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| C:\Users\ANDERM\Desktop\HCA-logo.png | | INFORMATION TECHNOLOGY  CONTRACT for  Healthy Youth Survey | | | | | | | | | HCA Contract Number: K  Resulting from Solicitation Number:  Contractor Contract Number: | | | | |
| **THIS CONTRACT** is made by and between Washington State Health Care Authority, (HCA) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (Contractor). | | | | | | | | | | | | | | | |
| CONTRACTOR NAME | | | | | | CONTRACTOR doing business as (DBA) | | | | | | | | | |
|  | | | | | |  | | | | | | | | | |
| CONTRACTOR ADDRESS | Street | | | | | City | | | | | | State | | Zip Code | |
|  | | | | | |  | | | | | |  | |  | |
| CONTRACTOR CONTACT | | | | CONTRACTOR TELEPHONE | | | | | | | CONTRACTOR E-MAIL ADDRESS | | | | |
|  | | | |  | | | | | | |  | | | | |
| Is Contractor a Subrecipient under this Contract? | | | | | | | CFDA NUMBER(S): | | | | | | FFATA Form Required | | |
| YES NO | | | | | | |  | | | | | | YES NO | | |
|  | | | | | | | | |  | | | | | | |
| HCA PROGRAM | | | | | | | | | HCA DIVISION/SECTION | | | | | | |
|  | | | | | | | | |  | | | | | | |
| HCA CONTACT NAME AND TITLE | | | | | | | | HCA CONTACT ADDRESS | | | | | | | |
| , | | | | | | | | Health Care Authority  626 8th Avenue SE  PO Box \_\_\_\_  Olympia, WA 98504-\_\_\_\_ | | | | | | | |
| HCA CONTACT TELEPHONE | | | | | | | | | HCA CONTACT E-MAIL ADDRESS | | | | | | |
| (360) 725- | | | | | | | | |  | | | | | | |
|  | | |  | | | | | | |  | | | | | |
| CONTRACT START DATE | | | CONTRACT END DATE | | | | | | | TOTAL MAXIMUM CONTRACT AMOUNT | | | | | |
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| PURPOSE OF CONTRACT: | | |  | | | | | | |  | | | | | |
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| The parties signing below warrant that they have read and understand this Contract and have authority to execute this Contract. This Contract will be binding on HCA only upon signature by both parties. | | | | | | | | | | | | | | | |
| CONTRACTOR SIGNATURE | | | | | PRINTED NAME AND TITLE | | | | | | | | | | DATE SIGNED |
|  | | | | |  | | | | | | | | | |  |
| HCA SIGNATURE | | | | | PRINTED NAME AND TITLE | | | | | | | | | | DATE SIGNED |
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Exhibit A: HCA RFP 2021HCA16 for Healthy Youth Survey

Exhibit B: [Bidder Name] Response to HCA RFP

Note: Exhibits A and B are not attached but are available upon request from the HCA Contracts Administrator.

RECITALS

The State of Washington, acting by and through the Health Care Authority (HCA), issued Request for Proposals (RFP) # dated October 11, 2021 (Exhibit A) for the purpose of purchasing Healthy Youth Survey in accordance with its authority under chapters 39.26 and 41.05 RCW.

[Contractor Name] submitted a timely Response to HCA’s RFP # 2021HCA16 (Exhibit B)

HCA evaluated all properly submitted Responses to RFP and has identified [Contractor Name] as the Apparent Successful Bidder.

HCA has determined that entering into a Contract with [Contractor Name] will meet HCA’s needs and will be in the State’s best interests.

NOW THEREFORE, HCA awards [Contractor Name] this Contract, the terms and conditions of which will govern the Contractor’s providing to HCA the Heathy Youth Survey as described in this Contract.

DEFINITIONS

**Acceptance** or **Accept**: The materials, supplies, services, and/or equipment that have passed an appropriate inspection. In the event that there is a formal Acceptance Testing period required in the Solicitation document, then acceptance is formalized in writing. If there is no Acceptance Testing, Acceptance will occur when the Product is delivered and inspected by HCA.

**Acceptance Date**: The date upon which HCA Accepts a Deliverable as provided in the section titled Artifact and Deliverable Acceptance; or, if there is no Acceptance Testing, Acceptance Date shall mean the date HCA confirms in writing that the submitted Deliverable meets Acceptance criteria.

**Acceptance Testing**: The process for ascertaining that the materials, supplies, services, and/or equipment meets the standards set forth in the Solicitation, prior to Acceptance.

**Addendum** or **Amendment**: An agreed, written, signed change to a legal document.

**Alternate**: A substitute offer of materials, supplies, services and/or equipment that is not at least a functional equal in features, performance and use and which materially deviates from one or more of the specifications in a competitive Solicitation.

**Application Services**: Web services that are made available from the Contractor’s server.

**Artifact**: A tangible by-product (software or non-software) of a defined Deliverable produced by the Contractor and submitted to HCA for approval in accordance with this Contract and the Traceability Contractor Management Plan. Artifacts will be analyzed by HCA through a pre-established Artifact Review Process outlined in its associated Deliverable Expectation Document.

**Authorized Representative**: An individual designated by the Contractor to act on its behalf with the authority to legally bind the Contractor concerning the terms and conditions set forth in the RFP and this Contract.

**Business Days and Hours**: Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by Washington State.

**Business Requirements**: Critical activities of HCA that must be performed to meet Agency objectives while remaining solution independent.

**Change Order**: Formal instructions to amend the Contract based on an approved Change Request.

**Change Request**: A request to modify the Traceability scope, schedule, or budget.

**Cloud Service** or **Cloud Service Provider**: A model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction.

**Commercial Off-The-Shelf (COTS)**: A collection of computer source and/or object code that, with modifications defined by HCA, shall meet the system requirements and specifications set forth in this RFP. HCA shall have the right to use the modified software and all purchased modules in accordance with the licensing provisions contained in this Contract.

**Complete System**: All functional, technical, and system requirements have been met as confirmed in writing by HCA.

**Confidential Information**: 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**: This signed agreement, which includes all schedules, exhibits and amendments for the procurement of items of tangible property, and services derived from RFP K.

**Contractor**: Individual or company whose proposal has been accepted by the agency and is awarded a fully executed, written contract. The Contractor has full responsibility for the coordination and control of all aspects of the project, including support to be provided by any Subcontractor(s). The Contractor will be the sole point of contact with HCA relative to contract performance.

**Contractor Management Plan**: A sub-component of the HCA Traceability Project Management Plan that establishes and documents the structure for collaboration with Project team members and the Contractor. This plan provides the process for receiving and validating the delivery of commitments made in the Contract.

**Correction**: Use of reasonable commercial efforts to resolve a Defect/Deficiency in the Software to HCA’s satisfaction as evidenced by explicit Acceptance.

**Covered Entity**: A health plan, a health care clearinghouse or a health care provider who transmits any health information in electronic form to carry out financial or administrative activities related to health care, as defined in 45 CFR 160.103.

**Data**: All information recorded for purposes of this Contract including all models, diagrams, and dictionaries necessary to use said information. Data also includes all data converted pursuant to this Contract.

**Data Dictionary**:Centralized repository of information about data such as meaning, relationships to other data, origin, usage, and format.

**DDI**: Design, Development, and Implementation of the Solution.

**Defect**: A defect, deficiency, flaw, anomaly, failure, omission, error, incident, interruption of service, or other problem of any nature whatsoever with respect to the Software, including, without limitation, any failure of the Software to conform to, meet, or function in accordance with an applicable Specification or requirements of K1108. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of the Software.

**Deliverable**: Any measurable, tangible, verifiable outcome, result, or item that shall be produced to complete a project or part of a project and to receive payment. A Deliverable may be composed of one or more interrelated project Work Products.

**Deliverable Expectation Document**: A document cooperatively produced by HCA and the Contractor as outlined in the Traceability Contractor Management Plan that provides a description of a Deliverable, the standards by which the Deliverable will be analyzed, and defines associated Artifacts and Artifact approval criteria.

**Delivery Date**: The date by which a Deliverable must be delivered to the HCA.

**Disaster Recovery**: A catastrophic event that is caused by acts beyond the Contractor’s reasonable control and that result in significant or potentially significant downtime or disruption of the production environment and requires the Contractor to invoke their Disaster Recovery Plan.

**Documentation**: All operations, technical or user manuals and guides used in conjunction with the System, including manuals provided by licensors of Third-Party software. Additionally, Documentation refers to all materials required to support and convey information about the Services required by this Contract. It includes, but is not restricted to, written reports and analyses, diagrams, maps, logical and physical designs, system designs, computer programs, flow charts, disks, and/or other machine-readable storage media.

**Effective Date**: The first date the 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.

**Enhancements**: Any releases, versions (including releases or versions that operate on a different or new platform or version of the operating system of the equipment or any database or other equipment) improvements, updates, upgrades, additions, fixes, and modifications to, and new releases of, the Software not related to the resolution of a Defect/Deficiency

**Error**: See Defect.

Executive Sponsor: The HCA “owner” of all Deliverables.

**HCA Contract Manager**: The individual identified on the cover page of this Contract who will provide oversight of the Contractor’s activities and monitor Deliverables completed and accepted under this Contract.

**Health Care Authority (HCA)**: 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.

**Held Desk**: A service provided by the Contractor for the support of the Contractors Software.

**Incident**: See Defect.

**Inspection**: An examination of delivered material, supplies, services, software and/or equipment prior to Acceptance, aimed at forming a judgment as to whether such delivered items are what was ordered, were properly delivered and ready for Acceptance. Inspection may include a high-level examination or a more thorough detailed examination as is customary to the type of purchase, as set forth in the Solicitation document and/or as agreed between the parties. Inspection may be acknowledged by an authorized signature of the Agency. Inspection may include testing of the Software.

**Installation**: Transferring the electronic media to computer systems so that Software will provide the features and functions generally described in the user documentation.

**Installation Date**: The date by which all Software shall be in place, in good working order and ready for Acceptance Testing.

**Interfaces**: Custom Software that is developed by the Contractor for transmitting Data between the System and other systems.

**Legacy System**: An existing computer system or application program that continues to be used.

**Mandatory**: The terms “shall,” “will,” and “is/are required,” identify a Mandatory item or factor (as opposed to “desirable”). Failure to meet a Mandatory item or factor may result in the rejection of a Bidder’s proposal.

**Milestone**: A significant event in a project, usually the completion of a major Deliverable**.**

**Module**: A fully functioning part of the total system that is targeted to a specific business function.

**Office of the Chief Information Officer (OCIO)**: The Washington State Office of Chief Information Officer. OCIO sets information technology (IT) policy and direction for the state of Washington.

**Online File Storage Service**: A file hosting service, cloud storage service, or online file storage provider that hosts user files via the Internet. Users can upload files that can be accessed over the Internet from other computers and mobile devices, by the same user or other designated users. Examples include but are not limited to: Box.com, OneDrive for Business.

**Operational**: The condition when the System is completely functional in accordance with Specifications and usable for its purposes in the daily operations of HCA, and all of the Data has been loaded into the System and is available for use by the HCA.

**Optional**: The terms “may,” “can,” or “prefers” identify a discretionary item or factor.

**Order Document**: A written communication, submitted by HCA to the Contractor, which details the specific transactional elements required by HCA within the scope of the Contract such as delivery date, size, color, capacity, etc. An Order Document may include, but is not limited to field orders, purchase orders, work orders, or other writings as may be designated by the parties hereto. No additional or alternate terms and/or conditions on such written communication shall apply unless authorized by the Contract and expressly agreed to between HCA and the Contractor.

**Price**: Charges, costs, rates, and/or fees charged for the Products and Services under this Contract, which shall be paid in United States dollars.

**Product**: The Software source or object code, system technical documentation, user documentation, training material or other items of tangible property developed by or delivered from the Contractor to HCA under the terms and conditions of the Contract.

**Project**: The development and implementation of a Licensing and Enforcement Case Management System, Enterprise Content Management System, Tax and Fee System and Payroll System, collectively referred to as “Project” or “SMP.”

**Project Charter**: The Project Charter for the Project. A “project charter” refers to a statement of objectives in a project. This statement also sets out detailed project goals, roles, and responsibilities, and identifies the stakeholder(s), and the level of authority of a project manager.

**Project Dashboard**: The OCIO’s web-based view into planned, current, and recently completed IT projects of all Washington state agencies.

**Project Manager**: The HCA project manager for the Project.

**Project Management Plan**: A composite document that sets forth the guiding principles by which the HCA Traceability Project will be managed. It describes the approach to project management, governance, communication, change control, budget management, issue management, risk management, quality assurance, organizational change management, training, implementation, decommissioning, scheduling and all other activities related to the implementation of the System, Software and Service associated with this Contract.

**Proposal**: A formal offer submitted in response to this Solicitation.

**Proprietary Information**: Information owned by the Contractor to which the 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 (PHI)**: 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).

**Request for Proposal (RFP)**: The formal solicitation document preceding the execution of this Contract, including all its amendments and modifications and is Exhibit A hereto.

**Requirements:** HCA expectations for the System and all other goods and services delivered by the Contractor under the terms of this Contract.

**Response**: The Contractor’s submission to HCA in response to the RFP.

**Revised Code of Washington (RCW)**: All references in this Contract to RCW chapters or sections include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at: <https://apps.leg.wa.gov/rcw/>.

**Salting**: The placement of deliberate errors and omissions in the Software or a database.

**Schedule**: The dates described in the Work Plan for the performance of services and other Project events and activities, including scheduled dates, projected dates, and actual dates.

**Scheduled Downtime**: The total amount of time during any Service Year during which the System’s core features and functions are unavailable for the majority of users due to planned System maintenance performed by the Contractor, as set forth below. The Contractor will provide reasonable notice, not to exceed two hours, for all Scheduled Downtime. The Contractor will exercise reasonable efforts to perform scheduled System maintenance outside of standard business hours (PST). Generally, these scheduled System maintenance activities occur once a month.

**Service(s)**: All the Contractor activities necessary to carry satisfy this Contract.

**Service Standard**: The System Availability during the Service Year will equal or exceed 99.99%.

**Service Year**: The preceding 365 days from the date of a Service Level Agreement claim.

**Software**: The object code version of computer programs that are the subject of the Contract. Software also means the source code version and related utilities, provided by the Contractor. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

**Software Assurance**: The level of confidence that software is free from vulnerabilities, either intentionally designed into the software or accidentally inserted at any time during its lifecycle, and that the software functions in the intended manner.

**Specifications**: The technical and other written specifications that define the requirements and Acceptance Criteria, as described in the RFP, the Response, and subsequent Deliverables which have received Acceptance, the Performance Standards, and the Documentation. Such Specifications shall include and be in compliance with all applicable State and federal policies, statutes, regulations, and usability standards.

**State**: Means the Washington State.

**Statement of Work (SOW)**: A detailed description of the work activities the Contractor is required to perform under the terms and conditions of this Contract, including the deliverables and timeline, and is Schedule A hereto.

**Subcontractor**: One 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 the Contractor. The term “Subcontractor” means Subcontractor(s) of any tier.

**System**: Licensing and Enforcement Case Management System.

**System Availability**: With respect to any Service Year, the ratio obtained by subtracting Unscheduled Downtime during such Service Year from the total time during such Service Year (525,600 minutes) and thereafter dividing the difference so obtained by the total time during such Service Year. If HCA has used the System for less than 365 days from the Contract effective date, Service Year is still the preceding 365 days but any days prior to HCA’s use of the service will be deemed to have had 100% availability. Represented mathematically, System Availability for any particular Service Year is determined as follows:

**System Availability = (Total Service Year Time - Unscheduled Downtime) / Total Service Year Time. NOTE: "Total Service Year Time"** is deemed to include all minutes in the relevant Service Year period as described above (525,600 minutes).

**Third-Party**: A person or entity (including, but not limited to any form of business organization, such as a corporation, partnership, limited liability corporation, or association) that is not a party to this Contract.

**Unscheduled Downtime**: The total amount of time in minutes during any Service Year during which the System’s core features and functions are unavailable for HCA’s access, other than Scheduled Downtime.

**Update**: Any and all updates, upgrades, patches, additions, modifications, releases, or other changes made by the Contractor with respect to the Software, and all changes to the Documentation of the API.

**Uptime**: The time that the System is Operational, as measured 24 per day, Monday through Sunday, on a monthly basis, except for mutually agreed upon scheduled maintenance activities.

**Veteran-owned business**: A business that is certified by Department of Veterans Affairs to be at least fifty-one percent owned and controlled by (a) A veteran as defined in RCW [41.04.007;](http://apps.leg.wa.gov/rcw/default.aspx?cite=41.04.007) or (b) An active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves.

**Warranty Period**: For purposes of the Contract, Warranty Period shall also mean the Subscription Services period.

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

**Washington Electronic Business Solutions (WEBS)**:(<https://fortress.wa.gov/ga/webscust/>) an Internet vendor registration and bid notification system. The system offers one online site where vendors can register to receive government bid notifications.

**Work Plan**: The overall plan and living document of activities for the Project, and the delineation of tasks, activities, and events to be performed and Deliverables. The Work Plan shall be incorporated into this Contract from the Contractor’s Response. Each revision of the Work Plan shall be incorporated into this Contract upon Acceptance by HCA.

**Work Product**: The documented results of Schedule A: Statement of Work activities developed and reviewed per the requirements stated within the RFP and developed or prepared by the Contractor in carrying out the obligations and Services of this Contract. One or more Work Products collectively form a Deliverable. Work Product includes data and products produced under any Contract resulting from RFP K, including but 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.

PURPOSE

HCA is tasked providing high-quality health care through innovative health policies and purchasing strategies. Insert program/contract purpose here.

CONTRACT TERM

1. Initial Term of Contract - The period of performance for the initial Subscription/License and implementation shall commence on X and shall be for X (X) year(s), unless terminated earlier as provided in Section 30.50, *General Terms and Conditions* or unless an extension of Period of Performance is issued by HCA. Any services performed beyond the fiscal or biennial year’s end are contingent upon receipt of funding. Extensions will be issued at the sole discretion of HCA and are not subject to mutual agreement.
2. Term of Subscription/License – The Contract’s initial Software maintenance and support terms shall be for X (X) year(s), commencing upon Final Acceptance of implementation, unless terminated earlier as provided in Section 30.47 or unless an extension for Period of Performance is issued by HCA. This Contract can be extended in X (X) year increments at the sole discretion of HCA. If, within HCA’s sole discretion, an extension for Period of Performance is executed, the Contractor shall not charge more than the agreed to prices described in Section 10.1, Maximum Amount. Any subscription/license purchased beyond the biennial year’s end is contingent upon receipt of funding. Extensions are not subject to mutual agreement.

ORDER OF PRECEDENCE

Each of the Attachments listed below is hereby incorporated into this Contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable federal and State statutes and regulations;
2. Attachment 1: Confidential Information Security Requirements;
3. Terms and Conditions within the body of this Contract;
4. Schedule A: Statement of Work;
5. Exhibit A: HCA RFP # 2021 HCA16 for Healthy Youth Survey, dated X;
6. Exhibit B: Contractor’s Response to RFP #2021HCA16, dated X; and
7. Any other provision, term or material incorporated herein by reference or otherwise incorporated.

CONTRACT ADMINISTRATION

All authorized communication regarding this Contract shall occur between the Contractor’s Authorized Representative or designee and the HCA Contract Manager or designee.

|  |  |  |  |
| --- | --- | --- | --- |
| Contractor’s Authorized Representative | | Health Care Authority Contract Manager Information | |
| Name: |  | Name: |  |
| Title: |  | Title: |  |
| Address: |  | Address: |  |
| Phone: |  | Phone: |  |
| Email: |  | Email: |  |

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 services, or deposited with the United States Postal Services as first-class mail, postage prepaid certificate mail, return receipt requested, to the parties at the addresses provided in this Section.

In case of notice to the Contractor:

**Attention**:

In case of notice to HCA:

**Attention**: Contracts Administrator

Health Care Authority

Division of Legal Services

Post Office Box 42702

Olympia, WA 98504-2702

[contracts@hca.wa.gov](mailto:contracts@hca.wa.gov)

LOCATION

NOTE: adjust this section based on program’s worksite location flexibility.

The work will be completed at HCA offices in Olympia, WA.

FINANCIAL MATTERS

## Maximum Amount

The Maximum Amount payable under the terms of this Contract are set forth in Schedule A: Section X.

## Charges for Services

The charges for services are set forth in Schedule A. Subject to HCA’s receipt of an accurate invoice, any Holdback amounts, Contractor’s performance of its obligations in accordance with the terms in this Contract, and to HCA’s Acceptance of Deliverable(s) and exercise of its rights and remedies, HCA will pay Contractor the charges for the services that are described in this Contract within 30 days of receipt of such invoice for services provided in the previous month. HCA will not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed.

## Holdback

As set forth in Schedule A, Statement of Work, or as established in a Change Order or an amendment to this Contract, HCA shall retain a Holdback of ten percent (10%) of all Deliverable payments. For Deliverables that have received Acceptance, HCA will pay Contractor the Holdback within 30 days following receipt by HCA of a properly submitted invoice after the Go-Live. Additionally, HCA’s payment of the Holdback amount for each described situation will be subject to Contractor’s performance of its obligation in accordance with the terms of the Contract, and HCA’s exercise of its rights and remedies.

## Testing and Inspection

Payment of Services or a Deliverable shall not be construed as Acceptance of the service or Deliverable. HCA reserves the right to conduct further testing and Inspection after payment, but within a reasonable time after performance, and to reject the Service or Deliverable if such post-payment testing or Inspection discloses a Defect or a failure to meet Specifications. In such event, HCA reserves the right to (i) credit the amount paid for the rejected Service or Deliverable against any future payments made to Contractor or (ii) demand a refund.

## O&M

For O&M in years 2-5, $X will be set aside for HCA’s Change Order contingencies. The Contractor will only receive any of this funding if HCA chooses to execute a Change Order with the Contractor.

After the O&M period, if optional renewal years or portions thereof are executed, the escalation of O&M costs for renewal year 1, year 2 and year 3 cannot exceed 3% per year.

## Proration

For any and all Services that are priced at a monthly rate under this Contract, if such Services are provided fewer than all calendar days in any calendar month, then the cost for such Services will be prorated as the daily portion of the monthly rate (calculated based upon a 30-day month) times the number of days on which Services are provided. Similarly, for any and all Services that are priced at an annual rate under this Contract, if such Services are provided fewer than all calendar days in any calendar year, then the cost for such Services will be prorated as the monthly portion of the annual rate (calculated based on 12 months) times the number of months on which Services are provided. Note: Additional calculations will be included based on mutual agreement between Contractor and HCA. The calculations for pro rata daily and monthly amounts identified also will be used to calculate any and all credits and Price reduction amounts due to HCA under this Contract for partial months of years.

## Invoice and Payment

1. The Contractor must submit accurate invoices to the following address for all amounts to be paid by HCA via e-mail to: [Acctspay@hca.wa.gov](mailto:Acctspay@hca.wa.gov).
2. Invoices must describe and document to HCA’s satisfaction a description of the work performed, the progress of the project, and fees. If expenses are invoiced, invoices must provide a detailed breakdown of each type. Any single expense in the amount of $50.00 or more must be accompanied by a receipt in order to receive reimbursement. All invoices will be reviewed and must be approved by the Contract Manager or his/her designee prior to payment.
3. The Contractor must submit properly itemized invoices to include the following information, as applicable:

* HCA Contract number K     ;
* Contractor name, address, phone number;
* Description of Services;
* Date(s) of delivery;
* Net invoice price for each item;
* Applicable taxes;
* Total invoice price; and
* Payment terms and any available prompt payment discount.

1. 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.
2. In order to receive payment for services or products provided to a state agency, the Contractor must register with the Statewide Payee Desk at <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services/receiving-payment-state>. Payment will be considered timely if made by HCA within thirty (30) calendar days of receipt of properly completed invoices. Payment will be directly deposited in the bank account or sent to the address the Contractor designated in its registration.
3. The Contractor warrants that the cost charged for services under the terms of this Contract are not in excess of those charged any other client for the same services performed by the same individuals.
4. The Contractor will provide the Products and Services at the Prices set forth in this Contract and no other Prices shall be payable to the Contractor. Prices shall not be increased during the term of the Contract unless otherwise provided herein. If the Contractor reduces its Prices for any of the Services provided to any other additional client during the term of this Contract, HCA shall have the immediate benefit of such lower Prices for new purchases. The Contractor shall send notice to HCA with the reduced Prices within 15 Business Days of the reduction taking effect.
5. The Contractor shall not bill HCA for costs if the Contractor is being paid by another funding source for those same costs.
6. 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.

SOFTWARE

## Reauthorization Code not Required

Software must not require a reauthorization code in order for the Software to remain functional upon HCA’s movement of the Software to another computer system or location.

## Representations and Warranties

### General

The Contractor represents and warrants that all Software will possess and perform the functions and features (such as functionality, response times, transaction throughput rates, and database update speeds) described in the documentation and specifications provided to HCA.

The Contactor represents and warrants that all Software, materials, equipment, and/or services provided under this Contract, shall conform, in all material respects, for the purpose(s) for which intended, for merchantability, and shall conform to stipulated requirements and specifications. Customizations, including configuration completed as part of implementation, to the software created specifically for HCA will be warranted throughout the term of this Contract and any extensions. This warranty includes migration to any subsequent version of the software that might become available during the life of the subscription.

### Solution Functionality

The Contractor represents and warrants that the Solution shall possess:

1. All the functional capabilities described in:
   1. The HCA Business and Technical Requirements;
   2. The Documentation.
2. The various components of the Solution:
   1. Are designated to and shall not require multiple user sign-ons and forced sign-offs within, across or among all product lines, including Solutions provided to HCA from and after the Effective Date;
   2. Shall have the same “look and feel” within a product line;
   3. Either share a common database used across components of the Solution, or if there are multiple databases, the data among such databases is coordinated, synchronized, or otherwise managed by the Solution without the need of a separate interface.
3. To the extent the System meets HCA’s accessibility standards.

The terms of this Section are effective on the Effective Date and shall remain in effect with respect to the particular Solution for as long as HCA is paying for O&M services.

### Disabling Codes

The Contractor represents and warrants that the Software and any Deliverables do not contain – and HCA shall not receive from any the Contractor data transmission – any viruses, worm, trap door, back door, timer, clock, counter, or other limiting routine, instruction or design that would release data or programming or otherwise cause any system to become inoperable or incapable of being used in the full manner for which it was designed and created, including any limitations that are triggered by, as applicable: (a) any Solution being used or copied a certain number of times, or after the lapse of a certain period of time: (b) the Software being installed on or moved to a central processing unit or system that has a serial number, model number or other identification different from the central processing unit or equipment on which the Software was originally installed; or (c) the occurrence or lapse of any similar triggering factor or event. If the Contractor introduces a disabling code into the Solution, then the Contractor shall, at its sole cost and expense, as applicable: (d) take all steps necessary to test for the presence of disabling codes; (e) furnish to HCA a new copy of the System without the presence of a disabling code; (f) install and implement such new copy of the System; and (g) restore any and all data and programming lost by HCA as a result of such disabling code (such restoration shall include, if needed, on-site technical assistance to extract data from corrupted data files, restoration of backup media, data log analysis, and the like).

This representation and warranty shall survive the expiration or termination of the Contract.

### Intellectual Property Warranty

The Contractor represents and warrants to HCA that, as of the Effective Date, the System and HCA’s use of the System do not infringe upon any patent, trademark, copyright, trade secret or other intellectual property or proprietary right of any Third-Party.

The Contractor further represents and warrants to HCA that, as of the Effective Date there is, and there shall be, no actual or threatened suit against the Contractor by any Third-Party based on an alleged violation of any right specified in this Contract. This representation shall survive the termination of the Contract.

### Offshoring

Contractor represent, warrants and covenants to HCA that Contractor shall not: (a) perform any of its obligations under the Contract from locations, or using employees, Subcontractors, and/or agents, situated outside of the United States; or (b) directly or indirectly (including through the use of subcontractors) transmit any State Data outside the United States; or (c) allow any State Data to be accessed by Contractor employees, contractors and/or agents from locations outside of the United States or transmitted to locations outside the United States. Notwithstanding the foregoing, with respect to Hosting Services, Contractor represents and warrants to HCA that the primary, backup, disaster recovery and other data center sites for the Hosting Services will be located in the United States.

## Software to be Free of Viruses and Destructive Programming

Contractor warrants and represents that the Software will not contain any viruses, destructive programming, or mechanisms designed to disrupt the performance of the Software or contain any Self-Help Code nor any Unauthorized Code as defined below. Contractor further warrants they will not introduce any code or mechanism that electronically notifies of any fact or event, or any key, node, lock, time-out, or other function, implemented by any type of means or under any circumstances, that may restrict HCA’s use of or access to any program, data, or equipment based on any type of limiting criteria, including frequency or duration of use for any copy of the Software provided to agency under this Contract. This warranty is referred to in the Contract as the “No Surreptitious Code Warranty.”

“Self-Help Code” means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee’s computer system(s) (e.g., remote access via modem) solely for purposes of maintenance or technical support.

“Unauthorized Code” means any virus, Trojan Horse, worm or other software routines or equipment components designed to permit unauthorized access, to disable, erase, or otherwise harm Software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

## Compatibility of System Software Components

Contractor warrants that all system components, including any replacement or upgraded system Software components provided by Contractor to correct deficiencies or as an enhancement through the request of HCA and/or initiated by Contractor, shall operate with the rest of the system without loss of any functionality, performance, or security.

Contractor must have implemented practices that are consistent with national and state data security and confidentiality guidelines.

## Date Warranty

Contractor warrants that all Software provided under this Contract: (i) does not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by HCA that may deliver date records from the Software, or interact with date records of the Software (“Date Warranty”). In the event a Date Warranty problem is reported to Contractor by HCA and such problem remains unresolved after three (3) calendar days, at HCA’s sole discretion, Contract shall send, at the Contractor’s sole expense, at least one (1) qualified and knowledgeable representative to HCA remises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on HCA premises. This Date Warranty shall last perpetually.

## Software Documentation

Contractor shall provide two (2) complete sets of Documentation for each Software order, including technical, maintenance and installation information. Contractor shall also provide two (2) complete sets of Documentation for each updated version of Software that Contractor provides pursuant to the Software Upgrades and Enhancements Section. Contractor shall provide the Documentation on or before the date Contractor delivers its respective Software. There shall be no additional charge for this Documentation or the updates, in whatever form provided. Contractor’s Software Documentation shall be comprehensive, well structured, and indexed for easy reference. If Contractor maintains its technical, maintenance and installation Documentation on a web site, Contractor may fulfill the obligations set forth in this Section by providing HCA access to its web-based Documentation information. Contractor may also provide such information on CD-ROM. Contractor grants HCA the right to make derivative works, update, modify, copy, or otherwise reproduce the Documentation furnished pursuant to this Section at no additional charge.

HOSTING

## Hosting Facility Management

Contractor shall:

* Provide the cloud environment in the \_\_X\_\_\_\_ solution;
* Manage all aspects of the cloud environment;
* Perform all operating systems maintenance and updates;
* Monitor system performance;
* Isolate performance issues;
* Implement and test fixes to performance issues;
* Plan, implement and manage capacity based on performance standards;
* Identify need for, and analyze impact of, infrastructure changes;
* Apply security and other patches for operating systems and all Third-Party software in the cloud environment. Patch management includes security patches, version updates, and service packs provided by Third-Party contractors for all hardware and software used to support the Solution and/or the Contractor’s environment. Patch management shall include regular monthly patch vulnerability scanning to verify that no security patches are missing from any component of the Solution or Contractor environment. Contractor shall proactively monitor all Third-Party contractors who provide components of the Solution and the Contractor environment for patch alerts and update notices;
* Test patches and the interaction of such patches to the components to which they are applied; and
* Provide HCA with monthly evidence that patch management was accomplished, including providing vulnerability assessments of any components that were not patched

## Backup/Restore and Data Recovery

### Backup Operations

Contractor shall perform the following backup operations:

|  |  |  |
| --- | --- | --- |
| Backup Type | Description | Frequency |
| Baseline | Pre-Production (go-live) image | For each solution module, one (1) baseline backup prior to any scheduled module maintenance. |
| Daily Incremental Files | Any element (including all files, application data and objects) in the System that changes during the period. | Daily |
| Applications | All application executables and configuration files and source code for software operating the solution. | Weekly |

All backed up data shall be encrypted, and upon request, Contactor shall provide HCA with the names of the individuals who are authorized to recover and decrypt backup files.

As part of its backup procedures, Contractor shall perform automated verification of each backup to confirm that complete data, software, and other files have been successfully backed up. The results of the automated verification shall be placed in backup logs that shall be made available and accessible to HCA staff. In addition, Contractor, each quarter, shall perform manual checks to verify that the backup procedures are working properly and the then-current set (at the time of manual verification) of backups have all the required data, software and other files properly backed up.

### Backups and Retention

During the Hosting Term, Contractor shall transfer, maintain, and retain backup copies at a physically secure location in the United States at least 250 miles from the primary data center. Contractor shall disclose the location of the offsite location to HCA. Contractor shall ensure that there is limited access to the backup media. If Contactor uses a Third-Party for their backup solution, Contractor shall have a written agreement with such Third-Party incorporating appropriate handling of media safeguards, consistent with industry practices, and limiting the number of Third-Party personnel having access to the media. Contractor shall be responsible for any and all damages relating to the use, misuse and/or loss of media, whether caused by Contractor or a Third-Party handler.

### Incident Data Restoration

For incidents not involving a Disaster, Contractor shall perform data restoration services to recover lost or corrupted data from production data as soon as possible from HCA’s request, but in no event greater than four (4) hours.

### Disaster Recovery and Business Continuity Plan

Within ninety (90) days from the Effective Date, Contractor will provide HCA with a detailed, updated plan from HCA’s review. The Disaster Recovery and Business Continuity Plan is a Deliverable and its delivery is a Critical Milestone event. After delivery of the updated plan, the parties shall meet to finalize the plan, and once agreed to by HCA, shall supersede the primary plan. If Contractor fails to deliver the updated plan within ninety (90) days or fails to finalize the plan with HCA within 180 days from the Effective Date, HCA shall have the right to suspend payment of all amounts due or to be due and owing until the plan is finalized and agreed to by HCA. The plan shall be updated by the Contractor on an annual basis.

NON-DISCLOSURE

## Covered Information

Contractor understands that HCA has or may disclose employee or Licensee information and other related information which to the extent previously, presently, or subsequently disclosed to Contractor is hereinafter referred to as Proprietary Information or Confidential Information, and collectively referred to as (“Covered Information”).

## Definition of Proprietary Information

As used in this Contract, "Proprietary Information" refers to any information which has commercial value and is either (i) technical information, including patent, copyright, trade secret, and other proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae related to the current, future and proposed products and services of HCA, or (ii) non-technical information relating to HCA's products, including without limitation pricing, margins, merchandising plans and strategies, finances, financial and accounting data and information, suppliers, customers, customer lists, purchasing data, sales and marketing plans, future business plans and any other information which is proprietary and confidential to HCA.

## Definition of Confidential Information

As used in this Contract, “Confidential Information” refers to information that may include, but is not limited to, names, addresses, social security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, personnel information and associated documentation, agency security data, or information identifiable to an individual that relates to any of these types of information.

## Non – Disclosure

In consideration of the disclosure of Covered Information by HCA, Contractor hereby agrees: (1) to hold the Covered Information in strict confidence and to take all reasonable precautions to protect such Covered Information (including, without limitation, all precautions Contractor employs with respect to its own confidential materials), (2) not to disclose any such Covered Information or any other information derived therefrom to any third person, (3) not to make any use whatsoever at any time of such Covered Information except for the purposes set forth in HCA contract K, and (4) not to copy or reverse engineer any such Covered Information. There will be no obligation of confidentiality with respect to any Covered Information that (a) is publicly available, other than through a breach of this Contract by Contractor; (b) is developed by Contractor independently of, or was known by Contractor prior to, any disclosures made by HCA to Contractor of such information; (c) is disclosed with written consent of HCA; (d) is disclosed by Contractor as may be required by law, regulation, or judicial or administrative process in accordance with applicable professional standards or rules pursuant to an order of a court of competent jurisdiction or administrative agency, a validly enforceable subpoena, or any other legal or administrative process; (e) is disclosed in response to governmental inquiries, or in accordance with applicable professional standards or rules pursuant to an order of a court of competent jurisdiction or administrative agency, a validly enforceable subpoena, or any other legal or administrative process; or (f) is disclosed by Contractor in connection with any judicial or other proceeding involving either Party relating to this Contract, provided that Contractor will, to the extent permitted by applicable law, advise HCA of the disclosure requirement and request confidential treatment for the Covered Information disclosed.

## Non-Disclosure and Non-Use Obligations

Contractor will maintain in confidence and will not disclose, disseminate, or use any Covered Information belonging to HCA, whether or not in written form. Contractor agrees that Contractor shall treat all Covered Information of HCA with at least the same degree of care as Contractor accords its own confidential information. Contractor further represents that Contractor exercises at least reasonable care to protect its own Covered information. If Contractor is not an individual, Contractor agrees that Contractor shall disclose Confidential Information only to those of its employees who need to know such information and certifies that such employees have previously signed a copy of this Contract. Contractor will use any HCA issued computer, laptop, or cellular telephone in a secure fashion. Contractor will not allow unauthorized individuals to use their HCA issued property. Contractor will always lock or lockout any HCA issued property when leaving it unattended. In addition, passwords used to access HCA issued property will not be written down and stored in any unsecure fashion.

## Reporting of Unauthorized Disclosure

Contractor shall report to HCA any use or disclosure of Covered Information not authorized by this Contract or in writing by HCA to be used or disclosed. Contractor shall make the report to HCA not more than one (1) business day after Contractor learns of the unauthorized use or disclosure. The Contractor’s report shall include: (1) the nature of the unauthorized use or disclosure, (2) the Covered Information used or disclosed, (3) who made the unauthorized use or received the unauthorized disclosure, (4) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized disclosure, and (5) what corrective action the Contractor has taken or shall take to prevent similar unauthorized use or disclosure.

HCA reserves the right to monitor, audit, or investigate the use of Covered Information collected, used, or acquired by Contractor through this Contract. The monitoring, auditing, or investigating may include, but is not limited, salting databases.

## Return or Destruction of Information

Immediately upon the written request of HCA at any time, Contractor will return to HCA all Covered Information and all documents or media containing any such Covered Information and any and all copies or extracts thereof; except that where such Covered Information is a form incapable of return or has been copied or transcribed into another document, it shall be destroyed or erased as appropriate. Contractor shall provide HCA and Affidavit of Destruction if the foregoing sentence applies with respect to copied or transcribed information.

## Injunctive Relief and Indemnity

Contractor will immediately report to HCA any and all unauthorized disclosures or uses of the Covered Information of which Contractor or its staff is aware or has knowledge. Contractor acknowledges that any publication or disclosure of the Covered Information to others may cause immediate and irreparable harm to HCA. If Contractor publishes, uses, or discloses such Covered Information to others without authorization, HCA shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. Contractor shall indemnify and hold harmless HCA from all damages, costs, liabilities, and expenses (including without limitation reasonable attorneys’ fees) to the extent caused by or arising from Contractor's failure to fulfill its obligations related to the Covered Information.

SERVICE LEVEL AGREEMENT (“SLA”)

## Purpose

In accordance with the terms of this SLA, the Contractor shall furnish the installation, support, or error-correction services and perform all things necessary to maintain a fully functioning System.

## System Availability

The Contactor will undertake commercially reasonable measures to make sure System Availability meets the Service Standard, provided that any Unscheduled Downtime occurring as a result of circumstances beyond Contractor’s reasonable control including, but not limited to: (i) HCA’s breach of any provision of this Contract; (ii) non-compliance by HCA with any provision of this Contract; (iii) incompatibility of HCA’s equipment or software with the System; (iv) poor or inadequate performance of HCA’s systems; (v) HCA’s equipment failures; (vi) HCA’s network and internet service provider; (vii) public internet; (viii) security exposure; or (ix) force majeure, will not be considered toward any reduction in System Availability measurements. In the event of a Disaster, System Availability service levels defined herein do not apply.

## System Communication Standards

Status updates must be communicated via ticketing system. All updates to ticket should have descripted responses documenting the process or steps toward resolution.

## System Response Times

Contractor will undertake commercially reasonable measures to make sure that observed System requests are processed within the System on average within 500 milliseconds, excluding circumstances beyond Contractor’s reasonable control including, but not limited to: (i) large or complicated reporting requests; (ii) poor or inadequate performance of HCA systems; (iii) HCA equipment failures; (iv) HCA network and internet service provider; or (v) public internet. Circumstances beyond Contractor’s control will not be considered toward any reduction in System requests.

## Maintenance Services

Contractor will continuously maintain the Application Service to optimize availability that meets or exceeds the Service Standard. Such maintenance services shall include providing to HCA all such services and repairs, as needed, to maintain the System or are ancillary, necessary, or otherwise related to HCA’s access to, or use of, the Application Service, so that the Application Service operates properly in accordance with this SLA.

## Support Services

Contractor will (i) provide unlimited telephone support to Licensees, HCA users, and Third-Party commercial providers during business hours, and (ii) respond to and resolve support requests as specified in Section 14.9 – Support Requests.

Telephone support shall include: (a) clarification of functions and features of the System, (b) clarification of the Documentation, (c) guidance in operation of the System (i.e., tips, suggestions, and workarounds), and (d) additional Services that are outside of the scope of the SLA, provided that HCA approves in writing any such Service request, and any such Services shall be provided at the Service Rates.

The Contractor will provide a Support Request/Service Ticket Portal for HCA to use when asking for support. The Support Request/Service Ticket Portal shall be a web-based customer support/help desk application that features a customer self-service portal allowing the initiation, modification and tracking of service requests and/or support request tickets. It shall offer an easy-to-use, one-stop for ticket resolution.

In addition to the web-based portal, Contractor shall ensure that tickets can be initiated through the System via email. This special email address shall be managed by “trouble ticket” software, which tracks problem progress on an incident-by-incident basis to ensure timely turn-around in accordance with the severity classification described below. Contractor shall provide a standard support email address for Licensees and HCA staff.

## Service Rates

NOTE: The resulting contract shall incorporate in this Section the Service Rate(s) proposed by the Bidder and mutually agreed to by HCA.

## Upgrade Assistance

At HCA’s request, and at the Service Rates, Contractor shall provide on-site assistance to HCA to implement Enhancements.

## Support Requests

### Reporting an Incident

To assist the Contractor in diagnosing an issue, it is important for HCA to have the following information available when reporting a technical support incident:

1. Individual name and HCA Division;
2. Exact text of any error message received;
3. A full description of the problem;
4. Any circumstances surrounding the discovery of the issue; and
5. Contact information for the person reporting and/or experiencing the issue.

Incidents, defects, and service requests shall be recorded in the Contractor’s provided service request tracking system

### Timeliness of Incident Resolution

| **Expectations by Defect Severity** | | | | |
| --- | --- | --- | --- | --- |
| **Defect Severity Level** | **Severity 1** | **Severity 2** | **Severity 3** | **Severity 4** |
| **Severity Description** | Critical | Medium | Low | Low - Cosmetic |
| **Definition** | System being substantially or completely nonfunctional or inoperative. Normal service has been disrupted. Business risk is high. | Affects the accuracy of production data and/or inhibits the ability for one or more licensee to comply with reporting requirements. | Data is accurate and the system is usable, but not functioning as designed. Business risk is moderate to low. | A cosmetic deficiency (e.g., misspelled word or color irregularity) not affecting the functionality of the System. |
| **Initial Contractor Response Time** | One (1) hour during business hours and four (4) hours during non-business hours | Four (4) business hours | Eight (8) business hours | Twelve (12) business hours |
| **Minimum Frequency of Status Updates Until Resolved** | Hourly – Clock hours, not limited to business hours | Every eight (8) business hours | As specified by HCA | As specified by HCA |
| **Target Resolution Time** | Same business day | Within two business days | Within five business days | As prioritized by HCA |

### Severity Levels/Response Times

1. Severity Levels – These levels are used to ensure that incidents are resolved in a timely manner with the least amount of inconvenience to HCA and their Licensees.
2. Response Times – Response Times to support requests will be measured from the time Contractor receives a support request until the time they have responded to the support request. The chart above depicts the timelines Contractor is required to adhere to when receiving a support request.

## System Monitoring and Measurement

Contractor will provide for monitoring of System Availability on an ongoing basis. All measurements of System Availability will be calculated on the Service Year period during the term. This monitoring will be performed through a combination of monitoring services of Contractor’s choice. These monitoring services are intended to serve as an initial alert to Contractor that the System may be unavailable. Contractor will then conduct a series of tests to confirm System Availability.

1. If the monitoring services report that the System is unavailable and Contractor confirms the System to be unavailable, then Unscheduled Downtime will be calculated as the amount of time between the initial notification and when Contractor confirms the System is available.
2. If the monitoring services report that the System is unavailable, but Contractor’s tests and assessments confirm that the System is available, then Unscheduled Downtime will be calculated as the time between when the initial notification was received until Contractor confirms the System is available. If Contractor is able to confirm that the System was, in fact, available during the period between the initial notification and the point at which Contractor determined that the System was available, then Contractor will remove the Unscheduled Downtime calculated.

## System Performance Reports

Upon HCA’s request and at no cost to HCA, Contractor will provide standard System Availability reports to HCA, setting forth measurements of Unscheduled Downtime and a calculation of System Availability for the relevant preceding Service Year period. If HCA disagrees with any measurement or other information set forth in any such report, HCA must so inform Contractor in writing within ten (10) calendar days after receipt thereof. Accuracy of any such report will be deemed conclusive unless such notice is provided by HCA. Any such notice must indicate specific measurements in dispute and must include a detailed description of the nature of the dispute. Contractor and HCA agree to attempt to settle any such disputes regarding System Availability and/or related measurements in a timely manner by mutual good faith discussions.

## Credits for Unscheduled Downtime

In the event Contractorfails to meet the Service Standard, then HCA will receive a credit of 5% of the Annual Subscription Service Fee. HCA must claim credit in writing within thirty (30) days following Contractor’s provision of the system performance report as set forth in Section 14.11. Credits properly claimed by HCA will be applied to the next renewal period's Annual Subscription Service Fee and such fee will be reduced by the amount of the credit. Contractor’s invoice for each renewal period will reflect any credit earned during the previous subscription period and the reduction to the Annual Subscription Service Fee for the upcoming renewal period.

## Liquidated Damages

### Response Times

Contractor agrees that the impact of non-responsiveness on Support Request Classifications - Severity 1 and Severity 2 events are impossible to determine in exact dollar amounts but recognize that HCA will suffer significant damages through lost productivity. Therefore, Contractor agrees that for as long as HCA contracts with Contractor, if Contractor does not adhere to the Response Times identified and described above, Contractor will pay liquidated damages of $X per hour for each occurrence of non-responsiveness. This remedy of liquidated damages is in addition to any remedy for any other breach of this Contract by Contractor. HCA’s credit will be applied to the next renewal period's Annual Subscription Service Fee and such fee will be reduced by the amount of the credit. HCA’s invoice for each renewal period will reflect any credit earned during the previous subscription period and the reduction to the Annual Subscription Service Fee for the upcoming renewal period.

## Enhancements

### General

Contractor shall provide Enhancements to HCA and shall develop and provide to HCA all Enhancements necessary to: (a) maintain compatibility with all Third-Party software, (b) maintain compatibility with current, generally available versions of Internet Explorer, Firefox, Chrome, Safari, and other browsers to which Contractor then maintains compatibility (as described in the Documentation) or that are specified in the business and technical requirements contained in this Contract, and (c) maintain compatibility with changes to database, operating systems and other software used by HCA in conjunction with the System.

To the extent technically feasible and functionally compatible, Contractor shall maintain compatibility between the System and the latest releases of software by Third-Party contractors. Contractor shall ensure that all Enhancements, including Regulatory Modifications, successfully complete the testing process set forth in Section 14.15 prior to delivery to HCA.

### Quality Assurance Testing

Contractor shall create and maintain one (1) or more test environments as appropriate or advisable to adequately test any Enhancements. Contractor shall test each Enhancement in the test environment prior to delivery to HCA in accordance with Contractor’s quality assurance process which, at a minimum, shall test for: (a) vulnerabilities and compliance with security obligations which test results shall be provided to HCA, (b) operation and performance of the Enhancement, (c) browser compatibility, (d) database and operating system compatibility, and (e) any regression problems using HCA usage and test cases and test data that were developed during the Project and that do not involve manual

Intervention or involve connectivity to any system other than the System.

Contractor shall correct any Defects and other non-conformities discovered during such testing and shall deliver each Enhancement to HCA only after such Enhancement has been approved by Contractor’s quality assurance lead. Contractor shall also deliver to HCA along with delivery of each Enhancement detailed Documentation describing such Enhancement. With respect to any Enhancement labeled in writing by Contractor as an emergency fix intended to correct a Level 1 or Level 2 Defect, Contractor shall exercise all commercially reasonable efforts to test such emergency fix in accordance with the requirements of this Section, and in all events shall conduct sufficient and adequate regression testing.

If, after Contractor delivers the Enhancements to HCA, HCA experiences Level 1 or Level 2 Defects in an Enhancement (“Enhancement Defects”) that have nor been resolved in a reasonable time by Contractor’s standard Support and Maintenance procedures, then, upon HCA’s reasonable request given the severity of the Defect, Contractor shall provide the following personnel and shall comply by the following terms, at no additional cost to HCA (including weekends) until the Enhancement Defects are fully debugged and corrected:

1. Contractor shall provide one (1) appropriate technical representative from Contractor’s development/engineering group on a continuous basis to assist HCA in correcting any Enhancement Defects.
2. Contractor will assign a Senior Project Director to oversee and assist in the testing and debugging of any Enhancement Defects. The Senior Project Director and the appropriate additional technical personnel Contractor assigns will be referred to as the “Enhancement Correction Team.”
3. HCA and the Enhancement Correction Team shall have daily status update conference calls until the Enhancement Defects are resolved.
4. If Enhancement Defects exist and cannot be resolved for a period of one (1) week or more, the matter shall be escalated to daily conference calls to Contractor’s head of engineering, to facilitate closure of such items.
5. If required to debug and correct the Enhancement Defects, Contractor shall provide additional onsite engineering and technical services.

### Special Provisions Pertaining to Deliverables Including Interfaces

At the request of HCA, Contractor shall retrofit any then-existing Deliverables, including custom-developed Interfaces, to ensure that such then-existing Deliverables will be compatible with any Enhancements provided by Contractor, and continue to function and operate as originally designed. Retrofit work shall be performed pursuant to a time and materials-based Change Order at the Services Rate, and the cost to retrofit shall be shared equally by HCA and Contractor.

### Reductions in Functionality

If Contractor removed, reduces or disables any feature or functionality of the System that is then being used by HCA and that existed prior to such Enhancement or modification, then at HCA’s request and at no additional cost to HCA, Contractor shall either: (a) provide substantially equivalent replacement functionality to HCA that is reasonably acceptable to HCA, or (b) modify, adjust or customize such solution for HCA’s use, and continue to provide Support and Maintenance for such modified or customized solution, so that the applicable feature or functionality remains available to HCA along with all of the other features and functionality of the enhanced or modified solution, provided such replacement or modified or customized solution shall be treated as an Enhancement under the terms of the Contract. HCA acknowledges that Contractor may introduce an Enhancement that changes how a feature or function is expressed or used in the solution, and, provided that the feature to function is not removed, reduced, or disabled, such Enhancement may require that HCA expend additional costs or expenses to implement such Enhancement.

## Regulatory Modifications

Contractor shall provide Regulatory Modifications to HCA whenever such modifications and mandated or required to meet any Regulatory Requirements and are related generally to the then-existing features or functionality of the System. HCA shall notify Contractor of any new state or local Regulatory Requirements affecting HCA after becoming aware of such Regulatory Requirements. Regulatory Modifications shall be at no additional cost to HCA (beyond the Support and Maintenance Service Fees). Contractor shall provide to HCA fully-tested Regulatory Modifications in accordance with Section 14.15 so as to enable HCA to adequately test and deploy such Regulatory Modifications.

## Support and Maintenance Services History Tracking System

Contractor shall maintain an HCA-specific Support and Maintenance Services history. Contractor shall provide HCA and state auditors with online access to and the ability to extract all such data from Contractor’s online issue management system, which shall provide, at a minimum, the following information: (a) the number of HCA calls received by Contractor’s customer support center during the reporting period; (b) the date, time and the subject matter of each call; (c) the severity and urgency of the reported incident or request; and (d) the resolution of each matter, including date and time resolved. All data history and other data related to HCA, an agency and their authorized users residing in Contractor’s online issue management system or other support tools or trouble ticketing systems shall constitute data owned by HCA.

## Environments

Contractor shall be obligated to provide Support and Maintenance Services at no additional cost to HCA for all the equipment configurations specified in this Contract or Contractor’s Documentation.

## Multi-Contractor Sourced Environment

Contractor acknowledges that the System is being deployed as one of several components of HCA’s total technology environment. As such, Contractor shall cooperate with HCA and all Third-Parties that have services and/or products in HCA’s technology environment to minimize the disruptions, Incidents and Defects within HCA’s technology environment and interfaced Third-Party systems.

COMPLIANCE

The Contractor must be able to adapt to changes in technology, legislation, and business practices throughout the term of this Contract, including any extensions. Requirements listed herein may be subject to change due to requirements of the State Legislature.

The Contractor agrees that technology products and services delivered as part of this Contract shall comply with all HCA and OCIO technology standards, including but not limited to OCIO Standard No. 141.10 – *Security Technology Assets*, OCIO Standard No. 161.04 – *Geospatial Data Standards*, and OCIO Standard No. 188.10 – *Minimum Accessibility Standard*.

CONTRACTOR PROJECT MANAGEMENT

## Overall Responsibilities

Contractor shall have responsibility for managing the Project in accordance with the requirements of the Contract, including all Project Management Plans and the Contractor Management Plan.

## Reports and Meetings

1. Contractor shall produce reports and participate in meetings as described in \_\_\_\_ in person, except that such meetings may be conducted by telephone conference call, videoconference, and/or web conference in HCA’s sole discretion.
2. All reports shall be produced in formats approved by HCA and delivered in accordance with the schedule and terms of this Contract.
3. The Contractor Project Manager and other key staff shall attend weekly status meetings with HCA project manager and other HCA Project team during the Project at times mutually agreed upon in the Project Management Plan. These weekly meetings shall follow a present agenda jointly prepared by the Contractor Project Manager and the HCA Project Manager but will also allow both Contractor and HCA to discuss other issues that may concern either party.
4. In scheduling all other meetings, Contractor Project Manager shall make reasonable efforts to ensure that key HCA are available to participate.
5. Brief written status reports shall be provided by Contractor at least 24 hours prior to these weekly meetings. Status reports shall describe the previous week’s activities, including Deficiencies encountered and their disposition, results of tests, whether or not deadlines were met, and any Deficiencies that may have arisen that need to be addressed before proceeding to the next activity. Also described will be the anticipated activities for the current week and any changes to Project risks and risk mitigations. Contractor’s proposed format and level of detail for the status reports shall be subject to HCA approval.
6. Contractor shall produce a monthly report summary that compares actual performance by Contractor of the Services (including but not limited to activities related to Deliverables) to budgeted charges and dates in schedule.
7. As reasonably requested by HCA, the Contractor Project Manager shall assist the HCA project manager in preparing and shall prepare special reports and presentations related to Project management.

SOFTWARE CONFIGURATION AND CUSTOMIZATION

Contractor shall develop and manage all configuration/customization and installation activities against a detailed specification and design plan that identifies exactly how the System meets the requirements of RFP 2021HCA16 and the Services required to implement each requirement. The detailed specification and design plan will address all the data, functional, interface, and technical requirements included in RFP 2021HCA16 at a detailed level.

IMPLEMENTATION AND FINAL ACCEPTANCE

Contractor shall complete System implementation in accordance with the Project Management Plan and Deliverables Schedule. The System will be submitted for Acceptance Testing at the conclusion of implementation. System implementation shall include:

1. System installation and production readiness testing;
2. User Acceptance testing;
3. Quality assurance testing;
4. Training (administrative and end user);
5. Go-live implementation;
6. System stabilization;
7. Final implementation documents.

“Final Acceptance” for the System in the implementation phase of this Contract means:

1. The successful completion of all Deliverables as defined in the [Statement of Work](#_bookmark99) and associated Deliverable Expectation Document as following the Review, Approval, and Acceptance processes described above; and
2. The final delivered product fully implemented in HCA’s live production environment and in use by staff and end-customers as the system of record according to the schedule mutually agreed by Contractor and HCA at the end of project planning

API AUDITS

Once every twelve (12) months, at Contractor’s sole expense, an independent Third-Party, mutually agreed to by both parties, shall do an audit on the System. A report shall be provided to HCA after each audit that summarizes the audit and verifies that each API call matches the documentation on the website available for download or which API calls do not match.

HOSTING AGREEMENT

## Hosting Migration

A hosting migration plan will be written as part of closing activities of the initial implementation of the software. Upon termination or expiration of the Hosting Agreement, the Contractor will ensure that all HCA and system data is transferred to HCA or a Third-Party designated by HCA securely, within a reasonable period of time, and without significant interruption in service. The Contractor will work closely with its successor to ensure a successful transition to the new equipment, with minimal downtime and impact on HCA. All such transition work must be coordinated and performed in advance of the formal, final transition date. The Contractor will ensure that such migration uses facilities and methods that are compatible with the relevant systems of the transferee, and to the extent technologically feasible, that HCA will have reasonable access to HCA and End User Data during the transition.

## Hosting Agreement

NOTE: The resulting contract shall incorporate in this Section the Hosting Agreement proposed by the Bidder and mutually agreed to by HCA.

DATA CONVERSION

NOTE: The resulting contract shall incorporate in this Section the Data Conversion Plan proposed by the Bidder and mutually agreed to by HCA.

TESTING

NOTE: The resulting contract shall incorporate in this Section the Testing Plan proposed by the Bidder and mutually agreed to by HCA.

DISASTER RECOVERY

NOTE: The resulting contract shall incorporate in this Section the Disaster Recovery proposed by Bidder and mutually agreed to by HCA.

TRAINING

## General

The Contractor agrees to provide training during the implementation phase as set forth in Attachment A – Statement of Work. HCA shall have the right, so long as the Software licensed or purchased hereunder is in use by HCA, to give instruction to HCA personnel in all courses without charge, using materials supplied by the Contractor. Such use by HCA of the Contractor’s materials shall include the right to reproduce the same, and such reproduction shall not be construed as a violation of or infringement upon any patent, copyright, or other proprietary right of the Contractor. The Contractor grants to HCA the right to make derivative works, update, modify, copy, or otherwise reproduce the documentation furnished pursuant to this Section at no additional charge for training purposes only.

WHERE WILL TRAINING BE HELD, WHO WILL BE PAYING FOR THE FACILITIES, HOW OFTEN WILL TRAINING SESSIONS BE HELD; start date of training

NOTE: The resulting contract shall incorporate in this Section the Training Plan proposed by the Bidder and mutually agreed to by HCA.

## Re-Performance of Training Classes

If a training course is not performed to HCA’s reasonable satisfaction, whether because the instructor for the training course did not perform to HCA’s reasonable satisfaction, the training materials supplied by the Contractor were not relevant to HCA’s environment and/or training was otherwise not satisfactory to HCA, and HCA provides written notice to the Contractor of such dissatisfaction during the pendency of the class or shortly after the class is concluded, then, at no additional tuition cost to HCA, the Contractor shall promptly re-perform the training class with a different instructor who is qualified to teach the subject matter and/or correct the deficiencies or lack of relevancy in the training materials.

DELIVERABLE EXPECTATION DOCUMENTS

## Deliverable Expectation Documents

Deliverables represent completion of major Project milestones for development and delivery of services. Each Deliverable is comprised of Artifacts. A Deliverable is completed when all of its related Artifacts have been reviewed and accepted as a whole during the Deliverable Acceptance Process. Artifacts will be reviewed and evaluated against defined Acceptance Criteria as agreed upon in the Deliverable Expectation Document (DED).

A DED for each Deliverable will be determined at the Implementation Planning Workshop and will be incorporated into the resulting Contract.

## Artifact and Deliverable Acceptance

1. By submitting an Artifact or Deliverable, the Contractor represents that, to the best of its knowledge, it has performed the associated tasks in a manner that will, in concert with other tasks, meet the Requirements and objectives stated or referred to in this Contract and the Artifact or Deliverable’s associated Deliverable Expectation Document. By approving an Artifact and/or giving Acceptance for a Deliverable, HCA represents only that it has reviewed the Artifact or Deliverable against the stated Artifact and/or Deliverable Acceptance criteria as stated in the Associated Deliverable Expectation Document and has detected no Defects or Deficiencies of sufficient gravity to defeat or substantially threaten the attainment of those objectives and to warrant the withholding of Acceptance for work completed. Neither HCA approval of a submitted Artifact nor the Acceptance of a submitted Deliverable will in any way infringe on the ability of HCA to identify and report Defects or Deficiencies to the Contractor for resolution under the terms of this Contract.
2. The length of the Artifact and Deliverable review period shall be reasonable given the nature and complexity of the Artifact and or Deliverable as mutually determined by the Parties.
3. HCA will provide Acceptance for a Deliverable if it is “successful” meaning it has no material Deficiencies, error, or failures, behaves as expected for normal operations of the Deliverable or is otherwise acceptable by, and at the sole discretion of HCA. A Deliverable is “unsuccessful” when the deficiencies, errors or failures are not what would be expected behavior for normal operations of the Deliverable or as defined in the Artifact and Deliverable Acceptance criteria set forth in the associated Deliverable Expectation Document. Where a material Deficiency is found, HCA will notify Contractor in writing, detailing the Deficiency and/or Acceptance criteria not met.
4. The Contractor shall correct material Deficiencies and resubmit a corrected Artifact or Deliverable to HCA, which will then review or perform Acceptance tests to verify whether the Artifact or Deliverable meets requirements and/or lacks material Deficiencies and in writing shall either give its Acceptance or reject it following such review.
5. If the Contractor is unable to correct all material Deficiencies within the time period indicated within the Deliverable Expectation Document, or if no such date is in the Deliverable Expectation Document, within 30 calendar days within the scheduled Artifact or Deliverable Acceptance Date, then HCA may, at its sole discretion: (a) continue reviewing or performing Acceptance Tests and require the Contractor to continue until material Deficiencies are corrected or eliminated; (b) request the Contractor to provide, at its expense, a replacement Deliverable for further review or Acceptance Tests; or (c) after completion of the process set forth in this Section and providing Notice of default to the Contractor, terminate this Contract.
6. The Contractor shall continuously protect all Deliverables and backups for such Deliverables from damage, destruction or loss caused by the acts or omissions of the Contractor, its Staff, and any Subcontractors.
7. HCA’s Acceptance of a Deliverable shall be final unless at the time of Final Acceptance, the Work Product or developed material does not meet the Acceptance Criteria set forth in the associated DED(s).
8. If a Deliverable does not meet accessibility requirements, then the Contractor must provide written justification for its failure to meet the standard. The justification must provide specific details as to why the standard has not been met. HCA may either waive the requirement as not applicable or require the Contractor to provide an acceptable alternative. Any waiver of the accessibility requirement must be in writing.
9. If, upon testing or other confirmation process, a Deliverable that was previously Accepted does not meet the intended functionality, then the Contractor shall provide any corrections required will be provided at no additional cost to HCA.
10. Any extensions of time permitted by HCA where the criteria are not met shall not be construed as a waiver of any rights or remedies by HCA with respect to an event or default for failure of the Contractor to meet a critical milestone due date

TRANSITION OUT REQUIREMENTS

HCA shall own all right, title and interest in its data related to the Project and Services provided by this Contract. Data, databases, and derived data products created, collected, manipulated, or directly purchased as part of RFP K shall become the property of HCA. HCA is considered the custodian of the data and shall determine the use, access, distribution, and other conditions based on Washington state statutes and regulations, and HCA policy. The Contractor shall ensure that all HCA data, databases, and derived data products created, collected, or manipulated is transitioned back to HCA prior to the termination of the Contract. This shall include all archived backups.

Additionally, the Contractor must provide for reasonable transition assistance requested by HCA, to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to HCA or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. HCA shall pay the Contractor for any resources utilized in performing such transition assistance at the rates included in the Proposal. On expiration or termination of the Contract, the Contractor shall provide or make available to HCA a copy of all Data with instructions and software necessary to decrypt the Data, if it is encrypted.

CHANGE CONTROL PROCESS

1. Contractor and HCA will abide by the following during implementation and post-production implementation phases of work under this Contract:
2. Each Change Request documented, when authorized in writing by HCA and agreed to by the Contractor, will be deemed incorporated into and part of the Contract.
3. Contractor will only be compensated for Change Requests that are initiated by HCA and that from which HCA will solely benefit. System changes incorporated into the core System, and that are included in Subscription functionality accessible by other Contractor customers, will not be made at the expense of HCA.
4. Work must not commence on any new activities related to the Change Request until all parties agree in writing and the Contract amendment has been fully executed.
5. Change Requests must be documented before presented to HCA for approval. Documentation standards will be mutually agreed upon, but must include a description of all changes, work estimates and full cost to HCA.
6. All Change Orders will be logged and tracked.
7. Contractor will complete analysis and documentation no more than 20 business days after receiving an initial Change Request from HCA’s technical contact or Contract Manager.
8. If the change is not accepted by HCA or Contractor, HCA or Contractor will provide written feedback as to the reason or reasons for non-acceptance. Acceptance will not be unreasonably withheld.
9. If a Change Request is not accepted, the Contractor will continue performing the services in accordance with the original Contract unless otherwise agreed upon by HCA.
10. It is the sole responsibility of the Contractor to identify downstream impacts of a Change Request. If existing functionality is changed by the agreed upon Change Request, it shall be treated as a software defect and resolved by the Contractor at no additional cost to HCA.
11. If HCA and Contractor are unable to mutually agree to accept or withdraw a Change Request after a second submittal and within the timeframes listed this Section either party may invoke the “disputes” provision of the contract. If the parties cannot reach agreement on a proposed change order the parties shall 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 the dispute under this Section.
12. During the course of the Contract, if the Contractor determines or could reasonably determine any HCA actions or directions constitute a requirement to perform additional work, the Contractor shall notify HCA within 30 days that HCA has requested Contractor to perform additional work in the form of a documented Change Request utilizing the procedures above. The Contractor understands that it waives the right to request additional time and reimbursable costs if the Contractor fails to notify HCA within 30 days of determining or reasonably being able to determine that any HCA actions or directions constitute a requirement to perform additional work under the Contract. HCA reserves the right to reject or negotiate the Change Request.

DOCUMENTATION

NOTE: an option is to break this down into 2 categories: DDI and O&M

For each component of the System, the Contractor shall provide to HCA Documentation that is reasonably detailed and complete and that accurately describes the functional and operational characteristics of the System. Contractor shall provide to HCA updated versions of all Documentation as soon as reasonably practicable followings its release, but in no event later than ten (10) Business Days following delivery of any Enhancements to HCA. Updated Documentation will be at least as detailed as the Documentation issued to HCA with any initial System delivery. Documentation shall include detailed user-level descriptions of the changes in a release and the impact of such changes, detailed, comprehensive and complete technical release notes that identify all changes in a release and/or Enhancement. The Contractor agrees to continually work to improve and enhance the level of detail contained in its Documentation.

GENERAL TERMS AND CONDITIONS

## 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. HCA shall have the ability to import or export Data in piecemeal or in its entirety at HCA’s discretion. Upon expiration or termination of this Contract, HCA shall have full access to all Data for a period of 90 calendar days. This period will be covered at no charge. During this period, the Contractor shall not take any action to erase and/or withhold any Data, except as directed by HCA. HCA shall have the right to specify a period in excess or less than 90 calendar days in the solicitation document.

## Advance Payment Prohibited

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

## 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.

## Antitrust Violations

The Contractor and HCA recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by HCA. Therefore, the Contractor hereby assigns to HCA any and all claims for such overcharges as to goods and services purchased in connection with this Contract, except as to overcharges not passed on to HCA resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract.

## Assignment

### The 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 30.43, *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 30.5.1 of the Contract will be null and void.

### 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.

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

## 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.

## Benefit of Upgrades

If the Contractor upgrades or modifies its commercial product(s) provided to additional clients during the term of this Contract, HCA shall have the immediate benefit of the upgrades or modifications. The Contractor shall send notice for major releases to the HCA Contract Manager with the upgrades or modifications within five (5) days of said modification or upgrade.

## Change in Status

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

## Clean Air Act

During the performance of this Contract, the Contractor shall comply with the federal Clean Air Act. In the event of Contractor’s conviction of any offense under section 113(c) of such act, this Contract may be rescinded, canceled, or terminated in whole or in part by HCA under Section 30.50.1 *Termination for Default*, and the Contractor may be declared ineligible for further contracts with HCA .

## Clean Water Act

During the performance of this Contract, the Contractor shall comply with the federal Clean Water Act. In the event of the Contractor’s conviction of any offense under section 309(c) of such act, this Contract may be rescinded, canceled, or terminated in whole or in part by HCA under Section 30.50.1 *Termination for Default*, and the Contractor may be declared ineligible for further contracts with HCA.

## Confidential Information Protection

### 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. The 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. The Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information (See Attachment 1: Confidential Information Security Requirements).

### 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 Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as amended, and implementing regulations (collectively, HIPAA).

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

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

## Confidential Information Breach – Required Notification

### The Contractor must notify the HCA Privacy Officer ([PrivacyOfficer@hca.wa.gov](mailto:PrivacyOfficer@hca.wa.gov)) within five (5) Business Days of discovery of any Breach or suspected Breach of Confidential Information.

### The 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. The Contractor agrees to indemnify and hold HCA harmless for any damages related to unauthorized use or disclosure of Confidential Information by the Contractor, its officers, directors, employees, Subcontractors, or agents.

### 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:

#### HCA may choose to make any required notifications to the individuals, to the U.S. Department of Health and Human Services Secretary (DHHS), and to the media. HCA may instead direct Contractor to be the party responsible for notifying the previously listed entities;

#### 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); and

#### Contractor will compensate HCA clients for harms caused to them by any Breach or possible Breach.

### Any breach of this clause may result in termination of the Contract and the demand for return or disposition (Attachment 1, Section 6) of all Confidential Information.

### 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.

## Construction and Interpretation of License and Right to Use Terms

Contractor acknowledges that the intent of the scope of the Software license is to make HCA’s rights to use the Software as broad as possible and, accordingly, the language in Section 26.1 shall not be interpreted strictly or narrowly in favor of Contractor. Furthermore, in the even that Contractor develops future limitations, qualifications and/or restrictions in how it licenses the Software to its customers, such future limitations, qualifications and/or restrictions shall have no effect on the scope of the Software license granted herein to HCA, and Contractor expressly disclaims the right to claim otherwise.

## 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 that chapter. 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.

## 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.

## Data Mining

The Contractor shall not copy or transfer Data unless authorized by HCA. In such event, the Data shall be copied and/or transferred in accordance with HCA direction. Contractor shall not access any Data for any purpose other than fulfilling the Services. Contractor is prohibited from data mining, cross tabulating, monitoring HCA’s Data usage and/or access, or performing any other data analytics other than those required within this Contract. At no time shall any Data or processes (e.g., workflow, applications, etc.), which either are owned or used by HCA, be copied, disclosed, or retained by the Contractor or any party related to the Contractor. Contractors are allowed to perform industry standard back-ups of Data. Documentation of back-up must be provided to HCA upon request. Contractor must comply with any and all security requirements outlined in this Contract during the course of this transfer.

## 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.

## Disputes

The parties will use their best, good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Contract. Both parties will continue without delay to carry out their respective responsibilities under this Contract while attempting to resolve any dispute. When a genuine dispute arises between HCA and the Contractor regarding the terms of this Contract or the responsibilities imposed herein and it cannot be resolved between the parties’ Contract Managers, either party may initiate the following dispute resolution process.

### The initiating party will reduce its description of the dispute to writing and deliver it to the responding party (email acceptable). The responding party will respond in writing within five (5) Business Days (email acceptable). If the initiating party is not satisfied with the response of the responding party, then the initiating party may request that the HCA Director review the dispute. Any such request from the initiating party must be submitted in writing to the HCA Director within five (5) Business Days after receiving the response of the responding party. The HCA Director will have sole discretion in determining the procedural manner in which he or she will review the dispute. The HCA Director will inform the parties in writing within five (5) Business Days of the procedural manner in which he or she will review the dispute, including a timeframe in which he or she will issue a written decision.

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

### 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.

## 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 30.52, *Warranties*.

## 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.

## 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:

### Terminate this Contract pursuant to Section 30.50.3, *Termination for Non-Allocation of Funds*;

### Renegotiate the Contract under the revised funding conditions; or

### 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.

## 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.

## Grant of License

Subject to further terms and conditions in this Contract, Contractor grants to HCA a perpetual, non-exclusive, non-transferable, unlimited use, user and user type in connection with its business operations, non-assessable, irrevocable, worldwide, multi-state license for HCA, to: (a) use the Software and Documentation; (b) at no additional software license fee, to transfer and operate the Software on a different operating system and/or different equipment; (c) use the Software and Documentation as HCA deems necessary for production and non-production purposes, including testing, disaster recovery, backup, training and education, development, and archiving.

## 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.

## 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 30.9, *Confidential Information Protection* and Section 30.10, *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.

## 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.

## Insurance

Contractor shall, during the term of this Contract, maintain the insurance described in this Section in full force and effect. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington having a rating of A, Class VII or better, in the most recently published edition of Best’s Reports. In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Contractor shall provide written notice of such to HCA within five Business Days 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.

All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.

Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor’s liability or responsibility.

Contractor shall furnish to HCA copies of certificates of all required insurance within thirty (30) calendar days of this Contract’s Effective Date and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Section. Failure to provide evidence of coverage may, at HCA’s sole option, result in this Contract’s termination.

By requiring insurance herein, HCA does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor’s liability under the indemnities and reimbursements granted to HCA in this Contract.

For Professional Liability Errors and Omissions coverage and Crime Coverage, Contractor shall continue such coverage for two years beyond the expiration or termination of this Contract and providing HCA with certificates of insurance on an annual basis.

Contractor shall pay premiums on all insurance policies. Such insurance policies shall reference this Contract number and shall have a condition that they not be revoked by the insurer until 30 calendar days after notice of intended revocation thereof shall have been given to HCA by the insurer.

### Minimum Acceptable Limits

The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

* Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than $1 million per occurrence/$2 million general aggregate;
* Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, with a combined single limit of not less than $1 million per accident;
* Employers Liability insurance covering the risks of Contractor’s employees’ bodily injury by accident or disease with limits of not less than $1 million per accident for bodily injury by accident and $1 million per employee for bodily injury by disease;
* Umbrella policy providing excess limits over the primary policies in an amount not less than $3 million;
* Professional Liability Errors and Omissions, with a deductible not to exceed $25,000, conditioned upon this Section, and coverage of not less than $1 million per occurrence or claim/$2 million general aggregate;
* Crime Coverage with a deductible not to exceed $100,000, conditioned upon this Section, and coverage of not less than $1 million single limit per occurrence, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty; and
* Cyber-security insurance, with coverage of not less than $1 million per claim/$2 million general aggregate, that includes but is not limited to coverage for first-party costs and Third-Party claims from: (i) failure to protect data, including unauthorized disclosure, use or access, (ii) security failure or privacy breach, (iii) failure to disclose such breaches as required by law, regulation or contract, (iv) notifications, public relations, credit monitoring, postage, advertising, and other services to assist in managing and mitigating a cyber-incident, (v) interruptions of business operations, (vi) network security failure, (vii) cyber-extortion, (viii) cyber-terrorism, (ix) communications and media liability (e.g., infringement of copyright, title, slogan, trademark, trade name, trade dress, service mark or service name in the policyholder's covered material), (x) EFT, computer, and electronic transmissions fraud and theft, and (xi) other cyber-liability and cyber-crime expenses.

### 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.

## Legal and Regulatory Compliance

### During the term of this Contract, the 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.

### While on 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.

### Failure to comply with any provisions of this Section may result in Contract termination.

## Limitation of Authority

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

## Materials and Workmanship

The Contractor shall be required to furnish all materials, supplies, equipment and/or services necessary to perform Contractual requirements. Materials, supplies, and workmanship used in the construction of equipment for this Contract shall conform to all applicable federal, state, and local codes, regulations and requirements for such equipment, specifications contained herein, and the normal uses for which intended. Materials, supplies, and equipment shall be manufactured in accordance with the best commercial practices and standards for this type of materials, supplies, and equipment.

## 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.

## Nondiscrimitation

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.

## Overpayments to Contractor

In the event that HCA determines that it has made overpayments or erroneous payments to the Contractor, HCA will provide written notice to Contractor and Contractor will refund the full amount to HCA within thirty (30) calendar days of the notice. If Contractor fails to make timely refund, HCA may charge Contractor one percent (1%) per month on the amount due, until paid in full. If the Contractor disagrees with HCA’s actions under this Section, then it may invoke the dispute resolution provisions of Section 30.15, *Disputes*.

## Ownership of Interface and Extension Deliverables

All Interface and Extension Deliverables paid for by HCA and developed by Contractor shall be and remain the sole and exclusive property of HCA. If Contractor wants to make such Interfaces or Extensions available to any other customers or wants to incorporate the Interface and/or Extension into their base software or service offering, then ownership will transfer to Contractor upon written approval and agreement by HCA. In addition, (1) the Contractor shall include Support and Maintenance Services with respect to such items (whether or not such items were previously covered by Support and Maintenance Services); (2) any Support and Maintenance Service Fees or other fees relating to such items separately paid by HCA shall be eliminated or, if already paid to Contractor, shall be paid back to HCA; and (3) HCA shall not be obligated to pay any license fees for such Interfaces or Extensions.

## Pay Equity

### The Contractor represents and warrants that, as required by Washington state law (Engrossed Substitute Senate House Bill 5092 Section 952 (2021), 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.

### 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.

### 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.

### 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.

### 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.

## Publicity

### 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.

### 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.

## Records and Documents Review

### 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].

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

### 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.

## Remedies Non-Exclusive

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

## Restrictions

Other than the rights granted to HCA herein, no intellectual property rights to the Software are transferred to HCA under this Contract. HCA shall not disassemble, reverse compile, reverse engineer or otherwise translate the Software; provided however, that HCA shall have the right to disassemble, reverse compile, reverse engineer or otherwise translate the Software for purposes of creating interoperable computer programs.

## 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.

## Rights in Data/Ownership

### 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.

### If for any reason the Work Product would not be considered a work for hire under applicable law, then the 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.

### 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.

### Contractor will not use or in any manner disseminate any Work Product to any Third-Party or represent in any way Contractor ownership of any Work Product, without the prior written permission of HCA. Contractor will take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors will not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any Third-Party.

### 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.

### 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.

### Except for any pre-existing intellectual property rights, Contractor shall not acquire any right, titles, or interest (including any intellectual property rights subsisting therein) in or to any goods, services, software, technical information, specifications, drawings, records, documentation, data, or any other materials (including derivative works therefrom) provided by HCA to the Contractor.

### Title to all property or Work Product furnished by the Contractor, for the cost of which the Contractor is entitled to reimbursement as a direct item of cost under this contract provided by the Contractor, shall pass to and vest in HCA upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in HCA upon (i) issuance for use of such property in the performance of this contract, (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by HCA, in whole or in part, whichever occurs first.

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

### The parties shall use the information described in this Contract solely for the purpose stated in this Contract. All intellectual property rights to the hosted data shall remain the exclusive property of HCA. The Contractor has limited access to HCA’s data as provided in this Contract solely for the purpose of performing its system hosting obligations.

### Contractor shall continuously protect and be responsible for any loss, destruction, or damage to Property which results from or is caused by Contractor's acts or omissions. Contractor shall repair or make good any damage, destruction, personal injury or loss at the Facility or Sites caused by Contractor's acts or omissions.

### Upon the loss of, destruction of, or damage to any of the Property, Contractor shall notify the Contract Manager thereof and shall take all reasonable steps to protect that Property from further damage.

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

## Rights of State and Federal Governments

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

## Risk of Loss; Transfer of Title

Risk of loss for conforming supplies, equipment and materials specified as deliverables to HCA hereunder shall remain with the Contractor until the supplies, equipment, materials and are Deliverables are received and Accepted by HCA. Title to all Deliverables passes to HCA upon acceptance by HCA, subject to HCA’s payment for the same in accordance with the terms of this Contract.

## 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.

## 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.

## Subcontracting

### 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.

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

### 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.

### The rejection or approval by 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.

### HCA has no contractual obligations to any Subcontractor or contractor under contract to the Contractor. Contractor is fully responsible for all contractual obligations, financial or otherwise, to its Subcontractors.

## 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.

## 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.

## Technical Assistance and Knowledge Transfer

Contractor shall transfer any knowledge it possesses which is necessary to the day-to-day operation(s) of the System to HCA employees so that HCA will be able to operate and support the System on a going forward basis (“Knowledge”). The transfer of Knowledge shall consist of Contractor instructing, educating, and training HCA personnel with respect to the following:

* The Solution(s) and all Interfaces between and among the Solution(s) and Third-Party software;
* Enhancements to the Solution and Interfaces;
* All data files, file and data definitions and relationships, data definition specifications, data models, program and logic, interfaces, algorithms, program architecture, design concepts, system designs, program structure, sequence and organization, screen displays and report layouts relating to the Solution;
* All available maintenance and support tools, utilities, diagnostic programs and supporting programs utilized by Contractor in the support and maintenance of the Solution, Interfaces, and other Deliverables;
* Documentation;
* Security requirements and methodologies implemented under the terms of the Contract to prevent or detect unauthorized access, and any networking security tools;
* Maximizing the use of the Solution, Interfaces, and other Deliverables to perform key operational functions, including data backups, program downloads and security checks and how to automate such functions to minimize manual intervention; and
* Any and all updated, changed, or revised policies, practices, procedures, processes and/or techniques with respect to the Knowledge previously transferred to HCA hereunder.

## Termination

### Termination for Default

In the event HCA determines that Contractor has failed to comply with the terms and conditions of this Contract, HCA has the right to suspend or terminate this Contract. HCA will notify Contractor in writing of the need to take corrective action. If corrective action is not taken within five (5) Business Days, or other time period agreed to in writing by both parties, the Contract may be terminated. HCA reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Contractor or a decision by HCA to terminate the Contract.

In the event of termination for default, the Contractor will be liable for damages as authorized by law including, but not limited to, any cost difference between this Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising, and staff time.

The termination will be deemed a Termination for Convenience if it is determined that the Contractor: (i) was not in default, or (ii) its failure to perform was outside of its control, fault, or negligence.

### Termination for Convenience

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

### Termination for Nonallocation of Funds

If HCA determines in its sole discretion that funds have not been allocated to continue this Contract in any future period, then 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 will notify the Contractor of such non-allocation at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this Section is exercised.

### Termination for Withdrawal of Authority

If HCA determines in its sole discretion that it’s authority to perform any of its duties has been withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, then 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 the 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.

### 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 the Contractor had breached the contract.

## Termination Procedures

### 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.

### 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 30.15 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.

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

* Stop work under the Contract on the date of, and to the extent specified in, the notice;
* 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;
* 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;
* 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;
* Transfer title to and deliver as directed by HCA any property required to be furnished to HCA;
* 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.

## Uniform Commercial Code (UCC) Applicability

Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.

To the extent this Contract entails delivery or performance of services, such services shall be deemed “goods” within the meaning of the UCC, except when to do so would result in an absurdity.

In the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

The Software, in whole and in part is considered a good under applicable provisions of the UCC as promulgated in the State of Washington, for purposes of this Contract.

## Use of Name Prohibited

The Contractor shall not in any way contract on behalf of or in the name of HCA, nor shall the Contractor release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this project without obtaining HCA’s prior written approval.

## 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.

## Warranties

### The 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.

### The Contractor represents and warrants that it will comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services.

### Executive Order 18-03: Workers Rights (Mandatory Individual Arbitration). The Contractor represents and warrants, as previously certified in the Contractor’s Response, that the Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. The Contractor further represents and warrants that, during the term of this Contract, the Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. *(NOTE: use based on Contractor’s response to solicitation)*

### Any written commitment by the Contractor within the scope of this Contract will be binding upon the Contractor. Failure of the Contractor to fulfill such a commitment may constitute breach and will render the Contractor liable for damages under the terms of this Contract. For purposes of this Section, a commitment by the 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 the Contractor to HCA or contained in any the Contractor publications, or descriptions of services in written or other communication medium, used to influence HCA to enter into this Contract.

**Attachment 1**

**Confidential Information Security Requirements**

1. Definitions

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

1. “Hardened Password” means a string of characters containing at least three of the following character classes: upper case letters; lower case letters; numerals; and special characters, such as an asterisk, ampersand or exclamation point.
   1. Passwords for external authentication must be a minimum of 10 characters long.
   2. Passwords for internal authentication must be a minimum of 8 characters long.
   3. Passwords used for system service or service accounts must be a minimum of 20 characters long.
2. “Portable/Removable Media” means any Data storage device that can be detached or removed from a computer and transported, including but not limited to: optical media (e.g. CDs, DVDs); USB drives; or flash media (e.g. CompactFlash, SD, MMC).
3. “Portable/Removable Devices” means any small computing device that can be transported, including but not limited to: handhelds/PDAs/Smartphones; Ultramobile PC’s, flash memory devices (e.g. USB flash drives, personal media players); and laptops/notebook/tablet computers. If used to store Confidential Information, devices should be Federal Information Processing Standards (FIPS) Level 2 compliant.
4. “Secured Area” means an area to which only Authorized Users have access. Secured Areas may include buildings, rooms, or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.
5. “Transmitting” means the transferring of data electronically, such as via email, SFTP, webservices, AWS Snowball, etc.
6. “Trusted System(s)” means the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service (“USPS”) first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.
7. “Unique User ID” means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase, or other mechanism, authenticates a user to an information system.
8. Confidential Information Transmitting
9. When transmitting HCA’s Confidential Information electronically, including via email, the Data must be encrypted using NIST 800-series approved algorithms (<http://csrc.nist.gov/publications/PubsSPs.html>). This includes transmission over the public internet.
10. When transmitting HCA’s Confidential Information via paper documents, the Receiving Party must use a Trusted System.
11. Protection of Confidential Information

The Contractor agrees to store Confidential Information as described:

1. Data at Rest:
2. Data will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data. Access to the Data will be restricted to Authorized Users through the use of access control lists, a Unique User ID, and a Hardened Password, or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Systems which contain or provide access to Confidential Information must be located in an area that is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
3. Data stored on Portable/Removable Media or Devices:

* Confidential Information provided by HCA on Removable Media will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the Data.
* HCA’s data must not be stored by the Receiving Party on Portable Devices or Media unless specifically authorized within the Data Share Agreement. If so authorized, the Receiving Party must protect the Data by:

1. Encrypting with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data;
2. Control access to the devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics;
3. Keeping devices in locked storage when not in use;
4. Using check-in/check-out procedures when devices are shared;
5. Maintain an inventory of devices; and
6. Ensure that when being transported outside of a Secured Area, all devices with Data are under the physical control of an Authorized User.
7. Paper documents. Any paper records containing Confidential Information must be protected by storing the records in a Secured Area that is accessible only to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.
8. Confidential Information Segregation

HCA Confidential Information received under this Contract must be segregated or otherwise distinguishable from non-HCA data. This is to ensure that when no longer needed by the Contractor, all HCA Confidential Information can be identified for return or destruction. It also aids in determining whether HCA Confidential Information has or may have been compromised in the event of a security Breach.

* 1. The HCA Confidential Information must be kept in one of the following ways:

1. on media (e.g. hard disk, optical disc, tape, etc.) which will contain only HCA Data; or
2. in a logical container on electronic media, such as a partition or folder dedicated to HCA’s Data; or
3. in a database that will contain only HCA Data; or
4. within a database and will be distinguishable from non-HCA Data by the value of a specific field or fields within database records; or
5. when stored as physical paper documents, physically segregated from non-HCA Data in a drawer, folder, or other container.
   1. When it is not feasible or practical to segregate HCA Confidential Information from non-HCA data, then both the HCA Confidential Information and the non-HCA data with which it is commingled must be protected as described in this Attachment.
6. Confidential Information Shared with Subcontractors

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

1. Confidential Information Disposition

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

1. For HCA’s Confidential Information stored on network disks, deleting unneeded Confidential Information is sufficient as long as the disks remain in a Secured Area and otherwise meet the requirements listed in Section 3, above. Destruction of the Confidential Information as outlined in this section of this Attachment may be deferred until the disks are retired, replaced, or otherwise taken out of the Secured Area.

ATTACHMENT 2

Federal Compliance, Certifications, and Assurances

1. **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: **<<DBHR Contract Manager>>**.
2. *Source of Funds* *XXXX*: *This Contract is being funded partially or in full through* *Cooperative Contract number GRANT FAIN Number, the full and complete terms and provisions of which are hereby incorporated into this Contract. Federal funds to support this Contract are identified by the Catalog of Federal Domestic Assistance (CFDA) number XXXX in the amount of $XXX The Contractor or Subrecipient is responsible for tracking and reporting the cumulative amount expended under HCA Contract* ***K«New Contract Number»****.*
3. *Period of Availability of Funds XXX*: *Pursuant to 45 CFR 92.23, Contractor or Subrecipient may charge to the award only costs resulting from obligations of the funding period specified in <<GRANT FAIN Number>> 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.*
4. *Single Audit Act: This section applies to subrecipients only. Subrecipient (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 Subrecipient 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.*
5. *Modifications: This Contract 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:
      1. Deviations from the budget and Project plan.
      2. Change in scope or objective of the Contract.
      3. Change in a key person specified in the Contract.
      4. The absence for more than one (1) months or a 25% reduction in time by the Project Manager/Director.
      5. Need for additional funding.
      6. Inclusion of costs that require prior approvals as outlined in the appropriate cost principles.
      7. Any changes in budget line item(s) of greater than twenty percent (20%) of the total budget in this Contract.
   2. No changes are to be implemented by the Sub-awardee until a written notice of approval is received from the Health Care Authority.
6. *Sub-Contracting:* The Contractor or Subrecipient shall not enter into a sub-contract for any of the work performed under this Contract 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 Contract pertaining to Debarred and Suspended Vendors, Lobbying certification, Audit requirements, and/or any other project Federal, state, and local requirements.
7. *Condition for Receipt of Health Care Authority Funds:* Funds provided by Health Care Authority to the Contractor or Subrecipient under this Contract may not be used by the Contractor or Subrecipient as a match or cost-sharing provision to secure other federal monies without prior written approval by the Health Care Authority.
8. *Unallowable Costs:* The Contractor or Subrecipient’s 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 Contract.
9. *Supplanting Compliance: SABG:* If SABG funds support this Contract, the Block Grant will not be used to supplant State funding of alcohol and other drug prevention and treatment programs. (45 CFR section 96.123(a)(10)).
10. *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.
11. *Federal Compliance:* The Contractor or Subrecipient shall comply with all applicable State and Federal statutes, laws, rules, and regulations in the performance of this Contract, whether included specifically in this Contract or not.
12. *Civil Rights and Non-Discrimination Obligations:* During the performance of this Contract, the Contractor or Subrecipient 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

1. **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, **«Contractor Name»**. The federal Circulars which provide the applicable administrative requirements, cost principles and audit requirements are identified by sub-awardee organization type.

|  |  |  |  |
| --- | --- | --- | --- |
|  | **OMB CIRCULAR** | | |
| **ENTITY TYPE** | **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 |

1. **STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES -** Following are the Assurances, Certifications, and Special Conditions that apply to all federally funded (in whole or in part) Contracts administered by the Washington State Health Care Authority.
2. **CERTIFICATION REGARDING DEBARMENT AND SUSPENSION :** 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: are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency 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; 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 Section 2 of this certification; and have not within a 3-year period preceding this contract had one or more public transactions (Federal, State, or local) terminated for cause or default.

Should the Contractor or Subrecipient 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 above certification 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.

1. **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:
   * + - 1. 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; Establishing an ongoing drug-free awareness program to inform employees about

The dangers of drug abuse in the workplace;

The contractor’s policy of maintaining a drug-free workplace;

Any available drug counseling, rehabilitation, and employee assistance programs; and

The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

* + - * 1. 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 (I) above;
        2. Notifying the employee in the statement required by paragraph (I), above, that, as a condition of employment under the contract, the employee will—

Abide by the terms of the statement; and

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 (5) calendar days after such conviction;

* + - * 1. Notifying the agency in writing within ten calendar days after receiving notice under paragraph (III)(b) 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;
        2. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (III) (b), with respect to any employee who is so convicted—

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

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;

* + - * 1. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (I) through (V).

For purposes of paragraph (V) 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

1. **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 Contracts from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative Contract. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative Contract must disclose lobbying undertaken with non-Federal (nonappropriated) funds. These requirements apply to grants and cooperative Contracts 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 Contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Contract.
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 Contract, 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 Contracts) 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.

1. **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.
2. **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.**

1. **CERTIFICATION REGARDING OTHER RESPONSIBILITY MATTERS**
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. 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.
8. 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, HCA may terminate this transaction for cause or default.

**CONTRACTOR SIGNATURE REQUIRED**

|  |  |
| --- | --- |
| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL: | TITLE: |
| PLEASE ALSO PRINT OR TYPE NAME: |  |
| ORGANIZATION NAME: (if applicable) | DATE: |

**Attachment 3**

**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](http://www.dnb.com/).

Required Information about your organization and this contract will be made available on USASpending.gov by 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**

|  |  |
| --- | --- |
| 1. Legal Name | 1. DUNS Number |
| 1. Principle Place of Performance | 3a. Congressional District |
| 3b. City | 3c. State |
| 3d. Zip+4 | 3e. Country |
| 1. Are you registered in CCR (<https://www.uscontractorregistration.com/>)? YES (skip to page 2. Sign, date and return) NO | |
| In the preceding fiscal year did your organization:   1. Receive 80% or more of annual gross revenue from procurement federal contracts, Subcontracts, grants, loans, sub-grants, and/or cooperative agreements; **and** 2. $25,000,000 or more in annual gross revenues from federal procurement contracts, Subcontracts, grants, loans, subgrants, and/or cooperative agreements; **and** 3. The public does not have access to information about the compensation of the executives through periodic reports filed with the IRS or the Security and Exchange Commission per 2 CFR Part 170.330   NO (skip the remainder of this section - Sign, date and return)  YES (You must report the names and total compensation of the top 5 highly compensated officials of your organization).   |  |  | | --- | --- | | **Name Of Official** | **Total Compensation** | |  |  | |  |  | |  |  | |  |  | |  |  |   **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 |

***HCA will not endorse the Contractor’s sub-award until this form is completed and returned.***

**FOR HEALTH CARE AUTHORITY USE ONLY**

|  |
| --- |
| HCA Contract Number: **K** |
| FAIN: |
| 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.

**Exhibit E**

**Statement of Work**

The Contractor, will provide the services and staff, and otherwise perform all functions necessary for or incidental to the performance of work set forth below:

**1.** **2023 Survey Preparation**

The Contractor will work collaboratively with the Healthy Youth Survey Planning Committee (HYSPC) including representatives from Health Care Authority (HCA), Department of Health (DOH), Office of Superintendent of Public Instruction (OSPI) and Liquor and Cannabis Board (LCB) – to do the following:

* 1. **HYS data product and website conversion, migration, and rebuild.** The contractor will provide HYS data product conversion and/or migration to maintain the existing archive of data products on the HYS website. This includes HYS data from 2002 – 2021. HYS Data Products include but are not limited to: frequency reports, agency generated press releases, fact sheets, data query and online visualization tools, and versions of common and static reports. If needed, Contractor will coordinate with the current HYS Contractor between the Implementation start date (March 1, 2022) and Contract Go-Live date (July 1, 2022) to access data products and website coding. If applicable, Contractor will coordinate with Component A vendor to discuss data format for product and website rebuild. HYS data product and website conversion, migration, and rebuild will include:

1.1.1 Data Product Conversion and Rebuild Plan that outlines a process and timeline for data product migration, conversion, and rebuild;

1.1.2 Data backups throughout the conversion and migration process as needed;

1.1.3 Website migration as needed.

**1.2 HYS Data Visualization.** The Contractor will produce public-facing, user-friendly, ADA and Section 508-compliant, online dashboard visualization of historical (from 2002 - 2021) HYS data by January 31, 2023 and prepare a system for online visualization of future HYS data (2023 HYS and onward) by January 31, 2024. A modernized system for online data visualization of 2023 and future HYS data will be produced by January 31, 2024. Contractor will adhere to appropriate data security measures to make HYS data products available for the HYSPC, contract manager, appropriate school administrators, and the general public. If needed, Contractor will coordinate with the current HYS Contractor between the Implementation start date (March 1, 2022) and Contract Go-Live date (July 1, 2022) to access current data products and website coding. If applicable, Contractor will coordinate with Component A vendor to ensure data format and structure will result in high-quality online data visualization products. Refer to Exhibit F to view examples of online data visualization and website design.

**2.**  **AskHYS.net Website Maintenance and Operations**. AskHYS.net is an online system that facilitates the administration and dissemination of products from the HYS. The Contractor will:

**2.1 Host and Maintain AskHYS.net.**

2.1.1 The Contractor will host and maintain the hardware and software that supports AskHYS.net and provide HCA and other necessary users access through a license paid for under this Contract. If needed, domain name renewal may also be required.

2.1.2 The Contractor will modernize the current AskHYS.net website and system. If needed, Contractor will coordinate with the current HYS Contractor between the Implementation start date (March 1, 2022) and Contract Go-Live date (July 1, 2022) to access current hosting platform and website coding language.

2.1.3 The Contractor will provide unlimited online public access to HYS products (fact sheets, reports, PowerPoint presentations, training documents, etc.) and ad-hoc analyses at the State, Education Service District (ESD), and County levels.

2.1.4 The Contractor will provide secure online access (e.g., Education Data System [EDS]school district log-in) to HYS products and ad-hoc analyses at the school building and school district levels. Contractor will ensure that only appropriate users are able to access school district and school-level results. The Contractor will work with DOH staff (as agreed to and scheduled by Contractor and DOH) to assure adherence to all WSIRB and data security protocols.

2.1.5 The Contractor will maintain website meta data and correct any website coding errors that cause inaccurate results or website errors, either upon discovery by the Contractor or at the request of HCA. This effort includes the corrections of all HYS products and the maintenance of a corrections log.

2.1.6 The Contractor will rebuild and maintain the storage and retrieval system that allows for the accurate display of a library of existing static HYS reports, fact sheets, PowerPoint slides and QxQ Interface/Mechanism. If needed, Contractor will coordinate with the current HYS Contractor between the Implementation start date (March 1, 2022) and Contract Go-Live date (July 1, 2022) to access 2002-2021 HYS data storage and data product coding language. For HYS 2023 data, this includes the retrieval of survey data from Component A vendor (if applicable), and transformation of that data into display of data products.

2.1.7 If HYSPC and/or HCA are unable to provide direct website content updates, then the Contractor will maintain a log of text updates and changes to the AskHYS website and include the log in the monthly contract report that is submitted to HCA.

2.1.8 Provide a monthly report to contract manager on website analytics and usage, including number of content downloads and downloads by topic over time.

**3.**  **Website Access** Contractor grants to HCA a perpetual, non-exclusive license to use AskHYS.net technology, a web-based document library, analytic query, data dashboard and reporting service, and survey management tool, in any manner required to carry out the purposes of the contract.  HCA shall retain all intellectual property rights for any supporting survey data and any results or reports generated by HYS website.  HCA grants to contractor a limited non-exclusive license to HYS survey and school data, as well as data or reports generated by such service, in any manner to carry out the purposes of the contract.

Except as specified in the paragraph above, Contractor shall retain all intellectual property rights relating to the technology used in the development and implementation of AskHYS.net.  The technology is confidential, proprietary, and created prior to this contract.

**Deliverable Schedule for Component B**

|  |  |  |
| --- | --- | --- |
| Section | Item / deliverable | Due Date |
| **ALL** | **All deliverables** | **6/30/2024** |
| 1 | Project Management Services | Ongoing |
| 1.1 | Transition Plan | 3/30/2022 |
| 1.2 | Project Management Plan | 3/30/2022 |
| 1.3 | Data Security Plan | 4/30/2022 |
| 1.4 | Change Management Plan | 5/15/2022 |
| 1.5 | Project Status Report | Bi-weekly |
| 1.6 | Project Budget and Spending Plan Reporting | Monthly |
| 2 | Data and Website Processing | 1/31/2023 |
| 2.1 | Data Product Conversion and Rebuild Plan | 5/15/2022 |
| 2.2 | 2002-2021 HYS Data Conversion with Ongoing Data Backups | 1/31/2023 |
| 2.3 | Data migration issues log | 1/31/2023 |
| 2.4 | Website Migration and Rebuild Plan | 6/31/2022 |
| 2.5 | Website Migration, Launch and Access | 1/31/2023 |
| 3 | HYS Data Visualization | 1/31/2024 |
| 3.1 | HYS Online Data Visualization Plan | 5/15/2023 |
| 3.2 | 2002-2021 HYS Data Dashboard | 1/31/2023 |
| 3.3 | 2002-2023 HYS Data Dashboard | 1/31/2024 |
| 4 | AskHYS.net Website Operations and Maintenance | 1/31/2023 |
| 4.1 | Continuous Quality Improvement Tasks | Ongoing |
| 4.2 | Security Updates | Ongoing |
| 4.3 | Website Maintenance | Ongoing |
| 4.4 | Upgrades | Ongoing |
| 4.5 | Change Requests and Enhancements | Ongoing |
| 4.6 | O&M Schedule |  |
| 5 | Other Project Support | 6/30/2024 |
| 5.1 | HYSPC Meeting Participation | Ongoing |
| 5.2 | Ad Hoc Support and Consultation | Ongoing |