

**WASHINGTON STATE ASSOCIATION OF LOCAL PUBLIC HEALTH OFFICIALS  
and  
KITSAP PUBLIC HEALTH DISTRICT**

**AGREEMENT**

This AGREEMENT formalizes the understanding between the Washington State Association of Local Public Health Officials (WSALPHO) and Kitsap Public Health District (KPHD, an LHJ-level entity) regarding the operation of Medicaid Administrative Claiming (MAC) in Washington State.

**ARTICLE I  
PURPOSE**

The purpose of this AGREEMENT is to facilitate the operation of a statewide Random Moment Time Survey (RMTS) that complies with the requirements of the LHJs' Cost Allocation Plan approved by the Centers for Medicare and Medicaid Services (CMS), and the MAC contract between HCA and each participating LHJ. The AGREEMENT will also assist in oversight activities of the Health Care Authority (HCA) working with the LHJ MAC Steering Committee to provide coordination and program compliance among participating LHJs.

**ARTICLE II  
DEFINITIONS**

Authorized Representative: The person or persons authorized by the LHJ and WSALPHO to coordinate activities under this AGREEMENT (the MAC Coordinator) will be the Point of Contact for response to monitoring activities. Contact information for the LHJ and WSALPHO Representative, or the person who will connect the caller to the Authorized Representative, is found in Article III of this AGREEMENT.

Business Associate: As defined in 45 CFR, Part 160.103, otherwise known as HIPAA, and includes any entity that performs or assists in performing a function or activity involving the uses/disclosures of individually identifiable Health Information or involving any other function or activity regulated by HIPAA; or provides legal, accounting, actuarial, consulting, data aggregation, management, accreditation, or financial service where the services involve individually identifiable Health Information.

Business Days and Hours: Shall mean Monday through Friday, 8:00 a.m. to 4:30 p.m., Pacific Time, except for holidays observed by the State of Washington.

Centers for Medicare and Medicaid Services (CMS): A federal agency within the Department of Health and Human Services responsible for the administration and oversight of the Title XIX Medicaid Administrative Claiming program.

Consortium: LHJs are grouped into consortia based on similar duties staff perform, organizational structure, types of programs, scope of work, or regional working relationships and participate in a common Random Moment Time Survey (RMTS) together in order to achieve the level of statistical validity in the RMTS required by CMS. Each consortium composed of more

than one LHJ will identify a member LHJ to act as the Lead Agency for the consortium and serve on the statewide LHJ Steering Committee. Each LHJ that is the sole entity in a consortium, such as Public Health – Seattle & King County, will identify a single person to represent it on the Steering Committee.

Cost Allocation Plan: A federally-approved plan describing the methodology and procedures for claiming federal reimbursement for activities that are necessary for the efficient administration of the State Medicaid Plan.

Health Care Authority (HCA): The State agency responsible for administration and oversight of the Medicaid Administrative Claiming program in Washington State.

HIPAA Rules: “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and 164.

Local Health Jurisdiction (LHJ): A signatory health department, health district, or county within the State of Washington that operates a public health department or division within its county government pursuant to authority granted under Chapters 70.05, 70.08, 70.46 RCW or other applicable law.

LHJ MAC Contract: The legal agreement between HCA and the LHJ for participation in the MAC program. The contract lays out the responsibilities of each party for ensuring program compliance.

LHJ MAC Steering Committee: The LHJ MAC Steering Committee (Steering Committee) functions as an advisory board working under the direction of WSALPHO leadership. The Steering Committee provides broad oversight of the LHJ MAC program in Washington State and acts as a point of contact for HCA staff.

Medicaid Administrative Claiming (MAC): Title XIX of the Social Security Act (the Act) authorizes payments to states for expenditures necessary for the administration of the State Medicaid Plan.

Proportional Share: The percentage paid by each LHJ to WSALPHO for the costs of the WSALPHO Contractor and WSALPHO’s administrative fee is based on the proportional share of the total federal reimbursement paid to all LHJs for MAC activities for the most recent four quarters for which there is complete data.

Protected Health Information: Shall have the same meaning as those terms in the HIPAA Rules.

Random Moment Time Study: A web-based system operated by WSALPHO’s Contractor that captures the activities that can be reimbursed under Medicaid Administrative Claiming via a CMS-approved time survey methodology.

Washington State Association of Local Public Health Officials: WSALPHO is a 501(c)3 private, non-profit organization operating on behalf of Local Health Jurisdictions to advance the interests of local public health in Washington State.

WSALPHO Contractor: Also known as MAC Contractor. Vendor contracted through WSALPHO to operate an RMTS and claiming system [including offset, indirect rate, and Medicaid Eligibility Rate (MER)] for the MAC program that is compliant with the currently approved LHJ Cost Allocation Plan and to provide consultation and technical assistance to the Steering Committee and LHJs, as directed by the Steering Committee.

### **ARTICLE III AUTHORIZED REPRESENTATIVES**

KITSAP PUBLIC HEALTH DISTRICT  
Keith Grellner  
Administrator  
345 6<sup>th</sup> Street, Suite 300  
Bremerton, WA 98337

WSALPHO  
Jaime Bodden  
Managing Director  
206 10<sup>th</sup> Street  
Olympia, WA 98501

### **ARTICLE IV RESPONSIBILITIES OF LOCAL HEALTH JURISDICTIONS**

Local Health Jurisdictions participating in the Medicaid Administrative Claiming program will:

- Participate in the MAC claiming program through an inter-local AGREEMENT between the LHJ and HCA and participate in an RMTS operated by the WSALPHO Contractor.
- Participate in peer review or other quality assurance activities to ensure the program's compliance with all federal regulations and federal and state published guidance.
- Name an employee to act as the MAC Coordinator who will oversee MAC activities at the LHJ and monitor their compliance with federal and state regulations and published guidance, including the RMTS and the development and updating of all non-fiscal documents required for the MAC audit file.
- Name an employee to act as the MAC Fiscal Coordinator, who will oversee the development of the quarterly MAC invoice, certify its accuracy, and maintain the fiscal sections of the MAC audit file.
- The LHJ MAC Coordinator or designee will attend WSALPHO-sponsored trainings as scheduled.
- The LHJ Fiscal Coordinator will attend WSALPHO-sponsored fiscal trainings as scheduled.
- The LHJ MAC Coordinator will participate in regularly-scheduled Coordinator conference calls convened by WSALPHO.

### **ARTICLE V RESPONSIBILITIES OF WSALPHO**

WSALPHO will:

- Procure a contractor to operate an RMTS and claiming system that complies with the most current federally-approved Cost Allocation Plan.
- Provide assurance that this AGREEMENT, once executed by the parties, is and remains a Public Record subject to the provision of Ch. 42.56 RCW, the Public Records Act.

- In conjunction with LHJ Steering Committee, will provide coordination and leadership of the LHJ MAC program in Washington State to ensure quality assurance and consistency state-wide.

## **ARTICLE VI RESPONSIBILITIES OF MAC CONTRACTOR**

The MAC Contractor will operate a MAC RMTS and claiming system for participating LHJs in Washington State in accordance with a federally-approved cost allocation plan. The MAC Contractor will also provide consultation and technical assistance, as directed by the Steering Committee.

The MAC Contractor will submit a proposed work plan that includes proposed tasks, staffing, timeline, and associated costs to WSALPHO no later than November 15 of the preceding year for review and approval by WSALPHO and the LHJ MAC Steering Committee, which will be incorporated annually as an amendment to this AGREEMENT.

## **ARTICLE VII INVOICE AND PAYMENT**

The MAC Contractor submits a quarterly invoice of actual costs to WSALPHO no later than 60 days following the end of a calendar quarter to the designee of the LHJ Steering Committee who will review calculations and approve proposed work for payment. Following approval for payment, WSALPHO will invoice Public Health Seattle King County and Tacoma Pierce County Health Department quarterly with the remaining participating LHJs invoiced their proportional share semi-annually in January and August (for the prior six months). The invoice will link billed tasks to the annual work plan. The budgeted annual costs for MAC Contractor's services, WSALPHO's administrative fee, and the LHJ's proportionate share are incorporated by reference as MAC Contractor Costs and LHJ Proportional Share for calendar year 2019 (**Attachment A**).

WSALPHO receives a five percent fee based on the MAC Contractor's budget to administer the MAC program and coordinate the work of the LHJ MAC Steering Committee. WSALPHO will reconcile this fee to the MAC Contractor's actual cost and credit each LHJ its proportional share of any overpayment. This adjustment will be applied to the LHJ's succeeding year invoice.

## **ARTICLE VIII HIPAA – PROTECTED HEALTH INFORMATION**

WSALPHO acknowledges that the work under this AGREEMENT may require compliance with "The Health Insurance Portability and Accountability Act of 1996" commonly known as HIPAA. WSALPHO shall not use protected health information in any manner that would constitute a violation of HIPAA and any regulations enacted pursuant to its provisions and Washington State privacy laws and further agrees not to use or disclose Protected Health Information other than as permitted or required by the AGREEMENT or as required by law. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Protected Health Information.

WSALPHO Contractors that may use the LHJ Protected Health Information in the course of their work are considered to be a Business Associate of WSALPHO and the LHJ. WSALPHO and the LHJ shall sign a Business Associate Agreement, hereto attached and hereinafter referenced as **Attachment B**.

The LHJ reserves the right to monitor, audit, or investigate the use of Protected Health Information collected, used, or acquired by Contractor through this AGREEMENT. The obligations set forth in this Section shall survive completion, cancellation, expiration, or termination of this AGREEMENT.

#### **ARTICLE IX INDEMNIFICATION**

Each party shall indemnify, defend and hold harmless, each other, its officers, agents and employees, from and against any and all claims, lawsuits, demands for money damages, losses or liability, or any portion thereof, including attorney's fees and costs, arising from the negligent acts or omissions of the parties, its employees, or representatives.

#### **ARTICLE X RIGHTS IN DATA**

Records and other documents in any medium, furnished by one party to this AGREEMENT to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

#### **ARTICLE XI RECORDS, DOCUMENTS, AND REPORTS**

WSALPHO and its Contractor shall maintain books, records, documents, magnetic media, receipts, invoices and other evidence relating to this AGREEMENT 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 AGREEMENT. At no additional cost, these records, including materials generated under this AGREEMENT, shall be subject at all reasonable times to inspection, review, or audit by the LHJ. Records shall be retained for a period of six (6) years after the date of final payment.

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

#### **ARTICLE XII TERM AND TERMINATION**

This AGREEMENT is effective January 1, 2019 and will terminate December 31, 2019. Either LHJ or WSALPHO may terminate this AGREEMENT for convenience with written notification to all of the other signatories to the AGREEMENT no less than ninety (90) calendar days prior to the beginning of a calendar quarter. The AGREEMENT may be extended for two-year periods with the written consent of WSALPHO and the MAC Steering Committee.

**ARTICLE XIII  
AMENDMENTS**

Modifications to this AGREEMENT must be in writing and will become effective upon the approval of the modification by WSALPHO and LHJ.

**ARTICLE XIV  
INDEPENDENT CAPACITY**

The employees or agents of WSALPHO or LHJ who are engaged in the performance of this AGREEMENT shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of any other party to this AGREEMENT.

**ARTICLE XV  
SEVERABILITY**

If any provision of this AGREEMENT or any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this AGREEMENT which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this AGREEMENT, and to this end the provisions of this AGREEMENT are declared to be severable.

**ARTICLE XVI  
NO THIRD-PARTY BENEFICIARIES**

This AGREEMENT is entered into solely for the mutual benefit of the parties to this AGREEMENT. This AGREEMENT is not entered into with the intent that it shall benefit any other person and no other such person shall be entitled to be treated as a third-party beneficiary of this AGREEMENT.

**ARTICLE XVII  
DISPUTE RESOLUTION**

If a dispute between any parties to this AGREEMENT arises out of or related to this AGREEMENT, or the breach thereof, and if the dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation. Thereafter, any unresolved controversy or claim arising out of or related to this AGREEMENT, or breach thereof, may be settled in a court having jurisdiction thereof. The parties may seek to resolve disputes pursuant to mediation or arbitration but are not required to do so.

## **ARTICLE XVIII NOTICES**

Whenever this AGREEMENT provides for notice to be provided by one party to another, such notice shall be in writing and directed to the Authorized Representatives identified in Article III.

## **ARTICLE XIX SURVIVORSHIP**

The following clauses survive the termination of this AGREEMENT:

- VIII Confidential Information
- IX. Immunity, Indemnification, and Limitations
- XIV. Severability
- XV. No Third-Party Beneficiaries
- XVI. Dispute Resolution

## **ARTICLE XX INSURANCE**

WSALPHO shall ensure that any MAC Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect WSALPHO should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the MAC Contractor or subcontractor, or agents of either, while performing under the terms of this AGREEMENT.

The MAC Contractor shall provide insurance coverage that shall be maintained in full force and effect during the term of this AGREEMENT, as follows:

Commercial General Liability Insurance Policy: Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence.

Professional Liability Insurance: Provide a Professional Liability Insurance policy, including contractual liability, in adequate quantity to protect against legal liability, but no less than \$1,000,000 per claim.

## **ARTICLE XXI TERM**

The AGREEMENT shall be effective January 1, 2019 and end December 31, 2019.

## **ARTICLE XXII OTHER OR PRIOR AGREEMENTS**

If WSALPHO and LHJ have a prior written AGREEMENT that relates to the subject matter of this AGREEMENT, namely, MAC claiming, then, at such time that WSALPHO and said LHJ

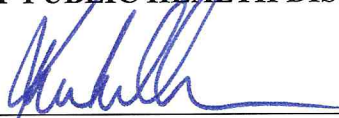
both execute this AGREEMENT, such prior written AGREEMENT between them shall become null and void and of no further force and effect.

**ARTICLE XXIII  
GOVERNING LAW**

This AGREEMENT shall be interpreted, construed and enforced in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, this AGREEMENT has been executed and approved and is effective and operative by WSALPHO and LHJ as herein provided.

**KITSAP PUBLIC HEALTH DISTRICT**

By:   
Keith Grellner  
Administrator

Date: 1/11/2019

**WSALPHO**

By:   
Jaime Bodden  
Managing Director

Date: 1-16-19



MAC Contractor Costs and LHJ Proportional Share for Calendar Year 2019

2019 WORKPLAN		FINAL 11/26/18	Hours	Est. Cost	Hours	Est. Cost	Hours	Est. Cost	Hours	Est. Cost	Hours	Est. Cost	Hours	Est. Cost	Hours	Est. Cost	Hours	Est. Cost	TOTAL COST	
TASK		CURRENTLY ASSIGNED STAFF	Manager (\$150 per hour)	Project Specialist (\$115 per hour)	Technical Specialist (\$90 per hour)	Project Technician (\$75 per hour)	Support (\$30 per hour)	Programmers (\$110 per hour)												
<b>Task 1: QUARTER START UP ACTIVITIES</b>																				
A	Set up new quarters, send notifications and reminders to coordinators regarding participant updates. Set up reconfiguration of consortia as requested by WSALPHO.	Riemann/Programmers	\$0	\$3,680	\$0	\$0	\$960	16	\$1,760											\$6,400
B	Provide assistance with participant updates. Review final updates. Perform tasks related to moment generation for each RMTS on a quarterly basis. Ensure that all processes are in place prior to moment generation.	Riemann	\$0	\$1,840	\$0	\$0	\$480	16	\$1,760											\$4,080
C	Monitor and follow-up with LHJ coordinators for participants who have not completed required training. Ensure participant certifications are completed and send reminders as needed to coordinators.	Riemann/Support Staff	\$0	\$1,840	\$0	\$0	\$960	32	\$0											\$2,800
<b>SUBTOTAL TASK 1</b>																				
<b>Task 2: MANAGING THE RMTS</b>																				
Monitor RMTS system. Respond to LHJ requests for technical support or questions via email or the helpline. Follow-up as needed; perform all other daily RMTS management activities. Manage Docvault. Maintain URMTS User Guide and MAC calendar; update as needed. Provide technical assistance to RMTS users in navigating the URMTS system, as requested.																				
A		Riemann/Support Staff	\$0	\$14,720	\$0	\$0	\$960	32	\$0											\$15,680
B	Provide technical assistance to RMTS users in navigating the URMTS system, as requested.	Riemann/Programmers	0	4600			0	72	\$7,920											\$12,520
C	Provide technical assistance to new RMTS Coordinators. Answer ongoing questions related to RMTS operations.	Riemann/Fisher	32	\$7,360	\$0	\$0	\$0	8	\$880											\$12,160
<b>SUBTOTAL TASK 2</b>																				
<b>Task 3: TRAINING AND TECHNICAL ASSISTANCE</b>																				
Set up new participant training for each quarter on URMTS, including updated materials and video tutorials. Set up any additional online trainings as requested by WSALPHO. As requested by WSALPHO Steering Committee: create updates and coordinate the review process for web-based and other established training materials. Trainings will include new participant training and annual refresher training, and any changes or modifications resulting from a revised claiming plan or other identified concerns. Post and update web-based tutorials, training materials and supporting documents to the RMTS and Claiming System. As requested by WSALPHO Steering Committee, coordinate and assist in trainings for LHJ RMTS or fiscal coordinators that may be scheduled, including drafting materials. Trainings will include, but are not limited to, RMTS management, in person or web-based code review trainings, webinars for RMTS participants on time survey coding, and annual fiscal refresher training. As requested by LHJ, respond to questions about coding issues, SPMP issues, or other program concerns through emails, phone calls, or onsite visits.																				
A		Riemann/Programmers	\$0	\$3,680	\$0	\$0	0	8	\$880											\$4,560
B		Riemann/Fisher	56	\$8,400	\$10,120	\$0	\$0	16	\$1,760											\$20,280
C		Fisher/Riemann	96	\$14,400	\$16,560	\$0	\$0	0	\$0											\$30,960
D	Work with Provider One/HCA regarding processing of 270/271 documents for the quarterly clinic and client-based MERS. Work with HCA on any issues that may surface around the MER; continue dialogue to ensure optimal matching of MER data.	Fisher/Riemann/Programmers	8	\$1,200	\$920	\$0	\$0	40	\$4,400											\$6,520
E	Using data supplied by DSHS, prepare the quarterly modified countywide MER.	Programmers	\$0	\$0	\$0	\$0	\$0	64	\$7,040											\$7,040
<b>SUBTOTAL TASK 3</b>																				
<b>TOTAL</b>																				

2019 WORKPLAN		FINAL 11/26/18	Hours	Est. Cost	Project Specialist (\$115 per hour)	Hours	Est. Cost	Technical Specialist (\$90 per hour)	Hours	Est. Cost	Support (\$30 per hour)	Hours	Est. Cost	Programmers (\$110 per hour)	Hours	Est. Cost	TOTAL COST
TASK		CURRENTLY ASSIGNED STAFF	Manager (\$150 per hour)	Project Specialist (\$115 per hour)	Technical Specialist (\$90 per hour)	Support (\$30 per hour)	Programmers (\$110 per hour)	Project Technician (\$75 per hour)	Hours	Est. Cost	Project Specialist (\$90 per hour)	Hours	Est. Cost	Programmers (\$110 per hour)	Hours	Est. Cost	TOTAL COST
F	Targeted outreach and training will be provided to LHJs identified jointly by the LHJ Steering Committee and HFA based on issues identified in RMTS participation, coding, coordinator turnover, and/or invoicing. Training will include the development of LHJ-specific training materials.	Fisher/Riemann	112	\$16,800	144	\$16,560	0	\$0	40	\$1,200	0	\$0	40	\$0	0	\$0	\$94,560
G	Monitor MER online data submissions for processing and provide assistance as necessary. Troubleshoot any MER issues with LHJs related to results variance and/or data problems.	Programmers/Riemann	0	\$0	16	\$1,840	0	\$0	0	\$0	0	\$0	32	\$3,520	0	\$0	\$5,360
<b>SUBTOTAL TASK 3</b>																	<b>\$109,280</b>
<b>Task 4: END OF QUARTER ACTIVITIES/QA REVIEW/INVOICING</b>																	
Monitor completion of initial new LJs review by LJs coordinators. Review 10% sample of moments by quarter and by RMTS for accuracy; provide feedback to coordinators on a regular basis including use of automated coding review module for comments and/or suggestions. Notify lead agency and WSALPHO work group of any late submissions. Assist WSALPHO in statewide management of end of quarter and invoicing processes. Assist in any updates needed to manuals.																	
A	Manage/monitor quarterly completion of the RMTS review process. Send reminders, notify lead agencies of progress, update instructions as needed.	Fisher/Riemann	88	\$13,200	112	\$12,880	0	\$0	40	\$1,200	0	\$0	40	\$0	0	\$0	\$27,280
B	As requested by LHJs, provide technical assistance on questions related to gathering financial data needed for the web-based claiming system. Assist users with the online invoice.	Riemann/Reynolds	0	\$0	40	\$4,600	0	\$0	160	\$12,000	0	\$0	0	\$0	0	\$0	\$16,600
C	Ensure that LHJs' RMTS certifications have been completed; close out the quarter; process RMTS results.	Fisher/Riemann	8	\$1,200	16	\$1,840	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	\$3,040
D		Riemann/Programmers	0	\$0	16	\$1,840	0	\$0	40	\$4,400	0	\$0	0	\$0	0	\$0	\$6,240
<b>SUBTOTAL TASK 4</b>																	<b>\$53,160</b>
<b>Task 5: System Development/Change Requests by Steering Committee</b>																	
A	Work with Steering Committee on any updates to DocVault (which houses supporting documentation for RMTS) and implement, including loading documents.	Riemann/Schuster/Fisher/Programmers	0	\$0	16	\$1,840	0	\$0	8	\$880	0	\$0	0	\$0	0	\$0	\$2,720
B	Work with HCA/Steering Committee to create and manage RMTS change requests. This includes initiating the change request form, guiding it through the Steering Committee approval process, development of specifications, and estimated programmatic implementation.	Riemann/Schuster/Fisher/Programmers	8	\$1,200	64	\$7,360	0	\$0	256	\$28,160	0	\$0	0	\$0	0	\$0	\$36,720
<b>SUBTOTAL TASK 5</b>																	<b>\$39,440</b>
<b>Task 6: Technical Assistance to HCA per HCA-WSALPHO Contract</b>																	
A	Draft quarterly reports on SPMP coding and quarterly RMTS QA trend analysis reports as required by contract.	Riemann/Fisher/Schuster	32	\$4,800	64	\$7,360	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	\$12,160
B	Respond to questions from HCA staff on RMTS or invoicing questions; prepare requested monitoring reports regarding invoice submission status, coding correction status. Maintain LHJ Contract List. Assist with A19 updates as requested by HCA.	Riemann/Fisher/Schuster/Programmers	16	\$2,400	32	\$3,680	0	\$0	24	\$2,640	0	\$0	0	\$0	0	\$0	\$8,720
<b>SUBTOTAL TASK 6</b>																	<b>\$20,880</b>
<b>Task 7: Meetings (Workgroup, HCA, Consortium, Including Planning and Prep)</b>																	



**ATTACHMENT B**  
**BUSINESS ASSOCIATE AGREEMENT**

This Agreement (“Agreement”) is made and entered into this 1st day of January 2019 by and between **Kitsap Public Health District (KPHD)** (“Covered Entity”), whose business address is 345 6<sup>th</sup> Street, Suite 300, Bremerton, Washington 98337 and **Washington State Associate of Local Public Health Officials (WSALPHO)** (“Business Associate”), whose business address is 206 10<sup>th</sup> Ave. SE., Olympia, WA 98501-1311.

WHEREAS, Business Associate is in the business of providing oversight activities of the Health Care Authority (HCA) working with the Local Health Jurisdiction (LHJ) Medicaid Administrative Claiming (MAC) Steering Committee to provide coordination and program compliance among participating LHJs (“Offering”); and

WHEREAS, Covered Entity wishes to engage, or has engaged, Business Associate in connection with said Offering,

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained, it is agreed as follows:

**1. Definitions.** Terms used, but not otherwise defined in this Agreement, shall have the same meaning as those terms in the Privacy Rule, Security Rule, and HITECH Act.

a. **Agent.** “Agent” shall have the meaning as determined in accordance with the federal common law of agency.

b. **Breach.** “Breach” shall have the same meaning as the term “breach” in 45 CFR §164.402.

c. **Business Associate.** “Business Associate” shall mean WSALPHO.

d. **Covered Entity.** “Covered Entity” shall mean Kitsap Public Health District

e. **Data Aggregation.** “Data Aggregation” shall have the same meaning as the term “data aggregation” in 45 CFR §164.501.

f. **Designated Record Set.** “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR §164.501.

g. **Disclosure.** “Disclosure” and “Disclose” shall have the same meaning as the term “Disclosure” in 45 CFR §160.103.

h. **Electronic Health Record.** “Electronic Health Record” shall have the same meaning as the term in Section 13400 of the HITECH Act.

i. **Health Care Operations.** “Health Care Operations” shall have the same meaning as the term “health care operations” in 45 CFR §164.501.

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

k. **HITECH Act.** “HITECH Act” shall mean The Health Information Technology for Economic and Clinical Health Act, part of the American Recovery and Reinvestment Act of 2009 (“ARRA” or “Stimulus Package”), specifically DIVISION A: TITLE XIII Subtitle D—Privacy, and its corresponding regulations as enacted under the authority of the Act.

l. **Individual.** “Individual” shall have the same meaning as the term “individual” in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

m. **Minimum Necessary.** “Minimum Necessary” shall mean the Privacy Rule Standards found at §164.502(b) and §164.514(d)(1).

n. **Privacy Rule.** “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

o. **Protected Health Information.** “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR §160.103, limited to the information created, received, maintained or transmitted by Business Associate on behalf of Covered Entity.

p. **Required by Law.** “Required by Law” shall have the same meaning as the term “required by law” in 45 CFR §164.103.

q. **Secretary.** “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

r. **Security Incident.** “Security Incident” shall have the same meaning as the term “Security Incident” in 45 CFR §164.304.

s. **Security Rule.** “Security Rule” shall mean the Standards for Security of Electronic Protected Health Information at 45 C.F.R. parts §160 and §164, Subparts A and C.

t. **Subcontractor.** “Subcontractor” shall mean a person or entity “that creates, receives, maintains, or transmits protected health information on behalf of a business associate” and who is now considered a business associate, as the latter term is defined in 45 CFR §160.103.

u. **Subject Matter.** “Subject Matter” shall mean compliance with the HIPAA Rules and with the HITECH Act.

v. **Unsecured Protected Health Information.** “Unsecured Protected Health Information” shall have the same meaning as the term “unsecured protected health information” in 45 CFR §164.402.

w. **Use.** “Use” shall have the same meaning as the term “Use” in 45 CFR §164.103.

## 2. Obligations and Activities of Business Associate.

- a. Business Associate agrees to not Use or Disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law.
- b. Business Associate agrees to use appropriate safeguards to prevent Use or Disclosure of Protected Health Information other than as provided for by this Agreement. Business Associate further agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any electronic Protected Health Information, as provided for in the Security Rule and as mandated by Section 13401 of the HITECH Act.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement. Business Associate further agrees to report to Covered Entity any Use or Disclosure of Protected Health Information not provided for by this Agreement of which it becomes aware, and in a manner as prescribed herein.
- d. Business Associate agrees to report to Covered Entity any Security Incident, including all data Breaches or compromises, whether internal or external, related to Protected Health Information, whether the Protected Health Information is secured or unsecured, of which Business Associate becomes aware.
- e. If the Breach, as discussed in paragraph 2(d), pertains to Unsecured Protected Health Information, then Business Associate agrees to report any such data Breach to Covered Entity within ten (10) business days of discovery of said Breach; all other compromises, or attempted compromises, of Protected Health Information shall be reported to Covered Entity within twenty (20) business days of discovery. Business Associate further agrees, consistent with Section 13402 of the HITECH Act, to provide Covered Entity with information necessary for Covered Entity to meet the requirements of said section, and in a manner and format to be specified by Covered Entity.
- f. If Business Associate is an Agent of Covered Entity, then Business Associate agrees that any Breach of Unsecured Protected Health Information shall be reported to Covered Entity *immediately* after the Business Associate becomes aware of said Breach, and under no circumstances later than one (1) business day thereafter. Business Associate further agrees that any compromise, or attempted compromise, of Protected Health Information, other than a Breach of Unsecured Protected Health Information as specified in 2(e) of this Agreement, shall be reported to Covered Entity within ten (10) business days of discovering said compromise, or attempted compromise.
- g. Business Associate agrees to ensure that any Subcontractor, to whom Business Associate provides Protected Health Information, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Business Associate further agrees that restrictions and conditions analogous to those contained herein shall be imposed on said Subcontractors via a written agreement that complies with all the

requirements specified in §164.504(e)(2), and that Business Associate shall only provide said Subcontractors Protected Health Information consistent with Section 13405(b) of the HITECH Act. Further, Business Associate agrees to provide copies of said written agreements to Covered Entity within ten (10) business days of a Covered Entity's request for same.

h. Business Associate agrees to provide access, at the request of Covered Entity and during normal business hours, to Protected Health Information in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual, in order to meet Covered Entity's requirements under 45 CFR §164.524, provided that Covered Entity delivers to Business Associate a written notice at least three (3) business days in advance of requesting such access. Business Associate further agrees, in the case where Business Associate controls access to Protected Health Information in an Electronic Health Record, or controls access to Protected Health Information stored electronically in any format, to provide similar access in order for Covered Entity to meet its requirements the HIPAA Rules and under Section 13405(c) of the HITECH Act. These provisions do not apply if Business Associate and its employees or Subcontractors have no Protected Health Information in a Designated Record Set of Covered Entity.

i. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR §164.526, at the request of Covered Entity or an Individual. This provision does not apply if Business Associate and its employees or Subcontractors have no Protected Health Information from a Designated Record Set of Covered Entity.

j. Unless otherwise protected or prohibited from discovery or disclosure by law, Business Associate agrees to make internal practices, books, and records, including policies and procedures (collectively "Compliance Information"), relating to the Use or Disclosure of Protected Health Information and the protection of same, available to the Covered Entity or to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Rules and the HITECH Act. Business Associate further agrees, at the request of Covered Entity, to provide Covered Entity with demonstrable evidence that its Compliance Information ensures Business Associate's compliance with this Agreement over time. Business Associate shall have a reasonable time within which to comply with requests for such access and/or demonstrable evidence, consistent with this Agreement. In no case shall access, or demonstrable evidence, be required in less than five (5) business days after Business Associate's receipt of such request, unless otherwise designated by the Secretary.

k. Business Associate agrees to maintain necessary and sufficient documentation of Disclosures of Protected Health Information as would be required for Covered Entity to respond to a request by an Individual for an accounting of such Disclosures, in accordance with 45 CFR §164.528.

l. On request of Covered Entity, Business Associate agrees to provide to Covered Entity documentation made in accordance with this Agreement to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. §164.528. Business Associate shall provide said documentation in a manner and format to be specified by Covered Entity. Business Associate shall have a reasonable

time within which to comply with such a request from Covered Entity and in no case shall Business Associate be required to provide such documentation in less than three (3) business days after Business Associate's receipt of such request.

m. Except as provided for in this Agreement, in the event Business Associate receives an access, amendment, accounting of disclosure, or other similar request directly from an Individual, Business Associate shall redirect the Individual to the Covered Entity.

n. To the extent that Business Associate carries out one or more of Covered Entity's obligations under the HIPAA Rules, the Business Associate must comply with all requirements of the HIPAA Rules that would be applicable to the Covered Entity.

o. A Business Associate must honor all restrictions consistent with 45 C.F.R. §164.522 that the Covered Entity or the Individual makes the Business Associate aware of, including the Individual's right to restrict certain disclosures of protected health information to a health plan where the individual pays out of pocket in full for the healthcare item or service, in accordance with HITECH Act Section 13405(a).

### **3. Permitted Uses and Disclosures by Business Associate.**

a. Except as otherwise limited by this Agreement, Business Associate may make any Uses and Disclosures of Protected Health Information necessary to perform its services to Covered Entity and otherwise meet its obligations under this Agreement, if such Use or Disclosure would not violate the Privacy Rule, or the privacy provisions of the HITECH Act, if done by Covered Entity. All other Uses or Disclosures by Business Associate not authorized by this Agreement, or by specific instruction of Covered Entity, are prohibited.

b. Except as otherwise limited in this Agreement, Business Associate may Use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

c. Except as otherwise limited in this Agreement, Business Associate may Disclose Protected Health Information for the proper management and administration of the Business Associate, provided that Disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and used, or further Disclosed, only as Required By Law, or for the purpose for which it was Disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

d. Except as otherwise limited in this Agreement, Business Associate may Use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B). Business Associate agrees that such Data Aggregation services shall be provided to Covered Entity only wherein said services pertain to Health Care Operations. Business Associate further agrees that said services shall not be provided in a manner that would result in Disclosure of Protected Health Information to another covered entity who was not the originator and/or lawful possessor of said Protected Health Information. Further, Business



Associate agrees that any such wrongful Disclosure of Protected Health Information is a direct violation of this Agreement and shall be reported to Covered Entity *immediately* after the Business Associate becomes aware of said Disclosure and, under no circumstances, later than three (3) business days thereafter.

e. Business Associate may Use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

f. Business Associate shall make Uses, Disclosures, and requests for Protected Health Information consistent with the Minimum Necessary principle as defined herein.

#### **4. Obligations and Activities of Covered Entity.**

a. Covered Entity shall notify Business Associate of the provisions and any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such provisions and limitation(s) may affect Business Associate's Use or Disclosure of Protected Health Information.

b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that the changes or revocation may affect Business Associate's use or disclosure of Protected Health Information.

c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, and also notify Business Associate regarding restrictions that must be honored under section 13405(a) of the HITECH Act, to the extent that such restrictions may affect Business Associate's Use or Disclosure of Protected Health Information.

d. Covered Entity shall notify Business Associate of any modifications to accounting disclosures of Protected Health Information under 45 CFR §164.528, made applicable under Section 13405(c) of the HITECH Act, to the extent that such restrictions may affect Business Associate's use or disclosure of Protected Health Information.

e. Covered Entity shall provide Business Associate, within thirty (30) business days of Covered Entity executing this Agreement, a description and/or specification regarding the manner and format in which Business Associate shall provide information to Covered Entity, wherein such information is required to be provided to Covered Entity as agreed to by Business Associate in paragraph 2(e) of this Agreement. Covered Entity reserves the right to modify the manner and format in which said information is provided to Covered Entity, as long as the requested modification is reasonably required by Covered Entity to comply with the HIPAA Rules or the HITECH Act, and Business Associate is provided sixty (60) business days notice before the requested modification takes effect.

f. Covered Entity shall provide Business Associate, within thirty (30) business days of Covered Entity executing this Agreement, a description and/or specification regarding the manner and

format in which Business Associate shall provide information to Covered Entity, wherein such information is required to be provided to Covered Entity as agreed to by Business Associate in paragraph 2(l) of this Agreement. Covered Entity reserves the right to modify the manner and format in which said information is provided to Covered Entity, as long as the requested modification is reasonably required by Covered Entity to comply with the HIPAA Rules or the HITECH Act, and Business Associate is provided sixty (60) business days notice before the requested modification takes effect.

g. Covered Entity shall not require Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under the HIPAA Rules if done by the Covered Entity.

## 5. Term and Termination.

- a. Term. The Term of this Agreement shall be effective as of January 1, 2019 and shall terminate when **all** of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Agreement.
- b. Termination for Cause by Covered Entity. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall give Business Associate written notice of such breach and provide reasonable opportunity for Business Associate to cure the breach or end the violation. Covered Entity may terminate this Agreement, and Business Associate agrees to such termination, if Business Associate has breached a material term of this Agreement and does not cure the breach or cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- c. Termination for Cause by Business Associate. Upon Business Associate's knowledge of a material breach of this Agreement by Covered Entity, Business Associate shall give Covered Entity written notice of such breach and provide reasonable opportunity for Covered Entity to cure the breach or end the violation. Business Associate may terminate this Agreement, and Covered Entity agrees to such termination, if Covered Entity has breached a material term of this Agreement and does not cure the breach or cure is not possible. If neither termination nor cure is feasible, Business Associate shall report the violation to the Secretary.
- d. Effect of Termination.
  1. Except as provided in paragraph (2) of this section, upon termination of this Agreement for any reason, Business Associate shall **return or destroy all** Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity. This provision shall also apply to Protected Health Information that is in the possession of Subcontractors of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity, within ten (10) business days, notification of the conditions that make return or destruction infeasible. Upon such determination, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

## **6. Entire Agreement.**

- a. This Agreement supersedes all other prior and contemporaneous written and oral agreements and understandings between Covered Entity and Business Associate regarding this Subject Matter. It contains the entire Agreement between the parties.
- b. This Agreement may be modified only by a signed written agreement between Covered Entity and Business Associate.
- c. All other agreements entered into between Covered Entity and Business Associate, not related to this Subject Matter, remain in full force and effect.

## **7. Governing Law.**

- a. This Agreement and the rights of the parties shall be governed by and construed in accordance with Federal law as it pertains to the Subject Matter and shall be governed by and construed in accordance with the laws of the **State of Washington** as it pertains to contract formation and interpretation, without giving effect to its conflict of laws. The parties agree that any appropriate state court sitting in **Kitsap County, Washington** or any Federal Court sitting in the Eastern District of Washington shall have exclusive jurisdiction of any case or controversy arising under or in connection with this Agreement and shall be a proper forum in which to adjudicate such case or controversy.
- b. Each party irrevocably consents to the jurisdiction of such courts, and irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such suit, action, or proceeding in any such court and further waives the right to object, with respect to such suit, action, or proceeding, that such court does not have jurisdiction over such party.

## **8. Miscellaneous.**

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule, Security Rule, or HITECH Act means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with

the requirements of the Privacy Rule, Security Rule, the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), and the HITECH Act, and its corresponding regulations.

- c. Survival. The respective rights and obligations of Business Associate under Section 5(d) of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity and Business Associate to comply with the Privacy Rule, Security Rule, the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), and the HITECH Act, and its corresponding regulations.
- e. Severability. If any provision or provisions of this Agreement is/are determined by a court of competent jurisdiction to be unlawful, void, or unenforceable, this Agreement shall not be unlawful, void or unenforceable thereby, but shall continue in effect and be enforced as though such provision or provisions were omitted.

**9. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one original Agreement. Facsimile or electronically authenticated signatures shall be accepted and enforceable in lieu of original signatures.

APPROVED AND ACCEPTED BY:

Business Associate:  
**WSALPHO**

Jamie Bodden      1-16-19  
Jamie Bodden      Date  
Managing Director  
Phone: (360) 753-1886

Covered Entity:  
**KITSAP PUBLIC HEALTH DISTRICT**

Kelth Grellner      1/11/2019  
Kelth Grellner      Date  
Administrator  
Phone: (360) 728-2284