

COUNTY ORIGINAL

WHATCOM COUNTY
CONTRACT NO.
201812037

	<p>PROFESSIONAL SERVICES CONTRACT for MEDICAID ADMINISTRATIVE CLAIMING</p>	<p>HCA Contract Number: K3084</p>
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THIS CONTRACT is made by and between Washington State Health Care Authority, (HCA) and Whatcom County Health Dept., (Contractor).

CONTRACTOR NAME Whatcom County Health Dept.		CONTRACTOR DOING BUSINESS AS (DBA)		
CONTRACTOR ADDRESS Street 509 Girard Street	City Bellingham	State WA	Zip Code 98225	
CONTRACTOR CONTACT Patty Proctor	CONTRACTOR TELEPHONE (360) 778 6015	CONTRACTOR E-MAIL ADDRESS Pproctor@co.whatcom.wa.us		
Is Contractor a Subrecipient under this Contract? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		CFDA NUMBER(S): 93.778;	FFATA Form Required <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	

HCA PROGRAM Medicaid Administrative Claiming (MAC)	HCA DIVISION/SECTION MPOI/CS
HCA CONTACT NAME AND TITLE Jon Brogger Medical Assistance Program Specialist	HCA CONTACT ADDRESS Health Care Authority 626 8th Avenue SE PO Box 45506 Olympia, WA 98504-5506
HCA CONTACT TELEPHONE (360) 725-1647	HCA CONTACT E-MAIL ADDRESS jon.brogger@hca.wa.gov

CONTRACT START DATE January 1, 2019	CONTRACT END DATE December 31, 2020	TOTAL MAXIMUM CONTRACT AMOUNT No Maximum
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PURPOSE OF CONTRACT:
The purpose of this Contract is to support Medicaid related outreach and linkage activities performed by Local Health Jurisdictions (LHJ) to Washington State residents who live within its jurisdiction. These activities assist residents who have no or inadequate medical coverage, and includes explaining the benefits of the Medicaid program, assisting them in the Medicaid application and renewal processes, and linking them to Medicaid covered services. This Agreement provides a process for partially reimbursing the Contractor for allowable and reasonable expenses associated with the time its staff spend performing Medicaid Administrative Claiming (MAC) activities.

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 Erika Nuerenberg, Assistant Director	DATE SIGNED 12/19/18
HCA SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED

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Schedule A: Statement of Work (SOW) Medicaid Administrative Claiming

Contract #K3084 for Medicaid Administrative Claiming

Recitals

This contract, number **K3084**, supersedes and replaces contract number **K1422** in its entirety.

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" or **"A19"** means the State of Washington Invoice Voucher used by contractors and vendors to submit claims for payment in return for goods and/or services provided to HCA or its Clients.

"Activity Code" or **"Code"** means the code assigned to the daily activities performed by Contractor staff in order to identify the percentage of time spent on any given activity.

"Administrative Fee" means the dollar amount charged to the Contractor by HCA based on a percentage of each Contractor's billing for Federal Financial Participation claimed at the federally approved match rate, to offset HCA's costs incurred in administering this Agreement.

"Allocated" or **"Allocated Cost"** means an Operating Expense that is allocated across more than one cost pool.

"Allowable Expense" means an expenditure which meets the test of the appropriate OMB Circular (see Attachment 1, *Federal Compliance, Section I*). The most significant factors affecting allowability of expenses are: 1) they must be necessary and reasonable, 2) they must be allocable, 3) they must be authorized or not published under state or local laws and regulations, and 4) they must be documented.

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

"Billing Quarter" means a calendar quarter consisting of three (3) consecutive calendar months beginning with the first date of the calendar quarter during which this Agreement starts. The Contractor shall use Billing Quarters as the time periods for which claims for Federal Financial Participation are made.

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

“Budgeting, Accounting and Reporting System” or **“BARS”** or **“BARS Manual”** The BARS Manual prescribes accounting and reporting for local governments in accordance with RCW 43.09.200 and found at this website <http://www.sao.wa.gov/local/Pages/BarsManual.aspx>.

“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.

“Centers for Medicare and Medicaid Services School-Based Administrative Claiming Guide” or **“CMS Guide”** or **“Guide”** means the document issued by CMS in 2003 and any supplements, amendments or successor; incorporated herein by reference which provides guidance to States for developing and managing Medicaid Administrative Claiming programs.

“Certified Public Expenditure” or **“CPE”** means the sources of funds certified as actual expenditures by a local or public governmental entity and used as the State share in order to receive federal matching Medicaid funds, or Federal Financial Participation (FFP).

“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>.

“Claiming Unit” means the individual contractor eligible to submit a claim for reimbursement to HCA, and includes all of its subunits.

“Client” means an individual served within budget unit or cost center of the Contractor.

“Cognizant Agency” means the federal agency responsible for reviewing, negotiating, and approving Indirect Cost Rates.

“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 Whatcom County Health Dept., 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.

“**Coordinator Manual**” or “**Manual**” means the HCA document or its successor including any updates, that describes how the Contractor must manage their MAC program and provides program guidance.

“**Corrective Action Plan**” or “**Corrective Action**” means the written description of the plan the Contractor will complete in order to correct any finding or deficiency as identified by HCA or government entity.

“**Cost Allocation Plan**” or “**CAP**” means the HCA document that describes the allocation methodology that includes a description of the procedures HCA will use to identify and measure costs for a MAC program and must be approved by CMS.

“**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.

“**CPE Local Match Certification**” means HCA’s form the Contractor must submit with each quarterly invoice to report the source of funds certified as public expenditures and therefore eligible to be used as match for the MAC program.

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

“**Direct Charge Method**” means the method of accounting for Direct Costs without a stepdown allocation for single funding sources expenses wholly attributed to the MAC program.

“**Direct Cost**” means an Operating Expense that is wholly attributable to the MAC program and is not included in an Indirect Cost Rate. Direct costs must be a single cost objective, and must be certified quarterly.

“**Direct Medical Service**” means the provision of a medical, dental, vision, mental health, family planning, pharmacy, substance abuse or a Medicaid covered service and all related activities, administrative or otherwise, that integral to, or an extension of the healthcare service.”

“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.

“Eligible Staff” or **“Participant”** or **“RMTS Participant”** means an employee of the Contractor that is in compliance with all federal, state, and HCA regulations including this agreement, the CAP, the Manual, CMS guidance, and any other requirements for participation in the Medicaid Administrative Claiming program and whose costs are eligible for claiming their staff time costs for conducting Medicaid Administrative Claiming activities.

“Federal Financial Participation” or **“FFP”** means the federal payment (or federal “match”) that is available at a rate of 50% for amounts expended by a state “as found necessary by the Secretary for the proper and efficient administration of the state plan” per 42 CFR § 433.15(b)(7). An enhanced FFP rate of seventy five percent (75%) is available for certain SPMP or interpretation administrative costs. Only permissible, non-federal funding sources are allowed to be used as the state match for FFP.

“Fiscal Coordinator” means the Contractor’s employee who is assigned to be the liaison between HCA and the Contractor for the accounting purposes of this Agreement. The contractor may assign the fiscal and RMTS coordinator roles to the same staff if desired.

“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.

“Indirect Cost” means an Operating Expense that is allocated across more than one program. Indirect costs are only allowable for FFP reimbursement by the application of an Indirect Cost Rate approved by the Contractor’s Cognizant Agency. The indirect cost must be certified by the Contractor annually using the HCA Certificate of Indirect Costs form.

“Indirect Cost Rate” means the ratio, expressed as a percentage, of the indirect costs to a direct cost base as approved by the Contractor’s Cognizant Agency.

“Integral Activity” or **“Extension Activity”** means an activity that is necessary for or incidental to the provision of a direct medical service.

“MAC Activity” or **“Allowable Activity”** or **“Reimbursable Activity”** or **“Claimable Activity”** means an activity that is administrative in nature, and necessary for the proper and efficient administration for the Medicaid state plan which must be in compliance as described in applicable federal, state, HCA and CMS Regulations, the CAP, Manual, and this Agreement.

“Manual” or **“Coordinator Manual”** means the document that describes how the Contractor must implement the CAP locally and includes detailed instructions for implementing and monitoring the MAC program at the local level. The Manual is incorporated into this Agreement by reference.

“Medicaid Administrative Claiming” or **“MAC”** means the source of funding for reimbursements provided in this agreement is shared between the contractor and the Federal Financial Participation (FFP).

“Medicaid Eligibility Rate” or **“MER”** means the proportional share of Medicaid individuals to the total number of individuals in the target population (Contractor’s jurisdiction) as defined in the CAP, Manual and this Agreement.

“Medicaid Outreach Unit” means the unit within HCA’s Health Care Services division that administers and monitors Washington State’s MAC program.

“National Institutional Reimbursement Team (NIRT)” means the group of individuals comprised from both the CMS central office and regional offices who are responsible for providing technical assistance to the states on Medicaid institutional reimbursement issues and the development and promulgation of all Medicaid institutional reimbursement regulations and policies including review and approval of donated funds Certified as Public Expenditures.

“Operating Expense” means those costs incurred by the Contractor to perform business activities and includes both Direct Costs and Indirect Costs. Only operating expenses necessary to operate the Contractor’s MAC program are allowable for FFP reimbursement.

“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.

“Potential Medicaid Client” means a Washington resident who may be determined by HCA to meet the eligibility criteria for enrollment in Medicaid.

“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).

“Random Moment Time Study (RMTS)” or **“System”** or **“Time Study”** means an electronic System that quantifies the daily activities of eligible time study Participants through a statistically valid sampling methodology and allocates allowable participant costs to the MAC program. The System calculates the amount of FFP reimbursement based on the Contractors RMTS results, staff costs, MER, costs and other applicable calculations as described in the CAP, Manual and this Agreement.

“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/>.

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

“RMTS Consortium” “RMTS Consortia” or “Consortium” or “Consortia” means a group of Contractors who have organized together based on similar duties their staff perform, organizational structure, type of programs, scope of work, or regional working relationships and will participate in a single time study together in order to achieve statistical validity.

“RMTS Coordinator” means an employee of the Contractor who is assigned to be the time study liaison between HCA and the Contractor for purposes of this Agreement. The contractor may assign the fiscal and RMTS coordinator roles to the same staff if desired.

“Skilled Professional Medical Personnel” or “SPMP” means an individual who has completed a two-or-more-year program leading to an academic degree or certificate in a medically related profession, demonstrated by possession of a medical license, certificate or other document issued by a recognized National or State medical licensure or certifying organization or a degree in a medical field issued by a college or university certified by a professional medical organization.

“State Fiscal Year” or “SFY” means a twelve-month period beginning on July 1st of one calendar year and ending on June 30th of the following calendar year.

“State Medicaid Plan” means the comprehensive written commitment by HCA, submitted under 1902(a) of the Social Security Act and approved by the Centers for Medicare and Medicaid Services, to administer or supervise administration of a Medicaid program in accordance with Federal and state requirements.

“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.

“Subcontract” means any separate agreement or contract between the Contractor and an individual third party or entity (“Subcontractor”) to perform all or a portion of the duties and obligations that the Contractor is obligated to perform pursuant to 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.

“Subrecipient” means a contractor operating a federal or state assistance program receiving federal funds and having the authority to determine both the services rendered and disposition of program. See OMB Super Circular, 2 CFR 200.501, and 45 CFR 75.501, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” for additional detail.

“Subunit” means an individual cost center or budget unit within a claiming unit (LHJ).

“Successor” means any entity or individual which, through amalgamation, consolidation, or other legal succession becomes invested with rights and assumes burdens of the first contractor/vendor or any person who succeeds to the office, rights, responsibilities or place of another.

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

3. SPECIAL TERMS AND CONDITIONS

3.1 TERM

- 3.1.1 The initial term of the Contract will commence on January 1, 2019, and continue through December 31, 2020, unless terminated sooner as provided herein.
- 3.1.2 This Contract may be extended through December 31, 2023 in whatever time increments HCA deems appropriate. No change in terms and conditions will be permitted during these extensions unless specifically agreed to in writing.
- 3.1.3 Work performed without a contract or amendment signed by the authorized representatives of both parties will be at the sole risk of the Contractor. HCA will not pay any costs incurred before a contract or any subsequent amendment(s) is fully executed.

3.2 COMPENSATION

Compensation payable to the Contractor for satisfactory performance of the work under this Agreement will be made on a cost reimbursement bases and shall be based on the following:

- 3.2.1 There is no maximum consideration payable to the Contractor under the Agreement;
- 3.2.2 The Federal Financial Participation Rate shall be:
 - 3.2.2.1 50%, except;
 - 3.2.2.2 75% for appropriately documented Skilled Professional Medical Personnel and appropriately documented Interpreter staff. See Schedule A, Section 7, d and g, and Section 8.
- 3.2.3 Federal funds disbursed through this Contract were received by HCA through OMB Catalogue of Federal Domestic Assistance (CFDA) Number: 93.778, Medical Assistance Program, Contractor agrees to comply with applicable rules and regulations associated with these federal funds and has signed Attachment 2: *Federal Compliance, Certification and Assurances*, attached.
- 3.2.4 HCA will not issue reimbursement for any quarters where HCA receives credible evidence or suspected evidence of a system failure that has the potential to impact the integrity of the reimbursement request. This includes but is not limited to failures related to the time study, MER calculation, claim calculation, or reconciliation.
 - 3.2.4.1 HCA will pursue corrective action as needed, and will restore payment after any issues related to the reimbursement request are resolved, and the requested amount is accurate.

3.3 BILLING AND INVOICE

- 3.3.1 Contractor shall submit correct invoices to the HCA Contract Manager for all amounts to be paid by the HCA hereunder.

All invoices submitted must meet with the approval of the HCA Contract Manager or his/her designee prior to payment, which approval shall not be unreasonably withheld.

Contractor shall only submit invoices for Services or Deliverables as permitted by this section of the Contract. The Contractor shall not bill the HCA for services performed under this Contract, and the HCA shall not pay the Contractor if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for such services/deliverables.

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

- 3.3.1.1 HCA Contract number K3084;
 - 3.3.1.2 Contractor name, address, phone number;
 - 3.3.1.3 Description of Services;
 - 3.3.1.4 Date(s) of delivery;
 - 3.3.1.5 Net invoice price for each item;
 - 3.3.1.6 Applicable taxes;
 - 3.3.1.7 Total invoice price; and
 - 3.3.1.8 Payment terms and any available prompt payment discount.
- 3.3.2 HCA will return incorrect or incomplete invoices to the Contractor for correction and reissue. The Contract Number must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract.
- 3.3.3 In order to receive payment for services or products provided to a state agency, Contractor must register with the Statewide Payee Desk at <https://des.wa.gov/services/contracting-purchasing/doing-business-state/receiving-payment-state/statewide-payee-desk>. Payment will be considered timely if made by HCA within thirty (30) calendar days of receipt of properly completed invoices. Payment will be directly deposited in the bank account or sent to the address Contractor designated in its registration.
- 3.3.4 Upon expiration of the Contract, any claims for payment for costs due and payable under this Contract that are incurred prior to the expiration date must be submitted by the Contractor to HCA within sixty (60) calendar days after the Contract expiration date. HCA is under no obligation to pay any claims that are submitted sixty-one (61) or more calendar days after the Contract expiration date ("Belated

Claims”). HCA will pay Belated Claims at its sole discretion, and any such potential payment is contingent upon the availability of funds.

3.4 CONTRACTOR AND HCA CONTRACT MANAGERS

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

CONTRACTOR Contract Manager Information		Health Care Authority Contract Manager Information	
Name:	Patty Proctor	Name:	Jon Brogger
Title:		Title:	Program Manager
Address:	509 Girard Street	Address:	PO Box 45506 Olympia, WA 98501
Phone:	(360) 778 6015	Phone:	360-725-1647
Email:	Pproctor@co.whatcom.wa.us	Email:	jon.brogger@hca.wa.gov

3.5 LEGAL NOTICES

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

- 3.5.1 In the case of notice to the Contractor:

Attention: Patty Proctor
 Whatcom County Health Dept.
 509 Girard Street
 Bellingham, WA 98225

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 Attachment 1: *Federal Compliance, Certifications and Assurances*;

3.6.6 Attachment 2: *Federal Funding Accountability and Transparency Act Data Collection Form*;

3.6.7 MAC Coordinator Manual;

3.6.8 Schedule A: Statement of Work; and

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

3.7 INSURANCE

Contractor must provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of Contractor or Subcontractor, or agents of either, while performing under the terms of this Contract. Contractor must provide insurance coverage that is maintained in full force and effect during the term of this Contract, as follows:

- 3.7.1 Commercial General Liability Insurance Policy - Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1 million per occurrence/\$2 million general aggregate. Additionally, Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
- 3.7.2 Business Automobile Liability. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned, hired, or non-owned by the Contractor, automobile liability insurance is required covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.
- 3.7.3 Professional Liability Errors and Omissions – Provide a policy with coverage of not less than \$1 million per claim/\$2 million general aggregate.
- 3.7.4 The insurance required must be issued by an insurance company/ies authorized to do business within the state of Washington, and must name HCA and the state of Washington, its agents and employees as additional insured's under any Commercial General and/or Business Automobile Liability policy/ies. All policies must be primary to any other valid and collectable insurance. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor must provide written notice of such to HCA within one (1) Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at HCA's sole option, result in this Contract's termination
- 3.7.5 For public agencies, the Contractor certifies that it is self-insured, is a member of a risk pool, or maintains the types and amounts of insurance identified above and will provide certificates of insurance to that effect to HCA upon request.

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

- 3.7.6 Privacy Breach Response Coverage. Contractor must maintain insurance to cover costs incurred in connection with a Breach, or potential Breach, including:
 - 3.7.6.1 Computer forensics assistance to assess the impact of the Breach or potential Breach, determine root cause, and help determine whether and

the extent to which notification must be provided to comply with Breach notification laws.

- 3.7.6.2 Notification and call center services for individuals affected by a Breach.
- 3.7.6.3 Breach resolution and mitigation services for individuals affected by a Breach, including fraud prevention, credit monitoring and identity theft assistance.
- 3.7.6.4 Regulatory defense, fines and penalties from any claim in the form of a regulatory proceeding resulting from a violation of any applicable privacy or security law(s) or regulation(s).

The policy must be maintained for the term of this Agreement and three (3) years following its termination.

4. GENERAL TERMS AND CONDITIONS

4.1 ACCESS TO DATA

In compliance with RCW 39.26.180 (2) and federal rules, the Contractor must provide access to any data generated under this Contract to HCA, the Joint Legislative Audit and Review Committee, the State Auditor, and any other state or federal officials so authorized by law, rule, regulation, or agreement at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

4.2 ADVANCE PAYMENT PROHIBITED

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

4.3 AMENDMENTS

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

4.4 ASSIGNMENT

4.4.1 Contractor may not assign or transfer all or any portion of this Contract or any of its rights hereunder, or delegate any of its duties hereunder, except delegations as set forth in Section 4.36, *Subcontracting*, without the prior written consent of HCA. Any permitted assignment will not operate to relieve Contractor of any of its duties and obligations hereunder, nor will such assignment affect any remedies available to HCA that may arise from any breach of the provisions of this Contract or warranties made herein, including but not limited to, rights of setoff. Any attempted assignment, transfer or delegation in contravention of this Subsection 4.4.1 of the Contract will be null and void.

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

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

4.5 ATTORNEYS' FEES

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

4.6 CHANGE IN STATUS

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

4.7 CONFIDENTIAL INFORMATION PROTECTION

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

- 4.8.1 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.
- 4.8.2 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.

- 4.8.3 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:
 - 4.8.3.1 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.
 - 4.8.3.2 In any case, Contractor will pay the reasonable costs of notification to individuals, media, and governmental agencies and of other actions HCA reasonably considers appropriate to protect HCA clients (such as paying for regular credit watches in some cases).
- 4.8.4 Any breach of this clause may result in termination of the Contract and the demand for return or disposition of all Confidential Information.
- 4.8.5 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.

4.9 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 at the project management level, either party may submit a request for a dispute resolution to the HCA Contract Administrator who shall oversee the following Dispute Resolution Process: HCA shall appoint a representative to a dispute panel; the Contractor shall appoint a representative to the dispute panel; HCA's and Contractor's representatives shall mutually agree on a third person to chair the dispute panel. The dispute panel shall thereafter decide the dispute with the majority prevailing.

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 appoint a dispute panel. 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.

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 4.43 *Warranties*.

4.14 FEDERAL FUNDING ACCOUNTABILITY & TRANSPARENCY ACT (FFATA)

- 4.14.1 This Contract is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.
- 4.14.2 To comply with the act and be eligible to enter into this Contract, Contractor must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If Contractor does not already have one, a DUNS® number is available free of charge by contacting Dun and Bradstreet at www.dnb.com.
- 4.14.3 Information about Contractor and this Contract will be made available on www.uscontractorregistration.com by HCA as required by P.L. 109-282. HCA's Attachment 2: *Federal Funding Accountability and Transparency Act Data Collection Form*, is considered part of this Contract and must be completed and returned along with the Contract.

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 4.40.3, *Termination for Non-Allocation of Funds*;
- 4.16.2 Renegotiate the Contract under the revised funding conditions; or
- 4.16.3 Suspend Contractor's performance under the Contract upon five (5) Business Days' advance written notice to Contractor. HCA will use this option only when HCA

determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this Contract.

- 4.16.3.1 During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
- 4.16.3.2 When HCA determines in its sole discretion that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to HCA informing HCA whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.
- 4.16.3.3 If the Contractor's proposed resumption date is not acceptable to HCA and an acceptable date cannot be negotiated, HCA may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.

4.17 GOVERNING LAW

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

4.18 HCA NETWORK SECURITY

Contractor agrees not to attach any Contractor-supplied computers, peripherals or software to the HCA Network without prior written authorization from HCA's Chief Information Officer. Unauthorized access to HCA networks and systems is a violation of HCA Policy and constitutes computer trespass in the first degree pursuant to RCW 9A.52.110. Violation of any of these laws or policies could result in termination of the contract and other penalties.

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

4.19 INDEMNIFICATION

Contractor must defend, indemnify, and save HCA harmless from and against all claims, including reasonable attorneys' fees resulting from such claims, for any or all injuries to persons or damage to property, or Breach of its confidentiality and notification obligations under Section 4.7 *Confidential Information Protection* and Section 4.8 *Confidentiality*

Breach-Required Notification, arising from intentional or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents, in the performance of this Contract.

4.20 INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of HCA. Contractor will not hold itself out as or claim to be an officer or employee of HCA or of the State of Washington by reason hereof, nor will Contractor make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with Contractor.

4.21 INDUSTRIAL INSURANCE COVERAGE

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

4.22 LEGAL AND REGULATORY COMPLIANCE

- 4.22.1 During the term of this Contract, Contractor must comply with all local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract and all other applicable federal, state and local laws, rules, and regulations.
- 4.22.2 While on the HCA premises, Contractor must comply with HCA operations and process standards and policies (e.g., ethics, internet / email usage, data, network and building security, harassment, as applicable). HCA will make an electronic copy of all such policies available to Contractor.
- 4.22.3 Failure to comply with any provisions of this section may result in Contract termination.

4.23 LIMITATION OF AUTHORITY

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

4.24 NO THIRD-PARTY BENEFICIARIES

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

4.25 NONDISCRIMINATION

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

4.26 OVERPAYMENTS TO CONTRACTOR

In the event that overpayments or erroneous payments have been made to the Contractor under this Contract, HCA will provide written notice to Contractor and Contractor shall 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 4.12 *Disputes*.

4.27 PAY EQUITY

- 4.27.1 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.
- 4.27.2 Contractor may allow differentials in compensation for its workers based in good faith on any of the following: (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings by quantity or quality of production; (iv) bona fide job-related factor(s); or (v) a bona fide regional difference in compensation levels.
- 4.27.3 Bona fide job-related factor(s)" may include, but not be limited to, education, training, or experience, that is: (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) accounts for the entire differential.
- 4.27.4 A "bona fide regional difference in compensation level" must be (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) account for the entire differential.
- 4.27.5 Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30)

Days of HCA's request for such evidence, HCA may suspend or terminate this Contract.

4.28 PUBLICITY

- 4.28.1 The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's Services by HCA and must not be so construed by Contractor in any advertising or other publicity materials.
- 4.28.2 Contractor agrees to submit to HCA, all advertising, sales promotion, and other publicity materials relating to this Contract or any Service furnished by Contractor in which HCA's name is mentioned, language is used, or Internet links are provided from which the connection of HCA's name with Contractor's Services may, in HCA's judgment, be inferred or implied. Contractor 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.

4.29 RECORDS AND DOCUMENTS REVIEW

- 4.29.1 The Contractor must maintain books, records, documents, magnetic media, receipts, invoices or other evidence relating to this Contract and the performance of the services rendered, along with accounting procedures and practices, all of which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. At no additional cost, these records, including materials generated under this Contract, are subject at all reasonable times to inspection, review, or audit by HCA, the Office of the State Auditor, and state and federal officials so authorized by law, rule, regulation, or agreement [See 42 USC 1396a(a)(27)(B); 42 USC 1396a(a)(37)(B); 42 USC 1396a(a)(42)(A); 42 CFR 431, Subpart Q; and 42 CFR 447.202].
- 4.29.2 The Contractor must retain such records for a period of six (6) years after the date of final payment under this Contract.
- 4.29.3 If any litigation, claim or audit is started before the expiration of the six (6) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved.

4.30 REMEDIES NON-EXCLUSIVE

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

4.31 RIGHT OF INSPECTION

The Contractor must provide right of access to its facilities to HCA, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal

government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

4.32 RIGHTS IN DATA/OWNERSHIP

- 4.32.1 HCA and Contractor agree that all data and work products (collectively "Work Product") produced pursuant to this Contract will be considered a *work for hire* under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and will be owned by HCA. Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.
- 4.32.2 If for any reason the Work Product would not be considered a *work for hire* under applicable law, Contractor assigns and transfers to HCA, the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- 4.32.3 Contractor will execute all documents and perform such other proper acts as HCA may deem necessary to secure for HCA the rights pursuant to this section.
- 4.32.4 Contractor will not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership of any Work Product, without the prior written permission of HCA. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors will not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.
- 4.32.5 Material that is delivered under this Contract, but that does not originate therefrom ("Preexisting Material"), must be transferred to HCA with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. HCA will have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.
- 4.32.6 Contractor must identify all Preexisting Material when it is delivered under this Contract and must advise HCA of any and all known 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.

4.33 RIGHTS OF STATE AND FEDERAL GOVERNMENTS

In accordance with 45 CFR 95.617, all appropriate state and federal agencies, including but not limited to the Centers for Medicare and Medicaid Services (CMS), will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate, or otherwise use, and to authorize others to use for Federal Government purposes: (i) software, modifications, and documentation designed, developed or installed with Federal Financial Participation (FFP) under 45 CFR Part 95, subpart F; (ii) the Custom Software and modifications of the Custom Software, and associated Documentation designed, developed, or installed with FFP under this Contract; (iii) the copyright in any work developed under this Contract; and (iv) any rights of copyright to which Contractor purchases ownership under this Contract.

4.34 SEVERABILITY

If any provision of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity will not affect the other provisions or applications of this Contract that can be given effect without the invalid provision, and to this end the provisions or application of this Contract are declared severable.

4.35 SITE SECURITY

While on HCA premises, Contractor, its agents, employees, or Subcontractors must conform in all respects with physical, fire or other security policies or regulations. Failure to comply with these regulations may be grounds for revoking or suspending security access to these facilities. HCA reserves the right and authority to immediately revoke security access to Contractor staff for any real or threatened breach of this provision. Upon reassignment or termination of any Contractor staff, Contractor agrees to promptly notify HCA.

4.36 SUBCONTRACTING

4.36.1 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.

4.36.2 Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are included in any subcontracts.

4.36.3 If at any time during the progress of the work HCA determines in its sole judgment that any Subcontractor is incompetent or undesirable, HCA will notify Contractor,

and Contractor must take immediate steps to terminate the Subcontractor's involvement in the work.

- 4.36.4 The rejection or approval by the HCA of any Subcontractor or the termination of a Subcontractor will not relieve Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to HCA.
- 4.36.5 HCA has no contractual obligations to any Subcontractor or vendor under contract to the Contractor. Contractor is fully responsible for all contractual obligations, financial or otherwise, to its Subcontractors
- 4.36.6 The Contractor is prohibited from entering into subrecipient subcontracts for the purpose of participating in the MAC program..

4.37 SUBRECIPIENT

4.37.1 General

If the Contractor is a subrecipient (as defined in 45 CFR 75.2 and 2 CFR 200.93) of federal awards, then the Contractor, in accordance with 2 CFR 200.501 and 45 CFR 75.501, shall:

- 4.37.1.1 Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;
- 4.37.1.2 Maintain internal controls that provide reasonable assurance that the Contractor is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;
- 4.37.1.3 Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
- 4.37.1.4 Incorporate OMB Super Circular, 2 CFR 200.501, and 45 CFR 75.501 audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;
- 4.37.1.5 Comply with any future amendments to OMB Super Circular, 2 CFR 200.501, and 45 CFR 75.501 and any successor or replacement Circular or regulation; Comply with the applicable requirements of OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501 and any future amendments

to OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, and any successor or replacement Circular or regulation; and

4.37.1.6 Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G, and 28 CFR Part 35 and 39. (Go to <http://oip.gov/about/offices/ocr.htm> for additional information and access to the aforementioned Federal laws and regulations.)

4.37.2 Single Audit Act Compliance

If the Contractor is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Contractor shall:

4.37.2.1 Submit to the Authority contact person the data collection form and reporting package specified in OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;

4.37.2.2 Follow-up and develop corrective action for all audit findings; in accordance with OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501, prepare a "Summary Schedule of Prior Audit Findings."

4.37.3 Overpayments

4.37.3.1 If it is determined by HCA, or during the course of a required audit, that Contractor has been paid unallowable costs under this or any Program Agreement, Contractor shall refund the full amount to HCA as provided in Section 4.26 *Overpayments to Contractors*.

4.38 SURVIVAL

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

4.39 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.

4.40 TERMINATION

4.40.1 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.

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."

4.40.2 TERMINATION FOR CONVENIENCE

Either party may terminate this Contract in whole or in part by providing ten (10) calendar days' written notice to the other party. 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.

4.40.3 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.

4.40.4 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.

4.40.5 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.

4.41 TERMINATION PROCEDURES

4.41.1 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.

4.41.2 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 4.12 *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.

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

- 4.41.3.1 Stop work under the Contract on the date of, and to the extent specified in, the notice;
- 4.41.3.2 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;
- 4.41.3.3 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;
- 4.41.4 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;
- 4.41.5 Transfer title to and deliver as directed by HCA any property required to be furnished to HCA;
- 4.41.6 Complete performance of any part of the work that was not terminated by HCA; and 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.

4.42 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.

4.43 WARRANTIES

- 4.43.1 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.
- 4.43.2 Contractor represents and warrants that it shall comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services.
- 4.43.3 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.

ATTACHMENT 1

FEDERAL COMPLIANCE, CERTIFICATIONS, AND ASSURANCES

In the event federal funds are included in this agreement, the following sections apply: I. Federal Compliance and II. Standard Federal Assurances and Certifications. In the instance of inclusion of federal funds, the Contractor may be designated as a sub-recipient and the effective date of the amendment shall also be the date at which these requirements go into effect.

- I. **FEDERAL COMPLIANCE** - The use of federal funds requires additional compliance and control mechanisms to be in place. The following represents the majority of compliance elements that may apply to any federal funds provided under this contract. For clarification regarding any of these elements or details specific to the federal funds in this contract, contact the Health Care Authority.
- a. *Source of Funds:* Federal funds to support this agreement are identified by the Catalog of Federal Domestic Assistance (CFDA) number **93.778**. The sub-awardee is responsible for tracking and reporting the cumulative amount expended under HCA IA Contract No. **K3084**.
 - b. *Period of Availability of Funds:* Pursuant to 45 CFR 92.23, Sub-awardee may charge to the award only costs resulting from obligations of the funding period specified in **CFDA 93.778**, unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period. All obligations incurred under the award must be liquidated no later than 90 days after the end of the funding period.
 - c. *Single Audit Act:* A sub-awardee (including private, for-profit hospitals and non-profit institutions) shall adhere to the federal Office of Management and Budget (OMB) Super Circular 2 CFR 200.501 and 45 CFR 75.501. A sub-awardee who expends \$750,000 or more in federal awards during a given fiscal year shall have a single or program-specific audit for that year in accordance with the provisions of OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501.
 - d. *Modifications:* This agreement may not be modified or amended, nor may any term or provision be waived or discharged, including this particular Paragraph, except in writing, signed upon by both parties.
 1. Examples of items requiring Health Care Authority prior written approval include, but are not limited to, the following:
 - i. Deviations from the budget and Project plan.
 - ii. Change in scope or objective of the agreement.
 - iii. Change in a key person specified in the agreement.
 - iv. The absence for more than three months or a 25% reduction in time by the Project Manager/Director.
 - v. Need for additional funding.
 - vi. Inclusion of costs that require prior approvals as outlined in the appropriate cost principles.
 - vii. Any changes in budget line item(s) of greater than twenty percent (20%) of the total budget in this agreement.
 2. No changes are to be implemented by the Sub-awardee until a written notice of approval is received from the Health Care Authority.

- e. *Sub-Contracting*: The sub-awardee shall not enter into a sub-contract for any of the work performed under this agreement without obtaining the prior written approval of the Health Care Authority. If sub-contractors are approved by the Health Care Authority, the subcontract, shall contain, at a minimum, sections of the agreement pertaining to Debarred and Suspended Vendors, Lobbying certification, Audit requirements, and/or any other project Federal, state, and local requirements.
- f. *Condition for Receipt of Health Care Authority Funds*: Funds provided by Health Care Authority to the sub-awardee under this agreement may not be used by the sub-awardee as a match or cost-sharing provision to secure other federal monies without prior written approval by the Health Care Authority.
- g. *Unallowable Costs*: The sub-awardees' expenditures shall be subject to reduction for amounts included in any invoice or prior payment made which determined by HCA not to constitute allowable costs on the basis of audits, reviews, or monitoring of this agreement.
- h. *Citizenship/Alien Verification/Determination*: The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (PL 104-193) states that federal public benefits should be made available only to U.S. citizens and qualified aliens. Entities that offer a service defined as a "federal public benefit" must make a citizenship/qualified alien determination/ verification of applicants at the time of application as part of the eligibility criteria. Non-US citizens and unqualified aliens are not eligible to receive the services. PL 104-193 also includes specific reporting requirements.
- i. *Federal Compliance*: The sub-awardee shall comply with all applicable State and Federal statutes, laws, rules, and regulations in the performance of this agreement, whether included specifically in this agreement or not.
- j. *Civil Rights and Non-Discrimination Obligations* During the performance of this agreement, the Contractor shall comply with all current and future federal statutes relating to nondiscrimination. These include but are not limited to: Title VI of the Civil Rights Act of 1964 (PL 88-352), Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1683 and 1685-1686), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107), the Drug Abuse Office and Treatment Act of 1972 (PL 92-255), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), and the Americans with Disability Act (42 U.S.C., Section 12101 et seq.) <http://www.hhs.gov/ocr/civilrights>

HCA Federal Compliance Contact Information

Federal Grants and Budget Specialist
 Health Care Policy
 Washington State Health Care Authority
 Post Office Box 42710
 Olympia, Washington 98504-2710

CIRCULARS 'COMPLIANCE MATRIX' - The following compliance matrix identifies the OMB Circulars that contain the requirements which govern expenditure of federal funds. These requirements apply to the Washington State Health Care Authority (HCA), as the primary recipient of federal funds and then follow the funds to the sub-awardee, **Whatcom County**

Health Dept.. The federal Circulars which provide the applicable administrative requirements, cost principles and audit requirements are identified by sub-awardee organization type.

ENTITY TYPE	OMB CIRCULAR		
	ADMINISTRATIVE REQUIREMENTS	COST PRINCIPLES	AUDIT REQUIREMENTS
State, Local and Indian Tribal Governments and Governmental Hospitals	OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501		
Non-Profit Organizations and Non-Profit Hospitals			
Colleges or Universities and Affiliated Hospitals			
For-Profit Organizations			

Definitions:

"Sub-recipient"; means the legal entity to which a sub-award is made and which is accountable to the State for the use of the funds provided in carrying out a portion of the State's programmatic effort under a sponsored project. The term may include institutions of higher education, for-profit corporations or non-U.S. Based entities.

"Sub-award and Sub-grant" are used interchangeably and mean a lower tier award of financial support from a prime awardee (e.g., Washington State Health Care Authority) to a Sub-recipient for the performance of a substantive portion of the program. These requirements do not apply to the procurement of goods and services for the benefit of the Washington State Health Care Authority.

II. STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES - Following are the Assurances, Certifications, and Special Conditions that apply to all federally funded (in whole or in part) agreements administered by the Washington State Health Care Authority.

CERTIFICATIONS

1. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

(Federal, State, or local) terminated for cause or default.

The undersigned (authorized official signing for the contracting organization) certifies to the best of his or her knowledge and belief, that the contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

- a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;
- b) have not within a 3-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d) have not within a 3-year period preceding this contract had one or more public transactions

Should the contractor not be able to provide this certification, an explanation as to why should be placed after the assurances page in the contract.

The contractor agrees by signing this contract that it will include, without modification, the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions" in all lower tier covered transactions (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 45 CFR Part 76.

2. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The undersigned (authorized official signing for the contracting organization) certifies that the contractor will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by:

- a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- b) Establishing an ongoing drug-free awareness program to inform employees about
 - (1) The dangers of drug abuse in the workplace;

- (2) The contractor's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c) Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (a) above;
- d) Notifying the employee in the statement required by paragraph (a), above, that, as a condition of employment under the contract, the employee will—
- (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- e) Notifying the agency in writing within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every contract officer or other designee on whose contract activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d) (2), with respect to any employee who is so convicted—
- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

- g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

For purposes of paragraph (e) regarding agency notification of criminal drug convictions, Authority has designated the following central point for receipt of such notices:

Legal Services Manager
 WA State Health Care Authority
 PO Box 42700
 Olympia, WA 98504-2700

3. CERTIFICATION REGARDING LOBBYING

Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement must disclose lobbying undertaken with non-Federal (nonappropriated) funds. These requirements apply to grants and cooperative agreements EXCEEDING \$100,000 in total costs (45 CFR Part 93).

The undersigned (authorized official signing for the contracting organization) certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subcontracts, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

4. CERTIFICATION REGARDING PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA)

The undersigned (authorized official signing for the contracting organization) certifies that the statements herein are true, complete, and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious, or fraudulent statements or claims may subject him or her to criminal, civil, or administrative penalties. The undersigned agrees that the contracting organization will comply with the Public Health Service terms and conditions of award if a contract is awarded.

5. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor

facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children's services provided in private residence, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole source of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing the certification, the undersigned certifies that the contracting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The contracting organization agrees that it will require that the language of this certification be included in any subcontracts which contain provisions for children's services and that all sub-recipients shall certify accordingly.

The Public Health Services strongly encourages all recipients to provide a smoke-free workplace and promote the non-use of tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

6. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS INSTRUCTIONS FOR CERTIFICATION

- 1) By signing and submitting this proposal, the prospective contractor is providing the certification set out below.
- 2) The inability of a person to provide the certification required below will not necessarily result in denial of participation in

this covered transaction. The prospective contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective contractor to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- 4) The prospective contractor shall provide immediate written notice to the department or agency to whom this contract is submitted if at any time the prospective contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to whom this contract is submitted for assistance in obtaining a copy of those regulations.
- 6) The prospective contractor agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by Authority.
- 7) The prospective contractor further agrees by submitting this contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," provided by HHS, without modification, in all lower tier covered

transactions and in all solicitations for lower tier covered transactions.

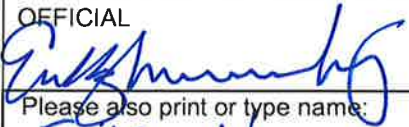
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List (of excluded parties).
- 9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 10) Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, Authority may terminate this transaction for cause or default.

7. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

- 1) The prospective contractor certifies to the best of its knowledge and belief, that it and its principals:
 - a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b) Have not within a three-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a

- public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - d) Have not within a three-year period preceding this contract had one or more public transactions (Federal, State or local) terminated for cause or default.
- 2) Where the prospective contractor is unable to certify to any of the statements in this certification, such prospective contractor shall attach an explanation to this proposal.

CONTRACTOR SIGNATURE REQUIRED

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL 	TITLE <i>Assistant Director</i>
Please also print or type name: <i>Erika Nuereberg</i>	
ORGANIZATION NAME: (if applicable) <i>Whatcom County Health Dept</i>	DATE <i>12/19/18</i>

Attachment 2

Federal Funding Accountability and Transparency Act (FFATA) Data Collection Form

This Contract is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.

To comply with the act and be eligible to enter into this contract, your organization must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If you do not already have one, you may receive a DUNS® number free of charge by contacting Dun and Bradstreet at www.dnb.com.

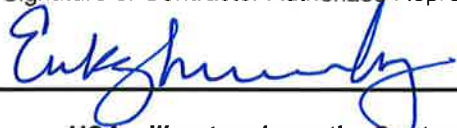
Required Information about your organization and this contract will be made available on USASpending.gov by the Washington State Health Care Authority (HCA) as required by P.L. 109-282. As a tool to provide the information, HCA encourages registration with the Central Contractor Registry (CCR) because less data entry and re-entry is required by both HCA and your organization. You may register with CCR on-line at <https://www.uscontractorregistration.com/>.

Contractor must complete this form and return it to the Health Care Authority (HCA).

CONTRACTOR

1. Legal Name Whatcom County		2. DUNS Number 060044641	
3. Principle Place of Performance Whatcom Co. Health Dept. 509 Girard Street Bellingham, WA 98225			
3a. City Bellingham		3b. State WA	
3c. Zip+4 98225-4005		3d. Country USA	
4. Are you registered in CCR (https://www.uscontractorregistration.com/)? <input checked="" type="checkbox"/> YES (skip to page 2. Sign, date and return) <input type="checkbox"/> NO			
5. In the preceding fiscal year did your organization:			
a. Receive 80% or more of annual gross revenue from federal contracts, subcontracts, grants, loans, subgrants, and/or cooperative agreements; and			
b. \$25,000,000 or more in annual gross revenues from federal contracts, subcontracts, grants, loans, subgrants, and/or cooperative agreements; and			
c. The public does not have access to information about the compensation of the executives through periodic reports filled with the IRS or the Security and Exchange Commission per 2 CFR Part 170.330			
<input type="checkbox"/> NO (skip the remainder of this section - Sign, date and return)			
<input type="checkbox"/> YES (You must report the names and total compensation of the top 5 highly compensated officials of your organization).			
Name Of Official		Total Compensation	
1.			
2.			
3.			
4.			
5.			
Note: "Total compensation" means the cash and noncash dollar value earned by the executive during the sub-recipient's past fiscal year of the following (for more information see 17 CFR 229.402 (c)(2)).			

By signing this document, the Contractor Authorized Representative attests to the information.

Signature of Contractor Authorized Representative 	Date 12/19/18
--	------------------

HCA will not endorse the Contractor's subaward until this form is completed and returned.

FOR HEALTH CARE AUTHORITY USE ONLY

HCA Contract Number: _____
Sub-award Project Description (see instructions and examples below)

Instructions for Sub-award Project Description:

In the first line of the description provide a title for the sub-award that captures the main purpose of the subrecipients work. Then, indicate the name of the subrecipient and provide a brief description that captures the overall purpose of the sub-award, how the funds will be used, and what will be accomplished.

Example of a Sub-award Project Description:

Increase Healthy Behaviors: Educational Services District XYZ will provide training and technical assistance to chemical dependency centers to assist the centers to integrate tobacco use into their existing addiction treatment programs. Funds will also be used to assist centers in creating tobacco free treatment environments.

SCHEDULE A STATEMENT OF WORK

1. GENERAL

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

- a) Provide the necessary staff to perform the allowable MAC activities described in the Cost a) Allocation Plan (CAP), and perform the work necessary to ensure all applicable laws, regulations and guidelines specific to the MAC program and this Agreement are in compliance including, but not limited to:
 - i. Code of Federal Regulation (CFR) Title 42 and Title 45.
 - ii. 1903(w)(6)(A) of the Social Security Act.
 - iii. Medicaid School-Based Administrative Claiming Guide May 2003.
 - iv. Revised Code of Washington (RCW).
 - v. The MAC Coordinator Manual.
 - vi. 2 CFR 225 Cost Principles for State, Local, and Indian Tribal Governments.
 - vii. OMB Compliance Supplements.
 - viii. Washington State Medicaid Plan.
 - ix. Secretary of State (SOS) records retention schedule.

- b) Maintain documentation to support each administrative claim submitted to HCA for reimbursement as required by federal, state, HCA and CMS Regulations, the CAP, the Manual and this Agreement. The documentation must be sufficiently detailed in order to determine whether the activities are necessary for the proper and efficient administration of the Medicaid State Plan and support the appropriateness of the administrative claim. The Contractor must:
 - i. Maintain all documentation related to staff participation in the RMTS according to section 1902(a)(4) of the Act and 42 CFR § 431.17; see also 45 CFR § 74.53 and 42 CFR § 433.32(a) (requiring source documentation to support accounting records) and 45 CFR § 74.20 and 42 CFR § 433.32(b and c) (retention period for records) and as described in the Medicaid School-Based Administrative Claiming Guide May 2003;
 - ii. Maintain all documentation related to MAC claiming, according to section 1902(a)(4) of the Act and 42 CFR § 431.17; see also 45 CFR § 74.53 and 42 CFR § 433.32(a) (requiring source documentation to support accounting records) and 45 CFR § 74.20 and 42 CFR § 433.32(b and c) (retention period for records) and as described in Medicaid School-Based Administrative Claiming Guide May 2003;
 - iii. Comply with the SOS records retention schedule;
 - iv. Assure all documentation is immediately accessible and available, must be in a useful and readable format, and must be stored electronically within the System at every opportunity as determined by HCA;
 - v. Provide any and all information and documentation requested by HCA within thirty (30) business days, or within a written, mutually agreed upon time frame; and

- vi. Submit any audit related to its MAC program to HCA within thirty (30) business days of receipt of the final report. This includes but is not limited to SAO Audits, OMB Circular Compliance Supplement Audits, Federal Reviews or Federal Audits. The contractor must provide to HCA, any corrective action related to MAC findings and questioned costs within thirty (30) business days of submission.
- c) Abide by all roles, responsibilities, limitations, restrictions, and documentation requirements including but not limited to those described in the CAP, Manual, and this Agreement.

2. RESPONSIBILITIES

- a) The Contractor is responsible for monitoring its MAC program to ensure compliance with all applicable laws, regulations and guidelines specific to the MAC program as described in this Agreement and comply with all roles, responsibilities, limitations, restrictions, and documentation requirements described in the CAP, Manual, associated federal and state regulations, and this Agreement that includes, but is not limited to, the following. Only expenses that are in reasonable and allowable, are permitted for reimbursement. HCA expects the MAC program to be managed similarly to other federal awards and expects the RMTS and Fiscal coordinators to report to, or work closely, with an administrator assigned oversight authority of the LHJ. The Contractor must:
 - i. Only include staff in the claimed reimbursement (through the RMTS or direct charge method) who are eligible to participate. The Contractor is prohibited from including any staff in the RMTS or the claimed reimbursement unless their job positions comply with the criteria described in the CAP, the Manual, and this Agreement. Staff who may be eligible to be included in the RMTS or claimed reimbursement must:
 - (1) Not be included in another MAC time study or reimbursement claim;
 - (2) Be directly employed or contracted by the LHJ, or an HCA approved Subcontractor;
 - (3) Be reasonably expected to perform MAC related activities;
 - (4) Have all federal dollars appropriately off-set according to the CAP and Manual;
 - (5) Not be included in the calculation of an indirect cost rate that is used to calculate FFP reimbursement;
 - (6) Not include any Federally Qualified Health Clinic (FQHC) staff (or expenses) whose costs are included in the FQHC cost report;
 - (7) Be job positions that fit within these job categories: nurses, other medical professionals, other professional classifications, community outreach and linkage classifications, manager/supervisor/administrator classifications, or administrative support classifications as described in the CAP and Manual; and
 - ii. Designate staff for each of the following roles: RMTS Coordinator and Fiscal Coordinator to be responsible for daily oversight and management of the Contractor's MAC program;
 - (1) The RMTS and Fiscal Coordinator roles may be assumed by one individual if desired.

- (2) The Contractor must submit contact information to the HCA Contract Manager for each coordinator, including their assigned role, name, telephone number, fax number, email, and address prior to participation in the MAC program, within seven (7) calendar days of the change.
 - (3) The Coordinators must participate in the monthly statewide coordinator conference calls.
 - (4) The Coordinators must participate in any scheduled RMTS consortium conference calls.
 - (5) The Coordinators must ensure federal, state, and HCA MAC policies are implemented.
 - (6) The Contractor must ensure the Coordinators accurately perform all responsibilities listed in the CAP, Manual and this Agreement.
- iii. Certify all data entered into the System is true and accurate, and based on actual expenditures incurred during the period of performance of the invoice. This certification must be maintained within the System. This includes, but is not limited to: calendaring, Staff/Participant lists, salary and benefits, direct charges or other claimed costs, indirect rate, MER, and any other data used to generate a claim to HCA for reimbursement;
 - iv. Verify all data that is determined necessary to be stored electronically within the System or other associated websites, or databases as described in the CAP, Manual and this Agreement is physically entered and stored according to the SOS Retention Schedule. This data includes, but is not limited to: calendaring, Staff/Participant lists, salary and benefits, direct charges or other claimed costs, indirect rate, MER, and any other data used to generate a claim to HCA for reimbursement;
 - v. Prepare an annual MER proposal to include the MER calculation and formula, the data sources used to determine the MER, the data collection process, the Contractor's monitoring process to ensure accuracy of the MER and any other relevant information;
 - (1) The proposal must be submitted to HCA no later than December first of each year.
 - (2) The proposal must be updated and re-submitted if the data source or collection, calculations, or monitoring changes thirty (30) business days prior to the change.
 - vi. Submit a quarterly MER certification with each invoice validating the accuracy of the MER (this certification may be maintained in the System);
 - vii. Submit a quarterly CPE certification identifying the revenue account codes as found in the BARS manual with each invoice validating the accuracy of the CPE;
 - viii. Submit an annual certificate of indirect costs that certifies the accuracy of indirect cost rate proposal submitted to their Cognizant Agency each January;
 - ix. Certify the accuracy of all data used to determine a quarterly MAC reimbursement by signing the A19 by an authorized representative. This certification extends to all RMTS data and financial data;

- x. Complete a one hundred percent (100%) code review of all RMTS moments to ensure the code and narrative correlate, within forty five (45) calendar days after the end of the quarter;
 - (1) Finalize and certify the accuracy of the 10% quality assurance review within 10 (ten) calendar days
- xi. Monitor the RMTS non response rate and identify any deficiencies in staff responses. Corrective action must:
 - (1) Be implemented within ten (10) business days; and
 - (2) Be documented and available to HCA upon request.
- xii. Use a System that is statistically valid and in compliance with all state, and federal laws and Regulations whether through a third-party or other means as stated in the CAP;
- xiii. Not participate in a time study or claiming process for the HCA MAC program with any entity that does not have an executed agreement with HCA.
- xiv. Not participate in an RMTS consortium without prior written approval from HCA;
 - (1) If identified as a Lead Agency for the RMTS Consortium, the Contractor must perform the Lead Agency duties described in the CAP and Manual and participate in the current statewide LHJ Steering Committee.
- xv. Ensure all interpreter staff have been tested and certified by Washington State Department of Social and Health Services (DSHS) as defined by DSHS;
 - (1) The contractor is prohibited from claiming the enhanced seventy five percent (75%) rate for any interpretation activities unless the staff has been certified by DSHS;
 - (2) The contractor is prohibited from claiming the enhanced seventy five percent (75%) rate for any interpretation activities unless MAC activities performed is part of the staff's assigned job duties; and
 - (3) The contractor is prohibited from claiming the enhanced seventy five percent (75%) rate unless an allowable MAC activity was performed on behalf of children under twenty one (21).
- xvi. Ensure all Coordinators and Participants have completed and have certified their understanding of the training prior to participating in the MAC program, and annually thereafter. The contractor is prohibited from allowing any staff to participate in the program unless they have completed and have certified their understanding of the training. The Contractor must:
 - (1) Ensure all Coordinators receive HCA approved training prior to participation;
 - (2) Ensure all Participants certify completion of the online training before performing any duties within the System or participating in the RMTS;
 - (3) Ensure all Participants fully understand each activity code and how to answer moments according to what activity they are doing exactly at the sampled moment;

- (4) Train all Participants to maintain proper documentation for MAC related activities;
 - (5) Only use training materials that have been approved in writing by HCA; and
 - (6) Track the completion and certification of training within the System, and must be available upon request by HCA.
- xvi. Comply with all HCA revisions and RMTS/claiming requirements as described in the Manual;
 - xvii. Only use the activity codes (or their successor) in the Manual as approved by HCA, for participation in MAC and are responsible for ensuring all Participating Staff understand each code.
- b) Health Care Authority is responsible for performing oversight of the Contractor's MAC program to ensure the effective administration of the MAC program and complying with all roles, responsibilities, limitations, restrictions, and documentation requirements described in the CAP, Manual, and this Agreement includes, but is not limited to, the following. HCA must:
- i. Maintain oversight of the Contractor's MAC program and monitoring activities including review of all components of the time study, claiming, training, or anything MAC related. The contractor is required to monitor its own MAC program to ensure compliance with all applicable Regulations and facilitating HCA's oversight of the program;
 - ii. Direct the MAC activities reimbursable at the enhanced seventy five percent (75%) rate for all Skilled Professional Medical Personnel (SPMP) participating in the Contractor's MAC program. The contractor is prohibited from claiming the enhanced rate for any SPMP activities without express, written approval from HCA, see section 8, *Skilled Professional Medical Personnel (SPMP)* below;
 - iii. Review the Contractor's monitoring activities to ensure monitoring is occurring and any identified issues are addressed as deemed appropriate by HCA. This includes, but is not limited to, review of time study responses, accuracy of coding, appropriateness of code changes, sufficiency of backup documentation, non-response rates;
 - iv. Verify the Contractor has entered all necessary data into the System and verify all data entered was certified by the Contractor as accurate;
 - v. Review all claimed costs prior to issuing reimbursement to ensure they are allowable, reasonable, and are supported by documentation that is sufficiently detailed to permit HCA, CMS, or others to determine whether the costs are necessary for the proper and efficient administration of the state plan. This includes but is not limited to; source documentation of staff costs, operating expenses, and subcontracted vendor costs.
 - vi. Review the RMTS Consortia organization and membership, including the Lead Agency identified, annually and issuing an official notice of approval or denial. The Contractor is prohibited from participating in a Consortium without express, written approval of the Consortia organization and membership;
 - vii. Review all MAC related training materials prior to their use in the MAC program and issuing an official notice of approval or denial. This includes multimedia video, audio, digital or other electronic sources, and paper based training materials. The Contractor

is prohibited from using any training materials without express, written approval from HCA;

- viii. Evaluate RMTS and claiming data prior to issuing quarterly reimbursements to ensure the RMTS results and claimed costs are appropriate according to all applicable laws, Regulations and guidelines specific to the MAC program. This evaluation will also be used to identify trends, best practices for the MAC program, quality assurance, training needs, areas in need of improvement, or other concerns related to the MAC program and HCA's oversight responsibilities;
- ix. Issue corrective action plans as necessary and determined by HCA's oversight capacity that includes but is not limited to, quarterly reviews of RMTS and claiming data, the contractor's failure to be in compliance with all applicable laws, Regulations and guidelines specific to the MAC program and this Agreement, or other quality assurance needs. The contractor is required to comply with any corrective action plan issued. Failure to do so will result in sanctions that may include, but is not limited to, reduced reimbursement and/or termination of this Agreement; and
- x. Produce and update the CAP, Manual, contracts, training materials, or other MAC related documentation as needed and make it available to the Contractor.

3. MINIMUM RESPONSE RATE AND NON-RESPONSES

Non-responses are moments not completed by Participant within five (5) business days, with the exception of expired moments where the Participant was on paid or unpaid leave. The return rate of valid responses for the RMTS must be a minimum of eighty five percent (85%). The following remedial action is required of the Contractor if the RMTS response rate drops below eighty five percent (85%).

- a) Non-response rates greater than fifteen percent (15%):
 - i. HCA will send written notification to the Contractor requesting a Corrective Action Plan to ensure a minimum eighty five percent (85%) compliance rate for the RMTS is achieved in subsequent quarters.
 - ii. The Contractor must develop and submit the plan to HCA for approval within thirty (30) business days of HCA's notification.
 - iii. Failure to provide a timely corrective action plan within thirty (30) business days may result in the Contractor being prohibited from participation in MAC for the following quarter.
 - iv. An eighty five percent (85%) compliance rate for the RMTS must be met in the following quarter.
- b) Non-response rates greater than fifteen percent (15%) for two (2) consecutive quarters:
 - i. HCA will reduce reimbursement by thirty five percent (35%) for the second consecutive quarter.
 - ii. The Contractor will be notified via Certified Mail of the reduced reimbursement.

- iii. Eighty five percent (85%) compliance rate for the RMTS must be met in the following quarter.
- c) Non-response rates greater than fifteen percent (15%) for three (3) consecutive quarters:
 - i. HCA will notify the affected Contractor via certified mail of the denied reimbursement for the third consecutive quarter and prohibited participation in MAC.
 - ii. None of the affected Contractors may claim for any denied or reduced reimbursement from the three consecutive quarters of non-compliance. The Contractor may be prohibited from participating in MAC for the following quarter (4th consecutive quarter), and will be notified as such through the HCA notification.

4. CORRECTIVE ACTION PLANS

HCA will pursue a corrective action plan if a Contractor fails to meet any MAC program requirements described in the CAP, Manual, this Agreement, or as determined by HCA. HCA will pursue a corrective action plan if the contractor fails to address or correct any problems timely and sufficiently as determined by HCA. The Contractor must develop and submit a corrective action plan response to HCA for approval within thirty (30) days of HCA's notification. If a Contractor fails to meet the requirements outlined in the corrective action plan, HCA will impose sanctions that may include, but are not limited to; conducting more frequent reviews, delayed or denied payment of MAC claims, recoupment of funds, or termination of this Agreement.

Examples of Contractor actions that may result in corrective action and/or sanctions include, but are not limited to:

- a) Repeated and/or uncorrected errors in financial reporting;
- b) Failure to maintain adequate documentation;
- c) Failure to cooperate with state or federal staff;
- d) Failure to provide accurate and timely information to state or federal staff as required;
- e) Failure to meet time study minimum response rates;
- f) Failure to meet statistical validity requirements; and
- g) Failure to comply with the terms and conditions of this agreement.

5. ADMINISTRATIVE FEE

HCA charges MAC contractors an administrative fee to offset HCA's costs for the administration of the MAC program. The rate is based on the costs associated with the staff effort spent on MAC related work for an entire State Fiscal Year (SFY) and is billed as a line item on the quarterly claim form A-19-1A submitted by the MAC contractor. This cost is divided by the dollar amount of administrative claims submitted by the participating contractors in the MAC program for the same SFY. The calculated rate is used on the claims for the subsequent SFY. At the end of the period, the rate used will be validated using the actual claimed expenditures for that period and any variances will be settled with the contractor during the second quarter of the new SFY.

6. TIMELY FILING AND OVERPAYMENT REQUIREMENTS

The Contractor must submit invoices for reimbursement to HCA for review and approval within one hundred twenty (120) calendar days following the end of each Billing Quarter. Upon approval, the Contractor must submit a signed A19-1A invoice voucher within thirty (30) calendar days.

- a) Invoices submitted after one hundred twenty (120) calendar days following the end of the Billing Quarter may result in corrective action.
- b) HCA will not offset negative balances against future A19s. The contractor must immediately remit a check to HCA for any funds requiring repayment.
- c) HCA is not a recovery agent and any overpayments that are at or beyond the one hundred eighty (180) calendar day mark will be turned over to the Office of Financial Recovery (OFR).
- d) HCA will not seek reimbursement for any invoice received after the 23rd month of the two-year federal filing deadline.

7. CALCULATING THE FFP AND GENERATING AN INVOICE

- a) The Contractor is responsible for ensuring all data (including all RMTS and financial data) used to calculate the amount of FFP submitted to HCA for reimbursement is accurate, based on actual expenses incurred during the period of performance, and complies with all federal, state, HCA and CMS Regulations, the CAP, Manual, and this Agreement. The Contractor must certify the accuracy of all data used to calculate the amount of FFP by an authorized representative signing the A-19. The Contractor must use a System that is statistically valid and in compliance with all state, and federal laws and Regulations whether through a third-party or other means as stated in the CAP to calculate the amount of FFP and generate a claim.
 - i. The Contractor must submit invoices to HCA for FFP on a quarterly basis;
 - ii. All data used to calculate the FFP must be from the same period of service;
 - iii. All data used to calculate the FFP must be the actual cost/expenditure and not approximated;
 - iv. The FFP is determined by calculating the total adjusted costs, multiplying these costs by the adjusted RMTS results, and the applicable Medicaid Eligibility Rate (MER), adding any direct charges, and then applying the appropriate FFP rate;
 - v. The invoice must be generated within one hundred twenty (120) business days of the end of the quarter; and
 - vi. The invoice is generated based on following five components:
 - (1) Cost pool construction;
 - (2) Calculating allowable Medicaid administrative time via the System or direct charge method and documentation;
 - (3) Calculation and application of the pertinent MER;

- (4) Calculation and application of the indirect cost rate; and
- (5) Application of the appropriate FFP rate.

b) Cost pool construction

- i. The Contractor must comply with all federal, state, HCA and CMS Regulations, the CAP, Manual, and this Agreement when constructing cost pools.
- ii. The Contractor is prohibited from including any unallowable costs in any cost pool.
- iii. The Contractor must include all costs used to calculate the FFP reimbursement to one of these six cost pools:
 - (1) Cost Pool 1: MAC SPMP;
 - (2) Cost Pool 2: MAC Non-SPMP;
 - (3) Cost Pool 3a and 3b: Non-MAC;
 - (4) Cost Pool 4: MAC Direct Charge – enhanced;
 - (5) Cost Pool 5: MAC Direct Charge – non-enhanced; and
 - (6) Cost Pool 6: Allocated.
- iv. Costs included in the calculation of an indirect cost rate are prohibited from being assigned to any of the six cost pools except by application of the indirect cost rate.
- v. All costs assigned to each cost pool must be allowable and comply with the descriptions in the CAP and Manual.

c) Calculating allowable Medicaid Administrative Time

- i. The Contractor must only use the RMTS or the Direct Charge method to calculate the percent of reimbursable time.
- ii. The Contractor must use the RMTS for all eligible staff who are not certified as a Single Cost Objective.
 - (1) The Contractor must use the RMTS results produced by the System.
 - (2) The Contractor is prohibited from altering the RMTS results and certifies the accuracy of the data by signing the A19 by an authorized Contractor representative.
- iii. The Contractor may only use the Direct Charge method for staff who are certified as a Single Cost Objective.
 - (1) These staff are required to document their daily work activities in fifteen (15) minute increments.

- (a) Daily logs must be maintained according to the SOS record's retention schedule.
 - (b) All daily logs must have a quarterly summary rolling up all time over the quarter.
 - (2) These staff must complete a single cost objective certification quarterly using an HCA approved form.
 - (3) Each single cost objective staff must be reported individually on the invoice.
 - (4) The invoice must report the name, the actual amount of time spent performing allowable MAC activities, and total dollar amount claimed for reimbursement for each staff.
- d) Direct Charge for Interpretation Service Contracts
 - i. The Contractor may only direct charge for a portion of Interpretation Service contracts for allowable interpretation activities as described in this Agreement.
 - (1) Services direct charged must be for interpretation activities identified as allowable activities within the Manual, the CAP, and this Agreement. The Contractor is prohibited from including any other portion of an Interpretation Services Contract in the calculation for FFP reimbursement.
 - (2) Each interpretation activity must be documented to HCA's satisfaction, in fifteen (15) minute increments, using a patient encounter form that includes, at minimum, the following data elements:
 - (a) Appointment time/duration
 - (b) Client Name/ID/transaction information
 - (c) Interpreter Agency
 - (d) Interpreter Name or Employee ID
 - (e) Language/communication type
 - (f) Requestor or nurse name
 - (g) The forms must be maintained according to SOS Record's retention schedule.
 - (3) The above data will be made available upon request. Upon request, the data will be provided in a mutually agreed upon format.
 - (4) The contractor is prohibited from altering the information on the patient encounter forms and certifies the accuracy of the data entered into the spreadsheet and the System by signing the A19 by an authorized Contractor representative.
- e) Calculation and application of the pertinent MER.
 - i. All MERs must be calculated quarterly;
 - ii. All MERs must be based on the quarter claimed;

- iii. All MAC activities that that benefit the Contractors Clients directly and are performed within a program that identifies Clients must use a Client-based MER as described in the CAP and Manual;
 - iv. All MAC activities that benefit the Contractors Clients directly and are performed within a program that operates a primary care or specialty clinic must use a clinic-based MER as described in the CAP and Manual;
 - v. All MAC activities that benefit a larger population in the geographical region served by the Contractor, or in programs that do not identify Clients or collect demographic data must use the modified county-wide MER; and
 - vi. The Contractor is required to collect and maintain demographic data used to determine Medicaid enrollment for all Clients served within budget units whose costs are included in the FFP reimbursement. The Contractor is prohibited from including clients from any budget unit that is not allowable within the MAC program.
 - (1) All data related to Medicaid enrollment and the MER must be maintained according to the SOS records retention schedule;
 - (2) The information collected must be sufficiently detailed to determine Medicaid enrollment through HCA's ProviderOne System;
 - (3) The information must be entered in the Contractor's Client information System or data base;
 - (4) The Contractor must produce a single electronic list of all unduplicated Clients served over the quarter within thirty (30) business days of the end of the quarter;
 - (5) The Contractor is prohibited from including the same Client more than once (duplicating) on the quarterly list; and
 - (6) The Contractor must submit the quarterly list to either their third party System operator or other System operator which calculates the Client-based and clinic-based MER.
- f) Calculation and application of the indirect cost rate
- i. All indirect cost rates must be developed in accordance with all applicable regulations and guidelines including the 2 CFR Chapter I, Chapter II, part 200, et al (OMNI Circular);
 - ii. The Contractor is required to have an indirect cost rate proposal approved by their Cognizant Agency;
 - iii. The Contractor is required to certify the accuracy of the indirect cost rate annually using HCA form 02-568 Certificate of Indirect Costs;
 - iv. The Contractor is required to verify all costs submitted to HCA for reimbursement are not duplicated through the indirect rate or any other mechanism; and
 - v. The Contractor is prohibited from requesting duplicate FFP for any cost.

g) Application of the appropriate FFP rate

The Contractor is:

- i. Permitted to claim seventy five percent (75%) enhanced FFP only for specific allowable MAC activities accurately reported to SPMP or Interpretation activity codes as described in the Manual. The Contractor is:
 - (1) Required to verify the accuracy of activities reported to activity codes 12b and 7d; and
 - (2) Prohibited from claiming seventy five percent (75%) FFP for any other activities.
- ii. Permitted to claim fifty percent (50%) for all other accurately reported MAC activity codes; and
- iii. Required to certify the accuracy of the FFP claimed for reimbursement by signing the A19.

h) Certified Public Expenditures

The Contractor is:

- i. Is prohibited from using any source of funds that do not comply with federal, state, HCA and CMS Regulations, the CAP, Manual, and this Agreement as CPE;
- ii. Is required to certify all sources of funds used as for CPE are accurate, allowable, and in compliance with all federal, state, HCA and CMS Regulations, the CAP, Manual, and this Agreement quarterly by completing a Certified Public Expenditure Local Match Certification quarterly and by signing the A19. The quarterly CPE certification may be completed
- iii. Is required to use the Budgeting, Accounting and Reporting System (BARS manual) prescribed accounting and reporting for local governments to identify and document the revenue account codes for all local matching funds reported as CPE
- iv. Is required to ensure the source of all CPE funds are not federal tax money and are not used as a match for federal money (by the Contractor or any other agency);
- v. Must only use these funds to supplement, not supplant the amount of federal, state and local funds otherwise expended or services provided under this Agreement;
- vi. Must have funds available for MAC activities and the funds must be within the Contractor's control and budget;
- vii. Is prohibited from using provider-related donations or impermissible health care related tax source for CPE;
- viii. Is prohibited from using any private donations or non-public funds as a source for CPE without authorization from CMS' Center for Medicaid and State Operations' National Institutional Reimbursement Team (NIRT);

- ix. Is prohibited from requiring or allowing private non-profits to participate in the financing of the non-federal share of expenditures;
 - (1) Is prohibited from allowing non-governmental units to voluntarily provide, or be contractually required to provide, any portion of the non-federal share of the Medicaid expenditures.
- ix. Is prohibited from using funds payable under this Agreement for lobbying activities of any nature. The contractor certifies that no state or federal funds payable under this Agreement shall be paid to any person or organization to influence, or attempt to influence, either directly or indirectly, an officer or employee of a state or federal agency, or an officer or member of any state or federal legislative body or committee regarding the award, amendment, modification, extension, or renewal of a state or federal contract grant; and
- x. Must expend the total computable cost to Subcontractors for performance of allowable MAC activities.
 - (1) The Contractor is prohibited from submitting a request for FFP reimbursement to HCA until they have actually incurred the total computable cost; and
 - (2) The Contractor is prohibited from requiring the Subcontractor to provide the non- federal share of the payment, or return any portion of the total computable cost to the Contractor.

i) Revenue Offset

The Contractor is:

- i. Prohibited from submitting a request for FFP reimbursement to HCA unless all funds are appropriately offset according to all federal, state, HCA and CMS Regulations, the CAP, Manual and this Agreement;
- ii. Required to certify the accuracy of the funds that are offset and the accuracy of the requested FFP reimbursement by signing the A19;
- iii. Required to ensure there is no duplication in FFP reimbursement between programs or cost objectives;
- iv. Financially responsible for repayment of any duplicated funds;
- v. Required to provide documentation that Coordinators have been trained and fully understands the scope of work and terms of each funding source; and
- vi. The Contractor is required to perform an assessment to determine whether each cost objective contained within the MAC budget unit(s) has potential to overlap with MAC;
 - (1) The Contractor is prohibited from using any source of funds contained within the MAC budget unit until they have been assessed and determined appropriate;

- (2) The Contractor must complete the assessment annually and submit the assessment to the HCA Contract Manager no later than January 31st or within thirty (30) business days of completion, whichever comes soonest;
- (3) If the assessment determines any portion of the scope of work overlaps with MAC activities, the entire cost objective is deemed to overlap and is prohibited from being used as CPE; and
- (4) Required to identify costs that must be offset, and verify the remaining net costs are allowable for inclusion in the MAC program and eligible for FFP reimbursement.

8. SKILLED PROFESSIONAL MEDICAL PERSONNEL (SPMP)

Contractor staff who have completed a two-or-more-year program leading to an academic degree or certificate in a medically related profession, demonstrated by possession of a medical license, certificate or other document issued by a recognized National or State medical licensure or certifying organization, or a degree in a medical field issued by a college or university certified by a professional medical organization are eligible for a seventy five percent (75%) enhanced reimbursement for specific MAC activities. Years of experience in the administration, direction, or implementation of the Medicaid program is not considered the equivalent of professional training in a field of medical care. The Contractor is permitted to perform SPMP activities as directed by HCA's Chief Medical Officer (CMO) to assist in achieving HCA's goals and administering the Medicaid State Plan.

The Contractor must:

- a) Monitor and ensure that FFP reimbursement for SPMP activities are in compliance with all federal, state, HCA and CMS Regulations, the CAP, Manual and this Agreement. Federal requirements include 42 CFR § 432.2, 432.45, 432.50, and 433.15;
- b) Have all forms and documents supporting the designation of an SPMP entered into the System and retained according to the SOS record's retention schedule;
- c) Not, and is prohibited from, requesting seventy five percent (75%) enhanced reimbursement for:
 - i. Any staff who are not certified as an SPMP, as stated above;
 - ii. Any staff whose position descriptions do not require certified SPMP duties or responsibilities;
 - iii. Any staff who are not directly employed by the Contractor;
 - iv. Medical assistance expenditures;
 - v. Any SPMP activities that are not directed by HCA's CMO and explicitly described in this Agreement (All other allowable MAC activities performed by an SPMP are eligible for 50% FFP); and
 - vi. Any activities that are not directly related to the administration of the State Medicaid plan.

- d) Contribute to a quarterly SPMP report as needed by HCA and/or WSALPHO. Provide details and additional information needed for the report as requested by HCA and/or WSALPHO , within a mutually agreed upon time frame;
- e) Participate in program planning and policy development meetings as requested by HCA;
 - i. The meetings will include discussions related to, but not limited to, reviewing the SPMP reports and related topics or the effectiveness of the activities performed in support of HCA's goals and the Medicaid State Plan.
- f) Comply with any changes to the allowable SPMP activities as directed by the CMO;
 - i. Failure to comply with CMO directives may result in termination of SPMP participation in the MAC program.
- g) Monitor and ensure that all activities reimbursed at the seventy five percent (75%) enhanced FFP are in support of the Medicaid State Plan and fall within the categories below. All other allowable MAC activities performed by an SPMP are eligible for fifty percent (50%) FFP;
- h) Comply with any changes to allowable SPMP activities as directed by the CMO that may include, but is not limited to:
 - i. Clinical consultation with medical providers regarding best practices and adequacy of medical care covered by Medicaid. Includes, but is not limited to the following areas:
 - (1) Pediatric immunization issues
 - (2) Access to Baby and Child Dentistry (ABCD) Emerging treatment/therapies for high risk populations
 - ii. Coordination of Medicaid-covered medical services for medically at-risk populations.
 - (1) Medically fragile children
 - (2) High risk pregnant women
 - (3) Homeless individuals
 - (4) Individuals with multiple medical conditions
 - iii. Case staffing on the medical aspects of cases requiring Medicaid-covered services.
 - (1) Medically involved children in foster care
 - (2) High risk pregnant women
 - (3) Individual with communicable diseases requiring extraordinary/non-standard medical care.
 - iv. Planning and coordination with local medical providers to facilitate earlier referrals and treatment for high-risk populations.

- (1) Children in foster care
- (2) Homeless individuals
- (3) Children with developmental delays or behavioral challenges
- v. Providing medical consultation to the state regarding the Medicaid state plan.
 - (1) Consultation with medical providers to improve birth outcomes for Medicaid children.
 - (2) Consultation with school personnel to improve health outcomes for children exhibiting developmental delays or behavioral challenges due to medical condition, family stress, or other factors.
- vi. Pediatric immunizations.