

	<b>CLIENT SERVICES CONTRACT for Kidney Disease Program</b>	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):	FFATA Form Required <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	

HCA PROGRAM Finance	HCA DIVISION/SECTION Finance
HCA CONTACT NAME AND TITLE Stefanie, Slakey, Cost Reimbursement Analyst	HCA CONTACT ADDRESS Health Care Authority 626 8th Avenue SE Olympia, WA 98504
HCA CONTACT TELEPHONE (360) 725-1243	HCA CONTACT E-MAIL ADDRESS <a href="mailto:stefanie.slakey@hca.wa.gov">stefanie.slakey@hca.wa.gov</a>

CONTRACT START DATE	CONTRACT END DATE	TOTAL MAXIMUM CONTRACT AMOUNT
July 01, 2023	June 30, 2025	

**PURPOSE OF CONTRACT:**  
To assist persons who meet the Kidney Disease Program (KDP) Eligibility Requirements to gain access to End Stage Renal Disease (ESRD) treatment services within the fiscal limits of each State fiscal year's KDP allocation.

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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**Schedules**

Schedule A: Statement of Work (SOW) Kidney Disease Program Services

## RECITALS

The state of Washington, acting by and through the Health Care Authority (HCA), seeks client services for Kidney Disease Program Services; and

WHEREAS, client services are exempt from competitive solicitation (RCW 39.26.125(6)) and \_\_\_\_\_ (Contractor) seeks to provide such services.

HCA has determined that entering into a Contract with \_\_\_\_\_ will meet HCA's needs and will be in the State's best interest.

NOW THEREFORE, HCA awards to \_\_\_\_\_ this Contract, the terms and conditions of which will govern Contractor's providing to HCA the Kidney Disease Program Services.

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

### 1. STATEMENT OF WORK (SOW)

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

### 2. DEFINITIONS

**"A19-1A"** means the state of Washington invoice voucher on which the Contractor shall report their Contract Quarterly Costs. The Health Care Authority (HCA) shall email this Form to the Contractor after execution of this Contract.

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

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

**"Business 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 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.

**“Clients”** means an applicant, recipient, or former applicant or recipient of any service of program administered by HCA.

**“Client and Billing Summary”** means the documentation that contains the reimbursable expenditures for each quarter, which is submitted to the HCA Contract Manager by the Contractor.

**“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>.

**“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.

**“Contract Quarter”** means one (1) of the three (3) month periods of July through September, October through December, January through March, and April through June, of each calendar year or part thereof that occurs during the term of this Contract.

**“Costs”** means the maximum allowable fee published on HCA fee schedule maximum allowable at <https://www.hca.wa.gov/billers-providers/claims-and-billing/professional-rates-and-billing-guides> or the Contractor’s usual and customary fee, whichever is less, for approved services provided to KDP clients, plus monies spent for approved transportation, and minus any monies received from other payers for those services.

**“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.

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

**“Dialysis services”** means all things necessary for or incidental to the performance of hemodialysis and/or peritoneal dialysis:

- 1) **“Hemodialysis”** means the process of removal of certain elements from the client’s blood by virtue of the difference in the elements’ rates of their diffusion through a semi-permeable membrane.
- 2) **“Peritoneal dialysis”** means the process of removal of certain elements from the person through the peritoneum, the dialyzing solution being introduced into and removed from the person’s peritoneal cavity as either a continuous or an intermittent procedure.

**“End-Stage Renal Disease”** or **“ESRD”** means the stage of renal impairment that is virtually irreversible and permanent requiring dialysis or kidney transplantation to ameliorate uremic symptoms and maintain life as defined in Title 182-540-005 WAC, or its successor.

**“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.

**“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.

**“HCA Medicaid Access Program”** means the medically necessary non-emergent transportation and interpreter services program of HCA that facilitates Clients’ access to medical services for those who have no other means of transportation and/or interpreter services.

**“Home dialysis”** means dialysis services performed on a KDP Client in his or her home.

**“Kidney Center”** means a facility as defined and certified by the federal government to:

- 1) Provide ESRD services; and
- 2) Promote and encourage home dialysis for a client when medically indicated.

**“Kidney Disease Program”** or **“KDP”** means HCA’s state-funded program that provides specific medical care to KDP Clients through contracts with Kidney Centers.

**“KDP Application for Eligibility” or “Application”** means HCA’s form 13-566 (8/16), available at [www.hca.wa.gov](http://www.hca.wa.gov), or its successor form, including revisions and instructions, used to verify KDP eligibility criteria as referred to in Title 182-540-015 WAC, or any successor rule.

**“KDP Client”** means a person who meets the KDP Eligibility Requirements as listed under Title 182-540-015 WAC, or its successor, as determined by a contracted Kidney Center.

**“KDP Eligibility Requirements”** means the criteria identified in Title 182-540-015 WAC, or its successor that must be met for a person to be eligible for benefits under the KDP.

**“KDP Manual”** means the guidebook produced and provided by HCA, and any subsequent revisions. The KDP Manual is incorporated in its entirety. It provides instructions to the Contractor, describes approved services, and provides pertinent information regarding program policies, Client eligibility, and reimbursement for services. The KDP Manual may be viewed or downloaded from the HCA KDP web site found at <https://www.hca.wa.gov/billers-providers-partners/programs-and-services/kidney-disease-program-kdp>.

**“Limited English Proficiency” or “LEP”** means being limited in ability or unable to speak, read and/or write the English language well enough to understand and be understood without the aid of an interpreter. LEP also includes being deaf, deaf-blind, or hard-of-hearing.

**“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.

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

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

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

**“Room and Board”** means sleeping accommodations and meals.

**“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.

**“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.

**“Subrecipient”** means a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a recipient of other federal awards directly from a federal awarding agency. As in 45 C.F.R. 75.2, or any successor or replacement to such definition, for any federal award from HHS; or 2 C.F.R. 200.93, or any successor or replacement to such definition, for any other federal award. See OMB circular a-133 for additional details.

**“Third-Party”** means any entity that is or may be liable to pay all or part of the medical cost of care of a Client. [WAC 182-500-0105, or its successor]

**“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/>

**“Usual and Customary Fees”** means the fees that may be billed to HCA for certain services, supplies, or equipment. These Fees may not exceed:

- 1) The Usual and Customary Fees bill to the public for the same service, or
- 2) If the public is not served, the Fee normally billed under other contracts for the same service.

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

### **3. SPECIAL TERMS AND CONDITIONS**

#### **3.1 PERFORMANCE EXPECTATIONS**

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

- 3.1.1 Knowledge of applicable state and federal laws and regulations pertaining to subject of contract;
- 3.1.2 Use of professional judgment;
- 3.1.3 Collaboration with HCA staff in Contractor's conduct of the services;
- 3.1.4 Conformance with HCA directions regarding the delivery of the services;
- 3.1.5 Timely, accurate and informed communications;
- 3.1.6 Regular completion and updating of reports, documentation and communications;  
and
- 3.1.7 Provision of high-quality services.

Prior to payment of invoices, HCA will review and evaluate the performance of Contractor in accordance with Contract and these performance expectations and may withhold payment if expectations are not met or Contractor's performance is unsatisfactory.

#### **3.2 TERM**

- 3.2.1 The initial term of the Contract will commence on July 01, 2023, 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 any costs incurred before a contract or any subsequent amendment(s) is fully executed.

#### **3.3 COMPENSATION**

- 3.3.1 The parties have determined the cost of accomplishing the work herein will not exceed **\$65,000.00**, inclusive of all fees, taxes, and expenses (Total Maximum Contract Amount). Compensation for satisfactory performance of the work will not exceed this amount unless the parties agree to a higher amount through an amendment.

3.3.2 Source of Funds:

Source of Funds	State Fiscal Year	Amount
Federal		<input type="checkbox"/> \$0.00
State	7/01/2023 – 6/30/2024	<input checked="" type="checkbox"/> \$0.00
Other		<input type="checkbox"/> \$0.00
<b>Total</b>		<b>\$0.00</b>

3.3.3 Contractor’s compensation for services rendered will be based timely, accurate, and approved A19-1As detailing the Costs of providing goods and services to KDP Clients under this Contract.

3.3.4 Consideration Adjustment. HCA reserves the right to adjust, via unilateral amendment, the Total Maximum Contract Amount to provide, within the limits of the State Fiscal Year budget allocation, an adjusted payment to Contractor when:

- a) Contractor’s reported Costs have exceeded the Total Maximum Contract Amount and the Contractor is requesting additional funds of up to, but no more than, three percent of the current Total Maximum Contract Amount; and
- b) Contractor has submitted timely and accurate A19-1As for the prior three Contract Quarters.

3.3.5 HCA’s payments under this Contract are only to offset Costs incurred by Contractor in providing goods and/or services to KDP Clients prior to their receipt of the goods and/or services. Contractor may provide goods and/or services to individuals who meet all of the eligibility requirements for KDP under WAC 182-540-015, or any successor WAC, but whose eligibility determination under Medicaid is still pending. Contractor must not use such payments to offset costs incurred in providing goods and/or services to individuals determined to be ineligible for KDP.

3.3.6 Contractor travel reimbursement is not allowed under this Contract.

**3.4 INVOICE AND PAYMENT**

3.4.1 In order to receive payment for services or products provided to a state agency, Contractor must register with the Statewide Payee Desk at <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services/receiving-payment-state>.

- 3.4.2 A19-1As must be properly completed and submitted, listing actual costs incurred and documentation, such as receipts, to the satisfaction to the HCA Contract Manager. All A19-1As will be approved by the HCA Contract Manager prior to payment. Approval will not be unreasonably withheld or delayed.
- 3.4.3 If expenses are invoiced, invoices must provide a detailed breakdown of each type. Expenses of \$50 or more must be accompanied by a receipt.
- 3.4.4 A19-1As must include the HCA Contract number in the subject line and must be properly completed. The HCA Contracts Manager will submit the approved A19-1As to [HCAAdminAccountsPayable@hca.wa.gov](mailto:HCAAdminAccountsPayable@hca.wa.gov). Quarterly submissions must include:
- a) A19-1As listing actual Costs incurred;
  - b) Documentation, such as copies of receipts; and
  - c) Information, such as KDP client applications, Medicaid applications, new A19-1As.
- HCA will return incorrect or incomplete A19-1As for correction and reissue.
- 3.4.5 Each A19-1A must be received by the HCA Contract Manager by the last business day of the second month following the close of each Contract Quarter.

<b>KDP A19-1A for:</b>	<b>Initial billing for items paid during or for the quarter must be received no later than the last business day of:</b>	<b>Initial billing for items paid after the quarter ends is due no later than the last business day of:</b>
First Quarter (July-Sept)	November	December
Second Quarter (Oct-Dec)	February	March
Third Quarter (Jan-March)	May	June
Fourth Quarter (Apr-June)	August	September

- 3.4.6 Reimbursable services under this Contract will only be reimbursed if provided during the Term, identified in Section 3.2, and State Fiscal Year, identified in Section 3.3.2.
- 3.4.7 The Contractor will have twelve (12) months from the month the service was provided to bill HCA, provided that the Contractor previously submitted the initial quarterly billings timely. The last date to bill services under this Contract is June 30, 2024. HCA is under no obligation to pay any claims submitted by the Contractor for

services rendered if the Contractor fails to satisfactorily comply with any term(s) or condition(s) of this Contract.

### 3.5 CONTRACTOR AND HCA CONTRACT MANAGERS

- 3.5.1 Contractor’s Contract Manager will have prime responsibility and final authority for the services provided under this Contract and be the principal point of contact for the HCA Contract Manager for all business matters, performance matters, and administrative activities.
- 3.5.2 HCA’s Contract Manager is responsible for monitoring the Contractor’s performance and will be the contact person for all communications regarding contract performance and deliverables. The HCA Contract Manager has the authority to accept or reject the services provided and must approve Contractor’s invoices prior to payment.
- 3.5.3 The contact information provided below may be changed by written notice of the change (email acceptable) to the other party.

<b>CONTRACTOR Contract Manager Information</b>		<b>Health Care Authority Contract Manager Information</b>	
Name:		Name:	Stefanie Slakey
Title:		Title:	Cost Reimbursement Analyst
Address:		Address:	Health Care Authority 626 8th Avenue SE Olympia, WA 98504
Phone:		Phone:	(360) 725-1243
Email:		Email:	stefanie.slakey@hca.wa.gov

### 3.6 BACKGROUND CHECKS

This requirement applies to all employees, volunteers and subcontractors who may have unsupervised access to children or vulnerable adults served under this Contract.

Pursuant to RCW 43.43.832, 43.43.834, RCW 43.20A.710 and Chapter 388-06 WAC, or successor RCWs or WACs, the Contractor must ensure a criminal history background check has been completed for all current employees, volunteers, and subcontractors. Further, the Contractor will initiate a criminal history background check for all prospective employees, volunteers and subcontractors who would have unsupervised access to children or vulnerable adults served under this Contract.

Contractor must assist in obtaining additional state or national criminal history and/or child abuse/neglect history, if requested by HCA.

Contractor must ensure that no employee, volunteer or subcontractor, including those provisionally hired pursuant to RCW 43.43.832(7), has unsupervised access to children or vulnerable adults served under this Contract, until a full and satisfactory background check is completed and documentation, qualifying the individual for unsupervised access, is received by the Contractor.

### **3.7 CLIENT NOT BILLABLE**

Contractor may not bill the Client for charges incurred that are not payable by KDP due to Contractor's failure to bill HCA within the time limits specified in subsection 3.4.5.

### **3.8 PROFESSIONAL CREDENTIALING AND LICENSURE**

If the Contractor, its employees, or subcontractors who will be in contact with HCA Clients while performing work under this Contract must be accredited, certified, licensed or registered according to Washington State laws and regulations, the Contractor must ensure that all such individuals do not have, and shall remain without during the term of this Contract, restrictions, or sanctions placed on such accreditation, certification, license and/or registration. Contractor must notify the HCA Contract Manager within three business days of receipt of information relating to disciplinary action against the accreditation, certification, license, and/or registration of the Contractor, an employee, or subcontractor.

### **3.9 FRAUD AND ABUSE REQUIREMENTS**

Contractor shall report in writing all verified cases of fraud and abuse, including fraud and abuse by the Contractor's employees and/or subcontractors, within five business days, to the HCA Contract Manager. The report must include the following information:

- a) Subject(s) of complaint by name and either provider/subcontractor type or employee position;
- b) Source of complaint by name and provider/subcontractor type or employee position;
- c) Nature of complaint;
- d) Estimate of the amount of funds involved; and
- e) Legal and administrative disposition of case.

### **3.10 HEALTH AND SAFETY**

Contractor and any Subcontractor(s) must perform any and all of its obligations under this Contract in a manner that does not compromise the health and safety of any HCA Client with whom the Contractor or Subcontractor(s) have contact.

### **3.11 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.

3.11.1 In the case of notice to the Contractor:

**Attention:**

3.11.2 In the case of notice to HCA:

**Attention:** Contracts Administrator  
Health Care Authority  
Division of Legal Services  
Post Office Box 42702  
Olympia, WA 98504-2702  
[contracts@hca.wa.gov](mailto:contracts@hca.wa.gov)

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

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

### **3.12 INCORPORATION OF DOCUMENTS AND ORDER OF PRECEDENCE**

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

3.12.1 Applicable Federal and State of Washington statutes and regulations;

3.12.2 Recitals;

3.12.3 Special Terms and Conditions;

3.12.4 General Terms and Conditions; and

3.12.5 Schedule A: Statement(s) of Work;

3.12.6 Any other provision, term or material incorporated herein by reference or otherwise incorporated.

### **3.13 INSURANCE**

Contractor must provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of

Contractor or 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:

3.13.1 Commercial General Liability Insurance Policy - Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of 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.

3.13.2 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.

3.13.3 Professional Liability Errors and Omissions – Provide a policy with coverage of not less than \$1 million per claim/\$2 million general aggregate.

#### 3.13.4 Industrial Insurance Coverage

Prior to performing work under this Contract, Contractor must provide or purchase industrial insurance coverage for the Contractor's employees, as may be required of an "employer" as defined in Title 51 RCW and must maintain full compliance with Title 51 RCW during the course of this Contract.

3.13.5 The insurance required must be issued by an insurance company/ies authorized to do business within the state of Washington, and must name HCA and the state of Washington, its agents and employees as additional insureds under any Commercial General and/or Business Automobile Liability policy/ies. All policies must be primary to any other valid and collectable insurance. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor must provide written notice of such to HCA within one (1) Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at HCA's sole option, result in this Contract's termination.

3.13.6 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 ACCESSIBILITY**

- 4.2.1 **REQUIREMENTS AND STANDARDS.** Each Information and Communication Technology (ICT) product or service furnished under this Contract shall be accessible to and usable by individuals with disabilities in accordance with the Americans with Disabilities Act (ADA) and other applicable Federal and State laws and policies, including OCIO Policy 188, *et seq.* For purposes of this clause, Contractor shall be considered in compliance with the ADA and other applicable Federal and State laws if it satisfies the requirements (including exceptions) specified in the regulations implementing Section 508 of the Rehabilitation Act, including the Web Content Accessibility Guidelines (WCAG) 2.1 Level AA Success Criteria and Conformance Requirements (2008), which are incorporated by reference, and the functional performance criteria.
- 4.2.2 **DOCUMENTATION.** Contractor shall maintain and retain, subject to review by HCA, full documentation of the measures taken to ensure compliance with the applicable requirements and functional performance criteria, including records of any testing or simulations conducted.
- 4.2.3 **REMEDIATION.** If Contractor claims that its products or services satisfy the applicable requirements and standards specified in Section 4.2.1 and it is later determined by HCA that any furnished product or service is not in compliance with such requirements and standards, HCA will promptly inform Contractor in writing of noncompliance. Contractor shall, at no additional cost to HCA, repair or replace the non-compliant products or services within the period specified by HCA. If the repair or replacement is not completed within the specified time, HCA may cancel the Contract, delivery, task order, or work order, or purchase line item without termination liabilities or have any necessary changes made or repairs performed by employees of HCA or by another contractor, and Contractor shall reimburse HCA for any expenses incurred thereby.
- 4.2.4 **DEFINITION.** Information and Communication Technology (ICT) means information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or

transmission of electronic data and information, as well as any associated content. Examples include computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment; multifunction office machines; software; applications; websites; videos; and electronic documents.

4.2.5 INDEMNIFICATION. Contractor agrees to indemnify and hold harmless HCA from any claim arising out of failure to comply with the aforesaid requirements.

#### **4.3 ADVANCE PAYMENT PROHIBITED**

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

#### **4.4 AMENDMENTS**

This Contract may be amended by mutual agreement of the parties. Such amendments will not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

#### **4.5 ASSIGNMENT**

4.5.1 Contractor may not assign or transfer all or any portion of this Contract or any of its rights hereunder, or delegate any of its duties hereunder, except delegations as set forth in Section 4.37, *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.

4.5.2 HCA may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the State of Washington, with written notice of thirty (30) calendar days to Contractor.

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

#### **4.6 ATTORNEYS' FEES**

In the event of litigation or other action brought to enforce the terms of this Contract, each party agrees to bear its own attorneys' fees and costs.

## **4.7 CHANGE IN STATUS**

In the event of any substantive change in its legal status, organizational structure, or fiscal reporting responsibility, Contractor will notify HCA of the change. Contractor must provide notice as soon as practicable, but no later than thirty (30) calendar days after such a change takes effect.

## **4.8 COVERED INFORMATION PROTECTION**

- 4.8.1 Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of HCA Proprietary Information or Confidential Information. For the purposes of this section, HCA Proprietary Information and Confidential Information are together referred to as Covered Information.
- 4.8.2 Nondisclosure and Non-Use Obligations. In the event of Disclosure of Covered Information to Contractor by HCA, Contractor agrees to: (1) hold Covered Information in strictest confidence and to take all reasonable precautions to protect such Covered Information (including, without limitation, all precautions the Contractor employs with respect to its own confidential materials); (2) not disclose any such Covered Information or any other information derived therefrom to any third party; (3) not make use of Covered Information for any purpose other than the performance of this Contract; (4) release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract; and (5) not release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without HCA's express written consent or as provided by law.
- 4.8.3 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).
- 4.8.4 HCA reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.
- 4.8.5 The obligations set forth in this Section will survive completion, cancellation, expiration, or termination of this Contract.

#### **4.9 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.

#### **4.10 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.

#### **4.11 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.

#### **4.12 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.

4.12.1 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.

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

4.12.2.1 Be in writing;

4.12.2.2 Include a written description of the dispute;

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

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

4.12.3 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.

#### **4.13 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 4.41, *Warranties*.

#### **4.14 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.

#### **4.15 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:

4.15.1 Terminate this Contract pursuant to Section 4.37.3, *Termination for Non-Allocation of Funds*;

4.15.2 Renegotiate the Contract under the revised funding conditions; or

4.15.3 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.

4.15.3.1 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.

4.15.3.2 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.

4.15.3.3 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.

#### **4.16 GOVERNING LAW**

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

#### **4.17 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.

#### **4.18 INDEMNIFICATION**

Contractor must defend, indemnify, and save HCA harmless from and against all claims, including reasonable attorneys' fees resulting from such claims and breach of confidentiality obligations as contained herein, arising from intentional or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents, in the performance of this Contract.

#### **4.19 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.

#### **4.20 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.

#### **4.21 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 Pursuant to Proclamation 21-14 – COVID-19 Vaccination Requirement (dated August 9, 2021) as amended by Proclamation 21-14.1 – COVID-19 Vaccination Requirement (dated August 20, 2021) ("Proclamation") all contractors and any of their employees and/or subcontractors who provide contracted services on-site at HCA facilities must certify that they are fully vaccinated against the COVID-19 virus,

unless properly excepted or exempted for disability or sincerely held religious beliefs as set forth in the Proclamation. Contractors who cannot so certify are prohibited from contracting with the state.

4.21.4 Contractor represents and warrants that should their responsibilities to the HCA involve on-site services as of October 18, 2021, Contractor's personnel (including subcontractors) providing such services will be fully vaccinated against the COVID-19 virus unless properly excepted or exempted for disability or sincerely held religious beliefs as set forth in the Proclamation. Contractor further understands that, upon request, Contractor personnel must provide to HCA proof of vaccination, in a manner established by the HCA. Failure to meet these requirements may result in the immediate termination of this Contract.

4.21.5 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 Termination for Default sections, and Contractor may be declared ineligible for further contracts with HCA.

#### **4.25 OVERPAYMENTS TO THE CONTRACTOR**

In the event that overpayments or erroneous payments have been made to the Contractor under this Contract, HCA will provide written notice to Contractor and Contractor will refund the full amount to HCA within thirty (30) calendar days of the notice. If Contractor fails to make timely refund, HCA may charge Contractor one percent (1%) per month on

the amount due, until paid in full. If the Contractor disagrees with HCA's actions under this section, then it may invoke the dispute resolution provisions of Section 4.11, *Disputes*.

#### **4.26 PAY EQUITY**

- 4.26.1 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.
- 4.26.2 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.
- 4.26.3 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.
- 4.26.4 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.
- 4.26.5 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.

#### **4.27 PUBLICITY**

- 4.27.1 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.
- 4.27.2 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.

#### **4.28 RECORDS AND DOCUMENT REVIEW**

- 4.28.1 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].
- 4.28.2 The Contractor must retain such records for a period of six (6) years after the date of final payment under this Contract.
- 4.28.3 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.

#### **4.29 REMEDIES NON-EXCLUSIVE**

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

#### **4.30 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.

#### **4.31 RIGHTS IN DATA/OWNERSHIP**

- 4.31.1 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.

- 4.31.2 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.
- 4.31.3 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.
- 4.31.4 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.
- 4.31.5 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.
- 4.31.6 Contractor must identify all Preexisting Material when it is delivered under this Contract and must advise HCA of any and all known or potential infringements of publicity, privacy or of intellectual property affecting any Preexisting Material at the time of delivery of such Preexisting Material. Contractor must provide HCA with prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract.

#### **4.32 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.

### **4.33 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.

### **4.34 SUBCONTRACTING**

- 4.34.1 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.
- 4.34.2 Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are included in any subcontracts.
- 4.34.3 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.
- 4.34.4 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.
- 4.34.5 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.

### **4.35 SURVIVAL**

The terms and conditions contained in this Contract that, by their sense and context, are intended to survive the completion, cancellation, termination, or expiration of the Contract will survive. In addition, the terms of the sections titled *Covered Information Protection*, *Contractor's Proprietary Information*, *Disputes*, *Overpayments to Contractor*, *Publicity*, *Records and Documents Review*, and *Rights in Data/Ownership*, will survive the termination of this Contract. The right of HCA to recover any overpayments will also survive the termination of this Contract.

## **4.36 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.

## **4.37 TERMINATION**

### **4.37.1 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."

### **4.37.2 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.

### **4.37.3 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.

#### 4.37.4 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.

#### 4.37.5 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.

### **4.38 TERMINATION PROCEDURES**

4.38.1 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.

4.38.2 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 4.11, *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.

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

- 4.38.3.1 Stop work under the Contract on the date of, and to the extent specified in, the notice;
- 4.38.3.2 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;
- 4.38.3.3 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;
- 4.38.3.4 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;
- 4.38.3.5 Transfer title to and deliver as directed by HCA any property required to be furnished to HCA;
- 4.38.3.6 Complete performance of any part of the work that was not terminated by HCA; and
- 4.38.3.7 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.

#### **4.39 TRANSITION OBLIGATIONS**

Contractor must provide for reasonable transition assistance requested by HCA to allow for the expired or terminated Contract, in whole or in part, to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to HCA or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance.

#### **4.40 TREATMENT OF ASSETS**

##### 4.40.1 Ownership

HCA shall retain title to all property furnished by HCA to Contractor under this contract. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to reimbursement as a direct item of cost under this contract, excluding intellectual property provided by the Contractor, shall pass to and vest in

HCA upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in HCA upon (i) issuance for use of such property in the performance of this Contract, (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by HCA, in whole or in part, whichever occurs first.

#### 4.40.2 Use of Property

Any property furnished to Contractor shall, unless otherwise provided herein, or approved in writing by the HCA Contract Manager, be used only for the performance of and subject to the terms of this Contract. Contractor's use of the equipment shall be subject to HCA's security, administrative and other requirements.

#### 4.40.3 Damage to Property

Contractor shall continuously protect and be responsible for any loss, destruction, or damage to property which results from or is caused by Contractor's acts or omissions. Contractor shall be liable to HCA for costs of repair or replacement for property or equipment that has been lost, destroyed or damaged by Contractor or Contractor's employees, agents or subcontractors. Cost of replacement shall be the current market value of the property and equipment on the date of the loss as determined by HCA.

#### 4.40.4 Notice of Damage

Upon the loss of, destruction of, or damage to any of the property, Contractor shall notify the HCA Contract Manager thereof within one (1) Business Day and shall take all reasonable steps to protect that property from further damage.

#### 4.40.5 Surrender of Property

Contractor will ensure that the property will be returned to HCA in like condition to that in which it was furnished to Contractor, reasonable wear and tear excepted. Contractor shall surrender to HCA all property upon the earlier of expiration or termination of this Contract.

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

# Schedule A

## Statement of Work

### 1. STATEMENT OF WORK.

Contractor shall provide the services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below. Contractor shall:

- a. Provide outreach educational assistance to persons with a diagnosis of ESRD or who have received a kidney transplant as follows:
  - (1) Inform potentially qualifying ESRD/kidney transplant patients of the KDP Eligibility Requirements;
  - (2) Educate KDP Clients on when and why KDP funding applies, as well as, how the KDP is funded and administered; and
  - (3) Assist each potentially KDP eligible ESRD patient to complete an application(s), as appropriate, for:
    - (a) Kidney Disease Program,
    - (b) Medicaid, and/or
    - (c) Medicare.
- b. Evaluate each completed application for the KDP against the KDP Eligibility Requirements to determine whether each applicant meets the KDP Eligibility Requirements;
- c. Retain each original completed application for review by the Health Care Authority (HCA) upon request;
- d. Provide all persons at application and reapplication with a copy of the Rights and Responsibilities and the KDP Reference Guide forms provided by HCA. If services are closed for an existing KDP Client, the KDP Client must be provided with a termination notice. The KDP Client must be given ten (10) days' notice before services can be terminated. If services provided are changed, the Contractor must provide the Client with a letter notifying them of the change, and why the change is occurring;
- e. Once the application process has been completed by the potential KDP Client and Contractor has made an eligibility determination, Contractor must provide the potential KDP Client with the approval or denial letter;
- f. Provide, without necessity of prior HCA staff's approval, the following ESRD services as described in WAC 182-540-055, or successor WAC(s) to KDP Clients, including:

- (1) Covered services: the Contractor shall provide services (funding permitting) as described in WAC 182-540-055(1), including:
  - (a) Dialysis services; and
  - (b) Prescription and non-prescription medications (drugs) directly related to the KDP Client's ESRD treatment. Contractor shall:
    - i. Provide KDP Clients with prescription medications listed as approved drugs in the KDP Manual;
    - ii. Use generic prescription and non-prescription drug products rather than brand name medications whenever possible; and
    - iii. Purchase prescription and non-prescription drugs at a discount via contracts.
  - (c) Third-Party payers:
    - i. i. Bill Third-Party payers, and
    - ii. ii. Deduct Third-Party receivables from total Costs reported on prior A19-1As.
- g. Obtain and maintain the Contractor's copy of the KDP Manual as defined in Section 2, Definitions, "KDP Manual", of this Contract and all subsequent updates. The KDP Manual and updates are posted on the KDP web site: <https://www.hca.wa.gov/billers-providers-partners/programs-and-services/kidney-disease-program-kdp>;
- h. Acknowledge, by signing this Contract, that the Contractor received a copy of the KDP Manual;
- i. Complete and submit quarterly A19-1A and documentation that explains and justifies the expenses being reported. Contractor shall:
  - (1) Use the A19-1A provided by the HCA Contract Manager, an example of which can be found in the KDP Manual, at the following link: <https://www.hca.wa.gov/billers-providers-partners/programs-and-services/kidney-disease-program-kdp>;
  - (2) Report actual Costs as defined by the KDP Manual;
  - (3) Submit an A19-1A for each Contract Quarter covered by this Contract, and documentation, when Costs are being reported, that explains and justifies any expenses being reported for that Contract Quarter. Contractors are not required to submit an A-19 invoice when the Contractor has no Costs to report for the quarter. Please note that contractors are permitted to fax or email A19-1As; these do not have to be originals to receive payment; and
  - (4) Mail each A19-1A to the HCA Contract Manager so that it is received by the last business day of the second (2nd) month following the close of each Contract Quarter:

<b>KDP A19-1A for:</b>	<b>Initial billing for items paid during or for the quarter must be received no later than the last business day of:</b>	<b>Initial billing for items paid after the quarter ends is due no later than the last business day of:</b>
First Quarter (July-Sept)	November	December
Second Quarter (Oct-Dec)	February	March
Third Quarter (Jan-March)	May	June
Fourth Quarter (Apr-June)	August	September

For details on what items are billed for the schedule, please refer to the KDP Manual at the following link: <https://www.hca.wa.gov/billers-providers-partners/programs-and-services/kidney-disease-program-kdp>.

## **2. MONITORING**

HCA will monitor the Contractor's performance under this Contract, and will undertake the following:

- a. Review all documentation submitted by the Contractor:
  - (1) Submitted quarterly A19-1A Invoice Vouchers and supporting documentation;
  - (2) Other requests for cost documentation made by the HCA Contract Manager.
- b. Review and follow-up on, within reason and available resources, on all complaints and/or requests specific to the work performed by the Contractor under the Contract; and
- c. Conduct on-site visits within existing resource limitations and when time permitting.