

	Professional Services Contract for SCHOOL-BASED HEALTH CARE SERVICES	HCA Contract Number: K1234

THIS **CONTRACT** is made by and between Washington State Health Care Authority, (HCA) and Contractor.

CONTRACTOR NAME ABC School District		CONTRACTOR DOING BUSINESS AS (DBA)		
ADDRESS 1234 SCHOOL LANE	Street	City OLYMPIA	State WA	Zip 98501
CONTRACTOR CONTACT Sally Smith	CONTRACTOR	CONTRACTOR E-MAIL		
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 School-Based Health Care Services	HCA DIVISION/SECTION MPD/Community Services
HCA CONTACT NAME AND TITLE Shanna Muirhead SBHS Program Specialist	HCA CONTACT ADDRESS Health Care Authority 626 8th Avenue SE PO Box 45530 Olympia, WA 98504-5530
HCA CONTACT TELEPHONE (360) 725-1153	HCA CONTACT E-MAIL ADDRESS shanna.muirhead@hca.wa.gov

CONTRACT START DATE DOE	CONTRACT END DATE June 30, 2025	TOTAL MAXIMUM CONTRACT No Maximum
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PURPOSE OF CONTRACT:
The purpose of this Contract is for HCA to pay the Contractor for providing Medicaid covered health-related services included in a Title XIX Medicaid-eligible student's Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) on a fee-for-service basis..

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 HCA.

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

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Schedules

Schedule A: Statement of Work (SOW) School-Based Health Care Services

Contract for School-Based Health Care Services

RECITALS

The state of Washington, acting by and through the Health Care Authority (HCA), pursuant to its authority under chapters 39.26 and 41.05 RCW, desires to enter into this Contract with Contractor to pay through fee-for-service for providing Medicaid covered services to Title XIX Medicaid eligible students with Individualized Education Programs (IEP) or Individualized Family Service Plans (IFSP).

NOW THEREFORE, in consideration of the mutual promises contained herein, the sufficiency of which is acknowledged by both parties, HCA and Contractor enter into the following Restated Contract, the terms and conditions of which are stated in this new Contract.

1. STATEMENT OF WORK (SOW) AND SUPERSEDING OF PRIOR CONTRACT

The Contractor will provide the services and staff as described in Schedule A: *Statement of Work*.

2. DEFINITIONS

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

“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 Contract 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: <https://www.govinfo.gov/app/collection/cfr/>.

“Charter School” or “Charter Public School” means a public school that is governed by a charter school board, and operated according to the terms of a charter school contract. Charter schools are open to all students, do not charge tuition, and do not have special entrance requirements.

“Child with a Disability” means a child evaluated and determined to need early intervention services or special education and related services because of disability in one or more of the following eligibility categories. List of disabilities and definitions are accessible at Individuals with Disabilities in Education Act (IDEA) 20 U.S. Code 1401 (3) at: <https://sites.ed.gov/idea/statute-chapter-33/subchapter-1/1401>

- Autism
- Deaf – Blindness
- Developmental delay for children aged (3) three through (9) nine years old, with an adverse educational impact, the results of which require special education and related direct services.
- Hearing Loss (including Deafness)

- Intellectual Disability
- Multiple Disabilities
- Orthopedic Impairment
- Other Health Impairment
- Serious Emotional Disturbance (emotional behavioral disturbance)
- Specific Learning Disability
- Speech or Language Impairment
- Traumatic Brain Injury
- Visual Impairment (including Blindness)

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

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

“Contractor” means the contracting organization (school district, educational service district, charter school or tribal school) that participates in the SBHS program.

“Covered Entity” means a health plan, a health care clearinghouse, a school district 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” for the purpose of this contract means Medicaid-covered evaluations for a student with a disability to determine if that student is in need of early intervention services or special education and related services, re-evaluations to determine whether a student continues to need early intervention or special education and related services; and direct health care related services such as audiology, counseling/mental health, nursing, occupational therapy, physical therapy, and speech-language therapy provided to students ages birth through 20 with an IEP or IFSP.

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

“Early Intervention Services” means developmental services provided to students ages birth through two years old. For the purposes of this contract, early intervention services include:

- Audiology Services
- Nursing Services
- Occupational Therapy
- Physical Therapy
- Psychological Services
- Speech-Language Pathology

“Educational Service District” or “ESD” means a regional agency which provides cooperative and informational services to local school districts within defined regions of the state.

“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.

“Evaluation” means procedures used to determine whether a student has a disability, and the nature and extent of the early intervention or special education and related services that the student needs. See WAC 392-172A-01070 and 34 CFR Sec 303.321.

“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.

“Fee-for-Service” means the general payment method the agency or agency’s designee uses to pay for covered medical services provided to Medicaid-eligible persons, except those services covered under the agency’s prepaid managed care programs.

“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 that oversees Washington State’s medical assistance programs, including Medicaid, its employees and authorized agents.

“Individualized Education Program” or “IEP” means a written statement of an educational program for a student ages three (3) through twenty-one (21) years old eligible for special education that is developed, reviewed, and revised in accordance with WAC 392-172A-03090 through 391-172A-03115 (see WAC 392-172A-01100 and 34 CFR Subpart D).

“Individualized Family Service Plan” or “IFSP” means a written plan for providing early intervention services to an infant or toddler, ages birth through two (2) years old, with a disability or developmental delay that is based on evaluation and assessment, described in 34 CFR 303.321 that includes the content specified in 34 CFR 303.344. The IFSP is developed in accordance with the IFSP procedures in 34 CFR §303.342, 303.343 and 303.345.

“Individuals with Disabilities Education Act” or “IDEA” means the United States federal law that governs how states and public agencies provide early intervention, special education, and related services to children with disabilities. It addresses the educational needs of children with disabilities from birth through age 21 years old.

“Licensed Provider” for the purposes of this Contract, the definition means an individual who has successfully completed a regionally accredited program of study in a health care related field, and has obtained a current and “unrestricted” license in that field from the Washington State Department of Health (DOH).

“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.

“ProviderOne” means the Washington state consolidated single payment system for Medicaid, medical and similar health care provider claims. All SBHS claims are paid through the ProviderOne system.

“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: <https://apps.leg.wa.gov/rcw/>.

“Re-Evaluation” means procedures used to determine whether a student continues to be in need of early intervention or special education and related services. See WAC 392-172A-03015 and C.F.R. Sec. 303.342 through Sec. 303.343.

“School-Based Health Care Services Billing Guide” or **“SBHS Billing Guide”** the SBHS Billing Guide provides detailed billing instructions and program requirements for school districts and providers participating in the SBHS program. The SBHS Billing Guide is located at: <https://www.hca.wa.gov/billers-providers-partners/prior-authorization-claims-and-billing/provider-billing-guides-and-fee-schedules#s>.

“School-Based Health Care Services Fee Schedule” or **“SBHS Fee Schedule”** provides information about procedure codes and the maximum allowable payment rate per unit. The agency updates the fee schedule as the national codes and rates are updated by the federal Centers for Medicare and Medicaid Services (CMS). SBHS rates are based on Resource-Based Relative Value Scale (RBRVS) methodology under WAC 182-531-1850, in which Washington uses CMS-established relative value units multiplied by one of the conversion factors specific to Washington and these services. SBHS rates (and all other professional rates) are based on values established by CMS and the State’s conversion factor that is annually adjusted based on utilization and budget neutrality. The rates paid for SBHS are no different than rates paid to similar providers within the community outside of the school setting. The SBHS Fee Schedule is located at: <https://www.hca.wa.gov/billers-providers-partners/prior-authorization-claims-and-billing/provider-billing-guides-and-fee-schedules#s>.

“School-Based Health Care Services Program” or **“SBHS Program”** means the program that pays contracted school districts, educational service districts, charter schools, and tribal schools for providing early intervention services or special education health-related services to students ages birth through 20 years old, who have an IEP or IFSP. HCA pays school districts on a fee-for-services basis for School-Based Health Care Services delivered to Title XIX Medicaid-eligible students under Section 1905(a) and 1903(c) of the Social Security Act.

“School-Based Health Care Services Program Specialist” or **“SBHS Specialist”** or **“SBHS Program Manager”** means the Health Care Authority (HCA) staff responsible for managing the SBHS program.

“School District” means a group of schools administered by a particular authority within a defined geographical division.

“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.

“Student” for the purpose of this contract means a person ages birth through 20 with a disability who is eligible for early intervention or special education and related services, has an active IFSP or IEP, and is covered by Title XIX Medicaid. The terms student and child may be used interchangeably throughout this contract.

“Subcontractor” means a person or entity that is not in the employment of the Contractor, who is performing all or part of the business activities under this Contract under a separate contract with Contractor. The term “Subcontractor” means subcontractor(s) of any tier.

“USC” means the United States Code. All references in this Contract to USC chapters or sections will include any successor, amended, or replacement statute. The USC may be accessed at: <http://uscode.house.gov/>.

“WAC” means the Washington Administrative Code. All references to WAC chapters or sections will include any successor, amended, or replacement regulation. Pertinent WACs may be accessed at: <https://app.leg.wa.gov/wac/>.

3. SPECIAL TERMS AND CONDITIONS

3.1 PERFORMANCE EXPECTATIONS

Expected performance under this Contract includes, but is not limited to, the following:

- 3.1.1 Knowledge of applicable state and federal laws and regulations pertaining to subject of contract;
- 3.1.2 Use of professional judgment;
- 3.1.3 Collaboration with HCA staff in Contractor's conduct of the services;
- 3.1.4 Conformance with HCA directions which includes:
 - 3.1.4.1 Complying with SBHS policies and procedures which can be found in the [School Based Health Care Services \(SBHS\) Billing Guide](#) and [Chapter 182-537 WAC: School Based Health Care Services](#);
- 3.1.5 The Contractor has the responsibility to ensure compliance with all SBHS policies and procedures. Upon post-pay-reviews, HCA will determine if further review and evaluation of performance of Contractor is necessary in accordance with Contract. HCA will notify Contractor as needed if performance expectations have not been met. HCA may withhold payment if expectations are not met or Contractor's performance is unsatisfactory.

3.2 TERM

- 3.2.1 The initial term of the Contract will commence on 'DOE' or date of last signature, whichever is later, and continue through June 30, 2025 unless terminated sooner as provided herein.
- 3.2.2 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 for services provided before a contract or any subsequent amendment(s) is fully executed.

3.3 BILLING, INVOICE, AND PAYMENT

- 3.3.1 Contractor will submit accurate claims under this Contract in accordance with the [School-Based Health Care Services \(SBHS\) Billing Guide](#) and [Chapter 182-537 WAC: School-Based Health Care Services](#).
- 3.3.2 Contractor will submit all initial claims no later than three hundred sixty five (365) days from the date of health care service(s) and will resubmit, modify or adjust initial claims within 24 months from the date of service(s). See WAC 182-502-0150.
- 3.3.3 In order to receive payment from ProviderOne for claims, Contractor must register, with Department of Enterprise Services (DES), which requires a one-time registration process, with the Statewide Payee Desk located at: <https://des.wa.gov/services/contracting-purchasing/doing-business-state/receiving-payment-state/statewide-payee-desk>.

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:

- Contractor Name:
 - Street Address:
 - City:

- 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

- 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 Recitals
- 3.6.3 Special Terms and Conditions;

- 3.6.4 General Terms and Conditions;
- 3.6.5 Schedule A: *Statement of Work*;
- 3.6.7 Any other provision, term or material incorporated herein by reference or otherwise incorporated.

3.7 INSURANCE

Contractor certifies that it is self-insured under the State's self-insurance liability program, as provided by RCW 4.92.130 located at: <https://app.leg.wa.gov/RCW/default.aspx?cite=4.92.130> and will pay for losses for which it is found liable.

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 ADMENDMENTS

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 4.32, *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.
- 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 Contract and appropriate portions of the Washington OCIO Security Standard, 141.10 at: <https://ocio.wa.gov/policy/securing-information-technology-assets-standards>.

4.9 CONFIDENTIAL INFORMATION BREACH – REQUIRED NOTIFICATION

- 4.9.1 Contractor must notify the HCA Privacy Officer (HCAPrivacyOfficer@hca.wa.gov) within five 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 Medicaid eligible students receiving SBHS (such as paying for regular credit watches in some cases).
 - 4.9.3.3 Contractor will compensate Medicaid eligible students receiving SBHS 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 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; and
 - 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 4.37 *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 4.34.3, *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 as follows:

- 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 4.9 *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 LEGAL AND REGULATORY COMPLIANCE

- 4.21.1 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.
- 4.21.2 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.
- 4.21.3 Failure to comply with any provisions of this section may result in Contract termination.

4.22 LIMITATION OF AUTHORITY

Only the HCA Authorized Representative has the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Contract is not effective or binding unless made in writing and signed by the HCA Authorized Representative.

4.23 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.

4.24 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 Section 4.34.1; *Termination for Default*, and Contractor may be declared ineligible for further contracts with HCA.

4.25 PAY EQUITY

- 4.25.1 Contractor represents and warrants that, as required by Washington state law (Laws of 2017, Chap. 1, § 147), 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.
- 4.25.2 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.

- 4.25.3 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.
- 4.25.4 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.
- 4.25.5 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.

4.26 PUBLICITY

- 4.26.1 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.
- 4.26.2 Contractor agrees to submit to HCA, all advertising, sales promotion, and other publicity materials relating to this Contract or any Service furnished by Contractor in which HCA's name is mentioned, language is used, or Internet links are provided from which the connection of HCA's name with Contractor's services may, in HCA's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, marketing, sales promotion materials, publicity or the like through print, voice, the Web, and other communication media in existence or hereinafter developed without the express written consent of HCA prior to such use.

4.27 RECORDS AND DOCUMENTS REVIEW

- 4.27.1 The Contractor must maintain books, records, documents, 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 the 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].
- 4.27.2 The Contractor must retain such records for a period of six (6) years from the date of services provided to the eligible student.
- 4.27.3 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.

4.28 REMEDIES NON-EXCLUSIVE

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

4.29 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.

4.30 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.

4.31 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.

4.32 SUBCONTRACTING

- 4.32.1 Neither Contractor, nor any Subcontractors, may enter into subcontracts for any of the work contemplated under this Contract without prior written approval of HCA. HCA has sole discretion to determine whether or not to approve any such subcontract. In no event will the existence of the subcontract operate to release or reduce the liability of Contractor to HCA for any breach in the performance of Contractor's duties.
- 4.32.2 Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are included in any subcontracts.
- 4.32.3 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.
- 4.32.4 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.
- 4.32.5 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.

4.33 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, 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.

4.34 TERMINATION

4.34.1 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."

4.34.2 TERMINATION FOR CONVENIENCE

When, at HCA's sole discretion, it is in the best interest of the State, HCA may terminate this Contract in whole or in part by providing ten (10) calendar days' written notice. If this Contract is so terminated, HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty will accrue to HCA in the event the termination option in this section is exercised.

4.34.3 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.

4.34.4 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.

4.34.5 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.

4.35 TERMINATION PROCEDURES

4.35.1 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.

4.35.2 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.

4.35.3 After receipt of notice of termination, and except as otherwise directed by HCA, Contractor must:

4.35.3.1 Stop work under the Contract on the date of, and to the extent specified in, the notice;

4.35.3.2 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;

- 4.35.3. 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;
- 4.35.3.4 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;
- 4.35.3.5 Transfer title to and deliver as directed by HCA any property required to be furnished to HCA;
- 4.35.3.6 Complete performance of any part of the work that was not terminated by HCA; and
- 4.35.3.7 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.

4.36 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.

4.37 WARRANTIES

- 4.37.1 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.
- 4.37.2 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.
- 4.37.3 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, or descriptions of services in written or other communication medium, used to influence HCA to enter into this Contract.

Approved as to Form:

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

Schedule A

Statement of Work (SOW) for School-Based Health Care Services

Responsibilities

The Contractor will:

1. Complete and submit to the SBHS program specialist the HCA School-Based Health Care Services Provider and Contact Update Form annually by October 31st, and throughout the year when a change in providers or school district administrative staff occurs. Form can be accessed on the SBHS webpage at: <https://hca.wa.gov/sbhs>;
2. Provide the services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth in this Schedule A, *Statement of Work*, and according to the processes specified in the *School-Based Health Care Services (SBHS) Billing Guide* and SBHS Chapter 182-537 WAC. The *SBHS Billing Guide* can be accessed on the SBHS webpage at: <https://www.hca.wa.gov/sbhs>;
3. Ensure employees and/or subcontractors, who provide SBHS to eligible students while performing work under this Contract, are licensed according to the Washington State Department of Health (DOH). If SBHS is provided by non-licensed employees, Contractor ensures services are provided under the supervision or direction of a DOH-licensed provider per professional practice standards. A list of SBHS eligible providers can be found in the *SBHS Billing Guide* and referenced at SBHS WAC Section [182-537-0350](#). It is the Contractor's responsibility to enroll all licensed health care providers who participate in the SBHS program under the school district's ProviderOne account prior to submitting claims for reimbursement;
4. Monitor its SBHS program, its providers, and subcontractors to ensure compliance with all applicable laws, regulations, and guidelines and bears full responsibility for all submitted billing information completed by Contractor, or billing agent, where applicable;
5. Submit claims to receive payment from HCA for SBHS, meet the applicable requirements in [Chapter 182-502 WAC](#) and bill according to the *SBHS Billing Guide* and SBHS [Chapter 182-537 WAC](#);
6. Maintain sufficient documentation in accordance with the *SBHS Billing Guide* and SBHS WAC Section [182.537.0700](#); to support and justify all claims billed and paid;

HCA will:

1. Provide payment to the Contractor for SBHS provided to Title XIX Medicaid eligible students, ages birth through 20 years old, with an IEP or IFSP on a fee-for-service rate per the SBHS fee schedule.
 - a. Only provide payment to Contractor for Medicaid-covered services provided to Title XIX Medicaid-eligible students as outlined in the *SBHS Billing Guide* and SBHS [Chapter 182-537 WAC](#);
2. Monitor, provide technical assistance, and provide training opportunities and resources to the Contractor annually or as needed;

3. Notify Contractor with SBHS program/policy updates throughout the calendar year, reflecting any changes to SBHS WAC legislation, SBHS rules and regulations, and any revised procedures through email alert notifications;
4. Conduct reviews in accordance with Chapter [182.502A WAC](#), [182.502](#) and SBHS WAC Section [182.537.0800](#); and
5. Recover overpayments if a school district does not comply with agency requirements according to agency rules outlined in the SBHS [Chapter 182-537 WAC](#) and the *SBHS Billing Guide*.