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|  | COMMUNITY BASED LEASE AGREEMENT | HCA Contract Number: K3128 |
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THIS AGREEMENT is made by and between Washington State Health Care Authority, (HCA) and Kitsap Public Health District, (Contractor).

| | | | | |
|---|--|--|--|-------------------|
| CONTRACTOR NAME Kitsap Public Health District | | CONTRACTOR DOING BUSINESS AS (DBA) | | |
| CONTRACTOR ADDRESS Street 345 6th Street Suite 300 | | City Bremerton | State WA | Zip Code 98337 |
| CONTRACTOR CONTACT Beth Phipps | | CONTRACTOR TELEPHONE (360) 728-2309 | CONTRACTOR E-MAIL ADDRESS beth.phipps@kitsappublichealth.org | |
| Is Contractor a Subrecipient under this Agreement? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | | CFDA NUMBER(S): | FFATA Form Required <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | |

| | |
|--|---|
| HCA PROGRAM Medicaid Eligibility Determination Service | HCA DIVISION/SECTION Medicaid Eligibility & Community Support |
| HCA CONTACT NAME AND TITLE Dana Eklund Regional Medical Enrollment Administrator | HCA CONTACT ADDRESS Health Care Authority 626 8th Avenue SE PO Box 45531 Olympia, WA 98504-5531 |
| HCA CONTACT TELEPHONE (360) 725-1527 | HCA CONTACT E-MAIL ADDRESS dana eklund@hca.wa.gov |

| | | |
|---|---|---------------------------------------|
| AGREEMENT START DATE January 1, 2019 | AGREEMENT END DATE December 31, 2020 | TOTAL MAXIMUM AGREEMENT AMOUNT N/A |
|---|---|---------------------------------------|

PURPOSE OF AGREEMENT:
This agreement is to establish the working relationship between the HCA and the Contractor and provide for a lease of office space from the Contractor at the Location specified below. HCA will assign one or more community-based Medical Assistance Specialists (MAS) to the Location specified to assist in determining Medicaid eligibility. The HCA staff member will be a resource to the Contractor's staff regarding the Medicaid program. This agreement assists HCA's efforts to expand access to Washington Apple Health (Medicaid).

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



| | | |
|---|---|---------------------------|
| CONTRACTOR SIGNATURE  | PRINTED NAME AND TITLE Keith Grellner Administrator | DATE SIGNED 12/5/2018 |
| HCA SIGNATURE  | PRINTED NAME AND TITLE James Gayton Contracts Administrator | DATE SIGNED 12/15/2018 |

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Contract #K3128 for Lease Services

Recitals

This contract, number K3128, supersedes and replaces contract number 'K1118 in its entirety.

HCA and Kitsap Public Health District enter into this Agreement, the terms and conditions of which will govern the working relationship between HCA and the Contractor, providing for a lease of office space from the Contractor's facility and the assignment of community-based HCA staff member by HCA at the facility location specified herein.

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

1. STATEMENT OF WORK (SOW)

1.1 Health Care Authority Responsibilities

HCA is the employer of and responsible for the HCA staff member assigned to the Contractor facility location specified herein. This responsibility must include the following:

- 1.1.1 Ensure the assigned HCA staff member is trained in all areas of their job responsibility and the use of assigned technology.
- 1.1.2 Ensure the assigned HCA staff member has been trained regarding all agency policies, including but not limited to policies regarding harassment and discrimination, ethics, personal conduct, HIPAA, confidentiality, and drug and alcohol-free workplace.
- 1.1.3 Pay for and provide any ergonomic or specialized equipment that the facility is unable to provide. E.g.: ergonomic or freestyle keyboard, roller mouse, display arm or lift stand, specialized chair, etc.
- 1.1.4 Notify the primary contact at the facility when the HCA staff member will not be at work.
- 1.1.5 Ensure the HCA staff member attends mandatory trainings presented by Contractor.
- 1.1.6 Provide computer technology necessary for the HCA staff member to fulfill their job responsibilities.
- 1.1.7 Review any change in location, parking, security (including card keys), and/or furnishings for HCA staff member within the campus.

1.2 Contractor Responsibilities

The Contractor must provide and otherwise do all things necessary for or incidental to the responsibilities as set forth below.

- 1.2.1 Provide a work station (desk, file cabinet, etc.) for the HCA staff to use in the space identified. If changes need to be made to the work station, the HCA will notify and coordinate with the Facility Partner.
- 1.2.2 Provide a wired internet connection for the HCA terminal or laptop.
- 1.2.3 Provide a desk phone with access to voice mail.
- 1.2.4 Provide access to mail and janitorial services.
- 1.2.5 Provide access to printers, copiers, scanners, and facsimile machines.
- 1.2.6 Relay notifications to HCA staff member regarding facility-related issues in a timely manner (e.g., parking paving, carpet cleaning, pest control activities).
- 1.2.7 Provide a brief orientation for all newly assigned HCA staff, to include at a minimum the following:
 - a) a tour of all areas of the facility the assigned HCA staff will have access to including as available restrooms, cafeteria, break rooms, vending machines, bike lockers, fitness center, showers, etc.; and
 - b) a general overview of building guidelines and emergency response plans.
- 1.2.8 Inform the HCA Contract Manager if the facility requires the employee to physically move the work station to a different location on the facility campus.
- 1.2.9 Inform the HCA Contract Manager if the employee is required to attend training provided by the Facility Partner or any other mandatory event or meeting.
- 1.2.10 Provide to the assigned HCA staff member any required security and emergency training specific to the facility.
- 1.2.11 Provide to the assigned HCA staff member any required badge and/or keys for security based upon need and agreed upon by facility management.
- 1.2.12 Notify the assigned HCA staff member if the facility closes due to inclement weather or some other emergency situation making it impossible to work.
- 1.2.13 Inform the HCA Contract Manager if the assigned HCA staff member has a medical emergency, acts in an inappropriate manner, or is suspected of not following protocol or agreed upon policy or behaviors.
- 1.2.14 Make available on an occasional basis a confidential meeting space for conversations with the assigned HCA Supervisor.

2. DEFINITIONS

“Agreement” means this contract document and all schedules, exhibits, attachments, incorporated documents, and amendments.

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

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

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

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

“Confidential Information” means information that may be exempt from disclosure to the public or other unauthorized persons under chapter 42.56 RCW or chapter 70.02 RCW or other state or federal statutes or regulations. Confidential Information includes, but is not limited to, any information identifiable to an individual that relates to a natural person’s health, (see also Protected Health Information); finances, education, business, use or receipt of governmental services, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and any other identifying numbers, law enforcement records, HCA source code or object code, or HCA or State security information.

“Contractor” means Kitsap Public Health District, its employees and agents. Contractor includes any firm, provider, organization, individual or other entity performing services under this Agreement.

“Data” means information produced, furnished, acquired, or used by Contractor in meeting requirements under this Agreement.

“Effective Date” means the first date this Agreement 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 Agreement.

“Facility” means the building in which the HCA staff member is allotted space or a “Location” from which to work.

“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 Information Portability and Accountability Act” or “HIPAA Rules” means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164, as now in effect and as modified from time to time. In part 164 of title 45 CFR, the “Security Rule” is subpart C (beginning with §164.302), the “Breach Notification Rule” is subpart D (beginning with § 164.400), and the “Privacy Rule” is subpart E (beginning with § 164.500).

“Lease” is a contract by which one party conveys land, property, services, etc. to another for a specified time, usually in return for a periodic payment.

“Location” means the space allotted by the Contractor, within the specified facility, from which the assigned HCA staff member will perform their duties.

“Overpayment” means any payment or benefit to the Contractor in excess of that to which the Contractor is entitled by law, rule, or this Agreement, including amounts in dispute.

“Proprietary Information” means information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

“Protected Health Information” or “PHI” means individually identifiable information that relates to the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or past, present, or future payment for provision of health care to an individual, as defined in 45 CFR 160.103. Individually identifiable information is information that identifies the individual or about which there is a reasonable basis to believe it can be used to identify the individual, and includes demographic information. PHI is information transmitted, maintained, or stored in any form or medium. 45 CFR 164.501. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USC 1232g(a)(4)(b)(iv).

“RCW” means the Revised Code of Washington. All references in this Agreement 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/>.

“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 Agreement, including the deliverables and timeline, and is Schedule A hereto.

“Statewide Payee Desk” maintains a central file that is used by all Washington State agencies to process payments to individuals and businesses.

“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 Agreement under a separate Agreement with Contractor. The term “Subcontractor” means subcontractor(s) of any tier.

“USC” means the United States Code. All references in this Agreement to USC chapters or sections shall 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 TERM

- 3.1.1 The initial term of the Agreement will commence on January 1, 2019 and continue through December 31, 2020, unless terminated sooner as provided herein.
- 3.1.2 This Agreement may be extended an additional two (2) years, through December 31, 2022, in two (2) one (1) year increments. No change in terms and conditions will be permitted during these extensions unless specifically agreed to in writing.
- 3.1.3 Work performed without an Agreement 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 Agreement or any subsequent amendment(s) is fully executed.

3.2 LEASED PREMISES

The Contractor hereby leases to HCA a work space Location at the following Facility:

- 3.2.1 Contractor Facility Street Address:
345 6th Street Suite 300
Bremerton, WA 98337

3.3 MAINTENANCE AND REPAIR

- 3.3.1 The Contractor must maintain the Location in good order and tenantable condition throughout the duration of this Agreement , with the exception of any damages arising from the negligence of any HCA staff member(s).
- 3.3.2 For the purposes of maintaining and repairing the premises, the Contractor reserves the right, at reasonable times, to enter and inspect the Location and to make any necessary repairs.

The Contractor's maintenance and repair obligations must include, but are not limited to;

- 3.3.2.1 mechanical,
- 3.3.2.2 electrical,
- 3.3.2.3 interior lighting, including replacement of ballasts, starters and fluorescent tubes as required,
- 3.3.2.4 plumbing,
- 3.3.2.5 heating,
- 3.3.2.6 ventilating and air conditioning systems, including replacement of filters as recommended in equipment service manual,
- 3.3.2.7 floor and window coverings,
- 3.3.2.8 elevators, including internal communications systems,
- 3.3.2.9 all structural portions of the building, including internal and external walls, the roof and watertight integrity of same, windows, internal and external doorways, porches, stairways,
- 3.3.2.10 parking lot, which must include snow removal, cleaning, and restriping as needed,
- 3.3.2.11 intergity and upkeep of all external structures including, all outdoor sidewalks, exterior lighting, wheel bumpers, drainage, and landscaping
- 3.3.2.12 manintain all structures and amenities in such a way that any applicable governmental requirements are met, e.g. fire, building, and energy codes, indoor air quality, and any requirements necessary to provide architecturally barrier free premises for persons with disabilities.

3.4 HAZARDOUS SUBSTANCES

- 3.4.1 The Contractor warrants to his/her knowledge that no hazardous substance, toxic waste, or other toxic substance has been produced, disposed of, or is or has been kept in the space hereby leased, which if found in the space would subject the owner or user to any damages, penalty, or liability under any applicable local, state or federal law or regulation.
- 3.4.2 The Contractor shall indemnify and hold harmless HCA with respect to any and all damages, costs, attorneys' fees, and penalties arising from the presence of any hazardous or toxic substances on the premises, except for such substances as may be placed on the premises by HCA staff members.

3.5 RENTAL RATE

- 3.5.1 The Contractor is providing the space detailed herein at no cost to HCA.
- 3.5.2 HCA will not make alterations, attach fixtures, erect additions, structures or signs within the Facility referenced above without the express written permission of the Contractor.

- 3.5.3 Any necessary alterations, as well as the financial responsibility for said alterations to the Facility or the assigned Location therein, will be agreed upon in advance and documented in writing.

3.6 EXPENSES

- 3.6.1 During the term of this Agreement, the Contractor and HCA will work cooperatively if/when additional expenses are incurred by the Contractor in relation to HCA's use of the identified Location . HCA will negotiate with the Contractor in good faith to compensate the Contractor for said additional expenses through direct payment to a vendor or reimbursement to the Contractor.

3.7 REIMBURSEMENT FOR DAMAGE TO PREMISES

- 3.7.1 HCA hereby agrees to reimburse the Contractor for any damages caused by the negligence of HCA employees, to the extent it is vicariously liable therefore, but in no event shall this paragraph be construed as diminishing the Contractor's duty to make repairs for normal wear and tear of the facility and space occupied by HCA staff members.

3.8 INVOICE AND PAYMENT

- 3.8.1 Contractor must submit accurate invoices to the following address for all amounts to be paid by HCA via e-mail to: Acctspay@hca.wa.gov. Include the HCA Agreement number in the subject line of the email.
- 3.8.2 Invoices must describe and document to HCA's satisfaction a description of the work performed, the progress of the project, and fees. If expenses are invoiced, invoices must provide a detailed breakdown of each type. Any single expense in the amount of \$50.00 or more must be accompanied by a receipt in order to receive reimbursement. All invoices will be reviewed and must be approved by the Contract Manager or his/her designee prior to payment.
- 3.8.3 Contractor must submit properly itemized invoices to include the following information, as applicable:

- 3.8.3.1 HCA Contract/Agreement number K3128;
 - 3.8.3.2 Contractor name, address, phone number;
 - 3.8.3.3 Description of Services;
 - 3.8.3.4 Date(s) of delivery;
 - 3.8.3.5 Net invoice price for each item;
 - 3.8.3.6 Applicable taxes;
 - 3.8.3.7 Total invoice price; and
 - 3.8.3.8 Payment terms and any available prompt payment discount.
- 3.8.4 HCA will return incorrect or incomplete invoices to the Contractor for correction and reissue. The Agreement number must appear on all invoices, bills of lading, packages, and correspondence relating to this Agreement.
- 3.8.5 In order to receive payment for services or products provided to a state agency, Contractor must register with the Statewide Payee Desk at <https://des.wa.gov/services/contracting-purchasing/doing-business-state/receiving-payment-state/statewide-payee-desk> Services Payment will be considered timely if made by HCA within thirty (30) calendar days of receipt of properly completed invoices. Payment will be directly deposited in the bank account or sent to the address designated by the Contractor in its registration.
- 3.8.6 Upon expiration of the Agreement, any claims for payment for costs due and payable under this Agreement that are incurred prior to the expiration date must be submitted by the Contractor to HCA within sixty (60) calendar days after the Agreement expiration date. HCA is under no obligation to pay any claims that are submitted sixty-one (61) or more calendar days after the Agreement 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.

3.9 CONTRACTOR and HCA CONTRACT MANAGERS

- 3.9.1 Contractor's Contract Manager will have prime responsibility and final authority for the services provided under this Agreement and will be the principal point of contact for the HCA Contract Manager for all business matters, performance matters, and administrative activities.
- 3.9.2 HCA's Contract Manager is responsible for monitoring the Contractor's performance and will be the contact person for all communications regarding Agreement 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.
- 3.9.3 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: | Beth Phipps | Name: | Dana Eklund |
| Title: | Public Health Nurse Supervisor | Title: | Contract Manager |
| Address: | 345 6th Street Suite 300 Bremerton, WA 98337 | Address: | Health Care Authority 626 8th Ave. SE P.O. Box 42702 Olympia, WA 98504 |
| Phone: | (360) 728-2309 | Phone: | (360) 725-1527 |
| Email: | beth.phipps@kitsappublichealth.org | Email: | dana eklund@hca.wa.gov |

3.10 KEY STAFF

| CONTRACTOR KEY STAFF | | | |
|-----------------------------|-------------|----------------|-----------------------------------|
| DEPARTMENT | NAME | PHONE | EMAIL |
| Facilities | John Kiess | (360) 728-2290 | john.kiess@kitsappublichealth.org |
| Security | Karen Holt | (360) 728-2294 | karen.holt@kitsappublichealth.org |
| Human Resources | Karen Holt | (360) 728-2294 | karen.holt@kitsappublichealth.org |
| Information Technology | Ed North | (360) 728-2269 | ed.north@kitsappublichealth.org |

| HCA KEY STAFF | | | |
|------------------------|------------------|----------------|--|
| DEPARTMENT | NAME | PHONE | EMAIL |
| Facilities | Jeff Stender | (360) 725-1307 | jeff.stender@hca.wa.gov |
| Security | Ed Hundsnurscher | (360) 725-1951 | ed.hundsnurscher@hca.wa.gov |
| Human Resources | Kerri Kallay | (360) 725-3712 | kerri.kallay@hca.wa.gov |
| Information Technology | Lonnie Richards | (360) 725-0748 | lonnie.richards@hca.wa.gov |

3.11 LEGAL NOTICES

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

3.11.1 In the case of notice to the Contractor:

Attention: Beth Phipps
Kitsap Public Health District
345 6th Street Suite 300
Bremerton, WA 98337

3.11.2 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

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

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

3.12 INCORPORATION OF DOCUMENTS AND ORDER OF PRECEDENCE

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

3.12.1 Applicable Federal and State of Washington statutes and regulations;

3.12.2 Recitals

3.12.3 Special Terms and Conditions;

3.12.4 General Terms and Conditions;

3.13 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 agents of,

while performing under the terms of this Agreement. Contractor must provide insurance coverage that is maintained in full force and effect during the term of this Agreement, as follows:

- 3.13.1 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 Agreement activity but no less than \$1 million per occurrence/\$2 million general aggregate.
- 3.13.2 Business Automobile Liability. In the event that services delivered pursuant to this Agreement 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.
- 3.13.3 The insurance required must be issued by an insurance company/ies authorized to do business within the state of Washington, and must name HCA and the state of Washington, its agents and employees as additional insured's under any Commercial General and/or Business Automobile Liability policy/ies. All policies must be primary to any other valid and collectable insurance. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Agreement, 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 Agreement's termination.
- 3.13.4 The Receiving Party certifies that it is self-insured, is a member of a risk pool, or maintains the types and amounts of insurance identified above and will provide certificates of insurance to that effect to HCA upon request.

Upon request, Contractor must submit to HCA a certificate of insurance that outlines the coverage and limits defined in the Insurance section. If a certificate of insurance is requested, Contractor must submit renewal certificates as appropriate during the term of the Agreement.

4. GENERAL TERMS AND CONDITIONS

4.1 AMENDMENTS

This Agreement may be amended by mutual agreement of the parties to extend the period of performance or to include additional renegotiated terms. Such amendments will not be binding unless they are in writing and signed by an Authorized Representative, or personnel authorized to bind each of the parties.

4.2 ASSIGNMENT/SUBLEASE

4.2.1 HCA may not assign this Lease or sublet the premises without the prior written consent of the Contractor, consent which shall not be unreasonably withheld.

4.2.2 HCA shall not permit the use of the premises by anyone other than the designated HCA staff member.

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

4.3 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.

4.4 CONFIDENTIAL INFORMATION PROTECTION

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

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

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

4.5 DISPUTES

4.5.1 In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

4.6 ENTIRE AGREEMENT

HCA and Contractor agree that the Agreement is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Agreement and supersedes all letters of intent or prior Agreements, oral or written, between the parties relating to the subject matter of the Agreement, except as provided in Section 4.21 *Warranties*.

4.7 FORCE MAJEURE

A party will not be liable for any failure of or delay in the performance of this Agreement 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.

4.8 GOVERNING LAW

This Agreement 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 Agreement will be construed as a waiver by HCA of the State's immunity under the 11th Amendment to the United States Constitution.

4.9 INDEMNIFICATION

Contractor must defend, indemnify, and save HCA harmless from and against all claims, including reasonable attorneys' fees resulting from such claims, for any or all injuries to persons or damage to property, or Breach of its confidentiality and notification obligations, arising from intentional or negligent acts or omissions of Contractor, its officers, employees, or agents, in the performance of this Agreement.

4.10 NO THIRD-PARTY BENEFICIARIES

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

4.11 NONDISCRIMINATION

During the performance of this Agreement, the Contractor must comply with all federal and state nondiscrimination laws, regulations and policies, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 et seq.; the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101 et seq., 28 CFR Part 35; and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Agreement may be rescinded, canceled, or terminated in whole or in part under the Termination for Default sections, and Contractor may be declared ineligible for further contracts with HCA.

4.12 PAY EQUITY

- 4.12.1 Contractor represents and warrants that, as required by Washington state law (Laws of 2017, Chap. 1, § 147), during the term of this Agreement, 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.
- 4.12.2 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.
- 4.12.3 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.
- 4.12.4 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.
- 4.12.5 Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) Days of HCA's request for such evidence, HCA may suspend or terminate this Agreement.

4.13 PUBLICITY

- 4.13.1 The award of this Agreement 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.

4.13.2 Contractor agrees to submit to HCA, all advertising, sales promotion, and other publicity materials relating to this Agreement 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.

4.14 REMEDIES NON-EXCLUSIVE

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

4.15 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 Agreement.

4.16 SEVERABILITY

If any provision of this Agreement 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 Agreement that can be given effect without the invalid provision, and to this end the provisions or application of this Agreement are declared severable.

4.17 SUBCONTRACTING

4.17.1 Subcontracting will not be permitted at any, time for any duration, throughout the performance of this Agreement.

4.18 SURVIVAL

The terms and conditions contained in this Agreement that, by their sense and context, are intended to survive the completion, cancellation, termination, or expiration of the Agreement will survive. In addition, the terms of the sections titled *Disputes, Publicity, Records and Documents Review, and Rights of State and Federal Governments* will survive the termination of this Agreement. The right of HCA to recover any overpayments will also survive the termination of this Agreement.

4.19 TERMINATION

Either party may terminate this Agreement upon 60-days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance

rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

4.20 WAIVER

Waiver of any breach of any term or condition of this Agreement will not be deemed a waiver of any prior or subsequent breach or default. No term or condition of this Agreement 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 Agreement on behalf of HCA.

4.21 WARRANTIES

- 4.21.1 Contractor represents and warrants that it will perform all services pursuant to this Agreement in a professional manner and with high quality and will immediately re-perform any services that are not in compliance with this representation and warranty at no cost to HCA.
- 4.21.2 Contractor represents and warrants that it shall comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services.
- 4.21.3 Any written commitment by Contractor within the scope of this Agreement 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 Agreement. 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 Agreement.

Approved as to Form:

This contract format was approved by
the Office of the Attorney General.
Approval on file.