|  |  |  |
| --- | --- | --- |
|  C:\Users\ANDERM\Desktop\HCA-logo.png | INDIAN NATION AGREEMENT | HCA Contract Number: K     Indian Nation Agreement Number:       |
| **THIS INDIAN NATION AGREEMENT (AGREEMENT)** is made by and between the Washington State Health Care Authority (HCA) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Indian Nation). |
| INDIAN NATION NAME | INDIAN NATION DIVISION OR AGENCY |
|       |       |
| INDIAN NATION ADDRESS | Street | City | State | Zip Code |
|       |       |       |       |
| INDIAN NATION CONTACT | INDIAN NATION TELEPHONE | INDIAN NATION E-MAIL ADDRESS |
|       |       |       |
| Is Indian Nation a Subrecipient under this Contract? | CFDA NUMBER(S): | FFATA Form Required |
|  [ ]  YES [ ]  NO |  |  [ ]  YES [ ]  NO |
|  |  |
| HCA PROGRAM  | HCA DIVISION/SECTION |
| Office of Tribal Affairs |       |
| HCA CONTACT NAME AND TITLE  | HCA CONTACT ADDRESS |
| Jessie Dean, Tribal Administrator | Health Care Authority626 8th Avenue SEPO Box 45502Olympia, WA 98504-5502 |
| HCA CONTACT TELEPHONE  | HCA CONTACT E-MAIL ADDRESS |
| (360) 725-1649 | tribalaffairs@hca.wa.gov |
| This Agreement will automatically renew for subsequent five-year terms unless either Party provides written notice to the other Party of the intent not to renew this Agreement prior to the end of the Term. |
| AGREEMENT START DATE | AGREEMENT END DATE  |
|       |       |
| The parties signing below warrant that they have read and understand this Agreement, and have authority to execute this Agreement. This Agreement will be binding on HCA only upon signature by HCA. |
| INDIAN NATION SIGNATURE | PRINTED NAME AND TITLE | DATE SIGNED |
|  |       |  |
| HCA SIGNATURE | PRINTED NAME AND TITLE | DATE SIGNED |
|  |       |  |

Contents

[1. Authority 5](#_Toc11052311)

[2. Purpose 5](#_Toc11052312)

[3. Definitions 5](#_Toc11052313)

[4. Term 7](#_Toc11052314)

[5. Amendment 7](#_Toc11052315)

[6. Assignment 7](#_Toc11052316)

[7. Compliance with Applicable Law. 7](#_Toc11052317)

[8. Confidentiality 7](#_Toc11052318)

[9. Conflict Resolution/Disputes 8](#_Toc11052319)

[10. Contract Management 8](#_Toc11052320)

[11. Culturally Relevant Services 8](#_Toc11052321)

[12. Debarment Certification 8](#_Toc11052322)

[13. Governing Law and Venue 9](#_Toc11052323)

[14. Hiring and Employment Practices 9](#_Toc11052324)

[15. Independent Status 9](#_Toc11052325)

[16. Inspection 9](#_Toc11052326)

[17. Insurance 9](#_Toc11052327)

[18. Legal Notices 9](#_Toc11052328)

[19. Maintenance of Records 10](#_Toc11052329)

[20. Notification of Funding 10](#_Toc11052330)

[21. Operation and Order of Precedence 10](#_Toc11052331)

[22. Ownership of Material 10](#_Toc11052332)

[23. Public Disclosure 11](#_Toc11052333)

[24. Records 11](#_Toc11052334)

[25. Reporting 11](#_Toc11052335)

[26. Responsibility - General 11](#_Toc11052336)

[27. Responsibilities of the Indian Nation 11](#_Toc11052337)

[28. Responsibilities of the Health Care Authority 12](#_Toc11052338)

[29. Severability 13](#_Toc11052339)

[30. Sovereign Immunity 13](#_Toc11052340)

[31. Subcontracting 13](#_Toc11052341)

[32. Subrecipients 13](#_Toc11052342)

[33. Survivability 13](#_Toc11052343)

[34. Program Agreement Renegotiation, Suspension, or Termination Due to Change in Funding. 13](#_Toc11052344)

[35. Termination or Cancellation 14](#_Toc11052345)

[36. Termination for Convenience 14](#_Toc11052346)

[37. Termination for Default. 14](#_Toc11052347)

[38. Termination Procedure 15](#_Toc11052348)

[39. Treatment of HCA Assets 16](#_Toc11052349)

[40. Waiver 16](#_Toc11052350)

[Table of Contents 18](#_Toc11052351)

[1. Definitions 19](#_Toc11052352)

[2. Description of Data to be Shared 21](#_Toc11052353)

[3. Data Classification 21](#_Toc11052354)

[4. Constraints on Use of Data 22](#_Toc11052355)

[5. Security of Data 22](#_Toc11052356)

[6. Data Confidentiality and Non-Disclosure 23](#_Toc11052357)

[7. Public Disclosure 24](#_Toc11052358)

[8. Data Shared with Subcontractors 24](#_Toc11052359)

[9. Data Breach Notification and Obligations 24](#_Toc11052360)

[10. HIPAA Compliance 24](#_Toc11052361)

[11. Amendments and Alterations 24](#_Toc11052362)

[12. Assignment 24](#_Toc11052363)

[13. Dispute Resolution 25](#_Toc11052364)

[14. Entire Agreement 25](#_Toc11052365)

[15. Governing Law and Venue 25](#_Toc11052366)

[16. Incorporated Documents and Order of Precedence 25](#_Toc11052367)

[17. Inspection 26](#_Toc11052368)

[18. Insurance 26](#_Toc11052369)

[19. Legal Notices 27](#_Toc11052370)

[20. Maintenance of Records 28](#_Toc11052371)

[21. Responsibility 28](#_Toc11052372)

[22. Severability 28](#_Toc11052373)

[23. Survival Clauses 28](#_Toc11052374)

[24. Term and Termination 28](#_Toc11052375)

[25. Waiver 29](#_Toc11052376)

[26. Signatures and Counterparts 29](#_Toc11052377)

[Exhibit A – Data Security Requirements 30](#_Toc11052378)

[1. Definitions 30](#_Toc11052379)

[2. Data Transmission 30](#_Toc11052380)

[3. Protection of Data 31](#_Toc11052381)

[4. Data Segregation 32](#_Toc11052382)

[5. Data Disposition 32](#_Toc11052383)

[Exhibit B 33](#_Toc11052384)

Attachments

Attachment 1: Confidential Information Security Requirements (if applicable)

Attachment 2: Federal Compliance, Certifications and Assurances

Attachment 3: Federal Funding Accountability and Transparency Act Data Collection Form (if applicable)

Schedule(s)

Schedule 1: Data Share Agreement

# **Authority**

This Indian Nation Agreement (Agreement) is entered into between the      , (Indian Nation) and the Washington State Health Care Authority (HCA) (collectively, Parties) pursuant to their respective governmental authorities. The       is authorized to enter into this Agreement under its constitution, legislative resolution, and other applicable tribal authority. HCA is authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, RCW 39.34, which permits any state agency to enter into a cooperative agreement with an Indian Nation for their mutual advantage and cooperation.

The Indian Nation Agreement, together with all program agreements (to include schedules, exhibits, and attachments) constitutes the final, complete, and exclusive statement of the agreement of the Parties relative to the subject matter hereof and supersedes all previous or contemporaneous oral and written proposals, negotiations, representations, or understandings concerning such subject matter. The Parties intend that this Agreement be liberally construed to effectuate its intent and purposes.

# **Purpose**

The Indian Nation and HCA enter into this Agreement to:

1. Recognize the government-to-government relationship between the tribes and both the United States government and the Washington State government.
2. Respect the Indian Nation’s inherent right to design and operate culturally relevant and appropriate programs on behalf of the population served.
3. Increase the quality and efficiency of state and tribal benefits and services to Washington State American Indian/Alaska Native (AI/AN) individuals and non-AI/AN individuals served by the Indian Nation.

# **Definitions**

The Indian Nation and the HCA agree to the following definitions for the purposes of this Agreement.

## “Administrative Costs” means the costs incurred by the Indian Nation that are not attributable to direct services. Examples of Administrative Costs include non-direct costs associated with customer service, utilization management, network development, and quality management programs.

## “CFR” means the Code of Federal Regulations. All references in this Agreement to CFR chapters or sections include any successor, amended, or replacement regulation, or any successor or replacement federal Office of Management and Budget circular or regulation as of the effective date of such successor, amended, or replacement regulation or circular.

## “Confidential Information” means information that is exempt from disclosure to the public or other unauthorized persons under RCW 42.56 or other federal, state, or tribal laws. Confidential Information includes, but is not limited to, Personal Information.

## “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.

## “Indian Nation” or “Tribe” means the federally recognized Indian Tribe that has executed this Agreement and its designated subdivisions and agencies performing services pursuant to this Agreement and includes the Indian Nation’s officers, employees, and/or agents. For purposes of any permitted Subcontract, “Indian Nation” includes any Subcontractor of the Indian Nation and the Subcontractor’s owners, members, officers, directors, partners, employees, and/or agents.

## “Indian Nation Agreement” or “Agreement” means this Agreement, any Program Agreements between the Parties, and any other documents attached to or incorporated therein by reference. Unless plainly inconsistent with context, the term “Agreement” includes and refers to all such agreements collectively.

## “Monitoring” means any planned and ongoing or periodic activity that measures and ensures the Tribe’s compliance with the terms, conditions, and requirements of this Agreement and the Program Agreement.

## “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, other identifying numbers, and any financial numbers. Personal Information includes “Protected Health Information” as set forth in 45 CFR § 160 and 164, as currently written and subsequently amended and other information that may be exempt from disclosure to the public or other unauthorized persons under federal, tribal, or state law.

## “Program Agreement” means an agreement between the Indian Nation and HCA establishing special terms and conditions of services to be provided by the Indian Nation, including a statement of work to be performed by the Indian Nation and payment to be made by HCA, each of which is and will be incorporated into this Agreement.

## “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).

## “RCW” means the Revised Code of Washington. All references in this Agreement to RCW chapters or sections includes any successor, amended, or replacement statute, as of the effective date of such successor, amended, or replacement statute.

## “Subcontract” means a separate contract between the Indian Nation and an individual or entity (“Subcontractor”) to perform all or a portion of the duties and obligations that the Indian Nation is obligated to perform pursuant to any Program Agreement.

## “Tribal Law” means the resolutions, laws, codes, and/or ordinances enacted by the Indian Nation executing this Agreement, and any of the Indian Nation’s tribal court decisions interpreting the same. All references in this Agreement to Tribal Law includes any successor, amended, or replacement law, as of the effective date of such successor, amended, or replacement law.

## “WAC” means the Washington Administrative Code. All references in this Agreement to WAC chapters or sections include any successor, amended, or replacement regulation, as of the effective date of such successor, amended, or replacement regulation.

# **Term**

This Agreement becomes effective July 1, 2019 and ends on June 30, 2024. This Agreement will automatically renew for subsequent five-year terms unless either Party provides written notice to the other Party of the intent not to renew this Agreement prior to the end of the Term.

# **Amendment**

This Agreement and any Program Agreement may be amended or renegotiated by mutual and written agreement of the Parties. The Parties agree to follow the amendment process established in this Agreement.

Such amendments will not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

# **Assignment**

The Indian Nation shall not assign or transfer all or any portion of this Agreement or any Program Agreement or any of its rights or obligations, without obtaining prior written consent of HCA. HCA shall not recognize any assignment without such prior written consent. In the event that consent is given and this Agreement or a Program Agreement is assigned, all terms and conditions of this Agreement are binding upon the Indian Nation’s assignees.

# **Compliance with Applicable Law.**

At all times during the term of this Agreement, the parties shall comply with all applicable federal, tribal, and state laws and regulations.

# **Confidentiality**

## The parties shall not use, publish, transfer, sell, or otherwise disclose any Confidential Information gained by reason of any Program Agreement for any purpose that is not directly connected with the performance of the services contemplated hereunder, except as provided by law.

## The parties shall protect and maintain all Confidential Information gained by reason of any Program Agreement against unauthorized use, access, disclosure, modification or loss. This duty requires the parties 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.

## To the extent allowed by law, at the end of the Agreement term, the parties shall return Confidential Information or certify in writing the destruction of Confidential Information upon written request by the other party.

## Paper documents with Confidential Information may be recycled through a contracted firm, provided the contract with the recycler specifies that the confidentiality of information will be protected, and the information destroyed through the recycling process. Paper documents containing Confidential Information requiring special handling (e.g. protected health information) must be destroyed on-site through shredding, pulping, or incineration.

## The compromise or potential compromise of Confidential Information must be reported to the HCA Contact within five (5) business days of discovery. The parties must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law.

# **Conflict Resolution/Disputes**

## The Parties agree to work cooperatively to accomplish all of the terms of this Agreement. However, the Parties acknowledge that there may be instances in which either the Tribe or HCA has not complied with the conditions of this Agreement. In such an instance, the Tribe and HCA shall attempt to resolve the matter through discussions. If unsuccessful, the Tribe and HCA agree to refer the issue to a Dispute Board.

## The Dispute Board shall consist of three individuals, one selected by the Tribe, one selected by HCA and a third party to be chosen by the first two. The Dispute Board shall review the facts, Agreement terms, Program Agreement terms, and applicable statutes, regulations and make a determination regarding the dispute. Either of the Parties may request intervention by the Governor at any time. These dispute resolution procedures does not modify or reduce the Indian Nation’s rights to judicial proceedings.

# **Contract Management**

The contract manager for each of the Parties shall be responsible for and shall be the contact person for all communications and billings regarding this Agreement, and they are listed below. Each party shall have the right to change its contract manager by providing written notice to the other party of the name and contact information for the new contract manager. The Parties may identify different contract managers for any Program Agreement.

|  |  |
| --- | --- |
| Indian NationContract Manager Information | Health Care AuthorityContract Manager Information |
| Name: |       | Name: | Jessie Dean |
| Title: |       | Title: | Tribal Affairs Administrator |
| Address: |       | Address: | PO Box 45502Olympia WA 98504-5502 |
| Phone:  |       | Phone:  | (360) 725-1649 |
| Email:  |       | Email:  | tribalaffairs@hca.wa.gov |

# **Culturally Relevant Services**

In performing work pursuant to any Program Agreement, the Indian Nation may develop and operate programs and deliver goods, services, and/or benefits in a manner that is culturally relevant and appropriate, and that is particularly suited to and/or particularly located for access by members of the Indian Nation and other community members, in accordance with Tribal Law and policies.

# **Debarment Certification**

The Indian Nation, by signature to this Agreement, certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any Federal department or agency. The Indian Nation also agrees to include the above requirement into any subcontracts entered into in connection with the Indian Nation’s duty to provide services under this Agreement.

# **Governing Law and Venue**

This Agreement is governed and construed in accordance with federal law of the United States and, to the extent an issue is not addressed by federal law, in accordance with the laws of the state of Washington governing interpretation of contracts. The jurisdiction and venue for any action hereunder is exclusively in the U.S. District Court for the Western District of Washington.

# **Hiring and Employment Practices**

The Indian Nation may give preference in its hiring and employment practices to members of the Indian Nation or other Indian Nations (including for purposes of this section Indian Nations previously but not currently recognized by the federal government) or their descendants, who have met all requirements for that position, including state requirements, and as may be provided by Tribal Law and policies.

# **Independent Status**

For purposes of this Agreement, the Indian Nation acknowledges that the Indian Nation is not an officer, employee, or agent of HCA or the state of Washington. The Indian Nation shall not hold out itself, or any of its employees as, nor claim status as, an officer, employee, or agent of HCA or the state of Washington. The Indian Nation shall not claim for itself or its employees any rights, privileges, or benefits which would accrue to an employee of the state of Washington. The Indian Nation shall indemnify and hold harmless HCA from all obligations to pay or withhold federal or state taxes or contributions on behalf of the Indian Nation or its employees.

# **Inspection**

During the term of this Agreement and for one year following termination or expiration of this Agreement, the Indian Nation shall provide reasonable access to the Indian Nation’s place of business, relevant Indian Nation records, and client records, to HCA and to any authorized agent of the state of Washington or the federal government in order to Monitor, audit, and evaluate the Indian Nation’s performance and compliance with applicable laws and regulations that pertain solely to this Agreement. HCA shall ensure appropriate notification to the Indian Nation’s authorized agent regarding inspections.

# **Insurance**

HCA shall recommend insurance coverage in, and as appropriate to, individual Program Agreements. Upon request and only to the extent of liability not covered by the Federal Tort Claims Act (28 U.S.C. § 1346), the Indian Nation must submit a certificate of insurance that outlines the coverage and limits defined in the insurance section of the individual Program Agreement. If HCA requests a certificate of insurance, then the Indian Nation must submit renewal certificates as appropriate during the term of the Agreement.

# **Legal Notices**

## Any notice, demand, or other communication required or permitted to be given under this Agreement or applicable law is effective only if it is in writing and signed by the applicable party, properly addressed, and 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.

|  |
| --- |
| LEGAL NOTICES |
| Indian Nation | Health Care Authority |
| Name: |       | ATTN: Contracts Administrator |
| Address: |            | Health Care AuthorityDivision of Legal ServicesPO Box 45502Olympia WA 98504-5502 |
|

## Notices are effective upon receipt or four 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.

# **Maintenance of Records**

During the term of any Program Agreement and for six years following termination or expiration of the Program Agreement, the Parties shall maintain records sufficient to:

## Document performance of all acts required by any Program Agreement and applicable statutes, regulations, and rules;

## Substantiate the Indian Nation’s statement of its organization’s structure, tax status, administrative capabilities, and performance; and

## Demonstrate accounting procedures, practices, and records, which sufficiently and properly document all invoices, expenditures, and payments.

# **Notification of Funding**

HCA shall notify the Indian Nation of any projected or anticipated budget increase or decrease that materially affects any program or service under a Program Agreement. This includes one-time surplus funding that could be obligated for unmet needs in Indian Nation services and program development.

# **Operation and Order of Precedence**

Each Program Agreement between the Indian Nation and HCA, in effect on or after the effective date of this Agreement, is incorporated by reference into this Agreement and is governed by this Agreement. In the event of any inconsistency in this Agreement and any Program Agreement, the inconsistency will be resolved by giving precedence to the applicable Program Agreement and its attachments over this Agreement.

# **Ownership of Material**

## The Indian Nation solely owns all materials of unique cultural significance unless otherwise expressly agreed in the applicable Program Agreement.

## Materials created by the Indian Nation which the Indian Nation uses to perform the Program Agreement (including without limitation books, computer programs, documents, films, pamphlets, reports, sound reproductions, studies, surveys, tapes and/or training materials) will be owned by the Indian Nation, regardless of whether the materials are paid for in whole or in part by HCA, except when such materials have been expressly identified within the applicable Program Agreement as belonging to HCA.

## If the Parties agree within a Program Agreement that certain materials will be owned by HCA, then the Indian Nation shall assign and hereby does assign to HCA all rights, title and interest in and to such materials.

# **Public Disclosure**

The Indian Nation acknowledges that this Agreement, including all Program Agreements, attachments, exhibits, and addenda hereto, is subject to the Public Records Act (RCW 42.56) and that any documents submitted by the Indian Nation to HCA may be subject to disclosure under such law.

# **Records**

## The Indian Nation shall maintain all accounting records in accordance with federal and state requirements and generally accepted accounting principles, and all transactions will be made in compliance with federal OMB Super Circulars (2 CFR § 200).

## The Indian Nation shall maintain client files and other records to fully support the information contained in all requests for payment and reports submitted to HCA.

## The Indian Nation shall cooperate with HCA in the performance of federal and state required Monitoring activities related to the programs and services of this Agreement.

## The Parties will protect the confidentiality of client records and information as set forth in this Agreement or any Program Agreement.

# **Reporting**

The Indian Nation must submit the reports and supporting documentation on or before the due dates set forth in the Program Agreement.

# **Responsibility - General**

The Indian Nation shall be responsible for the acts or omissions of the Indian Nation and its agents, employees, and officers. HCA shall be responsible for the acts or omissions of HCA and its officers, employees, and agents.

# **Responsibilities of the Indian Nation**

## The Indian Nation shall provide the services under the Program Agreement(s). Services provided, as well as Tribal program and fiscal management must conform to applicable federal, tribal and/or state laws and regulations.

## Requests for Waivers

### To petition for a statutory or regulatory waiver, the Indian Nation will submit a written waiver request to HCA. The request must identify the statute or regulation to be waived and the basis for the request. The request must explain the intended effect of the waiver, the impact upon the Indian Nation if the waiver is not granted, and the specific program(s) to which the waiver will apply. It must also describe the policy, if any, the Tribe is adopting to replace the statute or regulation to be waived.

### In accordance with applicable laws and regulations, the Director of HCA or designee will make the final decision on all requests for exceptions to rules within 90 calendar days after the Director receives a written waiver request. The Director’s decision will be in writing. Appeals may be conducted through the dispute mechanism in effect between the Indian Nation and HCA.

## The Indian Nation shall comply with all applicable federal and state regulations governing the use of federal and state funds provided to the Indian Nation under the terms and conditions of this Agreement or any Program Agreement.

## Translation and Interpretation. The Indian Nation shall strive to provide interpretation and translation services for any client requiring such services.

# **Responsibilities of the Health Care Authority**

## HCA shall promptly respond on a case-by-case basis to any written request by the Indian Nation regarding the Tribe’s eligibility to access any newly funded services.

## As required by RCW 43.376.040, HCA shall ensure that HCA employees receive training in:

### Effective communication and collaboration between state agencies and Indian tribes; and

### Cultural competency (cultural humility) in providing effective services to tribal governments and tribal members.

## When requested by the Indian Nation, HCA will support the Indian Nation in its efforts to obtain waivers of statutory or regulatory requirements, associated with the services under the Program Agreement, in accordance with the process described in the Program Agreement, unless HCA determines that such a waiver would be in direct conflict with a federal statute or regulation or be inconsistent with the purposes of the program or the statute from which the program derives its authority.

## HCA will support the Indian Nation in its efforts to petition the Legislature to amend statutory provisions that the Indian Nation finds burdensome, unless HCA determines that the requested amendment would be in direct conflict with a federal statute or regulation, be inconsistent with the purposes of the program, or be in conflict with program goals.

## HCA shall respect Tribal Law that meets or exceeds the requirements set forth in federal or state law as it pertains to this Agreement.

## Compliance Testing

### HCA may test compliance with the terms of this Agreement in a combination of ways, including but not limited to:

#### Review of reports submitted by the Indian Nation to HCA.

#### Review of any documents submitted from the Indian Nation’s federal Single Audit Act audit.

#### A biennial review of programs covered by this Agreement by conducting a desk or on-site inspection/review.

### HCA will monitor all services under the Program Agreement once per biennium unless otherwise required by federal and state law or regulation. HCA will provide the Indian Nation with at least 30 calendar days’ notice of any on-site Monitoring visits and, at the request of the Indian Nation, consider cultural or tribal activities that might take precedence when scheduling on-site visits.

### HCA shall provide response to the Indian Nation following review of any reports provided to HCA under the Program Agreement within 30 calendar days of receipt of submission.

# **Severability**

The provisions of the Agreement are severable. If any provision of the Agreement, including any provision of any document incorporated by reference, is held invalid by any court of competent jurisdiction, then that invalidity will not affect the other provisions of the Agreement and the invalid provision will be considered modified to conform to existing law and regulations.

# **Sovereign Immunity**

Nothing whatsoever in this Agreement constitutes or will be construed as a waiver of either party’s sovereign immunity.

# **Subcontracting**

Either party may subcontract services to be provided under Program Agreements. In any event, the Indian Nation shall remain ultimately responsible to HCA and HCA shall remain ultimately responsible to the Indian Nation for performance of all duties and obligations under this Agreement and in any Program Agreement. Each party shall be responsible for the acts and omissions of its subcontractors.

# **Subrecipients**

If, as a result of this Agreement, the Indian Nation is a subrecipient of federal awards as defined by 2 CFR Part 200, the Indian Nation shall comply with all applicable requirements of 2 CFR Part 200, including requirements regarding the reimbursement and the overpayment of unallowable costs.

# **Survivability**

The terms and conditions contained in this Agreement by their sense and context are intended to survive the expiration or termination of this Agreement must so survive.

# **Program Agreement Renegotiation, Suspension, or Termination Due to Change in Funding.**

If the funds HCA relied upon to establish any Program Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, after the effective date of any Program Agreement but prior to the normal completion of the Program Agreement:

## The Program Agreement may be renegotiated under the revised funding conditions.

## HCA may give written notice to the Indian Nation to suspend performance when HCA determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow the Indian Nation’s performance to be resumed prior to the normal completion date of any Program Agreement.

### 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 that the funding insufficiency is resolved, it will give the Indian Nation written notice to resume performance. Upon the receipt of this notice, the Indian Nation 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 Indian Nation’s proposed resumption date is not acceptable to HCA and an acceptable date cannot be negotiated, HCA may terminate any Program Agreement by giving written notice to the Indian Nation. The parties agree that the affected Program Agreement will be terminated retroactive to the date of the notice of suspension. HCA shall be liable only for payment in accordance with the terms of the respective Program Agreement for services rendered prior to the retroactive date of termination.

## HCA may terminate any Program Agreement by providing seven calendar days’ written notice to the Indian Nation. The termination will be effective on the date specified in the termination notice. HCA shall be liable only for payment in accordance with the terms of any affected Program Agreement 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.

## If funds are available, HCA shall pay the Indian Nation for its reasonable costs that directly relate to termination of the Program Agreement. The parties may identify such costs in any Program Agreement. Such costs may include, but are not limited to, close-out costs, unemployment costs, severance pay, retirement benefits, reasonable profits, and termination costs associated with any subcontract.

# **Termination or Cancellation**

## The Indian Nation may terminate or return administrative responsibility to the state for any program prior to the end of the term of a Program Agreement and will provide HCA with notification of its intent to do so at least 60 calendar days prior to the effective date of the termination or retrocession.

## Any money paid to the Indian Nation by HCA to provide a service or program for the period of time that program administration is returned to the state by the Indian Nation must be paid back to the HCA prior to the effective date of the return of program administrative responsibility to the state.

## If the Tribe terminates or returns administrative responsibility to the state for a service or program contained in this Agreement or any Program Agreement, the Indian Nation and HCA may then execute a new and separate agreement to enable the Tribe to operate that service or program outside of the consolidated Agreement.

# **Termination for Convenience**

Except for agreements regarding personal services, either party may terminate any Program Agreement by giving the other party at least 30 calendar days’ written notice. The Indian Nation shall address such notice to Health Care Authority, Attn: Contracts Administrator, 626 8th Avenue SE, PO Box 42730, Olympia, WA 98504-2730. HCA shall direct such notice to the Indian Nation Contact named in the first page of the applicable Program Agreement. If either party terminates any Program Agreement for convenience, the terminating party may pay an amount agreed to by the parties for actual costs incurred by the non-terminating party in performance of or in reliance on the Program Agreement.

# **Termination for Default.**

## HCA may terminate any Agreement for default, in whole or in part, by written notice to the Indian Nation if HCA has a reasonable basis to believe that the Indian Nation has:

### Failed to meet or maintain any requirement for contracting with HCA, as specified in any Program Agreement;

### Failed to perform under any provision of the applicable Agreement;

### Negligently failed to ensure the health or safety of any client for whom services are being provided under any Program Agreement;

### Violated any applicable law, regulation, rule, or ordinance related to any Program Agreement; or

### Otherwise breached any provision or condition of the Agreement.

## HCA shall give the Indian Nation at least ten business days’ notice of HCA’s intent to terminate an Agreement, along with a summary of the facts supporting such termination. Such notice will provide the Indian Nation at least ten business days in which to cure the default; provided, that if it will reasonably take longer than ten business days to cure the default, the cure period will be a reasonable period agreed by the Parties. In the event of a second or subsequent episode of default, HCA will not be required to provide a cure period. HCA is not required to offer a cure period if a client’s health or safety is at risk, except this provision does not apply if the alleged default is an activity related to Tribal Law, custom, or practice.

## The Indian Nation may terminate any Agreement for default, in whole or in part, by written notice to HCA, if the Indian Nation has a reasonable basis to believe that HCA has:

### Failed to meet or maintain any requirement for contracting with the Indian Nation;

### Failed to perform under any provision of the applicable Agreement;

### Violated any law, regulation, rule, or ordinance applicable to work performed under the Agreement; or

### Otherwise breached any provision or condition of the Agreement.

## Before the Indian Nation may terminate an Agreement for default, the Indian Nation shall provide HCA at least ten business days’ written notice of the Indian Nation’s intent to terminate the Agreement, along with a summary of the facts supporting such termination. HCA shall have at least ten business days in which to cure the default provided that if it will reasonably take longer than ten business days to cure the default, the cure period must be a reasonable period agreed by the parties.

# **Termination Procedure**

The following provisions will survive and be binding on the parties in the event any Agreement is terminated:

## Except as otherwise required under this section, the Indian Nation shall cease to perform any services required by the Agreement as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination.

## If requested by HCA within ten business days of termination, the Indian Nation shall, within a period not to exceed 30 business days, deliver to HCA all HCA assets (property) in its possession. If the Indian Nation does not return HCA property within such time period, the Indian Nation shall be charged with all reasonable costs of recovery, including transportation and attorney’s fees. The Indian Nation shall protect and preserve any property of HCA that is in the possession of the Indian Nation pending return to HCA.

## HCA shall be liable for and shall pay for those services authorized and provided through the date of termination. HCA may pay an amount agreed to by the parties for partially completed work and services, if work products are useful to or usable by HCA.

## If HCA terminates any Agreement for default, HCA may withhold a sum from the final payment to the Indian Nation that is reasonable and necessary to protect HCA against reasonably anticipated loss or liability. HCA shall provide the Indian Nation with written notice of the amount withheld and the nature of the reasonably anticipated loss or liability. If it is later determined that the Indian Nation was not in default, HCA shall pay the amount withheld to the Indian Nation within ten business days of determining that the Indian Nation was not in default.

# **Treatment of HCA Assets**

Except as otherwise provided in any Program Agreement, title to all assets (property) purchased or furnished by HCA for use by the Indian Nation during the Program Agreement term will remain with HCA. During the term of any Program Agreement, the Indian Nation shall protect, maintain, and insure all HCA property in the Indian Nation’s possession against loss or damage.

# **Waiver**

Waiver of any breach or default on any occasion must not be deemed to be a waiver of any subsequent breach or default. Any waiver must not be construed to be a modification of the terms and conditions of the Agreement. Only the HCA Contracts Administrator or designee has the authority to waive any term or condition of this Agreement on behalf of HCA. Only the Tribe’s official designee has the authority to waive any term or condition of this Agreement on behalf of the Indian Nation.

|  |  |
| --- | --- |
| C:\Users\ANDERM\Desktop\HCA-logo.png | Indian Nation AgreementSchedule 1 Data Share Agreement |
| This Data Share Agreement (“Agreement” or “DSA”) is made by and between the state of Washington Health Care Authority (“HCA”) and the Indian Nation listed in the Indian Nation Agreement (“Receiving Party”). By signing the Indian Nation Agreement the Indian Nation Agrees to this Data Share Agreement. |
|  |
| This Schedule 1 - Data Share Agreement is incorporated into the Indian Nation Agreement. Data classification category, Data Elements, frequency, and method of sharing data elements will be determined in the Indian Nation Program Agreement(s). |
| HCA Program  | HCA Division/Section |
| ProviderOne | ProviderOne Operations and Services |
| HCA Contact Name, Title (Contract Manager) | HCA Contact Address |
| Cathie Ott, Assistant DirectorProviderOne Operations and Services | 626 8th Avenue SE, PO Box 45564Olympia, WA 98504-5564 |
| HCA Contact Telephone | HCA Contact Email Address |
| (360) 725-2116 | Cathie.ott@hca.wa.gov  |

Table of Contents

1. Definitions 21

2. Description of Data to be Shared 23

3. Data Classification 23

4. Constraints on Use of Data 24

5. Security of Data 24

6. Data Confidentiality and Non-Disclosure 25

7. Public Disclosure 25

8. Data Shared with Subcontractors 26

9. Data Breach Notification and Obligations 26

10. HIPAA Compliance 26

11. Amendments and Alterations 26

12. Assignment 26

13. Dispute Resolution 26

14. Entire Agreement 27

15. Governing Law and Venue 27

16. Incorporated Documents and Order of Precedence 27

17. Inspection 28

18. Insurance 28

19. Legal Notices 29

20. Maintenance of Records 29

21. Responsibility 30

22. Severability 30

23. Survival Clauses 30

24. Term and Termination 30

25. Waiver 31

26. Signatures and Counterparts 31

EXHIBITS

Exhibit A: Data Security Requirements

Exhibit B: User Agreement on Non-Disclosure of Confidential Information

# Definitions

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

**“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.

**“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.

**“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.”

**“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.

**“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.

**“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.

**“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

Description of the 1) data classification category, 2) specific data elements to be shared, 3) frequency of sharing, 4) and method of sharing is set out in the Indian Nation Program Agreement, Schedule 1: *Description of Shared Data*.

# 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 shared is classified in the Indian Nation Program Agreement in one of the following categories 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.

## The Receiving Party must comply with the *Minimum Necessary Standard*, which means that Receiving Party will use the least amount of PHI necessary to accomplish the Purpose of this DSA as described in Section 2, *Purpose of the Data Sharing*.

### Receiving Party must identify:

#### Those persons or classes of persons in its workforce who need access to PHI to carry out their duties; and

#### For each such person or class of persons, the category or categories of PHI to which access is needed and any conditions appropriate to such access.

### Receiving Party must implement policies and procedures that limit the PHI disclosed to such persons or classes of persons to the amount reasonably necessary to achieve the purpose of the disclosure, in accordance with Section 2, *Purpose of the Data Sharing*, of this DSA.

# 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

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. 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.

# Data Breach Notification and Obligations

The Breach or potential compromise of 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 law or HCA including but not limited to RCW 42.56.590.

# HIPAA Compliance

The Receiving Party must perform all of its duties, activities, and tasks under this DSA in compliance with HIPAA, the HIPAA Rules, and all applicable regulations as promulgated by the U.S. Department of Health and Human Services, Office for Civil Rights, as applicable.

Within ten (10) business days, Receiving Party must notify the HCA Privacy Officer at PrivacyOfficer@hca.wa.gov of any complaint, enforcement, or compliance action initiated by the Office for Civil Rights based on an allegation of violation of HIPAA or the HIPAA Rules and must inform HCA of the outcome of that action. Receiving Party bears all responsibility for any penalties, fines, or sanctions imposed against Receiving Party for violations of HIPAA or the HIPAA Rules and for any sanction imposed against its Subcontractors or agents for which it is found liable.

# 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

## 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.

# 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, federal law of the United States and, to the extent an issue is not addressed by federal law, in accordance with the laws of the state of Washington governing interpretation of contracts. In the event of a lawsuit involving this DSA, jurisdiction is proper only in the U.S. District Court for the Western District of Washington, and venue is proper only in Tacoma, 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, to the extent that the Federal Tort Claims Act does not apply, 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 listed at:

Section 16, Legal Notices, of the Indian Nation Agreement

### 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.

# Severability

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 the Indian Nation Program Agreement beginning date or date of execution, whichever is later, and continue through the Indian Nation Program Agreement 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 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 of the Indian Nation Agreement indicate agreement of this DSA between the parties.

Exhibit A – Data Security Requirements

# **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.

# 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.

# 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.

# 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.

# 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.

|  |
| --- |
| Exhibit BUser 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:1. Will access, use, and disclose Confidential Information only in accordance with the terms of this Agreement and consistent with applicable statutes, regulations, and policies.
2. Have an authorized business requirement to access and use the Confidential Information.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. Will access, use or disclose only the “minimum necessary” Confidential Information required to perform my assigned job duties.
9. Will not distribute, transfer, or otherwise share any software with anyone.
10. 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.
11. 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.
12. 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 |
|  |  |  |