Washington State Health Care Authority	**EXHIBIT B** **DRAFT CONTRACT** **PROFESSIONAL SERVICES CONTRACT** **for** **Master Leasing Toolkit**	**HCA Contract Number: K** **Resulting from Solicitation #2022HCA33**

THIS CONTRACT is made by and between the Washington State Health Care Authority, (HCA) and , (Contractor).

CONTRACTOR NAME		CONTRACTOR DOING BUSINESS AS (DBA)		
CONTRACTOR ADDRESS	Street	City	State	Zip Code
CONTRACTOR CONTACT	CONTRACTOR TELEPHONE	CONTRACTOR E-MAIL ADDRESS		
Is Contractor a Subrecipient under this Contract? ☐YES ☐NO				

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

CONTRACT START DATE	CONTRACT END DATE	TOTAL MAXIMUM CONTRACT AMOUNT
PURPOSE OF CONTRACT:		

The parties signing below warrant that they have read and understand this Contract and have authority to execute this Contract. This Contract will be binding on HCA only upon signature by both parties.

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

DRAFT

TABLE OF CONTENTS

1. Statement of Work (SOW) 4
2. Definitions 4
3. Special Terms and Conditions 8
3.1 Performance Expectations 8
3.2 Term 9
3.3 Compensation 9
3.4 Invoice and Payment 9
3.5 Contractor and HCA Contract Managers 10
3.6 Key Staff 11
3.7 Legal Notices 11
3.8 Incorporation of Documents and Order of Precedence 12
3.9 Insurance 12
4. General Terms and Conditions 13
4.1 Access to Data 13
4.2 Accessibility 14
4.3 Advance Payment Prohibited 15
4.4 Amendments 15
4.5 Assignment 15
4.6 Attorneys' Fees 15
4.7 Change in Status 15
4.8 Conflict of Interest 15
4.9 Conformance 16
4.10 Covered Information Protection 16
4.11 Contractor's Proprietary Information 17
4.12 Covenant Against Contingent Fees 17
4.13 Debarment 17
4.14 Disputes 17
4.15 Entire Agreement 18
4.16 Force Majeure 18
4.17 Funding withdrawn, Reduced, or Limited 18
4.18 Governing Law 19
4.19 HCA Network Security 19
4.20 Indemnification 20
4.21 Independent Capacity of the Contractor 20
4.22 Legal and Regulatory Compliance 20
4.23 Limitation of Authority 21

DRAFT

4.24 No Third-Party Beneficiaries 21
4.25 Nondiscrimination 21
4.26 Overpayments to the Contractor 21
4.27 Pay Equity 21
4.28 Publicity 22
4.29 Records and Document Review 22
4.30 Remedies Non-Exclusive 23
4.31 Right of Inspection 23
4.32 Rights in Data/Ownership 23
4.33 Severability 24
4.34 Site Security 24
4.35 Subcontracting 25
4.36 Survival 25
4.37 Taxes 25
4.38 Termination 26
4.39 Termination Procedures 27
4.40 Transition Obligations 28
4.41 Treatment of Assets 28
4.42 Waiver 29
4.43 Warranties 29
Attachment 1: HCA RFP 2022HCA33 31
Attachment 2: Contractor Response to HCA RFP #2022HCA33 32
Attachment 3: Statement of Work 33

DRAFT

Recitals

The State of Washington, acting by and through the Health Care Authority (HCA), issued a Request for Proposals/Qualifications and Quotation (RFP) dated [date], (Attachment 1) for the purpose of purchasing Master Leasing Toolkit Services in accordance with its authority under chapters 39.26 and 41.05 RCW.

[Contractor Name] submitted a timely Response to HCA's RFP #2022HCA33 (Attachment 2).

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

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

THEREFORE, HCA awards to [Contractor Name] this Contract, the terms and conditions of which will govern Contractor's providing to HCA the Master Leasing Toolkit Services.

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

1. STATEMENT OF WORK (SOW)

The Contractor will provide the services and staff as described in Attachment 3: *Statement of Work*.

2. DEFINITIONS

"American Indian/Alaska Native (AI/AN)" means any individual defined at 25 U.S.C. § 1603(13), § 1603(28), or § 1679(a), or who has been determined eligible as an Indian, under 42 C.F.R. § 136.12. This means the individual is a member of a Tribe or resides in an urban center and meets one or more of the following criteria: Is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the state in which they reside, or who is descendant, in the first or second degree, of any such member; is an Eskimo or Aleut or other Alaska Native; is considered by the Secretary of the Interior to be an Indian for any purpose; or is determined to be an Indian under regulations issued by the Secretary. The term AI/AN also includes an individual who is considered by the Secretary of the Interior to be an Indian for any purpose or is considered by the Secretary of Health and Human Services to be an Administrative Service Organization Indian (ASO) for purposes of eligibility for Indian health care services, including as a California Indian, Eskimo, Aleut, or other Alaska Native.

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

DRAFT

"Authorized User" means an individual or individuals with an authorized business need to access HCA's Confidential Information under this Contract.

"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.

"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.

"C.F.R." means the Code of Federal Regulations. All references in this Contract to C.F.R. chapters or sections include any successor, amended, or replacement regulation. The C.F.R. may be accessed at http://www.eC.F.R..gov/cgi-bin/EC.F.R.?page=browse. .

"Client" means an individual who is eligible for or receiving services through HCA program(s).

"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 Attachment 4, Section 3 *Data Classification*, which includes, but is not limited to, Personal Information and Protected Health Information. For the purposes of this Contract, Confidential Information means the same as "Data".

"Contract" means this Contract document and all schedules, exhibits, attachments, incorporated documents and amendments.

"Contract Administrator" means the HCA individual designated to receive legal notices and to administer, amend, or terminate this Contract.

"Contract Manager" means the individual identified on the cover page of this Contract who will provide oversight of the activities conducted under this Contract.

"**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" has the same meaning as defined in 45 C.F.R. 160.103.

"Data" means information produced, furnished, acquired, or used by Contractor in meeting requirements under this Contract.

"DBHR" means the HCA, Division of Behavioral Health and Recovery, and its employees

DRAFT

and authorized agents.

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

"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.

"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.

"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 inlcudes the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.

"Indian Health Care Provider (IHCP)" means the Indian Health Service and/or any Tribe, Tribal organization, or Urban Indian Health Program (UIHP).

"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.

"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 (including or excluding zip code), telephone numbers, social security numbers, driver's license numbers, credit card numbers, any other identifying numbers, and any financial identifiers.

"Proprietary Information" refers to any information which has commercial value and is either: (1) technical information, including patent, copyright, trade secret, and other proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae related to the current, future, and proposed products and services; or (2) non-technical information relating to products, including without limitation pricing, margins, merchandising plans and strategies, finances, financial and accounting data and information, suppliers, customers, customer lists, purchasing data, sales and marketing plans, future business plans, and any other information which is proprietary and confidential. Contractor's Proprietary Information is information owned by Contractor to which Contractor claims a protectable interest under law.

DRAFT

"**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 C.F.R. 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 C.F.R. 160.103. PHI is information transmitted, maintained, or stored in any form or medium. 45 C.F.R. 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)..

"Response" means Contractor's Response to HCA's RFP #2022HCA33 for Master Leasing Tookit Services and is Attachment 2 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/.

"Regulation" means any federal, state, or local regulation, rule, or ordinance.

"RFP" means the Request for Proposals/Qualifications and Quotation/Applications used as the solicitation document to establish this Contract, including all its amendments and modifications and is Attachment 1 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 Attachment 3 hereto.

"Subcontract" means any separate agreement or contract between the Contractor 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 Contract.

"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.

"Tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"Tribal Organization" means the recognized governing body of any Tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by one or more federally recognized Tribes or whose governing body is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

DRAFT

"Trueblood" Trueblood Class Members" means refer to persons who are in jail and waiting to receive competency evaluation or competency restoration services as ordered by the court.

"Urban Indian Health Program (UIHP)" means a nonprofit corporate body situated in an urban center, governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, that is operating a facility delivering health care.

"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/.

3. SPECIAL TERMS AND CONDITIONS

3.1 PERFORMANCE EXPECTATIONS

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

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

3.1.2 Use of professional judgment;

3.1.3 Collaboration with HCA staff in Contractor's conduct of the services;

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

3.1.5 Timely, accurate and informed communications;

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

3.1.7 Regular, punctual attendance at all meetings; and

3.1.8 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.

DRAFT

3.2 TERM

3.2.1 The initial term of the Contract will commence on [Initiation Date], and continue through [Expiration Date], unless terminated sooner as provided herein.

3.2.2 This Contract may be extended through up to one (1) year after start date of the Contract, by mutually agreed amendment in whatever time increments HCA deems appropriate. No change in terms and conditions will be permitted during these extensions unless specifically agreed to in writing.

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

3.3 COMPENSATION

3.3.1 The parties have determined the cost of accomplishing the work herein will not exceed **$** , inclusive of all fees, taxes, and expenses. Compensation for satisfactory performance of the work will not exceed this amount unless the parties agree to a higher amount through an amendment.

3.3.2 Contractor's compensation for services rendered will be based in accordance with the terms in the ***Statement of Work, Attachment 3.***

3.3.3 Contractor travel reimbursement, if any, is included in the total compensation. Contractor travel reimbursement is limited to 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.

3.4 INVOICE AND PAYMENT

3.4.1 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.

3.4.2 Invoices must describe and document to the HCA Contract Manager's satisfaction a description of the work performed, the progress of the project, and fees. All invoices and deliverables will be approved by the HCA Contract Manager prior to payment. Approval will not be unreasonably withheld or delayed.

3.4.3 If expenses are invoiced, invoices must provide a detailed breakdown of each type. Expenses of $50 or more must be accompanied by a receipt.

DRAFT

3.4.4 Invoices must be submitted to HCAAdminAccountsPayable@hca.wa.gov with the HCA Contract number in the subject line of the email. Invoices must include the following information, as applicable:

A. The HCA Contract number;

B. Contractor name, address, phone number;

C. Description of services;

D. Date(s) of delivery;

E. Net invoice price for each item;

F. Applicable taxes;

G. Total invoice price; and

H. Any available prompt payment discount.

HCA will return incorrect or incomplete invoices for correction and reissue.

3.4.5 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.

3.5 CONTRACTOR AND HCA CONTRACT MANAGERS

3.5.1 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.

3.5.2 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.

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

CONTRACTOR **Contract Manager Information**		**Health Care Authority** **Contract Manager Information**	
Name:		Name:	

DRAFT

Title:		Title:	
Address:		Address:	
Phone:		Phone:	
Email:		Email:	

3.6 KEY STAFF

3.6.1 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 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.

3.6.2 During the term of the 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.

3.7 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.

3.7.1 In the case of notice to the Contractor:

[Contractor Contact Information]

3.7.2 In the case of notice to HCA:

Attention: Contracts Administrator
Health Care Authority
Division of Legal Services
Post Office Box 42702
Olympia, WA 98504-2702
contracts@hca.wa.gov

DRAFT

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

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

3.8 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:

3.8.1 Applicable Federal and State of Washington statutes and regulations;

3.8.2 Recitals;

3.8.3 Special Terms and Conditions;

3.8.4 General Terms and Conditions;

3.8.5 Attachment 3: Statement of Work;

3.8.6 Attachment 1: HCA RFP #2022HCA33;

3.8.7 Attachment 2: Contractor Response *to* RFP #2022HCA33; and

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

3.9 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:

3.9.1 Commercial General Liability Insurance Policy - Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than $1 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.

3.9.2 Business Automobile Liability. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned, hired, or non-owned by the Contractor, automobile liability insurance is required covering the risks of

DRAFT

bodily injury (including death) and property damage, including coverage for contractual liability. The minimum limit for automobile liability is $1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

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

3.9.4 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.

3.9.5 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 insureds 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.

3.9.6 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.

If Contractor is self-insured, include section 3.12.6 (below). If not, delete.

3.9.7 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 provide certificates of insurance to that effect to HCA upon request.

4. GENERAL TERMS AND CONDITIONS

4.1 ACCESS TO DATA

In compliance with RCW 39.26.180 (2) and federal rules, the Contractor must provide access to any data generated under this Contract to HCA, the Joint Legislative Audit and Review Committee, the State Auditor, and any other state or federal officials so authorized by law, rule, regulation, or agreement at no additional cost. This includes access to all

DRAFT

information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

4.2 ACCESSIBILITY

4.2.1 **REQUIREMENTS AND STANDARDS.** Each Information and Communication Technology (ICT) product or service furnished under this Contract shall be accessible to and usable by individuals with disabilities in accordance with the Americans with Disabilities Act (ADA) and other applicable Federal and State laws and policies, including OCIO Policy 188, *et seq*. For purposes of this clause, Contractor shall be considered in compliance with the ADA and other applicable Federal and State laws if it satisfies the requirements (including exceptions) specified in the regulations implementing Section 508 of the Rehabilitation Act, including the Web Content Accessibility Guidelines (WCAG) 2.1 Level AA Success Criteria and Conformance Requirements (2008), which are incorporated by reference, and the functional performance criteria.

4.2.2 **DOCUMENTATION.** Contractor shall maintain and retain, subject to review by HCA, full documentation of the measures taken to ensure compliance with the applicable requirements and functional performance criteria, including records of any testing or simulations conducted.

4.2.3 **REMEDIATION.** If Contractor claims that its products or services satisfy the applicable requirements and standards specified in Section 4.2.1 and it is later determined by HCA that any furnished product or service is not in compliance with such requirements and standards, HCA will promptly inform Contractor in writing of noncompliance. Contractor shall, at no additional cost to HCA, repair or replace the non-compliant products or services within the period specified by HCA. If the repair or replacement is not completed within the specified time, HCA may cancel the Contract, delivery, task order, or work order, or purchase line item without termination liabilities or have any necessary changes made or repairs performed by employees of HCA or by another contractor, and Contractor shall reimburse HCA for any expenses incurred thereby.

4.2.4 **DEFINITION.** Information and Communication Technology (ICT) means information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples include computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment; multifunction office machines; software; applications; websites; videos; and electronic documents.

4.2.5 **INDEMNIFICATION.** Contractor agrees to indemnify and hold harmless HCA from any claim arising out of failure to comply with the aforesaid requirements.

DRAFT

4.3 ADVANCE PAYMENT PROHIBITED

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

4.4 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.

4.5 ASSIGNMENT

4.5.1 Contractor may not assign or transfer all or any portion of this Contract or any of its rights hereunder, or delegate any of its duties hereunder, except delegations as set forth in Section 4.36, *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 4.5.1 of the Contract will be null and void.

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

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

4.6 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.

4.7 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.

4.8 CONFLICT OF INTEREST

Contractor represents and warrants that it has not undertaken and will not undertake any work with third parties that will conflict with the work Contractor Is performing for HCA

DRAFT

under this Contract. In case of doubt, before commencing such activities, Contractor shall review areas of possible conflict with HCA and obtain HCA's approval prior to commencing such activities.

4.9 CONFORMANCE

If any provision of this Contract is in conflict with or violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

4.10 COVERED INFORMATION PROTECTION

4.10.1 Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of HCA Proprietary Information or Confidential Information. For the purposes of this section, HCA Proprietary Information and Confidential Information are together referred to as Covered Information.

4.10.2 Nondisclosure and Non-Use Obligations. In the event of Disclosure of Covered Information to Contractor by HCA, Contractor agrees to: (1) hold Covered Information in strictest confidence and to take all reasonable precautions to protect such Covered Information (including, without limitation, all precautions the Contractor employs with respect to its own confidential materials); (2) not disclose any such Covered Information or any other information derived therefrom to any third party; (3) not make use of Covered Information for any purpose other than the performance of this Contract; (4) release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract; and (5) not 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.

4.10.3 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).

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

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

DRAFT

4.11 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.

4.12 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.

4.13 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.

4.14 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.

DRAFT

4.14.1 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.

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

4.14.2.1 Be in writing;

4.14.2.2 Include a written description of the dispute;

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

4.14.2.4 State the Contract Number and the names and contact information for the parties.

4.14.3 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.

4.15 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 4.45, *Warranties*.

4.16 FORCE MAJEURE

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

4.17 FUNDING WITHDRAWN, REDUCED, OR LIMITED

If HCA determines in its sole discretion that the funds it relied upon to establish this Contract have been withdrawn, reduced or limited, or if additional or modified conditions

DRAFT

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:

4.17.1 Terminate this Contract pursuant to Section 4.40.3, *Termination for Non-Allocation of Funds*;

4.17.2 Renegotiate the Contract under the revised funding conditions; or

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

A. 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.

B. 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.

C. 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.

4.18 GOVERNING LAW

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

4.19 HCA NETWORK SECURITY

Contractor agrees not to attach any Contractor-supplied computers, peripherals or software to the HCA Network without prior written authorization from HCA's Chief Information Officer. Unauthorized access to HCA networks and systems is a violation of HCA Policy and constitutes computer trespass in the first degree pursuant to RCW

DRAFT

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.

4.20 INDEMNIFICATION

Contractor must defend, indemnify, and save HCA harmless from and against all claims, including reasonable attorneys' fees resulting from such claims and breach of confidentiality obligations as contained herein, 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.

4.21 INDEPENDENT CAPACITY OF THE CONTRACTOR

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

4.22 LEGAL AND REGULATORY COMPLIANCE

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

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

4.22.3 Pursuant to Proclamation 21-14 – COVID-19 Vaccination Requirement (dated August 9, 2021) as amended by Proclamation 21-14.1 – COVID-19 Vaccination Requirement (dated August 20, 2021) ("Proclamation") all contractors and any of their employees and/or subcontractors who provide contracted services on-site at HCA facilities must certify that they are fully vaccinated against the COVID-19 virus, unless properly excepted or exempted for disability or sincerely held religious beliefs as set forth in the Proclamation. Contractors who cannot so certify are prohibited from contracting with the state.

4.22.4 Contractor represents and warrants that should their responsibilities to the HCA involve on-site services as of October 18, 2021, Contractor's personnel (including subcontractors) providing such services will be fully vaccinated against the

DRAFT

COVID-19 virus unless properly excepted or exempted for disability or sincerely held religious beliefs as set forth in the Proclamation. Contractor further understands that, upon request, Contractor personnel must provide to HCA proof of vaccination, in a manner established by the HCA. Failure to meet these requirements may result in the immediate termination of this Contract.

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

4.23 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.

4.24 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.

4.25 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 C.F.R. 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.

4.26 OVERPAYMENTS TO THE 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 4.14, *Disputes*.

4.27 PAY EQUITY

4.27.1 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

DRAFT

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.

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

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

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

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

4.28 PUBLICITY

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

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

4.29 RECORDS AND DOCUMENT REVIEW

4.29.1 The Contractor must maintain books, records, documents, magnetic media, receipts, invoices or other evidence relating to this Contract and the performance

DRAFT

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 C.F.R. 431, Subpart Q; and 42 C.F.R. 447.202].

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

4.29.3 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.

4.30 REMEDIES NON-EXCLUSIVE

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

4.31 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.

4.32 RIGHTS IN DATA/OWNERSHIP

4.32.1 HCA and Contractor agree that all data and work products produced pursuant to this Contract (collectively "Work Product") will be considered a "*work made for hire"* as defined under the U.S. Copyright Act of 1976 and Title 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.

4.32.2 If for any reason the Work Product would not be considered a "*work made 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

DRAFT

registrations and copyright applications relating thereto and any renewals and extensions thereof.

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

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

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

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

4.33 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.

4.34 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.

DRAFT

4.35 SUBCONTRACTING

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

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

4.35.3 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.

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

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

4.36 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 *Covered Information Protection, Contractor's Proprietary Information, Disputes, Overpayments to Contractor, Publicity, Records and Documents Review, Rights in Data/Ownership,* will survive the termination of this Contract. The right of HCA to recover any overpayments will also survive the termination of this Contract.

4.37 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.

DRAFT

4.38 TERMINATION

4.38.1 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."

4.38.2 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.

4.38.3 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.

4.38.4 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

DRAFT

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.

4.38.5 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.

4.39 TERMINATION PROCEDURES

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

4.39.2 HCA will pay Contractor the agreed-upon price, if separately stated, for completed work and services accepted by HCA and the amount agreed upon by the Contractor and HCA for (i) completed work and services for which no separate price is stated; (ii) partially completed work and services; (iii) other property or services that are accepted by HCA; and (iv) the protection and preservation of property, unless the termination is for default, in which case HCA will determine the extent of the liability. Failure to agree with such determination will be a dispute within the meaning of Section 4.14, *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.

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

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

B. 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;

C. 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

DRAFT

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;

D. 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;

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

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

G. 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.

4.40 TRANSITION OBLIGATIONS

Contractor must provide for reasonable transition assistance requested by HCA to allow for the expired or terminated Contract, in whole or in part, to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to HCA or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance.

4.41 TREATMENT OF ASSETS

4.41.1 Ownership

HCA shall retain title to all property furnished by HCA to Contractor under this Contract. Title to all property furnished by Contractor, for the cost of which the Contractor is entitled to reimbursement as a direct item of cost under this Contract, excluding intellectual property provided by Contractor, shall pass to and vest in HCA upon delivery of such property by Contractor. Title to other property, the cost of which is reimbursable to Contractor under this Contract, shall pass to and vest in HCA upon (i) issuance for use of such property in the performance of this Contract, (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by HCA, in whole or in part, whichever occurs first.

4.41.2 Use of Property

Any property furnished to Contractor shall, unless otherwise provided herein, or approved in writing by the HCA Contract Manager, be used only for the

DRAFT

performance of and subject to the terms of this Contract. Contractor's use of the equipment shall be subject to HCA's security, administrative, and other requirements.

4.41.3 Damage to Property

Contractor shall continuously protect and be responsible for any loss, destruction, or damage to property which results from or is caused by Contractor's acts or omissions. Contractor shall be liable to HCA for costs of repair or replacement for property or equipment that has been lost, destroyed, or damaged by Contractor or Contractor's employees, agents, or Subcontractors. Cost of replacement shall be the current market value of the property and equipment on the date of the loss as determined by HCA.

4.41.4 Notice of Damage

Upon the loss of, destruction of, or damage to any of the property, Contractor shall notify the HCA Contract Manager thereof within one (1) Business Day and shall take all reasonable steps to protect that property from further damage.

4.41.5 Surrender of Property

Contractor will ensure that the property will be returned to HCA in like condition to that in which it was furnished to Contractor, reasonable wear and tear expected. Contractor shall surrender to HCA all property upon the earlier of expiration or termination of this Contract.

4.42 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.

4.43 WARRANTIES

4.43.1 Contractor represents and warrants that its services will be of professional quality and will be rendered in accordance with prevailing professional standards and ethics. Services performed by Contractor under this Contract shall be conducted in a manner consistent with the level of care and skill standard to the industry. Contractor agrees to immediately re-perform any services that are not in compliance with this representation and warranty at no cost to HCA.

DRAFT

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

4.43.3 EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS (MANDATORY INDIVIDUAL ARBITRATION). Contractor represents and warrants 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.

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

DRAFT

ATTACHMENT 1: HCA RFP 2022HCA33

RFP 2022HCA33 dated , including any and all amendments, is an integral part of this Contract and is incorporated herein by reference.

DRAFT

ATTACHMENT 2: CONTRACTOR RESPONSE TO HCA RFP 2022HCA33

Contractor's response to RFP 2022HCA33 dated , is an integral part of this Contract and is incorporated herein reference.

DRAFT

ATTACHMENT 3: DRAFT STATEMENT OF WORK

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

The Contractor must create a Master Leasing Toolkit that will greatly inform the HCAs master leasing incentive program for landlords, with specific emphasis on the Trueblood programs and participants. The Toolkit must include descriptions of historically successful master leasing programs, best practices in master leasing programs, principles of harm reduction and Housing First, and how these models decrease barriers to housing for landlords serving special populations.

1. **Master Leasing Toolkit:** The Contractor will create a Master Leasing Toolkit. The Master Leasing Toolkit must consist of the following:

   1.1 Historically successful and unsuccessful master leasing initiatives nationally;

   1.2 Best practices in master leasing programs;

   1.3 How harm reduction and Housing First models work to decrease barriers to housing for populations in need;

   1.4 How other master leasing programs have been able to incentivize landlords to master lease;

   1.5 A section on the current state of housing available for master leasing in Washington State;

   1.6 Samples of leases between the owner of the property and property management entities and/or owner of the property and social service providers;

   1.7 Samples of lease between the property management entity and program participant and/or social services provider and program participant; and

   1.8 Descriptions of how property management staff and social services providers have worked together in other similar housing projects to provide transitional and/or permanent supportive housing while keeping housing and services separated.

2. **Principles of Evidence-based Permanent Supportive Housing**

   The Master Leasing Toolkit will align with Substance Abuse Mental Health Services Administration (SAMSHA) Permanent Supportive Housing model wherever possible. PSH is decent, safe, and affordable community-based housing that provides Washington State

DRAFT

tenants with the rights of tenancy under state and local landlord-tenant laws and is linked to voluntary and flexible support and services designed to meet tenants' needs and preferences. PSH makes housing affordable to someone with limited or no income, (either through rental assistance or housing development). It provides sufficient wraparound supports to allow people with significant support needs to remain in the housing they have chosen. Dimensions of PSH include the following:

2.1 Choice in housing and living arrangements;

2.2 Functional separation of housing and services;

2.3 Decent, safe, and affordable housing;

2.4 Community integration and rights of tenancy;

2.5 Access to housing and privacy; and

2.6 Flexible, voluntary, and recovery-focused services.

3. Master Leased Eligible Populations:

Individuals who are identified as eligible for master leasing projects include:

3.1 People who are enrolled in Foundational Community Supports (FCS) including the FCS Transitional Assistance Program (TAP);

3.2 Enrolled in Housing and Recovery through Peer Services (HARPS);

3.3 Enrolled in Forensic Housing and Recovery through Peer Services (FHARPS);

3.4 Enrolled in Governor's Opportunity for Supportive Housing (GOSH); and

3.5 Possibly also people enrolled in Community Behavioral Health Rental Assistance (CBRA);

DRAFT

DRAFT