorized disclosure, such as threats to health and safety, or legal sanctions.

# Constraints on Use of Data

## The Data being shared/accessed is owned and belongs to HCA.

## This DSA does not constitute a release of the Data for the Receiving Party’s discretionary use. Receiving Party must use the Data received or accessed under this DSA only to carry out the purpose and justification of this agreement as set out in sections 2, Purpose of the Data Sharing, and 3, Justification and Authority for Data Sharing. Any analysis, use, or reporting that is not within the Purpose of this DSA is not permitted without HCA’s prior written consent.

## Any disclosure of Data contrary to this DSA is unauthorized and is subject to penalties identified in law.

# Security of Data

## Data Protection

The Receiving Party must protect and maintain all Confidential Information gained by reason of this DSA against unauthorized use, access, disclosure, modification or loss. This duty requires the Receiving Party to employ reasonable security measures, which include restricting access to the Confidential Information by:

### Allowing access only to staff that have an authorized business requirement to view the Confidential Information.

### Physically securing any computers, documents, or other media containing the Confidential Information.

## Data Security Standards

Receiving Party must comply with the Data Security Requirements set out in Exhibit A and the Washington OCIO Security Standard, 141.10 (<https://ocio.wa.gov/policies/141-securing-information-technology-assets/14110-securing-information-technology-assets>.) The Security Standard 141.10 is hereby incorporated by reference into this DSA.

## Data Disposition

Upon request by HCA, or at the end of the DSA term, or when no longer needed, Confidential Information/Data must be disposed of as set out in Exhibit A, Section 5 *Data Disposition,* except as required to be maintained for compliance or accounting purposes. Receiving Party will provide written certification of disposition at HCA’s request.

# Data Confidentiality and Non-Disclosure

## Data Confidentiality.

The Receiving Party will not use, publish, transfer, sell, or otherwise disclose any Confidential Information gained by reason of this DSA for any purpose that is not directly connected with the purpose and justification of this DSA, as set out in Sections 1 and 3 above, except: (a) as provided by law; or (b) with the prior written consent of the person or personal representative of the person who is the subject of the Confidential Information.

## Non-Disclosure of Data

The Receiving Party must ensure that all employees or Subcontractors who will have access to the Data described in this DSA (including both employees who will use the Data and IT support staff) are instructed and made aware of the use restrictions and protection requirements of this DSA before gaining access to the Data identified herein. The Receiving Party will also instruct and make any new employee aware of the use restrictions and protection requirements of this DSA before they gain access to the Data.

The Receiving Party will ensure that each employee or Subcontractor who will access the Data signs the *User Agreement on Non-Disclosure of Confidential Information*, Exhibit B hereto. The Receiving Party will retain the signed copy of the *User Agreement on Non-Disclosure of Confidential Information* in each employee’s personnel file for a minimum of six years from the date the employee’s access to the Data ends. The documentation must be available to HCA upon request.

## Penalties for Unauthorized Disclosure of Data

State laws (including RCW 74.04.060 and RCW 70.02.020) and federal regulations (including HIPAA Privacy and Security Rules, 45 CFR Part 160 and Part 164; Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR, Part 2; and Safeguarding Information on Applicants and Beneficiaries, 42 CFR Part 431, Subpart F) prohibit unauthorized access, use, or disclosure of Confidential Information. Violation of these laws may result in criminal or civil penalties or fines.

The Receiving Party accepts full responsibility and liability for any noncompliance by itself, its employees, and its Subcontractors with these laws and any violations of the DSA.

# Public Disclosure (Public Agency)

If the Receiving Party receives a public records request under Chapter 42.56 RCW for any records containing Data subject to this DSA, Receiving Party agrees to notify the HCA Public Disclosure Officer within five (5) business days and to follow the procedure set out in this section before disclosing any records. The HCA Public Disclosure Officer can be contacted at PublicDisclosure@hca.wa.gov.

The Receiving Party must provide a copy of the records with proposed redactions to HCA when they are available and ready. HCA will respond within ten (10) business days of receipt of the redacted records to identify concerns with disclosure of the records, propose any changes to the Receiving Party redactions, or request more time if needed. If Receiving Party disagrees with any of HCA’s concerns or proposed changes, Receiving Party must notify HCA of that disagreement and provide HCA with a minimum of fifteen (15) business days to obtain a restraining order or injunction under RCW 42.56.540 before disclosing any records.

# Public Disclosure (non-Public Agency)

Receiving Party acknowledges that HCA is subject to the Public Records Act (Chapter 42.56 RCW). This DSA will be a “public record” as defined in Chapter 42.56 RCW. Any documents submitted to HCA by Receiving Party may also be construed as “public records” and therefore subject to public disclosure.

# Data Shared with Subcontractors

The Receiving Party will not enter into any Subcontract without the express, written permission of HCA, which will approve or deny the proposed contract in its sole discretion. If Data access is to be provided to a Subcontractor under this DSA, the Receiving Party must include all of the Data security terms, conditions and requirements set forth in this DSA in any such Subcontract. Because the Data includes PHI, Section 13.5 *Subcontracts and Other Third Party Agreements* also applies. In no event will the existence of the Subcontract operate to release or reduce the liability of the Receiving Party to HCA for any breach in the performance of the Receiving Party’s responsibilities.

# HIPAA Compliance

This section of the DSA is the Business Associate Agreement (BAA) required by HIPAA. The Receiving Party is a “Business Associate” of HCA as defined in the HIPAA Rules.

## HIPAA Point of Contact. The point of contact for the Receiving Party for all required HIPAA-related reporting and notification communications from this Section 13 *HIPAA Compliance* and all required Non-PHI Data breach notification communications from Section 14 *Non-PHI* *Data Breach Notification,* is*:*

HCA Privacy Officer

Washington State Health Care Authority

626 8th Avenue SE

PO Box 42700

Olympia, WA 98504-2700

Telephone: 360-725-1116

E-mail: PrivacyOfficer@hca.wa.gov

## Compliance. Business Associate must perform all DSA duties, activities and tasks in compliance with HIPAA, the HIPAA Rules, and all attendant regulations as promulgated by the U.S. Department of Health and Human Services, Office for Civil Rights, as applicable.

## Use and Disclosure of PHI. Business Associate is limited to the following permitted and required uses or disclosures of PHI:

### Duty to Protect PHI. Business Associate must protect PHI from, and will use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 (Security Standards for the Protection of Electronic Protected Health Information) with respect to ePHI, to prevent the unauthorized Use or disclosure of PHI for as long as the PHI is within its possession and control, even after the termination or expiration of this DSA.

### Minimum Necessary Standard. Business Associate will apply the HIPAA Minimum Necessary standard to any Use or disclosure of PHI necessary to achieve the purposes of this DSA. See 45 CFR 164.514 (d)(2) through (d)(5).

### Disclosure as Part of the Provision of Services. Business Associate will only Use or disclose PHI as necessary to perform the services specified in this DSA or as required by law, and will not Use or disclose such PHI in any manner that would violate Subpart E of 45 CFR Part 164 (Privacy of Individually Identifiable Health Information) if done by Covered Entity, except for the specific uses and disclosures set forth below.

### Use for Proper Management and Administration. Business Associate may Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

### Disclosure for Proper Management and Administration. Business Associate may disclose PHI for the proper management and administration of Business Associate, subject to HCA approval, or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

### Impermissible Use or Disclosure of PHI. Business Associate must report to the contact identified in Subsection 13.1 in writing all Uses or disclosures of PHI not provided for by this DSA within five (5) business days of becoming aware of the unauthorized Use or disclosure of PHI, including Breaches of unsecured PHI as required at 45 CFR 164.410 (Notification by a Business Associate), as well as any Security Incident of which it becomes aware. Upon request by HCA, Business Associate will mitigate, to the extent practicable, any harmful effect resulting from the impermissible Use or disclosure.

### Failure to Cure. If HCA learns of a pattern or practice of the Business Associate that constitutes a violation of the Business Associate’s obligations under the terms of this DSA and reasonable steps by the Business Associate do not end the violation, HCA may terminate this DSA, if feasible. In addition, If Business Associate learns of a pattern or practice of its Subcontractors that constitutes a violation of the Business Associate’s obligations under the terms of their contract and reasonable steps by the Business Associate do not end the violation, Business Associate must terminate the Subcontract, if feasible.

### Termination for Cause. Business Associate authorizes immediate termination of this DSA by HCA, if they determine that Business Associate has violated a material term of this Business Associate Agreement. HCA may, at their sole option, offer Business Associate an opportunity to cure a violation of this Business Associate Agreement before exercising a termination for cause.

### Consent to Audit. Business Associate must give reasonable access to PHI, its internal practices, records, books, documents, electronic data and/or all other business information received from, or created or received by Business Associate on behalf of HCA, to the Secretary of DHHS and/or to HCA for use in determining compliance with HIPAA privacy requirements.

### Obligations of Business Associate Upon Expiration or Termination. Upon expiration or termination of this DSA for any reason, with respect to PHI received from HCA, or created, maintained, or received by Business Associate, or any Subcontractors, on behalf of HCA, Business Associate must:

#### Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

#### Return to HCA or destroy the remaining PHI that the Business Associate or any Subcontractors still maintain in any form;

#### Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 (Security Standards for the Protection of Electronic Protected Health Information) with respect to Electronic Protected Health Information to prevent Use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate or any Subcontractors retain the PHI;

#### Not Use or disclose the PHI retained by Business Associate or any Subcontractors other than for the purposes for which such PHI was retained and subject to the same conditions set out in Subsection 13.3 *Use and Disclosure of PHI* that applied prior to termination; and

#### Return to HCA or destroy the PHI retained by Business Associate, or any Subcontractors, when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

### Survival. The obligations of the Business Associate under this section will survive the termination or expiration of this DSA.

## Individual Rights.

### Accounting of Disclosures.

#### Business Associate will document all disclosures, except those disclosures that are exempt under 45 CFR 164.528, of PHI and information related to such disclosures.

#### Within ten (10) business days of a request from HCA, Business Associate will make available to HCA the information in Business Associate’s possession that is necessary for HCA to respond in a timely manner to a request for an accounting of disclosures of PHI by the Business Associate. See 45 CFR 164.504(e)(2)(ii)(G) and 164.528(b)(1).

#### At the request of HCA or in response to a request made directly to the Business Associate by an Individual, Business Associate will respond, in a timely manner and in accordance with HIPAA and the HIPAA Rules, to requests by Individuals for an accounting of disclosures of PHI.

#### Business Associate record keeping procedures will be sufficient to respond to a request for an accounting under this section for the six (6) years prior to the date on which the accounting was requested.

### Access

#### Business Associate will make available PHI that it holds that is part of a Designated Record Set when requested by HCA or the Individual as necessary to satisfy HCA’s obligations under 45 CFR 164.524 (Access of Individuals to Protected Health Information).

#### When the request is made by the Individual to the Business Associate or if HCA ask the Business Associate to respond to a request, the Business Associate must comply with requirements in 45 CFR 164.524 (Access of Individuals to Protected Health Information) on form, time and manner of access. When the request is made by HCA, the Business Associate will provide the records to HCA within ten (10) business days.

### Amendment.

#### If HCA amends, in whole or in part, a record or PHI contained in an Individual’s Designated Record Set and HCA has previously provided the PHI or record that is the subject of the amendment to Business Associate, then HCA will inform Business Associate of the amendment pursuant to 45 CFR 164.526(c)(3) (Amendment of Protected Health Information).

#### Business Associate will make any amendments to PHI in a Designated Record Set as directed by HCA or as necessary to satisfy HCA’s obligations under 45 CFR 164.526 (Amendment of Protected Health Information).

## Subcontracts and other Third Party Agreements. In accordance with 45 CFR 164.502(e)(1)(ii), 164.504(e)(1)(i), and 164.308(b)(2), Business Associate must ensure that any agents, Subcontractors, independent contractors or other third parties that create, receive, maintain, or transmit PHI on Business Associate’s behalf, enter into a written contract that contains the same terms, restrictions, requirements, and conditions as the HIPAA compliance provisions in this Contract with respect to such PHI. The same provisions must also be included in any contracts by a Business Associate’s Subcontractor with its own business associates as required by 45 CFR 164.314(a)(2)(b) and 164.504(e)(5).

## Obligations. To the extent the Business Associate is to carry out one or more of HCA’s obligation(s) under Subpart E of 45 CFR Part 164 (Privacy of Individually Identifiable Health Information), Business Associate must comply with all requirements that would apply to HCA in the performance of such obligation(s).

## Liability. Within ten (10) business days, Business Associate must notify the contact identified in Subsection 13.1 of any complaint, enforcement or compliance action initiated by the Office for Civil Rights based on an allegation of violation of the HIPAA Rules and must inform HCA of the outcome of that action. Business Associate bears all responsibility for any penalties, fines or sanctions imposed against the Business Associate for violations of the HIPAA Rules and for any imposed against its Subcontractors or agents for which it is found liable.

## Breach Notification.

### In the event of a Breach of unsecured PHI or disclosure that compromises the privacy or security of PHI obtained from HCA or involving HCA clients, Business Associate will take all measures required by state or federal law.

### Business Associate will notify the contact identified in Subsection 13.1 by telephone and in writing within five (5) business days of any acquisition, access, use or disclosure of PHI not allowed by the provisions of this DSA or not authorized by HIPAA Rules or required by law that potentially compromises the security or privacy of the Protected Health Information.

### Business Associate will notify the HCA Privacy Officer identified in Section 13.1 above by telephone or e-mail within five (5) business days of any potential Breach of security or privacy of PHI by the Business Associate or its Subcontractors or agents. Business Associate will follow telephone or e-mail notification with a written (fax or email acceptable) explanation of the Breach, to include the following: date and time of the Breach, date Breach was discovered, location and nature of the PHI, type of Breach, origination and destination of PHI, Business Associate unit and personnel associated with the Breach, detailed description of the Breach, anticipated mitigation steps, and the name, address, telephone number, fax number, and e-mail of the individual who is responsible as the primary point of contact. Business Associate will notify HCA prior to dissemination of any public announcement of a data security Breach involving HCA’s data and include in any such required notifications, the planned date for the public announcement.

### Solely for purposes of the performance of the Proof of Concept as more particularly set forth in Schedule 1 hereto and Schedules A hereto, if a Breach of unsecured PHI is the sole fault of Business Associate then as between Business Associate and HCA, Business Associate will remain liable for claims that may arise from such Breach, including, but not limited to, costs for litigation (including reasonable attorneys’ fees), and reimbursement sought by individuals, including but not limited to, costs for credit monitoring or allegations of loss in connection with the Breach, and to the extent that any claims are brought against HCA, must indemnify HCA from such claims (if such claims arise through no fault or breach by HCA) and Business Associate will be responsible for any other legal or regulatory obligations which may arise under applicable law in connection with such a Breach and will bear all costs associated with complying with legal and regulatory obligations in connection therewith. For avoidance of doubt, “fault” refers to the party’s failure through act or omission to use reasonable procedures to avoid unauthorized access, use or disclosure of Personal Information.

### In the event the Breach is the sole fault of HCA, then as between Business Associate and HCA, HCA will remain liable for claims that may arise from such Breach, including, but not limited to, costs for litigation (including reasonable attorneys’ fees), and reimbursement sought by individuals, including but not limited to, costs for credit monitoring or allegations of loss in connection with the Breach, and to the extent that any claims are brought against Business Associate, will indemnify Business Associate from such claims (if such claims arise through no fault or breach by Business Associate ) and HCA will be responsible for any other legal or regulatory obligations which may arise under applicable law in connection with such a Breach and will bear all costs associated with complying with legal and regulatory obligations in connection therewith. For avoidance of doubt, “fault” refers to the party’s failure, through act or omission, to use reasonable procedures to prevent unauthorized acquisition of, access to or use of such Personal Information.

## Miscellaneous Provisions.

### Regulatory References. A reference in this DSA to a section in the HIPAA Rules means the section as in effect or amended.

### Interpretation. Any ambiguity in this DSA will be interpreted to permit compliance with the HIPAA Rules.

# Non PHI Data Breach Notification

The Breach of non-PHI Data shared under this DSA must be reported to the HCA Privacy Officer at PrivacyOfficer@hca.wa.gov within five (5) business days of discovery. The Receiving Party must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by applicable law or reasonably requested by HCA in order to meet its regulatory obligations.

# Amendments and Alterations

This DSA, or any term or condition, may be modified only by a written amendment signed by all parties. Only personnel authorized to bind each of the parties will sign an amendment.

# Assignment

The Receiving Party will not assign rights or obligations derived from this DSA to a third party without the prior, written consent of HCA and the written assumption of the Receiving Party’s obligations by the third party.

# Dispute Resolution (Option 1: non-Public Agency)

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

## The initiating party will reduce its description of the dispute to writing and deliver it to the responding party (email acceptable). The responding party will respond in writing within five (5) Business Days (email acceptable). If after five (5) additional Business Days the parties have not resolved the Dispute, it will be submitted to the HCA Director, who may employ whatever dispute resolution methods the Director deems appropriate to resolve the dispute.

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

### Be in writing;

### Include a written description of the dispute;

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

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

## This dispute resolution process constitutes the sole administrative remedy available under this DSA. There is no right under this DSA to an adjudicative proceeding under the Administrative Procedure Act.

# Dispute Resolution (Option 2: Public Agency)

## The parties agree to work in good faith to resolve all conflicts at the lowest level possible. However, if the parties are not able to promptly and efficiently resolve, through direct informal contact, any dispute concerning the interpretation, application, or implementation of any section of this DSA, either party may reduce its description of the dispute in writing, and deliver it to the other party for consideration. Once received, the assigned managers or designees of each party will work to informally and amicably resolve the issue within five (5) business days. If managers or designees are unable to come to a mutually acceptable decision within five (5) business days, they may agree to issue an extension to allow for more time.

## If the dispute cannot be resolved by the managers or designees, the issue will be referred through each Agency’s respective operational protocols, to the Director of HCA (“Director”) and the Receiving Party’s Agency Head (“Agency Head”) or their deputies or designated delegates. Both parties will be responsible for submitting all relevant documentation, along with a short statement as to how they believe the dispute should be settled, to the Director and Agency Head.

## Upon receipt of the referral and relevant documentation, the Director and Agency Head will confer to consider the potential options of resolution, and to arrive at a decision within fifteen (15) business days. The Director and Agency Head may appoint a review team, a facilitator, or both, to assist in the resolution of the dispute. If the Director and Agency Head are unable to come to a mutually acceptable decision within fifteen (15) business days, they may agree to issue an extension to allow for more time.

## The final decision will be put in writing, and will be signed by both the Director and Agency Head. If the agreement is active at the time of resolution, the parties will execute an amendment or change order to incorporate the final decision into the agreement. The decision will be final and binding as to the matter reviewed and the dispute will be settled in accordance with the terms of the decision.

## If the Director and Agency Head are uanble to come to a mutually acceptable decision, the parties will request intervention by the Governor, per RCW 43.17.330, in which case the governor may employ whatever dispute resolution methods that the governor deems appropriate in resolving the dispute.

## Both parties agree that, the existence of a dispute notwithstanding, the parties will continue without delay to carry out all respective responsibilities under this agreement that are not affected by the dispute.

# Entire Agreement

This DSA, including all documents attached to or incorporated by reference, contains all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this DSA, will be deemed to exist or bind the parties.

# Governing Law and Venue

This DSA is governed by, and will be construed and enforced in accordance with, the laws of the State of Washington. In the event of a lawsuit involving this DSA, jurisdiction is proper only in the Superior Court of Washington, and venue is proper only in Thurston County, Washington.

# Incorporated Documents and Order of Precedence

## Each of the documents listed below is, by this reference, incorporated into this DSA as though fully set forth herein.

### Schedule 1 – Description of Shared Data.

### Exhibit A – Data Security Requirements.

### Exhibit B – User Agreement on Non-Disclosure of Confidential Information.

### Section 4 of OCIO 141.10, *Securing Information Technology Assets Standards: Data Security* (<https://ocio.wa.gov/policies/141-securing-information-technology-assets/14110-securing-information-technology-assets>.)

## In the event of any inconsistency in this DSA, the inconsistency will be resolved in the following order of precedence:

### Applicable federal and state statutes, laws, and regulations;

### Sections of this DSA;

### Attachments, Exhibits and Schedules to this DSA.

# Inspection

No more than once per quarter during the term of this DSA and for six (6) years following termination or expiration of this DSA, HCA will have the right at reasonable times and upon no less than five (5) business days prior written notice to access the Receiving Party’s records and place of business for the purpose of auditing, and evaluating the Receiving Party’s compliance with this DSA and applicable laws and regulations.

# Insurance

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

## The Receiving Party certifies that it is self-insured, is a member of a risk pool, or maintains the types and amounts of insurance identified below and will provide certificates of insurance to that effect to HCA upon request.

## Required Insurance or Self-Insured Equivalent

### Commercial General Liability Insurance (CGL) covering the risks of bodily injury (including death), property damage, and contractual liability, with a limit of not less than $1 million per occurrence, $2 million aggregate.

### Cyber Liability/Privacy Breach Response Coverage. For the term of this DSA and 3 years following its termination or expiration, Receiving Party must maintain insurance to cover costs incurred in connection with a security incident, privacy Breach, or potential compromise of Data, including:

#### Computer forensics assistance to assess the impact of a Data Breach, determine root cause, and help determine whether and the extent to which notification must be provided to comply with Breach notification laws;

#### Notification and call center services for individuals affected by a security incident, or privacy Breach;

#### Breach resolution and mitigation services for individuals affected by a security incident or privacy Breach, including fraud prevention, credit monitoring, and identity theft assistance; and

#### 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).

### If any of the required policies provide coverage on a claims-made basis:

#### The retroactive date must be shown and must be before the date of the DSA or of the beginning of DSA work.

#### If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the DSA effective date, the Receiving Party must purchase “extended reporting” coverage for a minimum of 3 years after completion of DSA work.

The State of Washington, including but not limited to HCA, must be named as additional insureds.

In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this DSA, Receiving Party must provide written notice of such to HCA within one (1) Business Day of Receiving Party’s receipt of such notice.

By requiring insurance herein, HCA does not represent that coverage and limits will be adequate to protect Receiving Party. Such coverage and limits will not limit Receiving Party’s liability under the indemnities and reimbursements granted to HCA in this DSA.

# Legal Notices

## Any other notice or demand or other communication required or permitted to be given under this DSA or applicable law will be 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.

### To Receiving Party at:

[Address of Receiving Party]

### To HCA at:

Contract Administrator

Division of Legal Services

Health Care Authority

P. O. Box 42702

Olympia, Washington 98504-2702

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

# Maintenance of Records

The Receiving Party must maintain records related to compliance with this DSA for six (6) years after expiration or termination of this DSA. HCA or its designee will have the right to access those records during that six-year period for purposes of auditing.

# Responsibility

HCA and the Receiving Party will each be responsible for their own acts and omissions and for the acts and omissions of their agents and employees. Each party to this DSA must defend, protect, and hold harmless the other party, or any of the other party’s agents, from and against any loss and all claims, settlements, judgments, costs, penalties, and expenses, including reasonable attorney fees, arising from any willful misconduct or dishonest, fraudulent, reckless, unlawful, or negligent act or omission of the first party, or agents of the first party, while performing under the terms of this DSA, except to the extent that such losses result from the willful misconduct, or dishonest, fraudulent, reckless, unlawful, or negligent act or omission on the part of the second party. Each party agrees to promptly notify the other party in writing of any claim and provide the other party the opportunity to defend and settle the claim.

# Severablility

The provisions of this DSA are severable. If any provision of this DSA is held invalid by any court of competent jurisdiction, that invalidity will not affect the other provisions of this DSA and the invalid provision will be considered modified to conform to the existing law.

# Survival Clauses

The terms and conditions contained in this DSA that by their sense and context are intended to survive the expiration or other termination of this DSA must survive. Surviving terms include, but are not limited to: *Constraints on Use of Data, Security of Data, Data Confidentiality and Non-Disclosure of Data, HIPAA Compliance, Non PHI Data Breach Notification, Dispute Resolution, Inspection, Insurance, Maintenance of Records, and Responsibility*.

# Term and Termination

## Term. This DSA will begin on [BEGINNING DATE] or date of execution, whichever is later, and continue through [ENDING DATE], unless terminated sooner as provided in this Section.

## Termination for Convenience. Either HCA or the Receiving Party may terminate this DSA for convenience with thirty (30) calendar days’ written notice to the other. However, once Data is accessed by the Receiving Party, this DSA is binding as to the confidentiality, use and disposition of all Data received as a result of access, unless otherwise agreed in writing.

## Termination for Cause. HCA may terminate this DSA for default, in whole or in part, by written notice to the Receiving Pary, if HCA has a reasonable basis to believe that the Receiving Party has: (1) failed to perform under any provision of this DSA; (2) violated any law, regulation, rule, or ordinance applicable to this DSA; and/or (3) otherwise breached any provision or condition of this DSA.

Before HCA terminates this DSA for default, HCA will provide the Receiving Party with written notice of its noncompliance with the DSA and provide the Receiving Party a reasonable opportunity to correct its noncompliance. If the Receiving Party does not correct the noncompliance within the period of time specified in the written notice of noncompliance, HCA may then terminate the DSA. HCA may terminate the DSA for default without such written notice and without opportunity for correction if HCA has a reasonable basis to believe that a Client’s health or safety is in jeopardy. The determination of whether or not the Receiving Party corrected the noncompliance will be made by HCA, in its sole discretion.

# Waiver

Waiver of any breach or default on any occasion will not be deemed to be a waiver of any subsequent breach or default. Any waiver will not be construed to be a modification of the terms and conditions of this DSA.

# Signatures and Counterparts

The signatures on the cover page indicate agreement between the parties. The parties may execute this DSA in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement.

Schedule 1: Description of Shared Data

Exhibit A – Data Security Requirements

1. Definitions

In addition to the definitions set out in section 4, *Definitions*, of the Data Share Agreement (DSA), the definitions below apply to this Exhibit.

* 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 PCs, flash memory devices (e.g. USB flash drives, personal media players); and laptop/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.
1. Data Transmission
	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.
2. Protection of Data

The Receiving Party agrees to store and protect Confidential Information as described:

* 1. Data at Rest:
		1. 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.
		2. 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 DSA. If so authorized, the Receiving Party must protect the Data by:

Encrypting with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data;

Control access to the devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics;

Keeping devices in locked storage when not in use;

Using check-in/check-out procedures when devices are shared;

Maintain an inventory of devices; and

Ensure that when being transported outside of a Secured Area, all devices with Data are under the physical control of an Authorized User.

* 1. **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.
1. Data Segregation

HCA’s Data received under this DSA must be segregated or otherwise distinguishable from non-HCA Data. This is to ensure that when no longer needed by the Receiving Party, all of HCA’s Data can be identified for return or destruction. It also aids in determining whether HCA’s Data has or may have been compromised in the event of a security breach.

* 1. HCA’s Data 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.
	2. When it is not feasible or practical to segregate HCA’s Data from non-HCA data, then both HCA’s Data and the non-HCA data with which it is commingled must be protected as described in this Exhibit.
1. Data Disposition

When the Confidential Information is no longer needed, except as noted below, the Data 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 Data 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 Data as outlined in this section of this Exhibit may be deferred until the disks are retired, replaced, or otherwise taken out of the Secured Area.

|  |
| --- |
| User Agreement on Non-Disclosure of Confidential Information |
| Your organization has entered into a Data Share Agreement with the state of Washington Health Care Authority (HCA) that will allow you access to data and records that are deemed Confidential Information as defined below. Prior to accessing this Confidential Information you must sign this *User Agreement on Non-Disclosure of Confidential Information.*  |
| Confidential Information |
| “Confidential Information” means information that is exempt from disclosure to the public or other unauthorized persons under Chapter 42.56 RCW or other federal or state laws. Confidential Information includes, but is not limited to, Protected Health Information and Personal Information. For purposes of the pertinent Data Share Agreement, Confidential Information means the same as “Data.”“Protected Health Information” means 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 the past, present or future payment for provision of health care to an individual and includes demographic information that identifies the individual or can be used to identify the individual.“Personal Information” means information identifiable to any person, including, but not limited to, information that relates to a person’s name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, credit card numbers, any other identifying numbers, and any financial identifiers. |
| Regulatory Requirements and Penalties |
| State laws (including, but not limited to, RCW 74.04.060, RCW 74.34.095, and RCW 70.02.020) and federal regulations (including, but not limited to, HIPAA Privacy and Security Rules, 45 CFR Part 160 and Part 164; Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR, Part 2; and Safeguarding Information on Applicants and Beneficiaries, 42 CFR Part 431, Subpart F) prohibit unauthorized access, use, or disclosure of Confidential Information. Violation of these laws may result in criminal or civil penalties or fines.  |
| User Assurance of Confidentiality |
| In consideration for HCA granting me access to the Confidential Information that is the subject of this Agreement, I agree that I:Will access, use, and disclose Confidential Information only in accordance with the terms of this Agreement and consistent with applicable statutes, regulations, and policies.Have an authorized business requirement to access and use the Confidential Information.Will not use or disclose any Confidential Information gained by reason of this Agreement for any commercial or personal purpose, or any other purpose that is not directly connected with this Agreement.Will not use my access to look up or view information about family members, friends, the relatives or friends of other employees, or any persons who are not directly related to my assigned job duties.Will not discuss Confidential Information in public spaces in a manner in which unauthorized individuals could overhear and will not discuss Confidential Information with unauthorized individuals, including spouses, domestic partners, family members, or friends.Will protect all Confidential Information against unauthorized use, access, disclosure, or loss by employing reasonable security measures, including physically securing any computers, documents, or other media containing Confidential Information and viewing Confidential Information only on secure workstations in non-public areas.Will not make copies of Confidential Information, or print system screens unless necessary to perform my assigned job duties and will not transfer any Confidential Information to a portable electronic device or medium, or remove Confidential Information on a portable device or medium from facility premises, unless the information is encrypted and I have obtained prior permission from my supervisor.Will access, use or disclose only the “minimum necessary” Confidential Information required to perform my assigned job duties.Will not distribute, transfer, or otherwise share any software with anyone.Will forward any requests that I may receive to disclose Confidential Information to my supervisor for resolution and will immediately inform my supervisor of any actual or potential security breaches involving Confidential Information, or of any access to or use of Confidential Information by unauthorized users. Understand at any time, HCA may audit, investigate, monitor, access, and disclose information about my use of the Confidential Information and that my intentional or unintentional violation of the terms of this Agreement may result in revocation of privileges to access the Confidential Information, disciplinary actions against me, or possible civil or criminal penalties or fines. Understand that my assurance of confidentiality and these requirements will continue and do not cease at the time I terminate my relationship with my employer. |
| Signature |
| Print User’s Name | User Signature | Date |
|  |  |  |