

	<b>PROFESSIONAL SERVICES CONTRACT for</b> Third-Party Administrator for Clearinghouse Services	HCA Contract Number: K Resulting from Solicitation Number: 2025HCA14 Contractor/Vendor Contract Number:
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**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? <input type="checkbox"/> YES <input type="checkbox"/> NO				

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

CONTRACT START DATE  November 13, 2025	CONTRACT END DATE  June 30, 2027	TOTAL MAXIMUM CONTRACT AMOUNT  \$500,000.00
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 only be binding upon signature by both parties. The parties may execute this contract in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement. E-mail (electronic mail) transmission of a signed copy of this contract shall be the same as delivery of an original.

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

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*Instructions are included in red. Remove all instructional language from the final draft.*

## Recitals

The State of Washington, acting by and through the Health Care Authority (HCA), issued a Request for Proposals dated [date], (Attachment 1) for the purpose of purchasing a Third-Party Administrator for Community Behavioral Health Support (CBHS) services in accordance with its authority under chapters 39.26 and 41.05 RCW.

[Contractor Name] submitted a timely Response to HCA's RFP #2025HCA14 (Attachment 2).

HCA evaluated all properly submitted Responses to the above-referenced RFP 2025HCA14 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 Third-Party Administrator for CBHS 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**

**"1115 Demonstration Waiver"** means a provision under Section 1115 of the Social Security Act that allows states to test innovative approaches in their Medicaid programs. This type of waiver gives states the flexibility to design and implement programs that can improve care, enhance access, and reduce costs, while still ensuring that they meet federal Medicaid requirements.

**"Accountable Communities of Health (ACHs)"** means collaborative networks designed to improve health outcomes in specific geographic areas by addressing the social determinants of health and promoting health equity. These communities typically consist of various stakeholders, including healthcare providers, public health agencies, social service organizations, and community members.

**"Apple Health"** means an umbrella term or "brand name" for all Washington State medical assistance programs, including Medicaid. The brand name may be shortened to "Apple Health."

**“Applicant(s)”** means a person who is applying for Washington State’s Apple Health program.

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

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

**“Business Associate”** means a Business Associate as defined in 45 C.F.R. § 160.103, who performs or assists in the performance of an activity for or on behalf of HCA, a Covered Entity as defined in 45 C.F.R. 160.103, that involves the use or Disclosure of Protected Health Information (PHI). Any reference to Business Associate in this Contract includes Business Associate’s employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.

**“Business Associate Agreement”** or **“BAA”** means *the HIPAA Compliance section of Attachment 4, and [an agreement that]* includes the Business Associate provisions required by the U.S. Department of Health and Human Services, Office for Civil Rights. *(use blue language if there is a DSA/BAA Attachment and remove blue language and use red language if there is not a DSA/BAA Attachment. BAA Attachment is associated with Cat 4 Data.)*

**“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.

**“Claims Clearinghouse”** means a service or platform that acts as an intermediary between healthcare providers and insurance payers to facilitate the processing of claims. It helps streamline claims submissions by improving the efficiency of the healthcare billing process and ensuring that providers receive timely payments for their services.

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

**“Code of Federal Regulations”** or **“C.F.R.”** means the. 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>.

**“Community Behavioral Health Support”** or **“CBHS”** means an individually tailored home and community-based service, provided under Section 1915(i) of the Social Security Act, designed to assist Enrollees in restoring or acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home or community-based settings.

**“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.

**“Contracts Administrator”** means the HCA individual designated to receive legal notices and to administer, amend, or terminate 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. Confidential Information, Personal Information, and Protected Health Information are all considered Data for the purposes of this Contract. **For Attachment 4, [Business Associate and] Data Sharing Terms, Data specifically refers to the information that is disclosed or exchanged as described in the Attachment. (Remove the last sentence if there is not going to be a Data Sharing Terms Attachment.)**

**“Data Breach”** means the acquisition, access, use, or Disclosure of Data in a manner not permitted under law or by this Contract, including but not limited to the HIPAA Privacy Rule which compromises the security or privacy of the Protected Health Information, with the exclusions and exceptions listed in 45 C.F.R. 164.402.

**“Designated Record Set”** means a group of records maintained by or for a Covered Entity as defined in 45 C.F.R. 160.103, that is: the medical and billing records about individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or used in whole or part by or for the Covered Entity to make decisions about individuals.

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

**“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.

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

**“Enrollee(s)”** – means a person who is enrolled in Washington State's Apple Health program.

**“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.

**“Health Insurance Portability and Accountability Act of 1996” or “HIPAA”** means, as codified at 42 USC 1320d-8, as amended, and its attendant Regulations as promulgated by the U.S. Department of Health and Human Services (HHS), CMS, the HHS Office of the Inspector General, and the HHS Office for Civil Rights. HIPAA includes the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.

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

**“Information and Communication Technology” or “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.

**“Implementation of Claims Clearinghouse”** means the day, no later than January 1, 2026, that the ASB will satisfy the contractual requirements of operating the Claims Clearinghouse.

**“Implementation of TPA Services”** means the day the ASB will begin providing TPA services under the Contract. This date is currently scheduled for November 13, 2025. The Claims Clearinghouse may be operational after this date and no later than November 14, 2025.

**“Knowledge Transfer Sessions”** means a structured meeting designed to share, exchange, and document expertise, skills or information among team members or stakeholders. Its purpose is to ensure that critical knowledge is effectively communicated, preserved, and accessible, particularly during transitions such as project handovers, onboarding, or changes in personnel.

**“Limited Data Set(s)”** means a Data set that meets the requirements of 45 C.F.R. §§ 164.514(e)(2) and 164.514(e)(3).

**“Managed Care Organizations” or “MCOs”** means an organization having a certificate of authority or certificate of registration from the Washington State Office of Insurance Commissioner that contracts with HCA under a comprehensive risk contract to provide prepaid health care services to eligible HCA Enrollees Under HCA managed care programs.

**“Medicaid”** means the federally matched medical aid program under Title XIX of the Social Security Act (and Title XXI of the Social Security Act for the Children’s Health Insurance Plan) that covers the Categorically Needy (CN) and Medically Needy (MN) programs.

**“Medicaid Transformation Project 2.0” or “MTP 2.0”** means Washington State’s Section 1115 Medicaid demonstration waiver between HCA and CMS. MTP 2.0 allows our state to create and continue to develop projects, activities, and services that improve Washington’s health care system with the goal to:

- 1) Expand coverage and access to care, ensuring that people can get the care they need.
- 2) Advance whole-person primary, preventive, and home- and community-based care.
- 3) Accelerate care delivery and payment innovation focused on health-related social needs.

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

**“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.

**“Permissible Use”** means only those uses authorized in this Contract and as specifically defined herein.

**“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.

**“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 Rights and Privacy Act, as amended, 20 USC 1232g(a)(4)(b)(iv)..

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

**“Provider Enrollment”** means the HCA team responsible to process and enroll Providers into ProviderOne for payment.

**“Response”** means Contractor’s Response to HCA’s RFP #2025HCA14 for Third-Party Administrator for Clearinghouse 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 used as the solicitation document to establish this Contract, including all its amendments and modifications and is Attachment 1 hereto.

**“Serious Mental Illness” or “SMI”** means a group of mental health disorders that significantly interfere with a person’s ability to function in daily life. These conditions can cause severe distress and impairment in various areas, including work, relationships, and self-care. SMI typically requires comprehensive treatment, which may involve medication, therapy, and support services. The classification of SMI often takes into account the duration and intensity of the symptoms, as well as their impact on the individual’s overall functioning. Common examples of SMI include:

- 1) Schizophrenia
- 2) Bipolar disorder
- 3) Major depressive disorder
- 4) Severe anxiety disorders
- 5) Obsessive-compulsive disorder (OCD)

**“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.

**“Substance Use Disorder” or (SUD)”** means a problematic pattern of use of substances that causes clinical and functional impairment, such as health problems, disability, and failure to meet major responsibilities at work, school or home. Clinicians use criteria from the Diagnostic and Statistical Manual of Mental Disorders 5 (DSM 5) to diagnose SUD.

**“Technical Assistance” or “TA”** means support and guidance provided to help individuals or organizations improve their skills, knowledge, and processes in a specific area. This can include training, expert advice, resources, and tools to enhance capacity and achieve specific goals. Technical assistance is often utilized to promote effective practices and solve complex problems.

**“Third-Party Administrator” or “TPA”** means the Contractor under this Contract required to serve as the Claims Clearinghouse for claims payment and to provide Technical Assistance to the Community Behavioral health Services Providers.

**“Tribal Governments”** means the political entities that operate under the sovereignty of Indigenous tribes in the United States and other countries. These governments are established by the tribes themselves and have the authority to govern their members, manage their lands, and regulate various aspects of tribal life, including laws, resources, and social services. Tribal Governments can take various forms, often based on traditional customs or modern structures similar to state or local governments. They may include elected officials, councils, or other governing bodies. Tribal sovereignty allows these governments to exercise powers such as taxation, law enforcement, and jurisdiction over legal matters within their territories, independent of state or federal oversight in many areas.

**“Urban Indian Health Programs”** means non-profit organizations that provide health and social services to American Indians and Alaska Natives living in urban areas.

**“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.

#### **3.2 TERM**

- 3.2.1 The initial term of the Contract will commence on November 13, 2025, and continue through June 30, 2027, unless terminated sooner as provided herein.
- 3.2.2 This Contract may be extended for up to three (3) additional one (1)-year terms, by mutually agreed upon amendment. 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 **\$500,000.00**, 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 on the rates set forth in Attachment 3, Statement of Work.
- 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.
- 3.4.4 Invoices must be submitted to [HCAAdminAccountsPayable@hca.wa.gov](mailto: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.
- 3.4.5 HCA will return incorrect or incomplete invoices for correction and reissue. Payment will be considered timely if made within thirty (30) calendar days of receipt of properly completed invoices.

- 3.4.6 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:	
Title:		Title:	
Address:		Address:	626 8th Avenue SE P.O. Box 42### Olympia, WA 98504-####
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, 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:

**Attention:** Contractor Contact Name  
Contractor Legal Name  
Contractor Street Address  
Contractor City, State Zip+4  
Contractor Email

- 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](mailto:contracts@hca.wa.gov)

- 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 Attachment 5, [Business Associate and] Data Sharing Terms (including the Washington OCIO Security Standard 141.10)
- 3.8.3 Recitals;
- 3.8.4 Special Terms and Conditions;
- 3.8.5 General Terms and Conditions;
- 3.8.6 Attachment 3: Statement of Work;
- 3.8.7 Attachment 1: HCA RFP 2025HCA14;
- 3.8.8 Attachment 2: Contractor Response to HCA RFP 2025HCA14; and
- 3.8.9 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 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 this 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 3.12.7 (below). If not, delete.*

3.9.7 Contractor 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 and at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

### 4.2 **ACCESSIBILITY**

#### 4.2.1 Requirements and Standards

Each 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 Washington State IT 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, *Requirements and Standards*, 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 Indemnification

Contractor agrees to indemnify and hold harmless HCA from any claim arising out of failure to comply with this section.

### 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 under this Contract. In case of doubt, before commencing such activities, Contractor shall review areas of possible conflict with HCA and obtain HCA's written 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 PHI may be required to enter into a BAA with HCA in compliance with the requirements HIPAA, Pub. L. 104-191, as amended.
- 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.

## **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.

- 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:

- A. Be in writing;
- B. Include a written description of the dispute;
- C. State the relative positions of the parties and the remedy sought; and
- D. 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 4.444, *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 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 4.39.3, *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 11<sup>th</sup> 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 9A.90.040. 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 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 of 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**

### **4.25.1 Nondiscrimination Requirement.**

During the term of this Contract, Contractor, including any Subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3); Title VII of the Civil Rights Act, 42 U.S.C. §2000e et seq.; the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101 et seq., and 28 C.F.R. Part 35. In addition, Contractor, including any Subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or Subcontractor, has a collective bargaining or other agreement.

### **4.25.2 Obligation to Cooperate.**

Contractor, including any Subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any Subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).

### **4.25.3 Default.**

Notwithstanding any provision to the contrary, HCA may suspend Contractor, including any Subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until HCA receives notification that Contractor, including any Subcontractor, is cooperating with the investigating state agency. In the event Contractor, or Subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), HCA may terminate this Contract in whole or in part, and Contractor, Subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or Subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

### **4.25.4 Remedies for Breach.**

Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, Subcontractor, or both, shall be liable for contract 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, which damages are distinct from any penalties imposed under RCW 49.60. HCA shall have the right to deduct from any monies due to Contractor or Subcontractor, or that thereafter become due, an amount for damages Contractor or Subcontractor will owe HCA for default under this provision.

*(Use the below paragraph instead for contracts with direct insurance providers with an active license in Washington and regulated by the OIC. i.e. ERB contracts, MCO contracts, etc.)*

Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract damages as authorized by law, which damages are distinct from any penalties imposed under Chapter 49.60, RCW.

#### **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 Substitute Senate Bill 5187, Section 919 (2023 session), during the term of this Contract, it agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if (i) the individuals work for Contractor, (ii) the performance of the job requires comparable skill, effort, and responsibility, and (iii) the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.
- 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) calendar 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 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 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 RIGHTS OF STATE AND FEDERAL GOVERNMENTS**

*Only applicable if software development is involved.*

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

#### **4.34 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.

#### **4.35 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.

#### **4.36 SUBCONTRACTING**

- 4.36.1 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.

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

4.36.3 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.

4.36.4 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.

4.36.5 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.

#### **4.37 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, and Rights of State and Federal Governments* and all clauses identified in *Attachment 4, [Business Associate and] Data Sharing Terms, Subsection 13, Survival*, will survive the termination of this Contract. The right of HCA to recover any Overpayments will also survive the termination of this Contract.

#### **4.38 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.

#### **4.39 TERMINATION**

4.39.1 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."

#### 4.39.2 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.

#### 4.39.3 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.

#### 4.39.4 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 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.

#### 4.39.5 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.

### 4.40 TERMINATION PROCEDURES

- 4.40.1 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.
- 4.40.2 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.
- 4.40.3 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 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.

#### **4.41 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.

#### **4.42 TREATMENT OF ASSETS**

##### **4.42.1 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.

##### **4.42.2 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 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.

#### 4.42.3 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.

#### 4.42.4 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.

#### 4.42.5 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.

### 4.43 WAIVER

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

### 4.44 WARRANTIES

- 4.44.1 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.
- 4.44.2 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.

- 4.44.3 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.
- 4.44.4 Any written commitment by Contractor within the scope of this Contract will be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and will render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor to HCA or contained in any Contractor publications, or descriptions of services in written or other communication medium, used to influence HCA to enter into this Contract.

**ATTACHMENT 1: HCA RFP 2025HCA14**

RFP 2025HCA14, dated \_\_\_\_\_, including any and all amendments, is an integral part of this Contract and is incorporated herein by reference.

**ATTACHMENT 2: CONTRACTOR RESPONSE TO HCA RFP 2025HCA14**

Contractor's response to RFP 2025HCA14, dated \_\_\_\_\_, is an integral part of this Contract and is incorporated herein reference.

### **ATTACHMENT 3: STATEMENT OF WORK**

The Contractor will provide administrative and claims processing services, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

#### **1. Introduction**

The Contractor will manage a Claims Clearinghouse and provide TA to support Adult Family Homes, and other approved Residential Care Facilities with billing processes. In addition, the Contractor will assist, at a minimum, Adult Family Homes to coordinate the delivery and payment of CBHS services to approved Apple Health Enrollees on a daily basis. The Contractor will additionally be responsible for onboarding providers, as necessary, and providing training and support on provider enrollment, costs and claiming. This includes assisting facilities to develop a strategy to ensure the proper billing and claims processing to ensure timely payments and streamlined billing to HCA and Managed Care Organizations. If a facility is unable to receive timely payments for services, the Contractor will either help the facility to identify why their billing is being rejected or the Contractor will coordinate with the Managed Care Organization to resolve any submission errors.

To ensure the success of this program, the Contractor shall actively engage and develop collaborative relationships with HCA and the Adult Family Home Council to ensure complete training and timely communications. The Contractor must establish trust, maintain open communication channels, and respect the sovereignty of Tribal Governments while working to process and resolve outstanding claims. The Contractor will also partner with other relevant entities, such as the Aging and Long Terms Services administration, to effectively support claims payment and resolve outstanding claims issues. The Contractor will send completed claims to HCA's claim payment system and the claim payment systems that support the MCOs contracted by HCA. Five (5) MCOs are currently contracted by HCA to cover Apple Health Enrollees.

#### **2. Primary Support Services**

##### **2.1 Claims Clearinghouse**

The Contractor shall act as a central point of contact for the claims process by standing up a Claims Clearinghouse that supports the submission of claims or claims data by participating facilities and providers. The Contractor shall receive, review, and process claims data for services related to CBHS, turning claims data into submittable claims or encounters, and ensure that this process is compliant with all Medicaid billing requirements. The Contractor shall prioritize the implementation of a Claims Clearinghouse and satisfy the contractual requirements of operating the Claims Clearinghouse by January 1, 2026, as well as successfully complete any state required security reviews by no later than February 2, 2026. Specifically, the Contractor shall be responsible for:

##### **A. Claims/Encounter Processing and Provider Support**

The Contractor shall have the ability to create an Apple Health claim or encounter from data submitted by participating facilities and providers through

billing modules from electronic medical record platforms, other electronic methods, or paper-based claims. The Contactor must have the ability to check eligibility and be compliant with HIPAA data sharing. The Contactor shall also provide TA to participating facilities and providers submitting claims data or submitting claims with service that meets the needs of each participating facility or provider.

TA support includes:

- i) Onboarding facilities and providers. The Contractor shall work closely with providers to ensure they understand the submission process, whether electronically or via paper processes, including how to prepare and submit claims information, upload supporting documentation, and monitor claim status through the Contactor's Claims Clearinghouse.
- ii) Assuring that the claim is associated with an approved CBHS Apple Health Enrollee.
- iii) Notifying providers of any missing documentation and providing technical support as needed, to correct any claims data deficiencies.
- iv) Submitting claims and encounters through the Contactor's Claims Clearinghouse using data submitted by participating entities, ensuring data is complete, accurate, compliant with Medicaid rules, and submitted timely to the correct payer. HCA is developing updates to the ProviderOne Billing and Resource Guide to support CBHS and a Policy and Operations Guide that will assist participating facilities and providers to implement and provide CBHS services.
- v) Providing a virtual help desk with trained staff available to assist participating providers with any technical issues or questions related to claim submissions. This support must be available during regular business hours, Monday - Friday 8am - 5pm Pacific Time.
- vi) Provide all contracted services including billing support provided to Adult Family Homes for all other providers not identified as Adult Family Homes who are paying for access directly.
- vii) Provide support in order to ensure the Adult Family Home or Assisted Living Facility can successfully bill for provided services, including maintaining the documentation necessary to support claims the TPA is processing on their behalf.
- viii) Provide any related billing documents the Adult Family Home (AFH) or Assisted Living Facility (ALF) may need to support their retiering requests.

The Contactor shall monitor written communications sent from HCA and will be responsible for updating systems within sixty (60) days to meet any changes to Apple Health billing/encounter guidelines, Encounter Data Reporting Guide, eligibility policy, and the CBHS Program and Billing Guide. The Contactor shall have a process for

communicating all relevant HCA policy changes to supporting providers to understand these changes and the impacts on their operations.

### **3. Administrative Activities Supporting Providers and Enrollees**

- 3.1 The Contractor shall actively engage in all Knowledge Transfer Sessions scheduled with HCA. These sessions will provide necessary background information and implementation options for participating facilities and providers.
- 3.2 The Contractor shall work with HCA to act as a centralized place for resources to support facilities in addressing questions, navigating requirements and processes, and making the appropriate connections to other resources as necessary. Examples include: developing and sharing FAQs, best practices and recorded webinars; or hosting office hours to provide participating facilities and providers an opportunity to drop in and ask procedural questions or seek assistance with claim/encounters, checking eligibility, or other administrative activities.
- 3.3 The Contractor shall provide individualized TA to each facility and each provider in need of assistance in navigating the steps to become a Medicaid-billing provider with HCA. At a minimum, the TA will include the following:
  - A. Provider enrollment support: Support providers new to billing Apple Health for services in navigating the provider enrollment process with HCA. HCA will remain responsible for performing the duties of enrolling a provider into Apple Health.
  - B. Provider MCO credentialing support: Provide assistance to providers and facilities in becoming credentialed with an MCO serving Apple Health by leveraging information and training developed by MCOs and/or providing MCO points of contact.
  - C. Eligibility and enrollment support: Assist with the mechanisms, relationships, state policies and procedures, and agreements that help facilities and providers establish the capacity to enroll eligible individuals into Apple Health.
- 3.4 The Contractor will accept and file appeals with the Washington State Office of Administrative Hearings (OAH) and coordinate the appeal and hearing process with OAH on behalf of the Enrollees and Applicants that wish to appeal a decision related to payments. The Contractor shall also provide fair hearings coordination support services, which may include administrative activities such as accessing forms, ensuring form data is completed, and accessing relevant websites, to ensure Enrollees and Applicants have opportunity to participate in the process as entitled by 42 CFR Part 431, RCW 74.09.741, and WAC 182-526. The Contractor must develop a system with each AFH to intake appeals, and coordinate participation in a telephonic hearing.
  - A. If an Apple Health Enrollee is requesting a fair hearing related to eligibility or adverse benefit determination, the TPA should refer the Apple Health Enrollee to the HCA website link at [www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/requesting-administrative-hearing](http://www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/requesting-administrative-hearing).

- B. If an Adult Family Home or Assisted Living Facility is requesting assistance for a fair hearing related to payment, enrollment, or claims submissions the TPA is required to assist the provider with accessing appropriate resources.
- C. The TPA's involvement in the hearing process will be limited to relaying procedural motions, orders, etc. between the appellant/participant and the Office of Administrative Hearings (OAH), or HCA, providing supporting documentation related to payments and claims, directing to available resources and documents, and serving as a liaison for scheduling hearing related activities.

#### **4. Reporting to HCA**

The Contractor shall develop and submit:

- 4.1 Monthly Contractor-readiness reports from the Contract's Effective Date through Implementation of the Claims Clearinghouse date. The report shall contain any risks to implementation, progress with executing necessary data-sharing agreements/contracts, and mitigation strategies for at risk areas, and requests for TA where needed. Reports shall continue if there are unresolved/incomplete areas beyond Implementation of the Claims Clearinghouse date.
- 4.2 Monthly pre-submission reports that track error patterns in information received from the facilities and providers. The report shall include an analysis of the error patterns (e.g. lack of prior authorization, inappropriate billing codes, etc.) and the Contractor's actions to address the issue with the facility/provider.
- 4.3 The Contractor shall develop a template that is approved by HCA to report the following key performance areas on a quarterly basis:
  - A. A breakdown of claims submitted by entity and by payer, reports on averages time frames from data submitted to claim submission and payment, compares rejection and denial rates between payors, tracks resubmission rates, identifies trends, and makes recommendations.
  - B. TA provided.
  - C. An Issue Tracking and Resolution report. This report shall track, log, monitor, and describe resolution of any questions/problems/TA requested by participating facilities and providers. The report shall be used to escalate emerging questions unresolved issues, and implementation barriers to HCA and MCOs, as appropriate. The Contractor shall track and report on resolution times to ensure timely assistance, and work with HCA to develop mitigation strategies.
  - D. Total Number of Providers by Type.
- 4.4 Monthly reports on the Contractor's system downtime and technical issues experienced with the Claims Clearinghouse.

- 4.5 The Contractor shall participate in a performance survey of the TPA led, developed, and implemented by HCA. The intent of the survey is to evaluate the performance of the TPA.
- 4.6 The Contractor shall develop, maintain, and submit to HCA a statewide map of enrolled Apple Health providers serving individuals through CBHS, with breakdowns by affiliated provider type, and the number of approved payments by tier the Contractor identified and/or the number of Facilities or Providers the Contractor provided TA support to ensure they were paid timely.
  - A. The Contractor shall submit the map by December 31, 2025, and updated maps every six (6) months thereafter.
- 4.7 The Contractor shall provide a monthly fair hearing data report, to include new cases filed, scheduling of events, disposition of cases, communication initiated and responses to Facilities.
- 4.8 HCA requires maintenance of a data dashboard that monitors general service usage and other outcomes to be identified as the program ramps up. To support this dashboard, the Contractor shall leverage Claims Clearinghouse data to provide detailed CBHS service utilization reports monthly to HCA beginning no later than January 1, 2026.

Required data includes but is not limited to the following:

- A. Facility-Type utilization
- B. Number of individuals receiving services
- C. Total Claims submitted by Procedure/Modifier code
- D. Total Claims paid by Procedure/Modifier code
- E. Service dollars spent
- F. Number of facilities served
- G. Provider enrollments assisted
- H. Provider credentialing assisted

## **ATTACHMENT 4: [BUSINESS ASSOCIATE AND] DATA SHARING TERMS**

### **1. Definitions (specific to this Attachment)**

- 1.1 **“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.
- 1.2 **“Security Awareness Program”** or **“SAP”** means a formal program with the goal of training users on how to recognize potential security vulnerabilities, exploits and threats to an organization’s information technology infrastructure, along with how to avoid situations that may put an organization’s Data at risk.
- 1.3 **“Use”** includes the sharing, employment, application, utilization, examination, or analysis, of PHI within an entity that maintains such information.

### **2. Description of Data to be Shared / Data Licensing Statements**

Data Licensing Statements are the written statements that determine the following issues, at a minimum:

- 2.1 *Identification of the purpose of the file;*
- 2.2 *Identification of costs (if any);*
- 2.3 *Identification of transmission method; and*
- 2.4 *Identification of the file layout.*

*There must be at least one Data Licensing Statement attached hereto, but more than one Data Licensing Statement may be included or incorporated into this Contract at different times. Each Data Licensing Statement is incorporated into this Contract by using the same Attachment reference letter (A) and then further marking it with sequential identifying numbers (A1, A2, A3).*

### **3. HCA System Access Requirements and Process**

*Use for System Access Contracts only – otherwise delete*

- 3.1 The Contractor may request access to the [system] for up to [#] Authorized Users under this Contract.
- 3.2 The Contractor Contract Manager, identified in Section 3.4 must send the request to the HCA Security Help Desk at [HCAITSecurity@hca.wa.gov](mailto:HCAITSecurity@hca.wa.gov).
- 3.3 The Contractor must access the system(s) through the State Governmental Network (SGN), or SecureAccessWashington (SAW), or through another method of secure access approved by HCA in writing.
- 3.4 Contractor Point of Contact. The Contractor Point of Contact will be the single source of access requests and the person HCA will contact for any follow-up information or to initiate an audit under this Contract. Contractor Point of Contact

may be changed by written notice to the HCA Security Help Desk, email acceptable, with a copy to the HCA Contract Manager and HCA Office of Contracts and Procurements at [contracts@hca.wa.gov](mailto:contracts@hca.wa.gov).

<b>NAME OR TITLE</b>	
<b>ADDRESS</b>	
<b>TELEPHONE</b>	
<b>EMAIL</b>	

#### 4. Data Classification

The State classifies data into categories based on the sensitivity of the data pursuant to the security policies and standards promulgated by Washington Technology Solutions (WaTech). See the WaTech Data Classification Standard at:

[https://watech.wa.gov/sites/default/files/2023-12/Data%20Classification%20Standard Approved 2023.pdf](https://watech.wa.gov/sites/default/files/2023-12/Data%20Classification%20Standard%20Approved%202023.pdf), and which is hereby incorporated by reference.

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

4.1 ☐ 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.

4.2 ☐ 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.

4.3 ☐ Category 3 – Confidential Information

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

Personal Information about individuals, regardless of how that information is obtained;

Information concerning employee personnel records;

Information regarding IT infrastructure and security of computer and telecommunications systems;

4.4 ☐ 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:

- A. Especially strict handling requirements are dictated, such as by statutes, regulations, or agreements;

Serious consequences could arise from unauthorized disclosure, such as threats to health and safety, or legal sanctions.

**5. Constraints on Use of Data/Limited License**

- 5.1 Subject to the Terms and Conditions of this Contract, HCA hereby grants Contractor a limited license for the access and Permissible Use of Data. This grant of access may not be deemed as providing Contractor with ownership rights to the Data. The Data being shared/accessed is owned and belongs to HCA.
- 5.2 **[Use for Limited Data Sets]** Contractor agrees to not attempt to re-identify individuals in the Data shared or attempt to contact said individuals.
- 5.3 **[Use for Part 2 (SUD/MH) Data]** If Data shared under this Contract includes data protected by 42 C.F.R. Part 2. In accordance with 42 C.F.R. § 2.32, this Data has been disclosed from records protected by federal confidentiality rules (42 C.F.R. Part 2). The federal rules prohibit Contractor from making any further disclosure(s) of the Data that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed or as otherwise permitted by 42 C.F.R. Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (42 C.F.R. § 2.31). The federal rules restrict any use of the SUD data to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at 42 C.F.R. §§ 2.12(c)(5) and 2.65.
- 5.4 This Contract does not constitute a release of the Data for the Contractor's discretionary use. Contractor must use the Data received or accessed under this Contract only to carry out the purpose and justification of this Contract as set out in the Data Licensing Statement(s). Any Use or reporting (including of artificial intelligence tools) that is not within the Purpose of this DSA is not permitted without HCA's prior written consent.
- 5.5 This Contract does not constitute a release for Contractor to share the Data with any third parties, including Subcontractors, even if for authorized use(s) under this Contract, without the third party release being approved in advance by HCA and identified in the Data Licensing Statement(s).
- 5.6 Derivative Data Product Review and Release Process.

All reports derived from Data shared under this Contract, produced by Contractor that are created with the intention of being published for or shared with external customers (Data Product(s)) must be sent to HCA for review of usability, data sensitivity, data accuracy, completeness, and consistency with HCA standards prior to disclosure. This review will be conducted, and response of suggestions, concerns, approval, or notification of additional review time needed provided to Receiving Party within 10 business days. HCA reserves the right to extend the review period as needed for approval or denial.

Small Numbers. Contractor will adhere to HCA Small Numbers Standards, Attachment C. HCA and Contractor may agree to individual Permissible Use exceptions to the Small Numbers Standards, in writing (email acceptable).

- 5.7 Any disclosure of Data contrary to this Contract is unauthorized and is subject to penalties identified in law.

*If Contractor is **not** a Business Associate, include section 5.8 below. If Contractor is a Business Associate remove section 5.8.*

- 5.8 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 sharing as described in the attached Attachment A(s): Data Licensing Statement(s).

Receiving Party must identify:

- i. Those persons or classes of persons in its workforce who need access to PHI to carry out their duties; and
- ii. 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 the attached Data Licensing Statement(s).

## **6. Data Modification(s)**

Any modification to the Purpose, Justification, Description of Data to be Shared/Data Licensing Statement(s), and Permissible Use, is required to be approved through HCA's Data Request Process. Contractor must notify HCA's Contract Manager of any requested changes to the Data elements, use, records linking needs, research needs, and any other changes from this Contract, immediately to start the review process. Approved changes will be documented in an Amendment to the Contract.

## **7. Security of Data**

### **7.1 Security Awareness Program**

The Receiving Party must have a Security Awareness Program. This program must:

- A. Be issued biennially, or more frequently, for all Receiving Party's employees or Subcontractors whose roles are associated with the Data contemplated in this DSA; and
- B. At HCA's request, Receiving Party will provide documentation demonstrating its Security Awareness Program and associated training.

## 7.2 Data Protection

The Contractor must protect and maintain all Confidential Information gained by reason of this Contract against unauthorized use, access, disclosure, modification, or loss. This duty requires the Contractor 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.

## 7.3 Data Security Standards

Receiving Party must comply with the Data Security Requirements set out in Exhibit A and all WaTech Security Policies and Standards. See WaTech Security Policies and Standards at: [https://watech.wa.gov/sites/default/files/2023-12/141.10\\_SecuringITAssets\\_2023\\_12\\_Parts\\_Rescinded.pdf](https://watech.wa.gov/sites/default/files/2023-12/141.10_SecuringITAssets_2023_12_Parts_Rescinded.pdf). All WaTech Security Policies and Standards are hereby incorporated by reference into this DSA.

The Contractor must have a policy regarding monitoring and enforcement of the Data protection requirements specific in this DSA.

## 7.4 Data Disposition and Retention

Contractor will dispose of HCA Data in accordance with this section.

Upon request by HCA, or at the end of the Contract term, or when no longer needed, Confidential Information/Data must be disposed of as set out in Attachment B, Data Security Requirements, Section 5 Data Disposition, except as required to be maintained for compliance or accounting purposes. Contractor will provide written certification to HCA of disposition using Attachment D, Certification of Destruction/Disposition of Confidential Information.

**[Medicaid Claims Data]** For the purpose of this section, "fiscal year" means the 12-month period of July 1 to June 30. Claims Data will not be kept or maintained beyond 10 years after the end of the fiscal year in which the claim is dated. Client Data, not including Claims Data, will not be kept or maintained beyond 10 years from the date received from HCA. Any other Data will not be kept or maintained beyond 10 years from the date received from HCA. At that time Data and derivative Data Products must be disposed of in accordance with subsection 0.

## 8. Data Confidentiality and Non-Disclosure

### 8.1 Data Confidentiality.

The Contractor will not use, publish, transfer, sell, or otherwise disclose any Confidential Information gained by reason of this Contract for any purpose that is not directly connected with the purpose, justification, and Permissible Use of this Contract, as set out in the attached Data Licensing Statement(s), 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 Data.

### 8.2 Non-Disclosure of Data

The Contractor must ensure that all that all Authorized Users, including employees or Subcontractors who will have access to the Data described in this Contract (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 Contract before gaining access to the Data identified herein. For avoidance of doubt, the Contractor must 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 Contractor must ensure that each Authorized User who will access the Data adheres to confidentiality and non-disclosure obligations at least as restrictive as those contained in this agreement. The Contractor must retain a signed copy of its confidentiality and non-disclosure obligations for a minimum of six years from the date the Authorized User's access to the Data ends. The documentation must be available to HCA upon request.

### 8.3 Penalties for Unauthorized Disclosure of Data

*Check for applicability and accuracy of these laws and rules regarding Purpose, Justification, and Permissible Use. Add/remove as applicable.*

State laws (including RCW 74.04.060 and RCW 70.02.020) and federal regulations (including HIPAA Privacy and Security Rules, 45 C.F.R. Part 160 and Part 164; Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R., Part 2; and Safeguarding Information on Applicants and Beneficiaries, 42 C.F.R. 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 Contractor accepts full responsibility and liability for any noncompliance by itself, its employees, and its Subcontractors with these laws and any violations of the Contract.

## 9. Data Shared with Subcontractors

If Data access is to be provided to a Subcontractor under this Contract it will only be for the Permissible Use authorized by HCA and the Contractor must include all of the Data security terms, conditions and requirements set forth in this Attachment in any such Subcontract. In no event will the existence of the Subcontract operate to release or reduce the liability of the Contractor to HCA for any Data Breach in the performance of the Contractor's responsibilities.

## 10. Audit

10.1 At HCA's request or in accordance with WaTech Security Policies and Standards, Receiving Party shall obtain audits covering Data Security and Permissible Use.

Receiving Party may cover both the Permissible Use and the Data Security Requirements under the same audit, or under separate audits. The term, “independent third-party” as referenced in this section means an outside auditor that is an independent auditing firm.

- 10.2 Data Security audits must demonstrate compliance with Data Security standards adopted by WaTech, and as set forth in **Exhibit A**, Data Security Requirements. At a minimum, audit(s) must determine whether Data Security policies, procedures, and controls are in place to ensure compliance with all Data Security Requirements set forth herein and as required by state and federal law..
- 10.3 Permissible Use Audits must demonstrate compliance with Permissible Use standards as set forth in this Contract and each Attachment A. Audit(s) must determine whether Permissible Use policies, procedures, and controls are in place to ensure compliance with all Permissible Use requirements in this Contract.
- 10.4 HCA may monitor, investigate, and audit the use of Personal Information received by Contractor through this Contract. The monitoring and investigating may include the act of introducing data containing unique but false information (commonly referred to as “salting” or “seeding”) that can be used later to identify inappropriate use or disclosure of Data.
- 10.5 During the term of this Contract and for six (6) years following termination or expiration of this Contract, HCA will have the right at reasonable times and upon no less than five (5) business days prior written notice to access the Contractor’s records and place of business for the purpose of auditing and evaluating the Contractor’s compliance with this Contract and applicable laws and regulations.

## **11. Data Breach Notification and Obligations**

- 11.1 The Data Breach or potential compromise of Data shared under this Contract must be reported to the HCA Privacy Officer at [PrivacyOfficer@hca.wa.gov](mailto:PrivacyOfficer@hca.wa.gov) within one (1) business day of discovery.
- 11.2 If the Data Breach or potential compromise of Data includes PHI, and the Contractor does not have full details, it will report what information it has and provide full details within 15 business days of discovery. To the extent possible, these reports must include the following:

The identification of each individual whose PHI has been or may have been improperly accessed, acquired, used, or disclosed;

The nature of the unauthorized use or disclosure, including a brief description of what happened, the date of the event(s), and the date of discovery;

A description of the types of PHI involved;

The investigative and remedial actions the Contractor or its Subcontractor took or will take to prevent and mitigate harmful effects and protect against recurrence;

Any details necessary for a determination of the potential harm to Clients whose PHI is believed to have been used or disclosed and the steps those Clients should take to protect themselves; and

Any other information HCA reasonably requests.

11.3 The Contractor 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 45 C.F.R. Part 164 Subpart D; RCW 42.56.590; RCW 19.255.010; or WAC 284-04-625.

11.4 If notification must, in the sole judgement of HCA, must be made Contractor will further cooperate and facilitate notification to necessary individuals, to the U.S. Department of Health and Human Services (DHHS) Secretary, and to the media. At HCA's discretion, Contractor may be required to directly perform notification requirements, or if HCA elects to perform the notifications, Contractor must reimburse HCA for all costs associated with notification(s).

11.5 Contractor is responsible for all costs incurred in connection with a security incident, Data Breach, or potential compromise of Data, including:

The reasonable costs of notification to individuals, media, and governmental agencies and of other actions HCA reasonably considers appropriate to protect HCA clients.

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 Data Breach notification laws;

Notification and call center services, and other appropriate services (as determined exclusively by HCA) for individuals affected by a security incident or Data Breach, including fraud prevention, credit monitoring, and identify 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).

Compensation to HCA clients for harms caused to them by any Data Breach or possible Data Breach.

11.6 Any Breach of this section may result in termination of the Contract and the demand for return or disposition, as described in Section 7.4, of all HCA Data.

11.7 Contractor's obligations regarding Data Breach notification survive the termination of this Contract and continue for as long as Contractor maintains the Data and for any Data Breach or potential compromise, at any time.

## **12. HIPAA Compliance**

*There are 3 options for language in this section. Read the instructional language below and select the 1 option that applies and delete the rest.*

*Use the following language if Contractor is a Business Associate and does not have a stand-alone Business Associate Agreement:*

This section of the Attachment is the Business Associate Agreement required by HIPAA. The Contractor is a "Business Associate" of HCA as defined by HIPAA.

- 12.1 HIPAA Point of Contact. The point of contact for the Contractor for all required HIPAA-related reporting and notification communications from this Section 12, *HIPAA Compliance*, and all required Data Breach notification communications from Section 11, *Data Breach Notification and Obligations*, is:

HCA Privacy Officer

Washington State Health Care Authority

626 8th Avenue SE

Olympia, WA 98504-2700

Telephone: (360) 725-1116

E-mail: [PrivacyOfficer@hca.wa.gov](mailto:PrivacyOfficer@hca.wa.gov)

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

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

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

Minimum Necessary Standard. Business Associate will apply the HIPAA Minimum Necessary standard to any use or disclosure of PHI necessary to achieve the purposes of this Contract (45 C.F.R. § 164.514(d)(2) through (d)(5)).

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

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

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

Impermissible use or Disclosure of PHI. Business Associate must report to the contact identified in subsection 12.1, in writing, all uses or disclosures of PHI not provided for by this Contract within one business day of becoming aware of the unauthorized use or disclosure of PHI, including Data Breaches of unsecured PHI as required at 45 C.F.R. § 164.410, Notification by a Business Associate, as well as any Security Incident of which it becomes aware. Upon request by HCA, Business Associate will mitigate, to the extent practicable, any harmful effect resulting from the impermissible use or disclosure.

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

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

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

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

- i. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
- ii. Return to HCA or destroy the remaining PHI that the Business Associate or any Subcontractors still maintain in any form;
- iii. Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164, Security Standards for the Protection of Electronic Protected Health Information, with respect to ePHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate or any Subcontractors retain the PHI.
- iv. Not use or disclose the PHI retained by the Business Associate or any Subcontractors other than for the purposes for which such PHI was retained and subject to the same conditions set out in subsection 12.1, *Use and Disclosure of PHI*, that applied prior to termination; and
- v. Return to HCA or destroy the PHI retained by Business Associate, or any Subcontractors, when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

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

## 12.4 Individual Rights

### Accounting of Disclosures

- i. Business Associate will document all disclosures, except those disclosures that are exempt under 45 C.F.R. § 164.528, of PHI and information related to such disclosures.
- ii. Within ten business days of a request from HCA, Business Associate will make available to HCA the information in Business Associate's possession that is necessary for HCA to respond in a timely manner to a request for an accounting of disclosures of PHI by the Business Associate (45 C.F.R. §§ 164.504(e)(2)(ii)(G) and 164.528(b)(1)).
- iii. At the request of HCA or in response to a request made directly to the Business Associate by an Individual, Business Associate will respond, in a timely manner and in accordance with HIPAA, to requests by Individuals for an accounting of disclosures of PHI.
- iv. Business Associate record keeping procedures will be sufficient to respond to a request for an accounting under this section for the six years prior to the date on which the accounting was requested.

### Access

- v. Business Associate will make available PHI that it holds that is part of a Designated Record Set when requested by HCA or the Individual as necessary to satisfy HCA's obligations under 45 C.F.R. § 164.524, Access of Individuals to Protected Health Information.
- vi. When the request is made by the Individual to the Business Associate or if HCA asks the Business Associate to respond to a request, the Business Associate must comply with the requirements in 45 C.F.R. § 164.524, Access of Individuals to Protected Health Information, on form, time, and manner of access. When the request is made by HCA, the Business Associate will provide the records to HCA within ten business days.

#### Amendment

- vii. If HCA amends, in whole or in part, a record or PHI contained in an Individual's Designated Record Set and HCA has previously provided the PHI or record that is the subject of the amendment to Business Associate, then HCA will inform Business Associate of the amendment pursuant to 45 C.F.R. § 164.526(c)(3), Amendment of Protected Health Information.
- viii. Business Associate will make any amendments to PHI in a Designated Record Set as directed by HCA or as necessary to satisfy HCA's obligations under 45 C.F.R. § 164.526, Amendment of Protected Health Information.

- 12.5 Subcontracts and other Third Party Agreements. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii), 164.504(e)(1)(i), and 164.308(b)(2), Business Associate must ensure that any agents, Subcontractors, independent contractors, or other third parties that create, receive, maintain, or transmit PHI on Business Associate's behalf, enter into a written contract that contains the same terms, restrictions, requirements, and conditions as the HIPAA compliance provisions in this Contract with respect to such PHI. The same provisions must also be included in any contracts by a Business Associate's Subcontractor with its own business associates as required by 45 C.F.R. §§ 164.314(a)(2)(i)(B) and 164.504(e)(5).
- 12.6 Obligations. To the extent the Business Associate is to carry out one or more of HCA's obligation(s) under Subpart E of 45 C.F.R. Part 164, Privacy of Individually Identifiable Health Information, Business Associate must comply with all requirements that would apply to HCA in the performance of such obligation(s).
- 12.7 Liability. Within ten business days, Business Associate must notify the contact identified in subsection 12.1 of any complaint, enforcement, or compliance action initiated by the Office for Civil Rights based on an allegation of violation of HIPAA and must inform HCA of the outcome of that action. Business Associate bears all responsibility for any penalties, fines, or sanctions imposed against the Business Associate for violations of HIPAA and for any imposed against its Subcontractors or agents for which it is found liable.
- 12.8 Data Breach Notification. Data Breach Notification and Obligations are detailed in Section 11.

## 12.9 Miscellaneous Provisions

**Regulatory References.** A reference in this Attachment to a section of HIPAA means the section as in effect or as amended.

**Interpretation.** Any ambiguity in this Attachment will be interpreted to permit compliance with the HIPAA.

*Use the following language if Contractor has a separate stand-alone Business Associate Agreement:*

The parties to this Contract have entered into a Business Associate Agreement dated [date] (HCA Contract Number [Kxxxx]) that sets out Contractor's obligations for compliance with HIPAA, and all attendant regulations as promulgated by the U.S. Department of Health and Human Services, Office for Civil Rights, as applicable.

*Use the following language if Contractor is not a Business Associate:*

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

12.11 Within ten (10) Business Days, Contractor 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 and must inform HCA of the outcome of that action. Contractor bears all responsibility for any penalties, fines, or sanctions imposed against Contractor for violations of HIPAA and for any sanction imposed against its Subcontractors or agents for which it is found liable.

## 13. Data Breach Response Insurance Requirements

For the term of this Contract and 3 years following its termination or expiration, Contractor must maintain insurance to cover costs incurred in connection with a security incident, Data Breach, or potential compromise of Data, including:

- 13.1 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 Data Breach notification laws;
- 13.2 Notification and call center services for individuals affected by a security incident, or Data Breach;
- 13.3 Data Breach resolution and mitigation services for individuals affected by a security incident or Data Breach, including fraud prevention, credit monitoring, and identity theft assistance; and
- 13.4 Regulatory defense, fines, and penalties from any claim in the form of a regulatory proceeding resulting from a violation of any applicable privacy or security law(s) or regulation(s).

## 14. Survival Clauses

*Check after drafting for completeness and accuracy*

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

Surviving terms include but are not limited to: *Constraints on Use of Data / Limited License, Security of Data, Data Confidentiality and Non-Disclosure, Audit, HIPAA Compliance, Data Breach Notification and Obligations and Data Breach Response Coverage Requirements.*

## Attachment A1: Data Licensing Statement

*This Data Licensing Statement attachment will be completed during the negotiation process and after HCA's internal Data Governance review process.*

### 1. Background

*Optional Explain the context for sharing the data – who's who and how we got here.*

### 2. Justification and Authority for Data Sharing

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

*Explain the justification for the data sharing and provide the statutory or rule authority allowing or requiring for the data to be shared. This should include the "reason" HCA is sharing it (RCW, C.F.R., WAC, Executive Order, other directive, or DUC reasoning for sharing the data and how it aligns with RCW 41.05).*

### 3. Purpose / Use / Description of Data

The purpose of this Attachment is to provide terms and conditions under which HCA will allow the restricted use of its Data to the Contractor, and under which the Contractor may receive and use the Data. This Attachment ensures that HCA Data is provided, protected, and used only for purposes authorized by state and federal law governing such Data use.

The scope of this Attachment only provides the Contractor with access and Permissible Use of Data; it does not establish an agency relationship or independent contractor relationship between HCA and the Contractor.

*Explain the data to be shared, and the Use of the data, flow of the data, etc.*

- 3.1 Permissible Use: Contractor may only use the Data for the purposes of [Permissible Use]

*[Pull information from DUC/subDUC DRST, this is information provided under Information Access, "What are the types of employee duties that will access this information?"]*

**Authorized Users: The following is a comprehensive list of Receiving Party's Authorized Users for the Data contemplated in this DSA.**

- i. Title/Category of Authorized User (not individual name)
  - ii. Title/Category of Authorized User (not individual name) Title/Category of Authorized User (not individual name)
- 3.2 File Layout: The Parties will exchange Data using the mutually agreed upon file layouts below. The Parties may edit and/or change the *File Layout* as considered necessary.

Method of Access/Transfer: Once an established Secure Data Transfer connection with the host computer at Contractor's location is confirmed, HCA will provide Data listed in *File Layout* list below, to Contractor.

Delivery Method: Secure File Transfer

Frequency of Data Delivery: HCA will transmit Data [Frequency].

Costs: [(This will likely be N/A)]

*Example below – use what is received in Technical Design Specification.*

Element Name	Friendly Name	Length	Type	Data Descriptions and Usages

## Attachment B: Data Security Requirements

### 1. Definitions

In addition to the definitions set out in the Data Use, Security, and Confidentiality Attachment, the definitions below apply to this Attachment.

- 1.1 **“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.

Passwords for external authentication must be a minimum of 10 characters long.

Passwords for internal authentication must be a minimum of 8 characters long.

Passwords used for system service or service accounts must be a minimum of 20 characters long.

- 1.2 **“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).

- 1.3 **“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.

- 1.4 **“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.

- 1.5 **“Transmitting”** means the transferring of data electronically, such as via email, SFTP, webservices, AWS Snowball, etc.

- 1.6 **“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.

- 1.7 **“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.

## **2. Data Transmission**

- 2.1 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.
- 2.2 When transmitting HCA's Confidential Information via paper documents, the Contractor must use a Trusted System and must be physically kept in possession of an authorized person.

## **3. Protection of Data**

The Contractor agrees to store and protect Confidential Information as described:

### **3.1 Data at Rest:**

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.

Data stored on Portable/Removable Media or Devices:

- i. 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.
- ii. HCA's data must not be stored by the Contractor on Portable Devices or Media unless specifically authorized within the Contract. If so authorized, the Contractor 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.

- 3.2 **Paper documents.** Any paper records containing Confidential Information must be protected by storing the records in a Secured Area that is accessible only to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.

#### 4. Data Segregation

HCA's Data received under this Contract must be segregated or otherwise distinguishable from non-HCA Data. This is to ensure that when no longer needed by the Contractor, all 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.

- 4.1 HCA's Data must be kept in one of the following ways:

on media (e.g. hard disk, optical disc, tape, etc.) which will contain only HCA Data;  
or

in a logical container on electronic media, such as a partition or folder dedicated to HCA's Data; or

in a database that will contain only HCA Data; or

within a database and will be distinguishable from non-HCA Data by the value of a specific field or fields within database records; or

when stored as physical paper documents, physically segregated from non-HCA Data in a drawer, folder, or other container.

- 4.2 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 Attachment.

- 4.3 Contractor must designate and be able to identify all computing equipment on which they store, process and maintain HCA Data. No Data at any time may be processed on or transferred to any portable storage medium. Laptop/tablet computing devices are not considered portable storage medium devices for purposes of this Contract provided it is installed with end-point encryption.

#### 5. Data Disposition

- 5.1 Consistent with Chapter 40.14 RCW, Contractor shall erase, destroy, and render unrecoverable all HCA Confidential Data and certify in writing that these actions have been completed within thirty (30) days of the disposition requirement or termination of this Contract, whichever is earlier. At a minimum, media sanitization is to be performed according to the standards enumerated by NIST SP 800-88r1 Guidelines for Media Sanitization.
- 5.2 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 Attachment may be deferred until the disks are retired, replaced, or otherwise taken out of the Secured Area.

## **6. Network Security**

Contractor's network security must include the following:

- 6.1 Network firewall provisioning;
- 6.2 Intrusion detection;
- 6.3 Quarterly vulnerability assessments; and
- 6.4 Annual penetration tests.

## **7. Application Security**

Contractor must maintain and support its software and subsequent upgrades, updates, patches, and bug fixes such that the software is, and remains secure from known vulnerabilities.

## **8. Computer Security**

Contractor shall maintain computers that access Data by ensuring the operating system and software are updated and patched monthly, such that they remain secure from known vulnerabilities. Contractor computer device(s) must also be installed with an Anti-Malware solution and signatures updated no less than monthly.

## **9. Offshoring**

- 9.1 Contractor must maintain all hardcopies containing Confidential Information only from locations in the United States.
- 9.2 Contractor may not directly or indirectly (including through Subcontractors) transport any Data, hardcopy or electronic, outside the United States unless it has advance written approval from HCA.

## Attachment C: HCA Small Numbers Standard

### 1. Why do we need a Small Numbers Standard?

It is the Washington State Health Care Authority's (HCA) legal and ethical responsibility to protect the privacy of its clients and members. However, HCA also supports open data and recognizes the ability of information to be used to further HCA's mission and vision. As HCA continues down the path of Data Governance maturity, establishing standards such as this is key in helping HCA analysts and management meet the needs of external data requestors while maintaining the trust of our clients and members and complying with agency, state and federal laws and policies.

Publishing data products that include small numbers creates two concerns. As a reported number gets smaller, the risk of re-identifying an HCA client or member increases. This is especially true when a combination of variables are included in the data product to arrive at the small number (e.g. location, race/ethnicity, age, or other demographic information).

Small numbers can also create questions around statistical relevance. When it comes to publicly posting data products on HCA's internet site, or sharing outside the agency, the need to know the exact value in a cell that is less than 11 must be questioned.

As the agency moves away from traditional, static reports to a dynamic reporting environment (e.g. Tableau visualizations), it is easier for external data consumers to arrive at small numbers. Further, those external consumers have an increasing amount of their own data that could be used to re-identify individuals. As a result, more rigor and a consistent approach needs to be in place to protect the privacy of HCA's clients and members. Until now, some HCA data teams have elected to follow small numbers guidelines established by the Department of Health, which include examples of suppression methods for working with small numbers. HCA is now establishing its own standard, but is planning to work with DOH and other agencies dealing with healthcare data to try and develop a consistent small numbers methodology at a statewide level.

### 2. Scope

HCA often uses Category 4 data to create summary data products for public consumption. This Standard is intended to define one of the requirements for a summary data product to be considered Category 1. Specifically, it is intended to define the level of suppression that must be applied to an aggregated data product derived from Category 4 data for the data product to qualify as Category 1. Category 1 products are data products that are shared external to the agency, in large part those products that are posted on HCA's Internet website ([www.hca.wa.gov](http://www.hca.wa.gov)). The primary scope of this Standard is for those data products posted publicly (e.g. on the website), or, shared as public information.

The following are examples of when this Standard **does not** apply to data products are:

- 2.1 Those shared directly with an external entity outside HCA, the Standard suppression of small numbers would not be required. However, you should notify the recipient that the data products contain sensitive information and should not be shared or published.

2.2 Those exchanged under a data share agreement (DSA) that will not be posted or shared outside the Contractor.

2.3 Those created for HCA-only internal use.

This standard does not supersede any federal and state laws and regulation.

### **3. Approach**

In 2017, an impromptu workgroup was formed to tackle the issue of small numbers and determine what the general approach for handling data products that contain them would be. This initial effort was led by the agency's Analytics, Interoperability and Measurement (AIM) team who had an immediate need for guidance in handling and sharing of data products containing small numbers. The result of that work was a set of Interim Small Numbers Guidelines, which required suppression of cells containing values of less than 10. In addition, data products that contain small numbers are considered Category 2 under HCA's Data Classification Guidelines.

In spring 2018, a new cross-divisional and chartered Small Numbers Workgroup was formed to develop a formal agency standard. Representatives from each of the major HCA divisions that produce data and analytic products were selected. The charter, complete with membership, can be found here (available to internal HCA staff only). The Workgroup considered other state agency standards, and national standards and methods when forming this standard. The Workgroup also consulted business users and managers to determine the potential impact of implementing a small numbers suppression standard. All of this information was processed and used to form the HCA Small Numbers Standard.

### **4. State and National Small Numbers Standards Considered**

When developing these standards, HCA reviewed other organizations' small numbers standards at both a state and federal level. At the state level, DOH recently published a revised Small Numbers Standard, which emphasizes the need for suppression for both privacy concerns and statistical relevance. HCA also convened a meeting of other state agencies to discuss their approach and policies (if any) around Small Numbers. Feedback from that convening was also taken into consideration for this Standard as well.

Federal health organizations such as the Centers for Disease Control and Prevention (CDC) and the National Center for Health Statistics (NCHS) also maintain small numbers standards. HCA's federal oversight agency and funding partner, the Centers for Medicare and Medicaid Services (CMS) adopts suppression of any cell with a count of 10 or less.

### **5. WA Health Care Authority Small Numbers Standard**

Any HCA external publication of data products are to be compliant with both HIPAA and Washington State privacy laws. Data products are not to contain small numbers that could allow re-identification of individual beneficiaries. HCA analysts are to adhere to the following requirements when developing Category 1 data products for distribution and publication. Category 1 data is information that can be released to the public. These products do not need protection from unauthorized disclosure but do need integrity and availability protection controls. Additionally, all contractors (state and private) that use HCA's data to produce derivative reports and data products are required to adhere to this standard as well. HCA's Contracts team will ensure that proper contractual references are included to this and all HCA

Data Release and Publishing Standards. The requirements discussed herein are not intended for Category 2, Category 3, or Category 4 data products.

## 6. HCA's Small Number Standard:

- 6.1 There are no automatic exemptions from this standard.
- 6.2 (See Exception Request Process section below).
- 6.3 Standard applies for all geographical representations, including statewide.
- 6.4 Exceptions to this standard will be considered on a case-by-case basis (see *Exception Request Process* section later in this document for more information).
- 6.5 Ensure that no cells with  $0 < n < 11$  are reported ( $0 < n < 11$  suppressed).
- 6.6 Apply a marginal threshold of 1 – 10 and cell threshold of 1 – 10 to all tabulations.
- 6.7 ( $0 < n < 11$  suppressed).
- 6.8 To protect against secondary disclosure, suppress additional cells to ensure the primary suppressed small value cannot be recalculated.
- 6.9 Suppression of percentages that can be used to recalculate a small number is also required.
- 6.10 Use aggregation to prevent small numbers but allow reporting of data. Age ranges are a very good example of where aggregation can be used to avoid small numbers but avoid suppressing data (see example below).

## 7. Small Numbers Examples

### 7.1 Example (Before Applying Standard)

Client Gender	County	Accountable Community of Health (ACH)	Statewide
Male	6	8	14
Female	11	15	26
TOTAL	17	23	40

### 7.2 Example (After Applying Standard)

Client Gender	County	ACH	Statewide
Male	--- <sup>1</sup>	---	14
Female	11	15	26

TOTAL	---	---	40
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<sup>1</sup>In order to protect the privacy of individuals, cells in this data product that contain small numbers from 1 to 10 are not displayed.

The above examples show in order to comply with the standard, analysts must not only suppress directly those cells where  $n < 11$ , but also in this case secondary suppression is necessary of the county and ACH totals in order to avoid calculation of those cells that contained small numbers.

### 7.3 Example (Suppression with no aggregation)

Age Range	County	ACH	Statewide
0-3	5 (would be suppressed)	8 (would be suppressed)	13 (would be suppressed)
4-6	7 (would be suppressed)	18	25 (would be suppressed)
	15	23	38
10-12	24	33	57
TOTAL	51 (would be suppressed)	82 (would be suppressed)	133

### 7.4 Example (Using aggregation instead of suppression)

Age Range	County	ACH	Statewide
0-6	12	26	38
7-9	15	23	38
10-12	24	33	57
TOTAL	51	82	133

The above examples provide guidance for using aggregation to avoid small number suppression and still provide analytic value to the end user. Aggregation is an excellent method to avoid presenting information with many holes and empty values.

## 8. Exception Request Process

To request an exception to this standard, Receiving Party must do the following:

- 8.1 Send an e-mail to [HCADData@hca.wa.gov](mailto:HCADData@hca.wa.gov) containing the following information:
- A copy of the data product, or a sample of the data product if sending the entire data products is not feasible due to size.
  - Rationale and reason for publishing the product containing small numbers.
  - Impact if the product is not published.
  - Intended audience for the data product.
  - Why aggregation is not an acceptable mitigation.
- 8.2 Requests are jointly reviewed by the HCA Privacy Officer and Data Governance Program Manager.
- 8.3 If the HCA Privacy Officer and Data Governance Program Manager deem necessary, the request will be escalated up through HCA's Data Utilization Committee for a final decision.
- 8.4 HCA's Data Governance Program Manager will inform requestor the final decision along with any necessary handling instructions for the product if it is allowed to be shared or posted.
- 8.5 Decisions for each exception will be documented on the HCA Data Governance Decision Log.
- 8.6 Those approved exceptions for publishing small numbers will be considered in future updates of this standard.

## Attachment D: Certification of Destruction/Disposal of Confidential Information

(To Be Filled Out and Returned to HCA Upon Termination of Contract)

NAME OF CONTRACTOR:	CONTRACT #:
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\_\_\_\_\_ (Contractor) hereby certifies that the data elements listed below or attached, received as a part of the data provided in accordance with DSA have been:

☐ DISPOSED OF/DESTROYED ALL COPIES

You certify that you destroyed, and returned if requested by HCA, all identified confidential information received from HCA, or created, maintained, or received by you on behalf of HCA. You certify that you did not retain any copies of the confidential information received by HCA.

Description of Information Disposed of/ Destroyed:

Date of Destruction and/or Return:

Method(s) of destroying/disposing of Confidential Information:

Disposed of/Destroyed by:

Signature		Date
Printed Name:		
Title:		