



**CONTRACT
AMENDMENT**

HCA Contract No.:
Amendment No.:

THIS AMENDMENT TO THE CONTRACT is between the Washington State Health Care Authority and the party whose name appears below, and is effective as of the date set forth below.

CONTRACTOR NAME		CONTRACTOR doing business as (DBA)	
CONTRACTOR ADDRESS		CONTRACTOR CONTRACT MANAGER Name: Email:	
AMENDMENT START DATE July 1, 2023	AMENDMENT END DATE June 30, 2025	CONTRACT END DATE June 30, 2025	

WHEREAS, HCA and Contractor previously entered into a Contract for Non-Emergency Medical Transportation (NEMT) Broker services, and;

WHEREAS, HCA and Contractor wish to amend the Contract pursuant to Section 4.3 to extend the term of the Contract, update the Insurance section, and update the contract purpose as provided on Schedule A;

NOW THEREFORE, the parties agree the Contract is amended as follows:

1. The term of the Contract is extended to June 30, 2025.
2. Section 3.7, *Insurance*, subsection 3.7.4 is amended to read as follows:

The insurance required must be issued by an insurance company/ies authorized to do business within the State of Washington and have a Best's Reports rating of B++, Class VII, or better. Surplus Lines insurance companies will have a rating of A-, Class VII or better. Insurance 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. Schedule A, *Statement of Work*, Section 1, *Purpose*, is amended to read as follows:

The purpose of this Contract is to provide transportation access to necessary non-emergency medical services for all eligible medical assistance clients who have no other available means of gaining access to these services. Pre-authorized access to covered medical services is provided by the most cost-effective method which meets the clients' mobility status and personal capabilities. For Title XIX Medicaid clients, Non-Emergency Medical Transportation (NEMT) services are authorized under 42 CFR 440.170. NEMT services are not public transportation.


4. This Amendment will be effective July 1, 2023 ("Effective Date").
5. All capitalized terms not otherwise defined herein have the meaning ascribed to them in the Contract.

6. All other terms and conditions of the Contract remain unchanged and in full force and effect.

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

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

SAMPLE

	<p align="center">CLIENT SERVICES CONTRACT for Non-Emergency Medical Transportation for Region</p>	HCA Contract Number:
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THIS CONTRACT is made by and between 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 checked="" type="checkbox"/> NO		CFDA NUMBER(S): 93.778	FFATA Form Required <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	

HCA PROGRAM Non-Emergency Medical Transportation Program	HCA DIVISION/SECTION Medicaid Programs
HCA CONTACT NAME AND TITLE	HCA CONTACT ADDRESS Health Care Authority 626 8th Avenue SE PO Box 45531 Olympia, WA 98504-98504
HCA CONTACT TELEPHONE	HCA CONTACT E-MAIL ADDRESS

CONTRACT START DATE	CONTRACT END DATE	TOTAL MAXIMUM CONTRACT AMOUNT
PURPOSE OF CONTRACT: Provide transportation access to necessary non-emergency medical services for all eligible medical assistance clients who have no other available means of gaining access to these services. For Title XIX Medicaid Clients, Non-Emergency Medical Transportation services are authorized under 42 CFR 440.170.		

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

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

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Schedule A: Statement of Work (SOW) NEMT Services

Exhibits

- Exhibit A: Performance Metrics
- Exhibit B: Contractor Reporting Requirements
- Exhibit C: Customer Service Center
- Exhibit D: Client and Trip Eligibility Verification
- Exhibit E: Transport Vehicle Standards
- Exhibit F: Driver Standards and Expectations
- Exhibit G: Transportation Performance Standards
- Exhibit H: Policies and Procedures Manual
- Exhibit I: Subcontracts with Transportation Service Providers
- Exhibit J: Data Use, Security, and Confidentiality

Contract for NEMT Broker Services

Recitals

WHEREAS, the State of Washington, acting by and through the Health Care Authority (HCA), desires to provide Non-Emergency Medical Transportation (NEMT) Services directly to HCA Clients, in accordance with 42 C.F.R. § 440.170;

WHEREAS, HCA is acting in accordance with its authority under chapters 39.26 and 41.05 RCW; and Client Services are exempt from competitive solicitation (RCW 39.26.125(6));

WHEREAS, (Contractor) desires to provide such services.

NOW THEREFORE, HCA and Contractor enter into this Contract, the terms and conditions of which will govern Contractor's providing to HCA the Non-Emergency Medical Transportation (NEMT) Services described herein.

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 Schedule A: *Statement of Work*.

2. DEFINITIONS

“Administrative Cost Per Trip” means the Contractor's administrative costs divided by the number of trips billed by the Contractor.

“Administrative Costs” means the Contractor's costs of operations not including expenses or payment to Transportation Providers or Subcontractors for direct services. When the Contractor operates a pool of volunteer drivers, the costs associated with the Contractor's volunteer management (e.g., volunteer recruitment, screening, training, etc.) are Administrative Costs. When the Contractor has expenses such as mailing, delivery of bus passes, tickets, and/or gas cards, such costs are Administrative Costs.

“Ambulance” means a ground or air vehicle designed and used to provide transportation to the ill and injured; and to provide personnel, facilities, and equipment to treat clients before and during transportation; and licensed per RCW 18.73.140.

“Appointment” means a meeting or engagement set for a specific time and place.

“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.

“Broker” or **“Brokerage”** means the Contractor for the term of this Contract. A broker is a neutral third party that arranges transportation access to covered medical services for eligible clients by contracting with transportation service providers in accordance with the Department's contract requirements. Brokers review requests for transportation to covered medical services, and pre-authorize the most cost-effective method which meets the clients' mobility status and personal capabilities. CFR - The Code of Federal Regulations.

“Business Associate” means a Business Associate as defined in 45 CFR 160.103, who performs or assists in the performance of an activity for or on behalf of HCA, a Covered Entity, that involves the use or disclosure of protected health information (PHI). Any reference to Business Associate in this Data Sharing Agreement (DSA) includes Business Associate's employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.

“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.

“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.

“CFR” means the Code of Federal Regulations. All references in this Contract 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>.

“Client Associated Vehicle” means a vehicle owned by client, client's friend, or client's relative.

“Client Information” means information identifiable to any person including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, drivers license numbers, other identifying numbers, and any financial identifiers. Exchanges of client information are only allowed for the purpose of doing business outlined in this contract.

“Client(s)” means Clients of HCA living in the designated service region who seek medically necessary nonemergency transportation services and who are eligible to receive services under this Contract. This includes those certified:

- As eligible clients by the Division of Disability Determination Services (DDS).
- As eligible medical assistance clients by the Economic Services Administration as clients.

- Other groups when approved in writing by the HCA Transportation Program Manager.

“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.

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

“Contractor” means , 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” means a health plan, a health care clearinghouse or a health care provider who transmits any health information in electronic form to carry out financial or administrative activities related to health care, as defined in 45 CFR 160.103.

“Covered Services” those services covered in WAC 182-501-0050 through 182-501-0065 in the NEMT portion of WAC 182-546 and included in the client's benefit services package; and/or as determined by HCA.

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

“Database Script” means the screening protocol to be consistently followed by the Broker to verify both the eligibility of the client to receive Medicaid medical services, and also the protocol to determine if the client is eligible to receive Medicaid transportation services.

“Direct Service Costs” means the expenses and payments made to Transportation Services Providers for services, including reimbursement to clients, for travel expenses and reimbursement to the Contractor's pool of volunteer drivers. The costs associated with a volunteer's mileage or reimbursement of other expenses are Direct Service Costs

“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.

“Emergency” means an emergency medical condition means the sudden onset of a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient

severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- Placing the patient's health in serious jeopardy;
- Serious dysfunctions of any bodily organ or part;
- Serious impairment to bodily functions;
- As defined in WAC 182-500-0030.

“Escort” means a person authorized by the transportation broker to be transported with a client to a healthcare service. An escort may be authorized depending on the client's age, mental state or capacity, safety requirements, mobility skills, communication skills, or cultural issues.

“Extended Stay” means a period of time spanning thirty (30) days or longer for which a client(s) receives healthcare services outside of their local community and may request assistance with meals and/or lodging.

“Guardian” means a person who is legally responsible for a client and who may be required to be present when a client is receiving healthcare services.

“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.

“Healthcare Provider” means an institution, agency, or person who has a signed agreement with HCA to furnish medical care, goods, and/or services to clients; and is eligible to receive payment from HCA, as defined WAC 182-500-0085

“Incidents” means the occurrences and/or alleged occurrences that affect the health, safety, or rights of a client, including, but not limited to, accidents, sudden onset of serious illness, physical, emotional or verbal abuse, discrimination, other unlawful or actionable acts.

“Indian Tribe” has the meaning given in the Indian Health Care Improvement Act (IHCA) Section 4(14), 25 U.S.C. §1603(14).

“Local community” means the location in or nearest to the client's city or town of residence.

“Local healthcare provider” means the provider, as defined in WAC 182-500-0085, within the client's local community who fulfills the requirements of the healthcare appointment. The provider may vary by medical specialty, the provider's acceptance of the departments' clients,

and whether managed care, primary care case management or third party participation is involved.

“Lowest Cost” means the least costly rate per type of trip, including dispatch charges, vehicle maintenance, etc.

“Medicaid” means the federal aid Title XIX program under which medical care is provided to eligible persons:

- Categorically needy persons as defined in WAC 388-106-0010; or
- Medically needy persons as defined in WAC 388-106-0010.

“Medical Assistance” means a term which includes Medicaid, Children's Health Insurance Program, and state-only funded medical programs administered by the Health Care Authority.

“Medically Necessary” means as defined by WAC 182-500-0070 (Medical Definitions): a term for describing requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent worsening of conditions in the client that endanger life, or cause suffering or pain, or result in an illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction. There is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the client requesting the service.

“Non-ambulance” means a vehicle other than an ambulance. An ambulance is specifically designed, equipped, and used to transport the ill and injured, and to provide personnel, facilities, and equipment to treat patients before and during transportation.

“Noncompliance or Noncompliant” means a client who:

- Fails to appear at the pick-up point of the trip at the scheduled pick-up time.
- Misuses or abuses HCA-paid medical, transportation, or other services.
- Fails to comply with the rules, procedures, and/or policies of HCA's transportation brokers, the brokers' subcontracted transportation providers, and healthcare service providers.
- Poses a direct threat to the health and/or safety of self or others.
- Engages in violent, seriously disruptive, or illegal conduct.

“Non-emergency Medical Transportation Services (NEMT) Brokerage Program” means a transportation program established to cost-effectively provide non-emergency medical transportation services for individuals eligible for medical assistance under the Medicaid State

Plan who need access to medical care or services, and have no other means of transportation. In Washington State NEMT services are administered by the Health Care Authority.

“Non-Publicly Regulated Transportation Providers” means transportation providers who are not regulated by the Washington state Department of Licensing (DOL), the Washington Utilities and Transportation Commission (UTC), or any other responsible regulation agency. Providers may include, but not be limited to Federally Recognized Tribes or government entities that may provide transportation services not regulated by DOL or UTC.

“No-Show” means the result of an HCA client or Contract service provider not keeping an appointment and failing to cancel the appointment.

“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.

“Per Trip Service Cost” means Contractor’s direct service costs, divided by the number of trips billed by the Contractor

“Pickup point” or **“Origin”** means the location authorized by HCA’s transportation broker for the client’s trip to begin.

“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).

“ProviderOne” means HCA’s provider payment system for healthcare or medical providers. NEMT payments are not scheduled to be paid through ProviderOne as of the contract start date but may be in the future. Eligibility data from this system along with other sources will be used by Contractors to verify eligibility for NEMT services.

“Publicly Regulated Transportation Providers” means transportation providers that are regulated by the Washington State Department of Licensing (DOL), the Washington Utilities and Transportation Commission (UTC); or any other responsible regulation agency. Example of publicly regulated providers include, but are not limited to taxis, Cabulances, any other vehicles used for transporting passengers for payment, and nonprofit bus carriers.

“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/>.

“Return Trip” means the return of the client to the client's residence, or another authorized drop-off point, from the location where a covered healthcare service has occurred.

“Routine Scheduled Trips” means trips that are advance reservation trips taken at least once a week by the same rider(s) to and from the same origin and destination, at the same time of day.

“Scheduled Ambulance” means a non-emergency trip provided by an ambulance, arranged in advance.

“Scheduled Trips” means those trips for which an individual calls no less than two (2) Business Days in advance of the trip to request other than Individual or Group Subscription Trips.

“Service Mode” means the method of transportation the Broker selects to use for the Department's clients.

“Service Need” means a client's need for a particular mode of transportation determined through assessment of that client's mental and physical capabilities. The client's access to appropriate transportation through other sources, than this Contract, must be considered when determining need for services.

“Service Region” or **“Region”** means that portion or section of the State of Washington as identified in the Statement of Work for this Contract. May include border areas of other states contiguous with the State of Washington, if clients typically use approved medical services within the border area.

“Short Stay” means a period of time spanning one (1) to twenty-nine (29) days for which a client(s) receives healthcare services outside of their local community and may request assistance with meals and/or lodging.

“Significant Business Transaction” means any business transaction or series of transactions that, during any one (1) fiscal year, exceed \$25,000 or five percent (5%) of the Contractor's total operating expenses, whichever is less.

“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 Schedule A hereto.

“Stretcher Car” or **“Van”** means a vehicle that can legally transport a person who is in a prone or supine position who does not require medical attention en route.

“Stretcher Trip” means a transportation service that requires a client to be transported in a prone or supine position without medical attention during the trip. This may be by stretcher, board, or gurney, or other appropriate device. Safety requirements must be the basis for transporting a client in the prone or supine position.

“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.

“Total Average Cost Per Trip” means the total Contract expenditures divided by the number of trips performed by the Contractor. The total average cost per trip represents both Contractor’s Administrative and Direct Service Costs on a per trip basis.

“Transportation Provider” means an individual or company under contract to a Broker, for the provision of trips.

“Travel Time” means the time spent by a client from that client's pick-up to their final destination including stops, delays, etc.

“Trip” means transportation one-way from the pickup point to the drop off point by an authorized transportation provider.

“Units” means a combination of trips, meals, lodging, and ancillary services such as parking, and tolls.

“Unscheduled Trips” means trips for which an individual requests a trip with less than forty-eight (48) hours or two (2) Business Days advance notice and/or outside of regular call intake hours. Unscheduled trips are limited to urgent care needs and first-time callers.

“Urgent Care” means an unplanned appointment for a covered medical service with verification from an attending physician or facility that the client must be seen that day or the following day. Urgent care is differentiated from emergency care by the severity of symptoms and the need for immediate medical attention.

“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/>

“Volunteer” means an individual not paid by time or salary who provides transportation for clients, usually with the volunteer’s personally owned vehicle. Volunteers may be reimbursed for transportation related costs, typically mileage charge and occasionally meal reimbursement, parking, tolls and ferry fees. The Broker or a subcontracted volunteer agency recruits and trains volunteers.

“**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/>.

“**Wait Time**” means the duration of time from when a client must be ready to be transported, to when the client actually begins a trip.

“**Will Call**” means the status of return trips which occur after a medical event. They are trips for which the time cannot be determined until the appointment has ended. Certain types of appointments tend to require Will Call trips due to inconsistent amount of time needed for successful completion.

3. SPECIAL TERMS AND CONDITIONS

3.1 TERM

- 3.1.1 The initial term of the Contract will commence on July 1, 2021, or date of last signature, whichever is later, and continue through June 30, 2023, unless terminated sooner as provided herein.
- 3.1.2 This Contract may be extended in 2-year time 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 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.

3.2 COMPENSATION

- 3.2.1 The Maximum compensation payable to the Contractor for the performance of all things necessary for or incidental to the performance of work as set forth in Schedule A: *Statement of Work* is up to for administrative fees, including any and all expenses, and shall be based on the following:
- 3.2.2 For the term of this contract the compensation has two components:
 - 3.2.2.1 **Administrative Cost:** The maximum administrative fees for the Contractor to provide brokering services under this Contract is payable in monthly amounts not to exceed a maximum administrative cost of .

The first monthly administrative payment for this Contract is for the month of July 2021.

Funds received as part of administrative fee payments during this Term shall not be applied to any costs incurred during any subsequent Term.

3.2.2.2 **Service Costs:** The Contractor shall invoice HCA the Direct Service Costs (e.g., subcontractor payments or client reimbursement); no maximum stated.

3.2.3 For compensation, for the terms of this Contract, the Contractor shall coordinate an average number of Units per month (estimated range of Units per month). The Contractor shall provide the services consistent with all terms and conditions of this Contract.

3.2.4 The Contractor shall monitor expenditures against the following average costs per trip:

3.2.4.1 Administrative Cost per Unit (average) of

3.2.4.2 Service Cost per Unit (average goal) of

3.3 INVOICE AND PAYMENT

3.3.1 Contractor must submit accurate and completed invoices using the State Form A-19-1A invoice voucher with completed A-55, or such forms as designated by HCA to the secured SFT site. Invoices should be submitted by the 20th calendar day following the month in which the services were provided. HCA will grant the Subcontractor sixty (60) additional calendar days to resubmit the bill when the Contractor returns a bill to a Subcontractor for clarification or backup documentation.

3.3.2 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.

3.3.3 Contractor must submit properly itemized invoices to include the following information, as applicable:

3.3.3.1 HCA Contract number ;

3.3.3.2 Contractor name, address, phone number;

3.3.3.3 Description of Services;

3.3.3.4 Date(s) of delivery;

3.3.3.5 Net invoice price for each item;

3.3.3.6 Applicable taxes;

- 3.3.3.7 Total invoice price; and
- 3.3.3.8 Payment terms and any available prompt payment discount.
- 3.3.4 HCA will return incorrect or incomplete invoices to the Contractor for correction and reissue. The Contract Number must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract.
- 3.3.5 HCA shall deny any claims submitted for payment for any of the following reasons:
 - 3.3.5.1 The individual transported was not an eligible Client.
 - 3.3.5.2 The services received were not covered by the Client's medical program benefit services package.
 - 3.3.5.3 The Client's medical program does not have a benefit for non-emergency medical transportation.
 - 3.3.5.4 The facility or provider that provided care to the transported eligible Client was not an eligible provider as established in Exhibit C.
- 3.3.6 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>. 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 Contractor designated in its registration.
- 3.3.7 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.

3.4 CONTRACTOR AND HCA CONTRACT MANAGERS

- 3.4.1 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.
- 3.4.2 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.

3.4.3 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:	
Phone:		Phone:	
Email:	_____	Email:	

3.5 LEGAL NOTICES

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

3.5.1 In the case of notice to the Contractor:

Attention:

3.5.2 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

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

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

3.6 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:

- 3.6.1 Applicable Federal and State of Washington statutes and regulations;
- 3.6.2 Data Use, Security, and Confidentiality;
- 3.6.3 Recitals;
- 3.6.4 Special Terms and Conditions;
- 3.6.5 General Terms and Conditions;
- 3.6.6 Attachment 1: Confidential Information Security Requirements;
- 3.6.7 Schedule A: Statement of Work;
- 3.6.8 Any other provision, term or material incorporated herein by reference or otherwise incorporated.

3.7 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:

- 3.7.1 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.
- 3.7.2 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.

- 3.7.3 Professional Liability Errors and Omissions – Provide a policy with coverage of not less than \$1 million per claim/\$2 million general aggregate.
- 3.7.4 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 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.
- 3.7.5 Privacy Breach Response Coverage. Contractor must maintain insurance to cover costs incurred in connection with a Breach, or potential Breach, including:
- 3.7.5.1 Computer forensics assistance to assess the impact of the Breach or potential Breach, determine root cause, and help determine whether and the extent to which notification must be provided to comply with Breach notification laws.
 - 3.7.5.2 Notification and call center services for individuals affected by a Breach.
 - 3.7.5.3 Breach resolution and mitigation services for individuals affected by a Breach, including fraud prevention, credit monitoring and identity theft assistance.
 - 3.7.5.4 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).

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

4. GENERAL TERMS AND CONDITIONS

4.1 ACCESS TO DATA

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

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

4.2 ADVANCE PAYMENT PROHIBITED

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

4.3 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.

4.4 ASSIGNMENT

- 4.4.1 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 4.4.1 of the Contract will be null and void.
- 4.4.2 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.
- 4.4.3 This Contract will inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

4.5 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.

4.6 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.

4.7 CONFIDENTIAL INFORMATION PROTECTION

- 4.7.1 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 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 Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, 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 (See Attachment 1: *Confidential Information Security Requirements*).
- 4.7.2 Contractors that come into contact with Protected Health Information may be required to enter into a Business Associate Agreement with HCA in compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as modified by the American Recovery and Reinvestment Act of 2009 ("ARRA"), Sec. 13400 – 13424, H.R. 1 (2009) (HITECH Act) (HIPAA).
- 4.7.3 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.
- 4.7.4 The obligations set forth in this Section will survive completion, cancellation, expiration, or termination of this Contract.

4.8 CONFIDENTIAL INFORMATION SECURITY

The federal government, including the Centers for Medicare and Medicaid Services (CMS), and the State of Washington all maintain security requirements regarding privacy, data access, and other areas. Contractor is required to comply with the Confidential Information Security Requirements set out in Attachment 1 to this Contract and appropriate portions of the Washington OCIO Security Standard, 141.10 (<https://ocio.wa.gov/policies/141-securing-information-technology-assets/14110-securing-information-technology-assets>).

4.9 CONFIDENTIAL INFORMATION BREACH – REQUIRED NOTIFICATION

- 4.9.1 Contractor must notify the HCA Privacy Officer (PrivacyOfficer@hca.wa.gov) within five (5) Business Days of discovery of any Breach or suspected Breach of Confidential Information.

- 4.9.2 Contractor will take steps necessary to mitigate any known harmful effects of such unauthorized access including, but not limited to, sanctioning employees and taking steps necessary to stop further unauthorized access. Contractor agrees to indemnify and hold HCA harmless for any damages related to unauthorized use or disclosure of Confidential Information by Contractor, its officers, directors, employees, Subcontractors or agents.
- 4.9.3 If notification of the Breach or possible Breach must (in the judgment of HCA) be made under the HIPAA Breach Notification Rule, or RCW 42.56.590 or RCW 19.255.010, or other law or rule, then:
 - 4.9.3.1 HCA may choose to make any required notifications to the individuals, to the U.S. Department of Health and Human Services Secretary (DHHS) Secretary, and to the media, or direct Contractor to make them or any of them.
 - 4.9.3.2 In any case, Contractor will pay the reasonable costs of notification to individuals, media, and governmental agencies and of other actions HCA reasonably considers appropriate to protect HCA clients (such as paying for regular credit watches in some cases).
 - 4.9.3.3 Contractor will compensate HCA clients for harms caused to them by any Breach or possible Breach.
- 4.9.4 Any breach of this clause may result in termination of the Contract and the demand for return or disposition (Attachment 1, Section 6) of all Confidential Information.
- 4.9.5 Contractor's obligations regarding Breach notification survive the termination of this Contract and continue for as long as Contractor maintains the Confidential Information and for any breach or possible breach at any time.

4.10 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.

4.11 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.

4.12 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.

4.13 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.

4.13.1 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.

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

4.13.2.1 Be in writing;

4.13.2.2 Include a written description of the dispute;

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

4.13.2.4 State the Contract Number and the names and contact information for the parties;

4.13.3 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.

4.14 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 4.44 *Warranties*.

4.15 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.

4.16 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:

4.16.1 Terminate this Contract pursuant to Section 4.39.3, *Termination for Non-Allocation of Funds*;

4.16.2 Renegotiate the Contract under the revised funding conditions; or

4.16.3 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.

- 4.16.3.1 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.
- 4.16.3.2 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.
- 4.16.3.3 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.

4.17 GOVERNING LAW

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

4.18 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.52.110. Violation of any of these laws or policies could result in termination of the contract and other penalties.

Contractor will have access to the HCA visitor Wi-Fi Internet connection while on site.

4.19 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 under Section 4.7 *Confidential Information Protection* and Section 4.8 *Confidentiality Breach-Required Notification*, 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.

4.20 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.

4.21 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.

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 or any clause or condition of this Contract is not effective or binding unless made in writing and signed by the HCA Authorized Representative.

4.24 NO THIRD-PARTY BENEFICIARIES

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

4.25 NONDISCRIMINATION

During the performance of this Contract, the Contractor must comply with all federal and state nondiscrimination laws, regulations and policies, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 et seq.; the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101 et seq., 28 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 Contract may be rescinded, canceled, or terminated in whole or in part under the Termination for Default sections, and Contractor may be declared ineligible for further contracts with HCA.

4.26 OVERPAYMENTS TO 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 4.13 *Disputes*.

4.27 PAY EQUITY

- 4.27.1 Contractor represents and warrants that, as required by Washington state law (Engrossed House Bill 1109, Sec. 211), during the term of this Contract, it agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if (i) the individuals work for Contractor, (ii) the performance of the job requires comparable skill, effort, and responsibility, and (iii) the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.
- 4.27.2 Contractor may allow differentials in compensation for its workers based in good faith on any of the following: (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings by quantity or quality of production; (iv) bona fide job-related factor(s); or (v) a bona fide regional difference in compensation levels.
- 4.27.3 Bona fide job-related factor(s)" may include, but not be limited to, education, training, or experience, that is: (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) accounts for the entire differential.
- 4.27.4 A "bona fide regional difference in compensation level" must be (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) account for the entire differential.

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

4.28 PUBLICITY

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

4.28.2 Contractor agrees to submit to HCA, all advertising, sales promotion, and other publicity materials relating to this Contract or any Service furnished by Contractor in which HCA's name is mentioned, language is used, or Internet links are provided from which the connection of HCA's name with Contractor's Services may, in HCA's judgment, be inferred or implied. Contractor agrees to allow HCA the opportunity to review changes and will implement any suggestions HCA offers.

4.29 RECORDS AND DOCUMENTS 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 CFR 431, Subpart Q; and 42 CFR 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 (collectively "Work Product") produced pursuant to this Contract will be considered a *work for hire* under the U.S. Copyright Act, 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 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 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

In accordance with 45 C.F.R. 95.617, all appropriate state and federal agencies, including but not limited to the Centers for Medicare and Medicaid Services (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 CFR 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 Upon HCA request, Contractor will submit all subcontracting arrangements under this Contract. 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.
- 4.36.6 Contractor agrees to submit to and complete a Security Design Review (SDR) which ensures compliance with Attachment 1, *Confidential Information Security Requirements*, prior to end of the initial term of the Contract. After completion of the SDR, Contractor also agrees to attest that all affiliated subcontractors have instituted the data security protocols required per the level of data the subcontractor manages.

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 *Confidential Information Protection, Confidential Information Breach – Required Notification, Contractor's Proprietary Information, Disputes, Overpayments to Contractor, Publicity, Records and Documents Review, Rights in Data/Ownership, and Rights of State and Federal Governments* 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 thirty (30) calendar days' written notice. The Contractor may terminate this Contract in whole or in part by providing one hundred and twenty days (120) calendar days' written notice to the HCA Contract Manager. 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 4.13 *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:

- 4.40.3.1 Stop work under the Contract on the date of, and to the extent specified in, the notice;
- 4.40.3.2 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;
- 4.40.3.3 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;
- 4.40.3.4 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;
- 4.40.3.5 Transfer title to and deliver as directed by HCA any property required to be furnished to HCA;
- 4.40.3.6 Complete performance of any part of the work that was not terminated by HCA; and
- 4.40.3.7 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 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.

4.42 WARRANTIES

- 4.42.1 Contractor represents and warrants that it will perform all services pursuant to this Contract 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.
- 4.42.2 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.

4.42.3 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 provided to HCA, or descriptions of services in written or other communication medium provided to HCA, used to influence HCA to enter into this Contract.

SAMPLE

Attachment 1

Confidential Information Security Requirements

1. Definitions

In addition to the definitions set out in Section 2 of this Contract for NEMT Broker Services, the definitions below apply to this Attachment.

- a. **“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.
 - i. Passwords for external authentication must be a minimum of 10 characters long.
 - ii. Passwords for internal authentication must be a minimum of 8 characters long.
 - iii. Passwords used for system service or service accounts must be a minimum of 20 characters long.
- b. **“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).
- c. **“Portable/Removable Devices”** means any small computing device that can be transported, including but not limited to: handhelds/PDAs/Smartphones; Ultramobile PC's, flash memory devices (e.g., USB flash drives, personal media players); and laptops/notebook/tablet computers. If used to store Confidential Information, devices should be Federal Information Processing Standards (FIPS) Level 2 compliant.
- d. **“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.
- e. **“Transmitting”** means the transferring of data electronically, such as via email, SFTP, webservices, AWS Snowball, etc.
- f. **“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 and facsimile.

- g. **“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. Confidential Information Transmitting

- a. 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.
- b. When transmitting HCA’s Confidential Information via paper documents, the Receiving Party must use a Trusted System.

3. Protection of Confidential Information

The Contractor agrees to store Confidential Information as described:

- a. Data at Rest:
 - i. 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.
 - ii. Data stored on Portable/Removable Media or Devices:
 - Confidential Information provided by HCA on Removable Media will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the Data.
 - HCA’s data must not be stored by the Receiving Party on Portable Devices or Media unless specifically authorized within the Data Share Agreement. If so authorized, the Receiving Party must protect the Data by:
 1. Encrypting with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data;
 2. Control access to the devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics;
 3. Keeping devices in locked storage when not in use;
 4. Using check-in/check-out procedures when devices are shared;

5. Maintain an inventory of devices; and
 6. Ensure that when being transported outside of a Secured Area, all devices with Data are under the physical control of an Authorized User.
- b. 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. Confidential Information Segregation

HCA Confidential Information 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 HCA Confidential Information can be identified for return or destruction. It also aids in determining whether HCA Confidential Information has or may have been compromised in the event of a security Breach.

- a. The HCA Confidential Information must be kept in one of the following ways:
 - i. on media (e.g., hard disk, optical disc, tape, etc.) which will contain only HCA Data; or
 - ii. in a logical container on electronic media, such as a partition or folder dedicated to HCA's Data; or
 - iii. in a database that will contain only HCA Data; or
 - iv. within a database and will be distinguishable from non-HCA Data by the value of a specific field or fields within database records; or
 - v. when stored as physical paper documents, physically segregated from non-HCA Data in a drawer, folder, or other container.
- b. When it is not feasible or practical to segregate HCA Confidential Information from non-HCA data, then both the HCA Confidential Information and the non-HCA data with which it is commingled must be protected as described in this Attachment.

5. Confidential Information Shared with Subcontractors

If HCA Confidential Information provided under this Contract is to be shared with a Subcontractor, the contract with the Subcontractor must include all of the Confidential Information Security Requirements.

6. Confidential Information Disposition

When the Confidential Information is no longer needed, except as noted below, the Confidential Information must be returned to HCA or destroyed. Media are to be destroyed using a method documented within NIST 800-88 (<http://csrc.nist.gov/publications/PubsSPs.html>).

- a. For HCA's Confidential Information stored on network disks, deleting unneeded Confidential Information 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 Confidential Information 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.
- b. When it is not feasible to return or destroy the Confidential Information, then Contractor will extend the protections described in this Attachment to such Confidential Information and limit further use or disclosures of such Confidential Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Confidential Information.

SAMPLE

Schedule A – Statement of Work

1. Purpose

The purpose of this Contract is to provide transportation access to necessary non-emergency medical services for all eligible medical assistance clients who have no other available means of gaining access to these services. Pre-authorized access to covered medical services is provided by the most cost-effective method which meets the clients' mobility status and personal capabilities. For Title XIX Medicaid clients, Non-Emergency Medical Transportation services are authorized under 42 CFR 440.170.

2. Service Region

The Contractor shall:

- A. Provide NEMT services in Service Region which consists of County. The Contractor shall provide Transportation and related Services to all eligible clients living within the designated service region; to the extent these services are necessary to support access to authorized healthcare services.
- B. Provide NEMT services to eligible clients of other service regions in response to requests from Contractors responsible for those service regions. Such requests shall be consistent with the intent of section 3, *County of Residence*, of this exhibit.
- C. Ensure all trips provided outside of a client's Local Community meet the requirements as set forth in the NEMT portion of WAC Chapter 182-546 when required healthcare services are not available within the service region, or border cities designated by HCA.
- D. Coordinate out-of-state transportation requests with the Transportation Program Manager or designee. Upon HCA's authorization, the Contractor shall arrange destination and return trips out-of-state when HCA has determined that required services are not available within the state or designated border cities.

3. County of Residence

The Contractor of the client's county of residence shall:

- A. Arrange transportation from origin to destination and return trips outside the contracted service region.
 - I. If the client's travel requires an overnight stay, the Contractor for the service region of destination (where the Healthcare Provider is located) may arrange transportation if it is the most cost effective (lowest cost to HCA) available transportation.

II. For Extended Stays, the Contractor where the Healthcare Provider is located is responsible to provide transportation between the temporary lodging and the Healthcare Provider.

B. Maintain primary responsibility to arrange necessary travel expenses (meals and lodging) in coordination with the Contractor of the service region of destination. The Contractor shall ensure authorization for travel expenses meet the requirements as set forth in the NEMT portion of WAC Chapter 182-546.

4. Contractor Requirements

The Contractor shall:

- A. Maintain a Customer Service Center as set forth in Exhibit C, *Customer Service Center*.
- B. Verify and document the eligibility of each client requesting and receiving a brokered transportation service as set forth in Exhibit D, *Client and Trip Eligibility Verification*.
- C. Verify and document that a healthcare service occurred for which HCA paid to transport a client as set forth in Exhibit D, *Client and Trip Eligibility Verification*.
- D. Require that all vehicles used in the performance of this Contract, except client associated vehicle, meet or exceed the requirements established in Exhibit E, *Transportation Vehicle Standards*.
- E. Ensure Driver Expectations are met as set forth in Exhibit F, *Driver Standards and Expectations*.
- F. Comply with the requirements established in Exhibit G, *Transportation Performance Standards*.
- G. Ensure that services available to clients are comparable to services the general public receives in the same locale as the client.
- H. When denying or limiting a request for transportation, the Contractor must follow the guidelines of WAC 182-546. See <http://slc.leglwa.gov/>. The Contractor must use a denial letter template that is furnished by HCA or has been approved as to form by HCA. The Contractor must provide to HCA any discovery materials related to the denial/limitation decision and must participate in the administrative hearings process as requested by HCA.
- I. Leverage and coordinate efforts with other funding sources and programs, including, but not limited to, local, county, state, federal, private, for profit, and nonprofit entities, such as local Community Service Offices (CSOs), Transits, Area Agencies on Aging (AAA), School Districts, Tribes, that are involved in special needs transportation.
- J. Establish linkage with community programs to coordinate activities with existing programs serving the program population and to minimize or avoid duplicate efforts

and fragmentation of services to mutual clients. These linkages may include referral protocols, formal written coordination agreements, or special billing agreements that ensures client access to medical services in hard to serve communities.

K. In accordance with 42 CFR § 455.105, Disclosure by providers:

Information related to business transactions, the Contractor shall submit to the HCA within thirty five (35) calendar days of a request that includes full and complete information about:

- I. The ownership of any subcontractor with whom the Contractor has had business transaction totaling more than \$25,000 during the twelve (12) month period ending on the date of execution of this amendment; and
- II. Any Significant Business Transaction between the Contractor and any wholly owned supplier, or between the Contractor and any subcontractor, during the five (5) year period ending on the date of execution of this amendment.

L. The Contractor shall:

- I. Notify HCA in a timely manner of adverse action taken against any subcontractor for program integrity-related reasons;
- II. Collect and maintain disclosure information about the Contractor and subcontractors or any person with a direct or indirect ownership interest of five percent (5%) or more, or who is an agent or managing employee of the disclosing entity who exercise operational or managerial control over the disclosing entity;
- III. Search the United States Department of Health and Human Services, Office of the Inspector General's List of Excluded Individuals/Entities or the Medicare Exclusion Database and the United States General Services Administration's Excluded Parties List System no less frequently than monthly for convictions or a criminal offense related to Medicare, Medicaid or Title XX.
- IV. Modify disclosure forms as necessary to capture all disclosure information required under subsection K of this section.

5. Subcontracting Requirements

The Contractor shall:

- A. Develop a network of providers, using a fair and clear contracting process, through the use of subcontracts that establishes a competitive marketplace with a variety of service providers for each mode of transportation.
- B. Ensure all subcontracts are in writing and include, at a minimum, the terms and conditions set forth in Exhibit I, *Subcontracts with Transportation Service Providers*.

- C. Pay Subcontractors within ten (10) calendar days of receipt of reimbursement from HCA, for allowed claims performed under this Contract.
- D. Maintain and make available all documentation for review by HCA staff on all subcontractors and subcontracts, including but not limited to each subcontractor's: business organizations, business licenses, certifications, insurance coverage, driver verifications, vehicle inspections, and all other relevant documentation.
- E. Develop and implement a monitoring plan to monitor subcontracted transportation providers to ensure compliance with terms of their subcontracts:
 - I. Perform reviews on a minimum of ten (10) randomly selected trips for the period of performance being monitored during the biennial desk audit of each service provider. The trip review should include confirming all proper documentation (as outlined in this contract), timeliness, coding, and medical justification etc. The Contractor shall make a summary of findings available to the Transportation Program Manager upon request.
 - II. Perform a site visit of subcontractor office every other year to confirm security of client files/manifests, and perform any other monitoring processes deemed necessary from findings of desk audit in the previous year. The Contractor shall include results of the site visit in a report made available to the Transportation Program Manager upon request. For subcontractors shared between contractors, the NEMT program will accept a copy of the most recent report if the previous site visit was within two years.
- F. Maintain documentation for review by HCA staff on any subcontractor corrective action steps taken to ensure services provided are in compliance with this Contract.
- G. Ensure compliance with requirements of employer liability, worker's compensation, unemployment insurance, social security, and any other Washington State and local taxes applicable to the Contractor's subcontractors.

6. Prohibitions

The Contractor is subject to the requirements related to prohibitions on referrals and conflicts of interest as described at 42 CFR 440.170 (a)(4)(ii) and shall be liable for the full cost of services resulting from a prohibited referral or subcontract.

The Contractor is prohibited from:

- A. Directly providing transportation services.
- B. Making a referral or subcontracting to a transportation service provider if:
 - I. The Contractor has a financial relationship with the transportation provider as defined at Sec. 411.354 (a) of chapter 42 CFR with transportation broker

substituted for physician and nonemergency transportation substituted for OHS;
or

- II. The Contractor has an immediate Family Member, as defined at Section 411.351 of chapter 42 CFR that has a direct or indirect financial relationship with the transportation provider, with the term transportation broker substituted for physician.
- C. Withholding necessary transportation from a client for the purposes of financial gain, or any other purpose.
- D. Authorizing transportation that is not the most appropriate and a cost-effective means of transportation for a client for the purposes of financial gain, or for any other purposes.
- E. Paying more for fixed route public transportation than the rate charged to the general public.
- F. Paying more for public paratransit services than the rate charged to other state human service agencies for comparable services if the Contractor is a governmental entity.

7. Information Requirements

The Contractor shall:

- A. Establish written policies and procedures subject to HCA review for the items outlined in Exhibit H, *Policies and Procedures Manual*.
- B. Provide monitoring reports that document the activities of the Contractor and subcontracted transportation service providers as set forth in Exhibit B, *Contractor Reporting Requirements*.
- C. Establish and maintain a data tracking and utilization system capable of providing and reporting raw data, including amendments. The utilization data shall be delivered to HCA by Secure File Transfer Protocol (SFTP) or other format as designated by HCA. HCA reserves the right to make adjustments to the data required for reports.
- D. Maintain twenty-four (24) hour toll-free access to provide information on how to access transportation for urgent care on holidays, weekends, and after business hours.
- E. Provide information to clients regarding how to properly access and use transportation resources in the Contractor's service region, including non-emergency medical transportation or volunteer transportation services. The provision of this information may also involve a training program preparing people to use the fixed-route public transit system. This information may be provided verbally or in writing.
- F. Provide and maintain an internet website for clients and transportation service providers to access information pertaining to non-emergency medical transportation.

- G. Provide interpreter services for clients who speak a primary language other than English during interactions with the Contractor's Customer Service Center.
- H. Provide written translations of generally available materials including, at minimum, denial/limitation letters for clients that have Limited English Proficiency (LEP). These materials may be provided in English if the client's primary language is other than English, but the client can understand English and is willing to receive the materials in English. The client's consent to receiving information and materials in English must be documented in the client's file.
- I. Use a 6th grade reading level or less in all written communications to clients, except as otherwise required for legal notice.
- J. Maintain a list of local ITA transportation providers.

8. Tribal Relationships

The Contractor is encouraged to contract with Indian Tribes to provide transportation services, as requested by any Indian Tribe with any portion of their reservation within the Contractor's Service Region. To the extent that there is a conflict between this Section 8, *Tribal Relationships*, of this Schedule A, *Statement of Work*, and this Agreement, the provisions of this Section 8 will govern. HCA shall provide support to the Contractor as requested in facilitating this requirement.

A. Billing and Payment Authorizations

The Contractor may authorize the Indian Tribe to schedule and provide trips for Indian and Alaska Native Medicaid beneficiaries and their household members without prior Contractor approval and bill the Contractor for payment after the trips are provided.

- I. The Contractor is authorized by HCA to:
 - a. Enter into a billing agreement with an Indian Tribe using the HCA template or equivalent that is acceptable to local tribes.
 - b. Conduct a post-trip review to determine allowable trips upon receipt of a tribal transportation bill.
 - c. An allowable trip must be for eligible Medicaid clients who are also American Indian or Alaska Native, or members of their households, and meet the same criteria established in Exhibit C, section 6., *Trip Authorizations*, subitem A.
 - d. Pay the Indian Tribe for all allowable trips and associated costs following the post-review process.

B. Indian Tribes Contract Reporting

Contractor shall:

- I. Produce a monthly or quarterly summary report, relating only to Tribal Contracts, that details the payments, trips, modes and providers associated with Tribal transportation services;
- II. Include a copy of the monthly summary report with each billing it submits to HCA that is related to Tribal payments for this Contract.

C. Applicability of Federal Land Regulations.

Federal laws and regulations affecting the Indian Tribe include, but are not limited to, the following:

- I. Indian Self Determination and Education Assistance Act (ISDEAA), 25 U.S.C. § 450 et seq.;
- II. Indian Health Care Improvement Act (IHCIA), 25 U.S.C. § 1601 et seq.; (including without limitation pursuant to the IHCIA Section 206(e)(3), 25 U.S.C. § 1621e(e)(3), regarding recovery from tortfeasors)
- III. Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671-2680;
- IV. Federal Medical Care Recovery Act, 42 U.S.C. §§ 2651-2653;
- V. Privacy Act, 5 U.S.C. § 552a, 45 C.F.R. Part 5b; and
- VI. Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. Parts 160 and 164.

D. Persons Eligible for Items and Services from Provider

- I. Eligibility for services from an Indian Tribe's programs is determined by federal law, including the IHCIA and/or 42 C.F.R. Part 136. Nothing in any agreement between the Contractor and an Indian Tribe shall be construed in any way to change, reduce, expand, or alter the eligibility requirements for services for Medicaid eligible clients through the Indian Tribe's programs.
- II. No Indian Tribe shall be required to serve individuals who are ineligible under federal law for services from the Indian Tribe. Contractor acknowledges that pursuant to 45 C.F.R. §80.3(d), an individual shall not be deemed subjected to discrimination by reason of his/her exclusion from benefits limited by federal law to individuals eligible for services from the Indian Tribe.

E. Non-Taxable Entity

Indian Tribes are a non-taxable entity and shall not be required by any contract to collect or remit any federal, state, or local tax.

F. Insurance and Indemnification

No Indian Tribe shall be required to obtain or maintain professional liability insurance to the extent Provider is covered by the FTCA pursuant to federal law (Public Law 101-512, Title III, § 314, as amended by Public Law 103-138, Title III, § 308 (codified at 25 U.S.C. § 450f note); and 25 C.F.R. Part 900, Subpart M; 25 U.S.C. §458aaa-15(a); and 42 C.F.R. §137.220). No contract with an Indian Tribe may obligate any employee of an Indian Nation to operate outside the scope of employment of such employee.

G. Sovereign Immunity

No contract with an Indian Tribe may require a waiver of sovereignty immunity.

SAMPLE

Exhibit A – Performance Metrics

1. Definitions Specific to the Performance Metrics

In addition to the definitions set out in section 2, *Definitions*, of the Contract, the definitions below apply to this Exhibit:

“Abandoned Call” means a call accepted into queue but the caller hangs up before the call is answered by a live agent.

“After Call Work” or **“ACW”** means the time required by an agent after a conversation is ended, to complete work that is directly associated with the calls just completed prior to handling the next call such as filling out forms, making outbound calls necessary to complete the trip.

“Average Handle Time” or **“AHT”** means the average amount of time that an agent was working with an ACD call from the time of initial answer of the call to final release of the call including any after call time. This should include hold time in some systems.

“Average Hold Time” means the average length of time calls were on hold.

“Average Speed of Answer” or **“ASA”** means the average amount of time calls are in queue before being answered by an agent.

“Average Wait Time before Abandon” means the average amount of time the customer waited before abandoning the call. This is the total of all waiting times for abandoned calls divided by the number of calls abandoned in the ACD queue this reporting period.

“Blocked Call” or **“Busy”** means a call that cannot be connected immediately. The customer may hear a busy tone or announcement due to availability of lines or setting in the telephone system (Supervisor control or Queue Size).

“Call-back Messaging” means a feature that enable callers waiting in queue to leave a message or to enter a telephone number for later call back from an agent.

“Completed Call” means an inbound call that successfully reaches and is handled by an agent.

“Delay” or **“Queue Time”** means the time callers remain in queue waiting for an agent to become free. It may include the time listening to the delay announcements but does not include the time spent going through an automated attendant menu system selecting choices that result in direction of the call to a specific resource or agent group.

“Interactive Voice Response” or **“IVR”** means the system that gives callers the ability to interact with a system. This may be call routing, self-service, or other options.

“Low Cost Mode” means the following transportation modes: Public Bus, Public Bus-ADA, Voucher/Gas Card, Mileage, Volunteers-Agency, Volunteer-Broker, Commercial Bus, and Train.

“Offered Calls” means all the attempts callers make to reach the call center.

“Queue” means the place callers wait until an agent becomes available.

“Received Call”, “Accepted Call” or “Calls in Queue” means a call detected and seized by a trunk following the completion of the Interactive Voice Response (IVR) menu and completion of the user selection of menu items. Received calls will either abandon or be answered by an agent.

“Shared Ride” means any Ambulatory, Non-Ambulatory, Volunteer-Agency, Volunteer-Broker trip in which more than one (1) client is transported at a reduced cost per client.

2. Customer Service Center Telephone Response Time

The Contractor shall:

- A. During its normal business day, the Contractor’s Customer Service Center is expected to answer eighty (80%) percent of all incoming telephone calls within five (5) minutes. This includes answering all Received Calls by a live agent after interactive voice recording (IVR) message and conclusion of user selection of menu items. The “counter” for counting the calls is set to start after the caller hears the various messages played. Only those calls received Monday through Friday, for a minimum of eight (8) hours per day (normal business hours), are included.
- B. Ensure the average queue time for a system to assist Deaf/hearing impaired clients, such as Washington State Relay or TDD, does not exceed five (5) minutes.

3. Per Trip Service Cost Incentive

- A. The implementation of a performance incentive under this Contract will consist of establishing revolving baseline standards to be used during the Period of Performance of this Contract and may be extended by amendment. The monetary incentive shall be applied during the Period of Performance, as may be extended, the corresponding quarter from the previous calendar year will be used by HCA when calculating the baseline.
- B. The per trip service cost baseline provided by HCA will determine if the Contractor is eligible to receive the Performance Incentive.
- C. If the Contractor achieves a quarterly per trip service cost decrease comparing year to year as determined by HCA, HCA will pay the Contractor an incentive for the quarter that matches the percent decrease achieved. HCA will increase the amount of the incentive payment by one-tenth (1/10th) of one (1) percent up to a maximum of five (5) percent of each corresponding one-tenth (1/10th) of one (1) percent decrease in the

quarterly per trip service cost compared to the quarterly per trip service cost for the corresponding quarter for the previous calendar year. HCA will calculate and make incentive payments which will be made quarterly by the twentieth (20th) of the second month of the following calendar quarter. Incentive payments paid by HCA will increase the maximum administrative fees amount as stated in section 3.5, *Compensation*.

- D. The Per Trip Service Cost Incentive shall not exceed five (5%) percent of the agreed monthly administrative cost payment.
- E. Notwithstanding Section 4.16, *Funding Withdrawn, Reduced or Limited*, if the funds HCA relies upon to establish this Contract are withdrawn, reduced, or limited, due to program or eligibility changes, or other factors, resulting in additional or modified conditions being placed on such funding, HCA shall provide written notice to the Contractor.

4. Low Cost Mode and Shared Ride Incentive

A. The following transportation modes will be counted as low cost modes for this incentive: Public Bus, Public Bus-ADA, Voucher/Gas Card, Mileage, Volunteers-Agency, Volunteer-Broker, Commercial Bus, and Train.

- I. If the Contractor achieves a quarterly increase in the percentage of total trips provided through a low cost mode (LCM) when compared to the same quarter in the previous year the incentive for the quarter will match the percent increase with a maximum incentive of five (5%) percent. The three month average will be the effective percentage that will be compared. For example, if the contractor achieves a quarterly average of one (1) percent increase to the LCM percentage then a one (1%) percent increase to the monthly administrative payment will be provided.
- II. If the Contractor maintains an average Low Cost Mode percent of 50% for the quarter and the calculated LCM is less than five (5%) percent, a one (1%) percent increase to the total LCM percentage incentive calculation will be added. The total LCM incentive may not exceed five (5%) percent.

B. The Shared Ride percentage will be determined from the Ambulatory, Non-Ambulatory, Volunteer-Agency, Volunteer-Broker transportation modes only. It will be calculated by dividing the total number of trips coded with an "S" in DTUS by the grand total of trips in the same four transportation modes on a monthly basis. The three month average will be the effective percentage that will be compared.

- I. The Contractor can enhance the LCM incentive by a maximum of one (1%) percent by increasing their quarterly average shared ride percentage when compared to the same quarter in the previous year. See table below:

Shared Ride Quarterly Increase	LCM Incentive Increase
-----------------------------------	---------------------------

0% - 5%	0.25%
5.01% - 10%	0.50%
10.01% or more	1.0%

- II. If the sum of the LCM and the shared ride enhancement exceeds five (5%) percent, the Contractor shall receive a maximum incentive of five (5%) percent.
- III. This enhancement does not apply in the following cases:
 - a. The Contractor has already achieved a five (5%) percent increase through the LCM.
 - b. The Contractor has not achieved an incentive based on the LCM calculation.
- IV. LCM incentive payments paid by HCA will increase the maximum administrative fees amount as stated in Section 3.5, *Compensation*.

SAMPLE

Exhibit B – Contractor Reporting Requirements

1. External Independent Audit

The Contractor shall:

- A. Procure and pay for an annual external audit to be performed by a certified public accountant in accordance with generally accepted auditing standards.
- B. Provide a complete unaltered copy of the independent audit to HCA's Transportation Program Manager within thirty (30) days of receiving it.
- C. Include any and all management letters, footnotes, findings, recommendations, and all other relevant materials, or additional materials as requested by HCA.
- D. Maintain all documentation and make all documentation required by this Contract available for audit purposes.

2. Internal Financial & Operating Report

The Contractor shall:

- A. Document all brokerage transportation activities and operations.
- B. Submit a Financial and Operating Report to HCA annually by March 31st. This report shall include, at a minimum the following information:
 - I. Total Administrative Costs broken into:
 - a. Direct Cost Expenditures (broker manager, staff, salary, wages, compensation, bonuses, rent, etc.);
 - b. Indirect Cost Expenditures (i.e., G & A);
 - c. Certified copy of a Profit and Loss Statement, Balance Sheet and Income Statement, or equivalent for a 501(c) 3 or governmental entity.
 - d. Transportation Program Goals and information on the suggested use of retained earnings.
 - II. Total Direct Service Costs expenditures

3. Incident Reporting

The Contractor shall:

- A. Document and provide to HCA initial notification and any follow up using HCA's electronic incident reporting system. If the electronic incident reporting system is

unavailable, the Contractor shall utilize an HCA-provided standardized form with instructions on how to submit.

- B. Notify the HCA Transportation Program Manager within one (1) hour of the Contractor being notified or becoming aware of an incident involving a client who is the alleged victim or perpetrator of any of the following events:
 - I. An allegation of rape (Chapter 9A.44 RCW) or sexual assault (as defined in RCW 70.125.030);
 - II. Any violent act as defined in RCW 71.05.020 and RCW 9.94A.030 or any homicide or attempted homicide as defined in RCW 9A.32.010 that results in an arrest with charges or pending charges;
 - III. Any allegation of financial exploitation as defined in RCW 74.34.020;
 - IV. Any suicide or death;
 - V. An assault by a Contracted or Subcontracted Staff member; and
 - VI. Any injury to a Contracted or subcontracted staff member as the result of an assault by a client that requires any level "of medical intervention".
- C. Notify the HCA Transportation Program Manager, or designee, within one (1) working day of any incident that was referred to the Medicaid Fraud Control Unit by the Contractor or its Subcontractor.
- D. Utilize professional judgment in reporting incidents that fall outside the scope of this Section, in addition to all incidents described above.
- E. The Contractor shall inform all employees of the reporting requirements in RCW 26.44.030 and RCW 74.34.035 and ensure all such employees comply with the same reporting requirements applicable to HCA employees. This requirement applies regardless of whether these laws would apply to the Contractor's employees absent this contractual requirement.
- F. Provide additional information, when requested by HCA, regarding efforts designed to prevent or lessen the possibility of future similar incidents.

4. Vehicle and Accident Reporting

The Contractor shall:

- A. Provide initial notification of vehicle accidents using the HCA's electronic incident reporting system. If the electronic incident reporting system is unavailable, the Contractor shall utilize an HCA-provided standardized form with instructions on how to submit.

- B. Notify the HCA Transportation Program Manager, or designee, within one (1) hour of the Contractor being notified, or the first hour of the next business day, of Vehicle Accidents involving the transport of HCA clients, when the following occur:
 - I. Personal injury; or
 - II. Property damage in excess of two thousand dollars (\$2,000.00).

5. Customer Services Center Report

The Contractor must submit the Customer Services Center Report by the twentieth (20th) calendar day of the month following the month of service unless otherwise approved by the HCA Transportation Program Manager, or designee, with the exception of reports with identified specific delivery dates.

Using the definitions contained in Exhibit A, *Performance Metrics*, subsection 3, *Per Trip Service Cost Incentive*, the Contractor shall submit a customer services center summary report and backup documentation from the telephone system-generated report verifying the data contained in the summary report. The report should contain the telephone data for the normal business hours (Monday through Friday, for a minimum of 8 hours per day) as follows:

- A. Total number of incomplete calls that get busy signals;
- B. Monthly number of phone calls abandoned including average time to abandon and listed by:
 - I. Incoming; and
 - II. From queue.
- C. Total delay time (in hours, minutes, seconds) prior to being answered by an agent;
- D. Total number of calls completed (answered by an agent);
- E. Average call length;
- F. Average after-call work time;
- G. Average number of dally incoming phone calls, total number of incoming phone calls to the Contractor's Customer Services Center. Incoming phone calls do not include fax calls. Incoming phone calls do Include all calls, whether answered or not answered by the Contractor;
- H. The amount of telephone system inoperable time, in excess of one (1) hour, per incident; and
- I. Total number of calls answered by an agent within three (3) minutes.

6. Transportation Data Report

The Contractor must submit Transportation Data Report by the twentieth (20th) calendar day of the month following the month of service unless otherwise approved by the HCA Transportation Program Manager, or designee, with the exception of reports with identified specific delivery dates.

The Contractor shall submit transportation data that identifies:

- A. Number of trips provided;
- B. Percentage of trip verifications including summary information detailing any improprieties that were discovered, and the efforts taken to correct them;
- C. Number of trips denied organized by reason denied;
- D. Number of trips scheduled;
- E. Number of trips canceled or rescheduled with at least 24 hours' notice;
- F. Number of no-shows (i.e., cancelled at the door; the transportation provider attempted pickup);
- G. List of the "most costly" clients, (number to be determined by HCA); this list varies by service region;
- H. Meals and lodging costs;
- I. Number of trips completed by each transportation subcontractor, including:
 - I. Total dollar costs;
 - II. Mode; and
 - III. Transportation provider name.
- J. Rates table for all service providers of trips;
- K. By service region for each county:
 - I. Number of Trips;
 - II. Mode of Trips;
 - III. Service Cost of Trips;
 - IV. Administrative Cost of Trips;
 - V. Unduplicated number of clients served for:

- a. The reporting month; and
 - b. Fiscal year cumulative total.
- VI. Summaries of other transportation resources or funds that the Contractor receives when providing or authorizing trips within Washington State, using the form provided by HCA.

7. Complaint and Grievance Report

The Contractor must submit the Complaint and Grievance Report by the twentieth (20th) calendar day of the month following the month of service unless otherwise approved by the HCA Transportation Program Manager, or designee, with the exception of reports with identified specific delivery dates.

The Contractor shall submit complaint data that identifies:

- A. The number and percentage of complaints compared to total number of trips provided.
- B. Complaints by category:
 - I. Reported in aggregate;
 - II. By Provider; and
 - III. With Contractor's Department-approved categories.
- C. Additional information, including but not limited to specific complaints, as requested by HCA.

8. Minority and Women Owned Business Enterprises and Veteran Owned Business Report

The Contractor must submit a combined Minority and Women Owned Business Enterprises and Veteran Owned Business Report by February 1 of each year on the following:

- A. Minority and Women Owned Business Enterprise
 - I. The level of business done with Minority and Women Owned Business Enterprises (MWBE), either self-identified or certified by the Washington State office of Minority and Women's Business Enterprises (OMWBE); and
 - II. The efforts it has taken to encourage MWBE firms either self-identified or certified by OMWBE to participate in all Non-emergency Medical Transportation (NEMT) subcontracts, in accordance with the legislative findings and policies set forth in RCW 39.19. Equitable representation from the minority and women's business community is the goal. The OMWBE may be contacted at <https://omwbe.wa.gov/directory-certified-firms> to obtain information on certified firms for potential subcontracting arrangements or for information on how to become certified.

B. Veteran Owned Businesses

- I. The level of business done with certified Veteran Owned Businesses (VOB); and
- II. The efforts it has taken to encourage VOBs, including active or reserve members in any branch of the armed forces of the United States, to participate in all NEMT subcontracts in accordance with RCW.60A 190. Equitable representation from veteran business community is the goal. A list of certified veterans and servicemember owned businesses can be found at <https://www.dva.wa.gov/veterans-their-families/veteran-owned-businesses> to obtain information on certified firms for potential subcontracting arrangements or for information on how to become certified.

9. Quality Assurance Plan and Quality Assurance Summary Report

The Contractor must submit the Quality Assurance Plan and the Quality Assurance Summary report by February 1 of each year on the following:

A. Quality Assurance (QA) Plan

The QA Plan must state what improvements the Contractor will make including, but not limited to driver expectations, vehicle safety, and customer service over the upcoming year based on a February through January year timeframe.

B. Quality Assurance Summary Report

The QA Summary Report must include the following:

- I. Quality Improvement goals identified by the Contractor in the previous year's QA Plan;
- II. Summary of the progress made toward achieving the Quality Improvement goals identified in the previous year's QA Plan; and
- III. Description of how the information will be used to improve service delivery.

10. Subcontractor Fleet Inventory Report

The Contractor shall submit:

- A. A Monitoring Plan for monitoring subcontracted service providers that includes the name of the subcontractor to be monitored, dates of scheduled and completed monitoring visits to be delivered to HCA by February 1st annually.
- B. A Subcontractor summary report of vehicle inspections to be delivered by February 1st, and August 1st that includes:
 - I. Provider name, the number and type of vehicles used;

- II. Volunteers, the number of volunteers;
- III. Gas vouchers, the name and number of participating stations;
- IV. The date(s) of the last completed monitoring visit(s); and
- V. The date(s) of the next scheduled monitoring visit(s).

11. Other Reports

In the event that HCA requests the Contractor to submit a report that is not cited above, the Contractor shall submit the report according to the following timeline:

- A. Within five (5) business days if requested by HCA in writing and;
- B. If HCA requests that such report be submitted in a specific format, the delivery date to HCA will be negotiated.

SAMPLE

Exhibit C – Customer Service Center

1. Overview

The Contractor shall:

- A. Receive and process all requests for non-emergency medical transportation services for HCA's clients.
- B. Manage overall day-to-day operations necessary for the delivery of cost-efficient, appropriate non-emergency medical transportation services.
- C. Maintain appropriate records and systems of accountability to report to HCA.
- D. Meet the minimum federal requirements, as defined in 42C.F.R. § 440.170, for provision of transportation services, as well as applicable Department rules.

2. Customer Service Center Requirements

The Contractor shall:

- A. Provide a toll free number for scheduling medically necessary transportation. A local telephone number may also be provided for those clients within the local calling area.
- B. Provide customer services that are professional, prompt, courteous, customer-friendly, and responsive to clients.
- C. Promptly answer telephone calls placed to the Contractor's Customer Service Center during normal business hours, from Monday through Friday, eight (8) hours a day. The Contractor may need to surpass these minimums in order to assure adherence to service standards.
- D. Accept trip requests by phone and facsimile transmission and may accept trip requests by secure online website or other secured electronic means that meet the security requirements as established by HCA.
- E. Give HCA written notice of any requested day(s) of closure at least thirty (30) calendar days prior to the requested day of closure. HCA reserves the right to deny these requests.

F. The Contractor may:

- I. Close the Customer Service Center in observance of the following eleven (11) Washington State observed legal holidays as defined by RCW 1.16.050:

New Year's Day, Martin Luther King's Day, Presidents' Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and the Friday following, and Christmas Day.

- II. Use a phone answering machine or electronic voice mail as options to the client; however, clients shall be given the option of staying in a queue to reach a staff person.
- III. Utilize an automated pre-appointment call-out system (i.e., a system that automatically reminds clients of their upcoming scheduled trips).

3. Emergencies

The Contractor shall:

- A. Not authorize Emergency transportation.
- B. Ensure clients in an Emergency are directed to the appropriate Emergency resources.
- C. Refer Emergency calls to 911, or an Ambulance, as necessary.
- D. Maintain local referral sources with whom to discuss Emergency situations, such as a local emergency management department or local Medic-One resource(s).

4. Staffing

The Contractor shall:

- A. Have diverse staff representative of, or consistent with, the demographic (including client language and ethnicity) pattern of the Service Region to the extent practicable.
- B. Have personnel policies that conform to all federal, Washington State, and local statutes and ordinances.
- C. Ensure clients can request a review of a decision on transportation services by one of the key personnel. This requirement must be written and included in the policies and procedures manual.
- D. Establish and maintain a client ombudsperson position or a properly trained staff person whose responsibility is to resolve client complaints. The Contractor shall provide the ombudsperson's contact information to HCA's Transportation Program Manager upon the initial establishment of the position and upon any changes to the position thereafter.
- E. Remove any of the Contractor's employees from contact with clients when the Contractor determines that:
 - I. The employee is not handling calls or scheduling trips in accordance with the performance standards of this contract, or
 - II. Prior sanctions levied against the employee have not resulted in improved performance.

- F. Maintain and send to HCA's transportation staff upon request a list of current Contractor employees assigned to the performance of this Contract, including employee names, titles, supervisory relationships, and an organizational chart.
- G. Provide staff to ensure that services to persons who are hearing impaired are comparable to services available to clients who are not hearing impaired. This may include use of the Washington State Relay or TDD equipment.
- H. Train customer service representatives in the area of dispute resolution.

5. Trip Request

The Contractor shall:

- A. Respond to transportation inquiries and requests made by HCA's clients and Guardians, parents of minor clients residing in the Contractor's Service Region, Department approved providers, and other Washington Non-Emergency Medical Transportation Contractors.
- B. Accept and process requests for trips when requested at least two business days in advance for a regularly scheduled trip when:
 - I. Requested Monday through Friday, excluding holidays, and
 - II. Up to fourteen (14) days in advance of the scheduled trip.
- C. Accept and process requests for trips when requested with less than two (2) business days' notice for an unscheduled trip when requested by a client in need of urgent care or a first-time caller.

6. Trip Authorizations

The Contractor shall:

- A. Schedule transportation services to be provided through subcontractors when the Contractor has determined that:
 - I. The individual requesting transportation services, or for whom transportation services are being requested, is an eligible client;
 - II. The healthcare service meets the requirements as established in WAC 388-501-0050 through 501-0065 and the NEMT portion of Chapter WAC 546 and is included in the client's benefit services package; and/or as determined by HCA; and
 - III. The medical professional who will provide care to the eligible client.

Eligible client is defined as:

- a. An enrolled participating medical provider with HCA as established in WAC 182-502-0010.
- b. An enrolled participating provider with an HCA Managed Care plan.
- c. Authorized by the state contracted Regional Support Network to provide covered mental health services.
- d. A certified Chemical Dependency Provider.
- e. An enrolled participating Medicare provider.
- f. A provider in the network covered by the client's primary insurance where there is third party insurance.
- g. A provider performing services paid for by a third party, Veterans Administration (V.A.) Shriner's, charitable or other voluntary program.
- h. Has not had their Medicaid Core Provider Agreement terminated by HCA.

B. Not transport clients for Involuntary Treatment Act (ITA) admissions.

7. Selection of Mode of Transportation

The Contractor shall:

- A. Ensure that client resources and/or lowest cost resources are used first, based on each client's mobility status and personal capabilities. This includes public transit systems, volunteers, client mileage reimbursement, gas vouchers, or other low-cost means of transportation.
- B. Document reasons for not using the lowest cost provider or services in the assigned Service Region.
- C. Document in the client's file a client's transportation needs based upon their mobility status and personal capabilities including notations identifying when staff need to contact a supervisor or lead worker when a challenging client (e.g., client that is confused, has dementia; or challenging behavior) contacts the center.
- D. Develop a "shared ride" rate structure for multi-passenger grouped trips that assures the possibility of a lesser fee for all additional passengers.
- E. Establish a method of effectively identifying, scheduling, and coordinating standing orders or recurring trips.
- F. Make available a variety of modes of client transportation, including:
 - I. Bus passes, tickets or fares;

- II. Grouped or shared-ride vehicle;
 - III. Travel expenses for client associated vehicles (i.e., mileage reimbursement, gas voucher(s), or gas cards) at the limits set by the HCA Transportation Program Manager, or successor;
 - IV. Volunteer drivers;
 - V. Tickets, such as commercial ground, rail, and air;
 - VI. Tickets through common carriers, such as airport shuttles, charter buses, and intercity buses;
 - VII. Wheelchair van;
 - VIII. Taxi;
 - IX. Ferries or water taxi;
 - X. Other Transportation Expenses:
 - a. Lodging and meals;
 - b. Pharmacy Access Services (State Funded prescription delivery);
 - c. Parking;
 - d. Tolls.
- G. Ensure each driver of a Client Associated Vehicle has the following and provides the Contractor with legible copies of the following:
- I. A valid driver's license;
 - II. A valid vehicle registration;
 - III. Valid proof of insurance for the vehicle/operator;
 - IV. Additional documents for client associated and volunteer vehicles when reimbursement is requested:
 - a. Mileage records;
 - b. Gas vouchers;
 - c. Parking expenses;
 - d. Tolls; and
 - e. Ferries.

8. Attendants, Escorts, Guardians

The Contractor may arrange and purchase appropriate travel if a client needs an attendant, Escort or Guardian to accompany them on a specific trip for purposes of health and safety.

The Contractor shall not:

- A. Authorize or pay for a client's trip if an attendant, Escort or Guardian is needed and such a person is not available to travel with the client.
- B. Pay the wages or salary of an attendant or escort without the written authorization of HCA.
- C. Be responsible to provide an attendant or escort, if the medical facility or caregiver has the legal responsibility to provide an attendant or escort.
- D. Pay the wages of a Guardian.

9. Drivers' Assistants

The Contractor may authorize the use of Drivers' Assistant(s) to assist clients who may require additional assistance with loading and unloading during a trip.

10. Daily Computerized Trip Log

The Contractor shall:

- A. Establish and maintain a daily computerized trip log that documents trips requested for clients to and from approved healthcare services, and that justifies the expenditures of transportation resources. The daily computerized trip log shall include at a minimum, the following:
 - I. Client or Requester name (both if different);
 - II. Date and time of contact or request;
 - III. Date and time for the provision of the requested transportation;
 - IV. Pick-up location;
 - V. Destination;
 - VI. Client's county of residence;
 - VII. Each client's ProviderOne client Number;
 - VIII. Each client's mobility status;
 - IX. Each client's personal capabilities. This does not usually mean diagnosis, procedure or treatment codes;

- X. Availability of other transportation resources;
- XI. Approval or denial of transportation;
- XII. Level of transportation approved, if appropriate;
- XIII. Justification of level of transportation and cost authorized;
- XIV. Name of Contractor's staff approving or denying request;
- XV. Assigned provider of transportation; and
- XVI. Coverage status of medical event(s).

SAMPLE

Exhibit D – Client and Trip Eligibility Verification

1. Pre-trip Review and Verification

The Contractor shall:

- A. Verify the eligibility of each client requesting brokered transportation and the medical eligibility of each trip by reviewing the client's eligibility to receive transportation services provided under this Contract by requiring one of the following:
 - I. Presentation of a valid client services card;
 - II. Verification from eligibility files supplied by HCA; and
 - III. Other appropriate sources, such as:
 - a. Medical Eligibility Verification (MEV) or successor;
 - b. When available, through the Internet, web portal, or "swipe card" systems;
 - c. Documentation from any authorized HCA representative; or
 - d. Documentation from HCA's contracted programs and agencies.
- B. Perform and document a pre-trip verification review by verifying the medical Appointment for a Covered Service with the service provider on a minimum of 10 percent (10%) of scheduled trips prior to transportation services being provided.

2. Transportation Needs

The Contractor shall:

- A. Verify that the client needs transportation services through use of an "electronic template" (Database Script) which guides the process as an integral part of receiving a call from the client. The Contractor shall submit a copy of the electronic template or Database Script to the HCA Transportation Program Manager, or designee, within ten (10) working days of contract execution. The transportation needs test shall include at a minimum:
 - I. Verification from the requesting client that they have no other available means of transportation to/from healthcare services;
 - II. Verification that the transportation is not covered by other programs or funding;
 - III. Verification that the healthcare services to be provided during the Appointment are covered by the client's benefit services package;

- IV. Verification that the requested transportation is to/from a Local Healthcare Provider of Covered Services unless otherwise exempted or dictated by HCA's rules or policy; and
- V. Verification that the transportation that may be authorized is provided to and from a service destination identified and covered by HCA. Contractors shall receive technical assistance on specific programs and Covered Services.

3. Post-trip Review and Verification.

The Contractor shall:

- A. Perform and document a post trip verification review on a minimum of ten percent (10%) of trips and include problem areas such as after-hours transportation.
- B. Verify that "routine trips" are for legitimate medical services in a manner that:
 - I. Is consistent with Exhibit D, *Client and Trip Eligibility Verification*; and
 - II. Asks for only minimally necessary information to accomplish each verification.

SAMPLE

Exhibit E – Transport Vehicle Standards

1. Overview

The Contractor shall ensure that clients receive brokered transportation services that are safe and reliable.

The Contractor shall ensure all vehicles and components used for the performance under this Contract meet or exceed the standards in this exhibit.

2. Vehical Regulatory Requirements

The Contractor shall:

A. Require that all vehicles used in the transport of clients, except privately owned, meet or exceed the following regulations and safety standards, including their successors:

- I. Licensing requirements of the Washington Department of Licensing (DOL);
- II. Requirements of the Washington Utilities and Transportation Commission (WUTC);
- III. State and federal safety standards; including safety belt use requirements and exemptions as established in RCW 46.61.688;
- IV. Regulations of the Americans with Disabilities Act (ADA); and
- V. Contract requirements.

B. Require that vehicles which fail to meet the standards:

- I. Be immediately removed from service; and
- II. Be re-inspected before they are eligible to be used to provide transportation services for clients under this Contract, for the specific mode for which they were-removed.

3. Vehicle Inspections

The Contractor must:

A. Preliminary Schedule of Inspections

Provide HCA with a preliminary schedule of inspections within the first thirty (30) days of the Contract's start date and by February 1 thereafter as follows:

- I. On-Site Inspections must be conducted every other year, on odd years. For example, February 1, 2017, etcetera; and

- II. Desk Audit Inspections must be conducted every other year, on even years. For example, February 1, 2016, February 1, 2018, etcetera.

B. Initial Inspections

Inspect all vehicles, except those that are Client Associated Vehicles, to ensure that all regulatory requirements are met prior to their initial use under this Contract.

C. On-Site Vehicle Inspections

Perform on-site Vehicle Inspections after that on ten percent (10%) of the vehicles of each provider every other year, on odd years, as stated above in subsection 3, A. of this exhibit.

- I. On-site inspections must include five percent (5%) planned inspections and five percent (5%) unannounced random inspections.
- II. Inspect the remainder of the fleet if, during the course of the inspection, more than five percent (5%) of all inspected vehicles in a service provider's fleet do not meet regulatory requirements.
- III. Vehicles in a provider's fleet that are inspected must be rotated with each inspection regardless of whether the inspection is done on-site or by a desk audit.

D. Vehicle Desk Audit Inspections

Perform desk audit inspections on a minimum of ten percent (10%) of the vehicles of each provider every other year, on even years. For example, years 2016, 2018, etcetera.

- I. Inspect the remainder of the fleet if more than five percent (5%) of the inspected vehicles in a service provider's fleet do not meet regulatory requirements.
- II. Multiple complaints received against a service provider during a sixty (60) day period must also initiate desk audit inspections.
- III. Immediately remove vehicles not passing inspections. Each vehicle must be reinspected before it is eligible to return to service.
- IV. Confirm the condition of the vehicle(s) if a client or a healthcare facility complains about the condition of a specific vehicle(s). Vehicles found deficient must immediately be removed from performing services under this Contract and must remain so until deficiencies are corrected and the vehicle(s) is re-inspected. The Contractor must determine if the vehicle is eligible to return to service.
- V. Document inspections completed by other agencies. Inspections completed by other agencies will suffice as long as the Contractor has access to the

inspection reports and the standards set forth in this Contract are met or exceeded.

4. Vehicle Requirements

All vehicles used in the performance of this Contract, except client associated and transit, shall meet or exceed the following requirements, and at a minimum shall have:

- A. A two-way communication system (two-way radio or cell phone are acceptable) linking all vehicles used in delivering the services under this Contract with the transportation provider's major place of business (dispatcher).
 - I. The two-way communication system shall be used in such a manner as to facilitate communication and minimize the time in which out-of-service vehicles can be replaced or repaired.
 - II. A vehicle with an inoperative two-way communication system shall be placed out-of-service until the system is repaired or replaced.
 - III. Two-way communication devices, including hands-free, utilized in the performance of this Contract shall be utilized in accordance with RCW 46.61.667.
- B. Climate control systems adequate for the heating and ventilation needs of both driver and passengers. Any vehicle with a non-functioning climate control system shall be placed out of service until repaired.
- C. Functioning, clean, and accessible seat belts for each passenger seat position. Seat belts shall be stored off the floor when not in use. The Contractor shall identify providers that have seatbelt extenders and shall assure an effort is made to arrange for vehicles with seatbelt extenders when requested by clients.
- D. Functioning door handles on all doors.
- E. An accurate speedometer and odometer.
- F. Functioning interior light(s) within the passenger compartment.
- G. Adequate sidewall and ceiling coverings.
- H. Two exterior side view mirrors, one on each side of the vehicle.
- I. One interior mirror for monitoring the passenger compartment.
- J. Clean exteriors that are free of broken mirrors or windows, excessive grime, rust, chipped paint or major dents that detract from the overall appearance of the vehicle.
- K. Clean interiors that are free from torn upholstery or floor covering, damaged or broken seats, protruding sharp edges and free of dirt, oil, grease or litter.

- L. The transportation provider's name and vehicle number prominently displayed.
- M. A bottom seat cushion for each seat.
- N. Devices in place to secure wheelchairs or other personal mobility devices.
- O. Capability of securing child safety seats that meet applicable state and federal guidelines as may be required by State or Federal law.

5. Scent Free Vehicles

The Contractor shall:

- A. Ensure an effort is made to arrange for scent-free vehicles for every transport mode when requested by client(s).
- B. Encourage providers to reduce smoke residue in vehicles.

SAMPLE

Exhibit F – Driver Standards and Expectations

1. Driver Standards

The Contractor shall ensure that all drivers:

- A. Act in a professional manner at all times, and are appropriately licensed, qualified, competent, and courteous.
- B. Protect client confidentiality, avoid offensive language/topics, maintain an appropriate professional relationship, and treat clients with respect.
- C. Wear, or have visible, easy-to-read proper company identification.
- D. Be clean and maintain a neat appearance at all times.
- E. Exit the vehicle to open and close vehicle doors when passengers enter or exit the vehicle. This shall apply to all commercial drivers.
- F. Provide assistance as necessary to or from the main door of the place of destination.
- G. Identify and announce their presence at the specified pick-up location. If a curbside pick-up is not apparent or appropriate drivers shall announce their presence to facility staff.
- H. Assist the passengers in being seated, including the fastening of the seat belt when necessitated by the client's condition or if requested.
- I. Confirm, prior to allowing any vehicle to proceed that:
 - I. Passengers are properly secured by their seat belts
 - II. Wheelchairs are properly secured to the vehicle
 - III. Passengers in wheelchairs are properly secured in their chairs
- J. Provide an appropriate level of assistance to clients when requested, as noted in the client's file, or when necessitated by the client's mobility status and personal condition, including:
 - I. Curb-to-curb
 - II. Door-to-door
 - III. Door-through-door
 - a. For residences, this applies to the exterior door of the residence

- b. For healthcare facilities, this applies to the street level main reception desk of the facility
 - IV. Hand-to-hand
 - a. For residence, this applies to exterior door of residence.
 - b. For healthcare facilities, this applies to the street level main reception desk of facility.
 - V. Passage up and down outside stairs, without placing the client or driver's personal health and safety in danger
- K. Provide support and direction to passengers as required by the client's mobility status and physical condition, such as:
- I. Movement of wheelchairs and mobility-limited persons as they enter or exit the vehicle using the wheelchair lift; and
 - II. Stowage by the driver of mobility aids and folding wheelchairs.

2. Prohibitions

The Contractor shall require drivers or driver's assistants shall not:

- A. Make sexually implicit or explicit comments, or solicit sexual favors, or engage in sexual activity.
- B. Respond to or encourage a passenger's sexually implicit or explicit comments, or solicitation of sexual favors, or attempted engagement in sexual activity.
- C. Solicit or accept controlled substances, alcohol, or medications from clients or passengers.
- D. Solicit or accept money or other items of value from clients or passengers.
- E. Use alcohol, narcotics, or controlled substances, or be under their influence while on duty. Prescribed medication or other substances which have the potential to adversely affect job performance can be used by a driver as long as:
 - I. The subcontractor has written documentation from a medical provider licensed to prescribe that the driver's current prescribed medication(s) and other substances which have the potential to adversely affect job performance will not impact the ability of the driver.
 - II. The drivers' duties can still be performed in a safe manner.
- F. Eat food or consume any beverage, other than water in a closed container, while operating the vehicle or while involved in client assistance.

- G. Give food or beverages to clients.
- H. Smoke in the vehicle when clients are present. The no-smoking rule also applies to all passengers, including clients who smoke. To the extent possible drivers shall ensure no smoking in the vehicle for a minimum of fifteen (15) minutes prior to picking up a client under this contract.
- I. Wear any type of headphones while on duty.
- J. Be responsible for passenger's personal items.
- K. Operate a moving motor vehicle while holding a wireless communication device subject to the requirements established by RCW 46.61.667.
- L. Attempt to influence or restrain clients, their families/Guardians, or medical providers from making complaints or reports regarding transportation. This includes refusing to give contact information.
- M. Attempt to influence clients, their families/Guardians, or medical providers to obtain additional business.

3. Driver Qualifications, Expectations and Training

The Contractor shall ensure that:

- A. Drivers have a valid driver's license, ADR (Abstract of Driving Record) and insurance before providing client services.
- B. A full and satisfactory initial fingerprint level criminal history background check through the Washington State Patrol (WSP) is completed and documented for all new drivers and volunteers and completed every three (3) years thereafter. During the intermittent years the Contractor shall obtain a Washington Access To Criminal History (WATCH) report through the WSP. These background checks must qualify the individual for unsupervised access to children and/or Vulnerable Adults as defined by RCW 43.43.830(14) while performing work under this Contract.
 - I. If Contractor is awaiting a completed and documented fingerprint level criminal history background check that qualifies a new driver or volunteer for unsupervised access to children and/or Vulnerable Adults and the Contractor needs to have the new driver or volunteer to begin providing services under this contract; then the Contractor may obtain a WATCH report through the WSP. If the Contractor's Region borders Idaho and/or Oregon, the Contractor may obtain a similar report through an appropriate governmental agency.
- C. The RCW 43.43.830, Background Checks, has been reviewed prior to the performance of this Contract. It can be accessed at <https://apps.leg.wa.gov/RCW/default.aspx?cite=43.43.830> , or successor, and local

regulations if any, for disqualifying convictions. The DSHS Secretary's List of Crimes and Negative Actions has been reviewed before allowing a driver to provide medically necessary transportation services to an HCA client. The DSHS Secretary's List is outlined in WAC 388-113-0020 and can be accessed at <https://apps.leg.wa.gov/WAC/default.aspx?cite=388-113-0020> .

- D. Commercial drivers performing work under this Contract are trained in:
 - II. The proper installation of child safety seats.
 - III. The use of child safety seats, both those with the vehicle and others, in case the child's parent or Guardian supplies a child safety seat.
- E. Each driver performing services under this contract receives the following recommended training in addition to the required training:
 - I. Cardio-pulmonary resuscitation (CPR)/First Aid;
 - II. Passenger assistance training, such as ADAPT or PAT;
 - III. Fire suppression;
 - IV. Defensive driving.
 - V. Have ready access to all documents listed in this Section of this Exhibit.
- F. Any driver or dispatcher is prohibited from providing or facilitating any service under this Contract if there is any indication that the driver or dispatcher may pose a risk to HCA-clients.

4. Driver Complaints

If the Contractor or the transportation provider receives complaints regarding a particular driver and it is determined that the driver may pose an imminent risk to clients, the Contractor shall:

- A. Direct the subcontractor to immediately remove that driver from transporting clients, pending further review.
- B. Investigate the matter further, to determine the level of risk, if any, to clients posed by that driver.
- C. Determine further steps to be taken, which may include:
 - I. Further Driver training
 - II. Selective assignments so that the Driver poses a lower risk to clients
 - III. Temporary suspension

- IV. Permanent suspension from driving clients
- V. Referral to civil authorities, such as licensing or law enforcement as necessary

D. Require the subcontractor to temporarily or permanently remove the driver from performing any services under this Contract, if the Contractor determines that the subcontractor's actions or lack of actions pose a risk to clients.

5. Complaint Initiated Verifications

When a client makes a complaint about the qualifications, safety or suitability of a driver, the Contractor shall:

- A. Verify the qualifications of and investigate the safety and suitability of the involved driver.
- B. Comply with the requirements of Section 4, B. of this Exhibit;
- C. Immediately remove drivers found not meeting the terms of this Contract or applicable regulatory requirements from serving clients.
- D. Prohibit drivers from transporting clients until deficiencies are documented, corrected, and the driver is re-verified.

6. Driver Verifications

The Contractor shall:

- A. Verify that drivers used in the provision of services under this Contract meet the terms and conditions of this Contract and applicable regulations. Driver Verifications may be done simultaneously with On-Site Vehicle Inspections and Desk Audit Inspections as outlined in Exhibit E, *Transport Vehicle Standards*.
- B. List of Drivers

The Contractor shall:

- I. Keep, by subcontractor, a list of drivers used for this Contract. This list shall be updated monthly. For each driver, the Contractor shall note the last date that the driver met the qualifications required by this Contract.
- II. Ensure that each qualification met can be verified by original documentation.
- III. Add other requirements to this list as appropriate.

C. Initial Verification

The Contractor shall verify that each driver meets the requirements of this Contract, including the appropriate regulatory requirements, before that driver serves Clients under this Contract.

D. Annual Verifications

Driver Verifications must be conducted annually, on-site on odd years and by desk audit on even years.

The Contractor must:

I. Preliminary Schedule of Driver Verifications

Provide HCA with a preliminary schedule of driver verifications within the first thirty (30) days of the Contract's start date and by February 1 of each year thereafter;

II. Initial Driver Verification(s)

Verify all drivers' qualifications, except those pertaining to Client Associated Vehicles, to ensure that all requirements are met prior to their initial drive under this Contract.

Driver verification must include, but not be limited to, a review of the abstract of driving record, training and testing as required by federal and/or state regulations, criminal background checks, driver's license, vehicle and driver insurance, and vehicle registration, as applicable.

III. On-Site Driver Verification(s)

Perform On-Site Driver Verification(s) on ten percent (10%) of the drivers of each service provider every other year, on odd years, as stated above in this section. Driver verifications must include at a minimum, both on-site verifications involving face-to-face contact with the drivers and also verifications of billings to assure that performing drivers are properly qualified under this Contract.

- a. Verify the remainder of the drivers if, during the course of the verification, more than five percent (5%) of the drivers verified of the service provider do not meet the contracted requirements.
- b. On-Site Driver Verifications must include five percent (5%) planned inspections and five percent (5%) unannounced random inspections.
- c. Drivers of each service provider must be rotated with each inspection regardless of whether it is done on-site or by desk audit.

E. Desk Audit Driver Verifications

Perform driver verifications by desk audit of all driver-related documents on a minimum of ten percent (10%) of the drivers of each service provider every other year, on even years, as stated above in this section.

- I. Verify the remainder of the drivers if more than five percent (5%) of the inspected drivers of a service provider do not meet contracted requirements; and
- II. Multiple complaints received against a driver(s) during a sixty (60) day period must also initiate desk audits.
- III. Drivers not passing these verifications must immediately be removed from serving clients. Each driver must be re-verified before they serve clients under this Contract.

SAMPLE

Exhibit G – Transportation Performance Standards

The Contractor shall ensure clients receive timely transportation services as described in 42 C.F.R. § 440.170. The Contractor shall comply with the transportation performance standards as presented in this exhibit.

1. Pickup Wait Time

The average waiting time for a scheduled pickup going to an Appointment shall not exceed fifteen (15) minutes. Actual waiting time shall be thirty-minutes or less. A client, under no circumstances, shall arrive more than thirty-minutes prior to Appointments, unless this is done at the client's request.

2. Drop-off Time

The Contractor shall ensure clients arrive on-time for their Appointments. The Contractor shall ensure that clients are not delayed in arriving at a medical Appointment due to a delay caused by either the Contractor or a subcontracted provider.

3. Return Trip Wait Time

The average waiting time for a scheduled return trip, after an Appointment, shall not exceed thirty (30) minutes.

4. Will-Call

Will-Call trips are not held to the standards listed above. Clients choosing Will-Call services shall be directly notified by the Contractor of the possibility of significantly longer wait times. Will-Call trips, being immediate in nature, may result in the availability of fewer resources.

5. Multi-Passenger

In normal driving conditions clients shall not remain in the vehicle for more than forty-five (45) minutes longer than the average travel time for transport for an individual client using that mode, from the point of pick-up to the destination. The Contractor shall require the dispatcher/provider to notify the Contractor of any delay more than forty-five 45 minutes, the alternative schedule, and of any alternate pick-up arrangements in these situations.

6. Exceptions

- A. Exceptions to the above times may be made for trips with pick-up or destinations outside the client's local service region.
- B. Exceptions may be due to unusual situations such as exceptional distances in rural areas or other situations beyond the control of the Contractor.
- C. Exceptions shall be documented in the client's file.

7. Delays

- A. The Contractor and subcontractor shall not be reimbursed for trips where the client arrives late for their Appointment, such that the Healthcare Provider cannot provide Covered Services. The Contractor may consider reimbursement when the late arrival was not the fault of the transportation provider, such as for traffic accidents that impeded all traffic which could not be anticipated (this does not include construction zones that slowed traffic).
- B. In the event a delay renders the client late for their Appointment or causes them to miss the Appointment, details of the occurrence and resolution must be documented in the client's file and recorded in the utilization database.

SAMPLE

Exhibit H – Policies and Procedures Manual

The Contractor shall develop written policies and/or procedures, to be submitted to HCA when requested, that include the following:

1. Fixed-route Public Transportation

Written procedures for determining whether fixed-route public transportation is accessible to, and appropriate for, clients requesting transportation services. Such procedures will take into account the distance from scheduled stops at facilities or service providers, the age and disability of the clients, any physical or cognitive impairment, inclement weather conditions, and other pertinent factors.

2. Confidentiality and Nondisclosure

Written internal policies and/or procedures for ensuring compliance with all state and federal Confidentiality and Nondisclosure requirements.

3. Grievance and Complaints

Policies and/or procedures that describe the Contractor's oversight procedures to monitor and resolve the grievance and complaint process, that include at a minimum:

- A. Procedures for registering and responding to complaints and grievances in a timely fashion;
- B. Documentation of the complaints or grievances;
- C. Procedures for resolving the complaint or grievance;
- D. A review of transportation-related decisions by key personnel; and
- E. Maintenance of records of all grievances and complaints received.

4. Driver Expectations and Transportation Vehicle Standards

Policies and procedures for monitoring subcontracted transportation providers to ensure driver expectations and transportation vehicle standards are met as established in Exhibits E, *Transport Vehicle Standards*, and F, *Driver Standards and Expectations*.

5. Quality Assurance Plan

Policies and procedures for monitoring and obtaining feedback from clients and Healthcare Providers on the quality of the transportation services provided. The quality assurance plan shall include, but not be limited to, driver expectations, vehicle safety, and customer service.

6. Timeliness

Policies and Procedures for monitoring the timeliness of the transportation services provided as required by 42 CFR 440.170, Critical Medical Conditions.

Policies and Procedures for providing transportation to clients who need critical medical care, such as dialysis, during adverse weather conditions or earthquakes.

7. Mandatory Reporting

The Contractor shall follow policies and procedures regarding mandatory incident reporting and referrals. These policies must address the Contractor's oversight and review of these incidents and shall assure that staff has proper orientation and training to respond to, report, and prevent incidents. These policies and procedures will be provided to HCA for review and approval upon request.

8. Client Missed Scheduled Pickups

- A. Procedures for occurrences that result in the client missing a scheduled pickup time through no fault of the client.
- B. Procedures to notify, and if appropriate reschedule, a client when a medical Appointment or treatment has gone past the time of the original scheduled pick-up and the subcontracted provider has left the pick-up location.

9. Noncompliant Behavior

- A. Policies for clients whose documented noncompliant behavior requires corrective action. These corrective action policies shall not allow for the suspension or termination of services to a client but shall offer restricted service modes when necessary. The restriction to fewer modes shall be time limited with a stated time for review of this action, and with the expectation of lifting the restriction at a later date.
- B. The Contractor shall send written notices to clients within three (3) Business Days after the effective date of a mode change due to noncompliance. A copy of the Contractor's written notice form shall be forwarded to the HCA Transportation Program Manager, or designee, for approval prior to sending to the client.

10. Corrective Action

Corrective action procedures in place to address the behavior of subcontractors. These policies shall include corrective actions for drivers, as established in Exhibit F, *Driver Standards and Expectations*.

11. Updates of Written Materials

The Contractor shall update all written materials within fifteen (15) business days after receiving a NEMT program or policy change.

Exhibit I – Subcontracts with Transportation Service Providers

In addition to the requirements provided in section 4.36, *Subcontracting*, of this Contract, the Contractor shall provide transportation services through written and signed subcontracts that include at a minimum, the following terms and conditions:

1. Contract Elements

State clearly services to be performed by the subcontractor.

2. Mandatory Elements

A. Non-discrimination Policy

Contract language that requires compliance with State and federal non-discrimination policies.

B. Client Confidentiality

- I. Contract language that requires only minimal information necessary to provide services shall be requested of clients.
- II. That any client information gained shall be protected from unauthorized disclosure, in order to ensure confidentiality of client information and medical records.

C. Parties to the subcontract

- I. Parties to the subcontract shall be clearly identified with contact information including name, address, telephone, fax, and email.
- II. Subcontracted drivers shall be considered employees of the subcontractor and not of the Contractor or the State of Washington.
- III. Drivers of participating Indian Tribes shall be considered employees of the participating Tribes and not of the Contractor or the State of Washington.
- IV. Subcontractor shall maintain written documentation to do business in State of Washington.

D. Fraud and Abuse

Contract language that requires subcontractors to have procedures in place for the prevention, detection, and reporting of suspected fraud and abuse.

E. Description of Payment

Contract language that describes the payment method, including applicable rates.

F. Remittance to Subcontractors

Contract language that requires remittance amounts are due to transportation service providers no later than ten (10) calendar days after receipt of the Contractor's monthly payment by HCA for transportation services.

G. Quality Assurance

Contract language that requires a quality control clause requiring a quality assurance plan.

H. Subcontractor Insurance

The Contractor must ensure that all subcontractors have the minimum required insurance coverage determined by their regulatory agency or the same types and amounts required of the Contractor in this contract.

By requiring insurance of the Subcontractor with the specified types and amounts according to the type of designated transportation provider the Subcontractor is, the State of Washington, HCA, and the Contractor do not represent that the coverage and limits specified will be adequate to protect the Subcontractor. Such coverage and limits will not be construed to relieve the Subcontractor from liability in excess of the required coverage limits. It is the responsibility of the Subcontractor to determine if the minimum insurance requirements are appropriate for their unique situation. The Contractor is advised to consult with their legal counsel and insurance agent regarding the types and coverage limits appropriate.

Requirements for business auto insurance and other driver insurance are as follows:

I. Non-Publicly Regulated Transportation Providers

The Contractor must ensure that providers have and maintain insurance with the same types and limits of coverage as required of the Contractor under this Contract. See section 3.11, *Insurance*, of this Contract.

II. Publicly Regulated Transportation Providers

- a. For subcontracted transportation providers, where their rates and operations are publicly regulated through RCW 46.72, Transportation of Passengers in For Hire Vehicles, the Contractor must ensure no less than the minimum insurance standards set by law. The Department of Licensing (DOL) requires that for-profit or for-hire business entities have a For-Hire license and For-Hire vehicle certificate.
- b. For subcontracted transportation providers where their rates and operations are publicly regulated through the Washington Utilities and

Transportation Commission (UTC) or other regulatory agency, Subcontractors must maintain no less than the minimum insurance standards set by law and comply with state law and regulations of the responsible regulatory agency.

III. Client Associated Vehicles and Volunteer Vehicles

The subcontractors must ensure that the private vehicles used to provide nonemergency medical transportation meet the minimum insurance and licensing standards required by state law.

I. Access to information

Contract language that requires the Contractor have access to information and records for six (6) years following the expiration or termination of the subcontract, sufficient to document services provided under this Contract, including billing and accounting information.

J. Prohibition against additional payment

Contract language that prohibits subcontractors from seeking payment from HCA, or any of its clients, or any other Contract service provider, for services performed under the subcontract.

K. Ethical Conduct

Contract language that prohibits subcontractors from offering or making any payment or other form of remuneration, including any kickback, rebate, cash, gifts, or service in kind to the Contractor in order to influence referrals or subcontracting for transportation provided to client. See 42 CFR Section 170.

L. Reimbursement to Subcontractors

Contract language that requires negotiating a fair rate, for reimbursement for an authorized and provided trip when the scheduled healthcare Appointment for a trip where services are not provided due to no fault of the subcontractor.

M. Rates Adjustment Schedule

Contract language that authorizes rate adjustments at least quarterly.

N. Appeals Process

Contract language that allows subcontractors an appeals process.

O. Unauthorized Driver Payments

Contract language that requires the subcontractor to return, within thirty (30) days of Contractor's or subcontractor's discovery, any and all payments for trips delivered by an unauthorized driver and/or vehicle.

P. Licenses and Certifications

Contract language that requires the subcontractor to hold all necessary licenses, certifications, and/or permits as required by law for performing the activities under this Contract.

Q. Other

Contract language that complies with employment liability insurance, worker's compensation, unemployment insurance, social security, and any other state and local taxes applicable to the transportation service providers.

SAMPLE

EXHIBIT J – DATA USE, SECURITY, AND CONFIDENTIALITY

1. Definitions

In addition to the definitions set out in section 2, *Definitions*, of the Contract, the definitions below apply to this Exhibit:

“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, that involves the use or disclosure of protected health information (PHI). Any reference to Business Associate in this Exhibit includes Business Associate’s employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.

“Business Associate Agreement (BAA)” means the *HIPAA Compliance* section of this Exhibit, Section 8, and includes the Business Associate provisions required by the U.S. Department of Health and Human Services (DHHS), Office for Civil Rights.

“Client” means an individual who is eligible for or receiving Medicaid services.

“Covered Entity” means HCA, which is a Covered Entity as defined in 45 C.F.R. § 160.103, in its conduct of covered functions by its health care components.

“Data” means the information that is disclosed or exchanged as described by this Contract. For purposes of this Contract, Data means the same as “Confidential Information.”

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

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as amended by the American Recovery and Reinvestment Act of 2009 (ARRA), Sec. 13400 – 13424, H.R. 1 (2009) (HITECH Act).

“HIPAA Rules” means the Privacy, Security, Breach Notification and Enforcement Rules at 45 C.F.R. Parts 160 and 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 CFR 164.502(g).

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

“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, address, telephone numbers, social security numbers, driver’s license numbers, credit card numbers, any other identifying numbers, and any financial identifiers.

“**ProviderOne**” means the Medicaid Management Information System (MMIS), which is the State’s Medicaid payment system managed by HCA.

“**Regulation**” means any federal, state, or local regulation, rule, or ordinance.

“**Security Incident**” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

“**Use**” includes the sharing, employment, application, utilization, examination, or analysis of Data.

2. Description of Data

- A. Client Medicaid eligibility data. The Data provided will be in TXT format and delivered five days a week (Tuesday-Saturday).
- a. Data Use Purpose
 - i. To screen clients for NEMT services and ensure proper coding when invoicing.
 - b. The Data to be shared is:

Item	Field Name
1	ProviderOne ID
2	Program Index
3	Last Name
4	First Name
5	Middle Initial
6	Client Address
7	Client Date of Birth
8	Client Race Code
9	Gender
10	ACES ID
11	Client County Code
12	Client Eligibility End Date
13	Benefit Service Package
14	Client RAC
15	Client Primary Written Language
16	Client Phone
17	Managed Care Plan
18	Community Services Office Code
19	Hospice Indicator (Y/N)

20	Restrictions (Y/N)
21	DD Code (Y/N)
22	CSHCN Code (Y/N)
23	Medicare Status (Y/N)
24	Estimated Delivery Date (if pregnant)
25	Eligibility Review End Date

i. The Data may be linked with the following: ProviderOne.

c. The Data to be received is:

Item	Field Name
1	Broker ProviderOne ID
2	Load Year Month
3	Load Row
4	DSHS Region Number
5	Broker Contract Region ID
6	Broker Transaction Control Number
7	Client Last Name
8	Client First Name
9	Client Middle Name
10	Client DOB
11	Client ProviderOne ID
12	Non ProviderOne ID
13	RAC
14	Trip Start Date
15	Trip End Date
16	Trip Origin County Code
17	Trip Origin Postal Code
18	Trip Origin Street Address
19	Trip Origin Street Address Type
20	Trip Destination County Code
21	Trip Destination Postal Code
22	Trip Destination Street Address
23	Trip Destination Street Address Type
24	Servicing Provider ID
25	Servicing Provider ID Type

26	Mobility Status
27	Number of Attendants
28	Trip Mileage
29	Oneway Trip Units
30	Medical Service Type Code
31	Medical Reason Description
32	Program Index Code
33	Allocation Code
34	Trip Cost
35	Individual/Shared Trip Code
36	Trip Cost Type Code
37	Transport Provider UBI
38	Other Transport Provider ID
39	Broker Service Type Code
40	Comments
41	Broker File Transaction Date
42	Broker File Batch Number
43	Adjustment Indicator
44	Adjustment Year Month
45	Resident County Code
46	RSA Designation Code
47	Managed Care Description

3. Data Classification

The State classifies data into categories based on the sensitivity of the data pursuant to the Security policy and standards promulgated by the Office of the State of Washington Chief Information Officer. (See Section 4, Data Security, of Securing IT Assets Standards No. 141.10 in the State Technology Manual at <https://ocio.wa.gov/policy/securing-information-technology-assets>. Section 4 is hereby incorporated by reference.)

The Data that is the subject of this Contract may be in any of the Categories indicated below:

Category 1 – Public Information

Public information is information that can be or currently is released to the public. It does not need protection from unauthorized disclosure, but does need integrity and availability protection controls.

Category 2 – Sensitive Information

Sensitive information may not be specifically protected from disclosure by law and is for official use only. Sensitive information is generally not released to the public unless specifically requested.

Category 3 – Confidential Information

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

- 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;

Category 4 – Confidential Information Requiring Special Handling.

Category 4 Data is information that is specifically protected from disclosure and for which:

- 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.

4. Constraints on Use of Data

- A. The Data being shared/accessed is owned and belongs to HCA.
- B. 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 of this Contract. Any analyses, use, or reporting that is not within the Purpose of this Contract is not permitted without HCA's prior written consent.
- C. Any disclosure of Data contrary to this Contract is unauthorized and is subject to penalties identified in law.

5. Security of Data

A. Data Protection

The Contractor must protect and maintain all Confidential Information gained by reason of this Contract, information that is defined as confidential under state or federal law or regulation, or Data that HCA has identified as confidential, 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:

- a. Allowing access only to staff that have an authorized business requirement to view the Confidential Information; and

- b. Physically securing any computer, documents, or other media containing the Confidential Information.

B. Data Security Standards

Contractor must comply with the Data Security Requirements set out in Attachment 1, *Confidential Information Security Requirements*, and the Washington OCIO Security Standard, 141.10, which will include any successor, amended, or replacement regulation ([https://ocio.wa.gov/policy/securing-information-technology-assets.](https://ocio.wa.gov/policy/securing-information-technology-assets)) The Security Standard 141.10 is hereby incorporated by reference into this Contract.

C. Data Disposition

For the purposes of this section “fiscal year” is from July 1 to June 30.

Upon request by HCA, at the end of the Contract term, when no longer needed, or 6 years after the end of the fiscal year in which the Data is received, Confidential Information/Data must be returned to HCA or disposed of as set out in Attachment 1, *Confidential Information Security Requirements*, except as required to be maintained for compliance or accounting purposes.

6. Data Confidentiality and Non-Disclosure

A. 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 of this Contract, except:

- a. as provided by law; or
- b. with the prior written consent of the person or personal representative of the person who is the subject of the Confidential Information.

B. Non-Disclosure of Data

The Contractor must ensure that all 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. The Contractor will also instruct and make any new employee aware of the use restrictions and protection requirements of this Contract before they gain access to the Data.

The Contractor will ensure that each employee or Subcontractor who will access the Data signs the User Agreement on Non-Disclosure of Confidential Information, Exhibit B hereto. The Contractor will retain the signed copy of the User Agreement on Non-Disclosure of Confidential Information in each employee’s personnel file for a minimum of six years from the date the employee’s access to the Data ends. The documentation must be available to HCA upon request.

C. Penalties for Unauthorized Disclosure of Data

State laws (including RCW 74.04.060 and RCW 70.02.020) and federal regulations (including HIPAA Privacy and Security Rules, 45 CFR Part 160 and Part 164; Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR, Part 2; and Safeguarding Information on Applicants and Beneficiaries, 42 CFR Part 431, Subpart F) prohibit unauthorized access, use, or disclosure of Confidential Information. The Contractor must comply with all applicable federal laws and regulations concerning collection, use, and disclosure of Personal Information and PHI. 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.

7. Data Shared with Subcontractors

If Data access is to be provided to a Subcontractor under this Contract, the Contractor must include all of the Data security terms, conditions and requirements set forth in this Contract in any such Subcontract. However, no subcontract will terminate the Contractor's legal responsibility to HCA for any work performed under this Contract nor for oversight of any functions and/or responsibilities it delegates to any subcontractor.

A. Termination or Expiration of Any Subcontractor Contract

At termination or expiration of the contract, all documents and archived electronic data including but not limited to trip logs, invoices, and driver documents generated in the performance of the contract and pursuant to maintenance of records requirements shall be returned to the Contractor prior to final payment to the Subcontractor.

B. Non-Compliance

If the Subcontractor does not comply within thirty (30) calendar days of Contractor request for records, payment of service costs for trips provided in the final month of the contract shall be returned to the HCA.

C. Reciprocity

If the Subcontractor has existing NEMT contracts with another transportation broker contracted with HCA, the Contractor is not required to take possession of documents/data but must ensure all contact information with Subcontractor is updated in the event of a NEMT Program trip review or state/federal audit.

8. HIPAA Compliance

This section of this Exhibit is the Business Associate Agreement required by HIPAA. The Contractor is a "Business Associate" of HCA as defined in the HIPAA Rules.

A. HIPAA Point of Contact

The point of contact for the Receiving Party for all required HIPAA-related reporting and notification communications from this Section 8 HIPAA Compliance and all required Data breach notification communications from Section 9 Data Breach Notification, is:

HCA Privacy Officer
Washington State Health Care Authority
626 8th Avenue SE
PO Box 42700
Olympia, WA 98504-2700
Telephone: 360-725-1116
E-mail: PrivacyOfficer@hca.wa.gov

B. Compliance

Business Associate must perform all Data Sharing Agreement (DSA) duties, activities and tasks in compliance with HIPAA, the HIPAA Rules, and all attendant regulations as promulgated by the U.S. Department of Health and Human Services, Office for Civil Rights, as applicable.

C. Use and Disclosure of PHI

Business Associate is limited to the following permitted and required uses or disclosures of PHI:

- a. Duty to Protect PHI. Business Associate must protect PHI from, and will use appropriate safeguards, and comply with Subpart C of 45 CFR 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 DSA.
- b. Training. All employees of the Contractor who will be handling client PHI in the performance of their duties shall take part in annual HIPAA training. The Contractor shall keep on file documentation attesting to the employee's successful completion of this training. Documentation shall include the date training was completed, employee name, and position within the organization.
- c. 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 DSA. See 45 CFR 164.514 (d)(2) through (d)(5).
- d. 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 DSA or as required by law, and will not Use or disclose such PHI in any manner that would violate Subpart E of 45 CFR Part 164 (Privacy of Individually Identifiable Health Information) if done by Covered Entity, except for the specific uses and disclosures set forth below.
- e. 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.

- f. 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 the 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.
- g. Impermissible Use or Disclosure of PHI. Business Associate must report to the contact identified in Subsection 8.1 in writing all Uses or disclosures of PHI not provided for by this DSA within five (5) business days of becoming aware of the unauthorized Use or disclosure of PHI, including Breaches of unsecured PHI as required at 45 CFR 164.410 (Notification by a Business Associate), as well as any Security Incident of which it becomes aware; provided, however, that notice is hereby deemed provided, and no further notice will be provided by Business Associate, for unsuccessful attempts at unauthorized access, use, or disclosure, modification, or destruction, such as pings and other broadcast attacks on a firewall, denial of service attacks, port cans, unsuccessful login attempts, or interception of encrypted information where the key is not compromised, or any combination of the above. Upon request by HCA, Business Associate will mitigate, to the extent practicable, any harmful effect resulting from the impermissible Use or disclosure.
- h. Failure to Cure. If HCA learns of a pattern or practice of the Business Associate that constitutes a violation of the Business Associate's obligations under the terms of this DSA and reasonable steps by the Business Associate do not end the violation, HCA may terminate this DSA, 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 the Business Associate do not end the violation, Business Associate must terminate the Subcontract, if feasible.
- i. Termination for Cause. Business Associate authorizes immediate termination of this DSA by HCA, if they determine 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.
- j. Consent to Audit. Business Associate must give reasonable access to PHI, its internal practices, records, books, documents, electronic data and/or 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.
- k. Obligations of Business Associate Upon Expiration or Termination. Upon expiration or termination of this DSA 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 CFR Part 164 (Security Standards for the Protection of Electronic Protected Health Information) with respect to Electronic Protected Health Information 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 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 8.3 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.
- I. Survival. The obligations of the Business Associate under this section will survive the termination or expiration of this DSA.

D. Individual Rights

a. Accounting of Disclosures

- i. Business Associate will document all disclosures, except those disclosures that are exempt under 45 CFR 164.528, of PHI and information related to such disclosures.
- ii. Within ten (10) 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. See 45 CFR 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 and the HIPAA Rules, 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 (6) years prior to the date on which the accounting was requested.

b. Access

- i. 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 CFR 164.524 (Access of Individuals to Protected Health Information).

- ii. When the request is made by the Individual to the Business Associate or if HCA ask the Business Associate to respond to a request, the Business Associate must comply with requirements in 45 CFR 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 (10) business days.

c. Amendment

- i. 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 CFR 164.526(c)(3) (Amendment of Protected Health Information).
- ii. 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 CFR 164.526 (Amendment of Protected Health Information).

E. Subcontracts and other Third Party Agreements

- a. In accordance with 45 CFR 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 CFR 164.314(a)(2)(b) and 164.504(e)(5).
- b. Obligations. To the extent the Business Associate is to carry out one or more of HCA's obligation(s) under Subpart E of 45 CFR 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).
- c. Liability. Within ten (10) business days, Business Associate must notify the contact identified in Subsection 8.1 of any complaint, enforcement or compliance action initiated by the Office for Civil Rights based on an allegation of violation of the HIPAA Rules 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 the HIPAA Rules and for any imposed against its Subcontractors or agents for which it is found liable.

F. Breach Notification

- a. In the event of a Breach of unsecured PHI or disclosure that compromises the privacy or security of PHI obtained from HCA or involving HCA clients, Business Associate will take all measures required by state or federal law.
- b. Section 9, below, contains the Breach Notification terms.

G. Miscellaneous Provisions.

- a. Regulatory References. A reference in this DSA to a section in the HIPAA Rules means the section as in effect or amended.
- b. Interpretation. Any ambiguity in this DSA will be interpreted to permit compliance with the HIPAA Rules.

9. Data Breach Notification

- A. The Breach or potential compromise of Data must be reported to the HCA Privacy Officer at PrivacyOfficer@hca.wa.gov within 2 business days of discovery. If 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:
 - a. The identification of each individual whose PHI has been or may have been improperly accessed, acquired, used, or disclosed;
 - b. 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;
 - c. A description of the types of PHI involved;
 - d. The investigative and remedial actions the Contractor or its Subcontractor took or will take to prevent and mitigate harmful effects, and protect against recurrence;
 - e. Any details necessary for a determination of the potential harm to individuals whose PHI is believed to have been used or disclosed and the steps those individuals should take to protect themselves; and
 - f. Any other information HCA reasonably requests.
- B. The Contractor must 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.
- C. If notification of the Breach or possible Breach must, in the judgement of HCA, be made under the HIPAA Breach Notification Rule, or RCW 42.56.590 or RCW 19.255.010, or other law or rule, then:
 - a. HCA may choose to make any required notifications to the individuals, to the U.S. Department of Health and Human Services (DHHS) Secretary, and to the media, or direct Contractor to make them or any of them.
 - b. In any case, Contractor will pay the reasonable costs of notification to individuals, media, and governmental agencies and of other actions HCA reasonably considers appropriate to protect HCA clients, such as paying for regular credit watches in some cases.

- c. Contractor will compensate HCA clients for harms caused to them by any Breach or possible Breach.
- D. Any breach of this clause may result in termination of the Contractor and the demand for return or disposition, as described in Section 5.3, of all Confidential Information.
- E. Contractor's obligations regarding Breach notification survive the termination of this Contract and continue for as long as Contractor maintains the Confidential Information and for any Breach or possible Breach at any time.

10. Inspection

HCA reserves the right to monitor, audit, or investigate compliance with this Contract in regards to the Personal Information and PHI of Enrollees collected, used, or acquired by Contractor during the term of this Contract and for six (6) years following termination or expiration of this Contract. HCA will have access to Contractor's records and place of business for this purpose. All HCA representatives conducting onsite audits of Contractor agree to keep confidential any patient-identifiable information which may be reviewed during the course of any site visit or audit.

11. Indemnification for Unauthorized Use or Release

The Contractor must indemnify and hold HCA and its employees harmless from any damages related to the Contractor's or Subcontractor's unauthorized use or release of Personal Information or PHI of Enrollees.

SAMPLE

User Agreement on Non-Disclosure of Confidential Information

Your organization has entered into a Contract with the State of Washington Health Care Authority (HCA) that will allow you access to data and records that are deemed Confidential Information as defined below. Prior to accessing this Confidential Information you must sign this *User Agreement on Non-Disclosure of Confidential Information*.

Confidential Information

“Confidential Information” means information that is exempt from disclosure to the public or other unauthorized persons under Chapter 42.56 RCW or other federal or state laws. Confidential Information includes, but is not limited to, Protected Health Information and Personal Information. For purposes of the pertinent Contract, Confidential Information means the same as “Data.”

“Protected Health Information” means information that relates to: the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or the past, present or future payment for provision of health care to an individual and includes demographic information that identifies the individual or can be used to identify the individual.

“Personal Information” means information identifiable to any person, including, but not limited to, information that relates to a person’s name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, credit card numbers, any other identifying numbers, and any financial identifiers.

Regulatory Requirements and Penalties

State laws (including, but not limited to, RCW 74.04.060, RCW 74.34.095, and RCW 70.02.020) and federal regulations (including, but not limited to, HIPAA Privacy and Security Rules, 45 CFR Part 160 and Part 164; Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR, Part 2; and Safeguarding Information on Applicants and Beneficiaries, 42 CFR Part 431, Subpart F) prohibit unauthorized access, use, or disclosure of Confidential Information. Violation of these laws may result in criminal or civil penalties or fines.

User Assurance of Confidentiality

In consideration for HCA granting me access to the Confidential Information that is the subject of this Agreement, I agree that I:

1. Will access, use, and disclose Confidential Information only in accordance with the terms of this Agreement and consistent with applicable statutes, regulations, and policies.
2. Have an authorized business requirement to access and use the Confidential Information.
3. Will not use or disclose any Confidential Information gained by reason of this Agreement for any commercial or personal purpose, or any other purpose that is not directly connected with this Agreement.
4. Will not use my access to look up or view information about family members, friends, the relatives or friends of other employees, or any persons who are not directly related to my assigned job duties.
5. Will not discuss Confidential Information in public spaces in a manner in which unauthorized individuals could overhear and will not discuss Confidential Information with unauthorized individuals, including spouses, domestic partners, family members, or friends.
6. Will protect all Confidential Information against unauthorized use, access, disclosure, or loss by employing reasonable security measures, including physically securing any computers, documents, or other media containing Confidential Information and viewing Confidential Information only on secure workstations in non-public areas.
7. Will not make copies of Confidential Information, or print system screens unless necessary to perform my assigned job duties and will not transfer any Confidential Information to a portable electronic device or medium, or remove Confidential Information on a portable device or medium from facility premises, unless the information is encrypted and I have obtained prior permission from my supervisor.
8. Will access, use or disclose only the “minimum necessary” Confidential Information required to perform my assigned job duties.
9. Will not distribute, transfer, or otherwise share any software with anyone.
10. Will forward any requests that I may receive to disclose Confidential Information to my supervisor for resolution and will immediately inform my supervisor of any actual or potential security breaches involving Confidential Information, or of any access to or use of Confidential Information by unauthorized users.
11. Understand at any time, HCA may audit, investigate, monitor, access, and disclose information about my use of the Confidential Information and that my intentional or unintentional violation of the terms of this Agreement may result in revocation of privileges to access the Confidential Information, disciplinary actions against me, or possible civil or criminal penalties or fines.
12. Understand that my assurance of confidentiality and these requirements will continue and do not cease at the time I terminate my relationship with my employer.

Signature

Print User's Name	User Signature	Date

SAMPLE