

ADMINISTRATIVE SERVICES AGREEMENT

This ADMINISTRATIVE SERVICES AGREEMENT (the “Agreement”), is effective the 1st day of July, 2021, (the “Effective Date”) by and between Community Health Plan of Washington, a Washington State not-for-profit corporation and Medicaid Managed Care Organization (“CHPW”) and Salish Behavioral Health Administrative Services Organization, through Kitsap County, its Administrative Entity, a Washington State government organization, formed through an interlocal agreement between Clallam, Jefferson and Kitsap Counties (“Contractor”). Hereafter, CHPW and Contractor may be referred to individually as a “party” and collectively as the “parties.”

RECITALS

- A. **WHEREAS**, CHPW is a tax exempt entity (under section 501(c)(4) of the United States Internal Revenue Code) and a licensed health care services contractor providing covered healthcare services to individuals enrolled in its benefit plans (“Members”), including its Apple Health (Washington State Medicaid) benefit plans, and is certified by the National Committee for Quality Assurance (“NCQA”);
- B. **WHEREAS**, Contractor is the Behavioral Health Administrative Services Organization (“BH-ASO”), contracted with the Washington State Health Care Authority (“HCA”) to administer certain behavioral health services and functions in the Salish Region; and
- C. **WHEREAS**, the parties have agreed that Contractor will provide the services contemplated by this Agreement, including the Delegated Functions described in Exhibit A, the Delegation Agreement, under the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the commitments set forth below, the parties agree as follows:

1. **DEFINITIONS**. Capitalized terms not otherwise defined herein have the meanings given under the applicable HCA Contract(s).
 - 1.1 **CHPW Policies**. “CHPW Policies” means CHPW-maintained policies and procedures, provided or made available to Contractor.
 - 1.2 **CMS**. “CMS” means the Centers for Medicare and Medicaid Services, the federal agency within the United States Department of Health and Human Services that is responsible for the Medicare and Medicaid programs.
 - 1.3 **Compliance Requirements**. “Compliance Requirements” means: (i) state and federal laws and regulations, applicable to CHPW or to Contractor; (ii) all HCA Contract requirements; (iii) applicable NCQA Standards; and (iv) the terms of this Agreement.

1.4 **Delegated Function.** “Delegated Function” means a core business function that CHPW is required to perform, which a subcontractor is authorized to perform on CHPW’s behalf pursuant to a written agreement, and that requires robust ongoing oversight to ensure compliance with applicable Compliance Requirements.

1.5 **HCA Contracts.** “HCA Contracts” means CHPW’s contracts with the Washington State Health Care Authority for the Apple Health program, including the *Apple Health (Medicaid) managed care contract*, the *Apple Health – Fully Integrated Managed Care contract*, and the *Apple Health – Fully Integrated Managed Care – Behavioral Health Services wrap-around contract*.

1.6 **Project Data.** “Project Data” means: (i) all information processed or stored on computers or other electronic media by Contractor on CHPW’s behalf; (ii) information that is provided by CHPW or its affiliates to Contractor to access, use, store, maintain, or transmit; and (iii) any information derived from such information. Project Data includes, without limitation: (i) information on paper or other non-electronic media provided to Contractor for computer processing or storage, or information formerly on electronic media; (ii) information provided to Contractor by CHPW or information related to the Services performed under the Agreement that is provided to Contractor by a third party; and (iii) any Patient Identifying Information, as that term is defined in 42 C.F.R. §2.11, or Protected Health Information, as that term is defined in 45 C.F.R. §160.103 (“PHI”), that Contractor receives from or on behalf of CHPW.

1.7 **Subdelegate.** “Subdelegate” means a subcontractor of Contractor who CHPW has approved in writing to perform all or part of a Delegated Function under this Agreement.

1.8 **Health Care Authority.** “Health Care Authority” or “HCA” shall mean the Washington State Health Care Authority, the single-state agency responsible for Washington State’s Medicaid programs, referred to as “Apple Health”.

1.9 **Member.** “Member” means an individual enrolled with CHPW and who is eligible to receive Behavioral Health Services from or through CHPW under the HCA Contracts.

2. **SERVICES**

2.1 As used herein, “Services” includes Contractor’s performance of all services contracted hereunder, including services related to the administration of Crisis and Ombudsmen Services, and any related Delegated Functions.

2.2 **Compliance.** Contractor shall perform the Services in accordance with applicable Compliance Requirements. Where a Compliance Requirement is not directly applicable to Contractor, Contractor shall perform its obligations in a manner that enables CHPW to comply with such Compliance Requirement.

- 2.2.1 The Services will be performed in a professional, competent, and timely manner by appropriately qualified personnel that have the requisite knowledge, training, ability, and licensure or credentials to perform the Services in accordance with applicable Compliance Requirements and industry standards.
- 2.2.2 Contractor shall comply with the Program Integrity requirements contained in the HCA Contracts, including the requirement to immediately report to CHPW any instance of actual or potential Fraud of which Contractor becomes aware, and CHPW's HCA-approved Program Integrity Policies.
- 2.2.3 The parties acknowledge that Compliance Requirements may be amended during the term of this Agreement. Each party shall modify its performance to ensure ongoing compliance with applicable Compliance Requirements, as amended.

3. **CONTRACTOR OBLIGATIONS**

3.1 Contractor shall cooperate with and participate in CHPW's monitoring and oversight activities, which shall be performed in accordance with applicable Compliance Requirements CHPW Policies, and industry standards.

3.2 Upon CHPW's request, Contractor shall provide to CHPW any information necessary for CHPW to meet its obligations under the HCA Contracts.

3.3 **Required Disclosures**. In accordance with HCA and CMS requirements, Contractor is required to make certain disclosures to CHPW concerning Contractor's ownership and control, information on persons convicted of crimes, and other sensitive matters. Contractor shall comply with all disclosure requirements as set forth herein, or as required by applicable Compliance Requirements.

3.3.1 Contractor shall complete CHPW's "Ownership and Control Interest Disclosure Form" ("OCID Form") upon execution of this Agreement, upon CHPW's reasonable request, and within 35 business days of any change in the information provided by Contractor on the OCID Form. Contractor will not receive any compensation or other financial remuneration hereunder unless and until Contractor executes and returns to CHPW the initial completed OCID Form. Failure to comply with the requirements of this Section constitutes a material breach of Contractor's obligations hereunder.

3.3.2 **Additional Disclosure Requirements**. Within 35 calendar days of CHPW's request, Contractor shall provide to CHPW:

3.3.2.1 Full and complete business information concerning: (i) the ownership of any subcontractor with whom Contractor has had more than \$25,000.00 of business transactions within the 12-month period prior to the date of

the request; and (ii) any significant business transactions between Contractor and any wholly owned supplier, or between Contractor and any of its subcontractors, during the 5-year period prior to the date of the request.

3.3.2.2 A description of any transactions between Contractor and a “party in interest,” as defined in Section 1318(b) of the Public Health Service Act, including: (i) the sale, lease or exchange of any property; (ii) the furnishing for consideration of goods, services (including management services), or facilities, but not including salaries paid to employees for services provided in the normal course of their employment; and (iii) the lending of money or other extension of credit.

3.3.3 Information on Persons Convicted of Crimes. Upon execution of this Agreement and upon CHPW’s request thereafter, Contractor shall investigate and disclose to CHPW the identity of any individual who has been convicted of a criminal offense related to that person’s participation in a federally funded health care program, including Medicaid, Medicare, and the Children’s Health Insurance Program, since the inception of those programs, and who is: (i) a person who has an ownership or control interest in Contractor; (ii) an agent or person who has been delegated the authority to obligate or act on behalf of Contractor; or (iii) an agent, managing employee, general manager, business manager, administrative, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts, Contractor’s day-to-day operations.

3.4 Public Records Act. The Parties acknowledge that Contractor is subject to the strict requirements of the Washington Public Records Act, Chapter 42.56 RCW (“PRA”). Compliance with the requirements of the PRA by Contractor shall not be violative of this Agreement or subject to the equitable power of any court, except as provided in the PRA. CHPW retains the right to review records prior to disclosure, to claim exemption, and to challenge any disclosure request in court; provided, however, that CHPW shall indemnify, defend, and hold Contractor harmless from any and all resulting claims, penalties, or costs, including attorneys’ fees.

3.5 Licenses and Registrations. Contractor has and will maintain the licenses, permits, registrations, certifications, and other governmental authorizations necessary to conduct its business or perform the Services. Contractor shall notify CHPW in the event of a change in status of any required license, permit, registration, certification, or other authorization necessary for Contractor performance under this Agreement.

3.6 No Exclusion. Contractor represents and warrants that itself and its employees, directors, officers, and agents are not now and never have been: (i) sanctioned under a federal or state program or law; (ii) listed in the current List of Excluded Individuals and Entities by the Office of the Inspector General for the U.S. Department of Health and Human Services; (iii) listed on the General Services Administration’s List of Parties Excluded from Federal Programs; (iv) otherwise excluded from participation in any federally-funded health care program, including Medicare and Medicaid; or (v) convicted of a serious crime directly related to healthcare. Contractor shall

immediately notify CHPW of any threatened, proposed, or actual change in the foregoing representations.

3.7 Subcontractors. If Contractor subcontracts any part of its performance hereunder, it must enter a written agreement with the subcontractor, which must require the subcontractor to comply with applicable Compliance Requirements and CHPW Policies. Any such subcontract shall also require the subcontractor to perform in a manner that enables CHPW to comply with such Compliance Requirements and CHPW Policies, regardless of whether such requirements are directly applicable to Contractor or subcontractor.

3.7.1 Contractor shall screen all new and existing subcontractors against the lists of excluded individuals referenced in Section 3.6, as well as applicable state-maintained exclusion list(s). If a subcontractor of Contractor is determined to be debarred, suspended, or otherwise excluded from receiving a subcontract funded in whole or in part by federal or state dollars, including Medicaid funds, Contractor will immediately terminate its relationship with such subcontractor.

3.7.2 Contractor may not subcontract any part of its performance of a Delegated Function without the prior written approval of CHPW. If CHPW approves a Contractor Subdelegate to perform all or part of a Delegated Function hereunder, Contractor shall ensure compliance with Exhibit A for itself and its Subdelegate.

3.8 Taxes. Contractor will pay any taxes on its income as well as any compensation, taxes, and insurance associated with its employees and subcontractors. Neither Contractor nor its representatives, employees, agents, or subcontractors, shall have any claim against CHPW for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind arising from Contractor's performance under this Agreement.

3.9 Insurance. At its sole expense and through the term of this Agreement, Contractor shall maintain the following insurance and coverage amounts to cover its provision of Services hereunder: (i) One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate for commercial general liability; (ii) applicable state statutory limits for workers' compensation; and (iii) any other usual and customary policies of insurance applicable to Contractor or the Services being performed.

3.9.1 By requiring insurance, CHPW does not represent that such coverage or limits will be adequate to protect Contractor. Such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted herein.

3.9.2 Contractor will obtain all insurance coverage specified herein from insurers with a current A.M. Best financial rating of A-, Class VII or better. All policies shall be primary with respect to any insurance maintained by Contractor.

- 3.9.3 If Contractor procures a “claims-made” policy to meet the insurance requirements herein, Contractor shall purchase “tail” coverage that provides for an indefinite reporting period upon the termination of any such policy or upon termination of this Agreement.
- 3.9.4 Contractor will promptly notify CHPW of any material change in the carrier or in the amount or scope of required coverage. Contractor shall provide a certificate of insurance coverage within ten (10) days of CHPW’s request. Contractor’s failure to maintain required insurance constitutes a material breach of this Agreement.

4. **CHPW OBLIGATIONS**

4.1 **Taxes.** CHPW will pay applicable federal, state, and local taxes including sales, use, service, or other such taxes associated with its receipt of the Services.

4.2 **CHPW Premises.** If Contractor provides Services on CHPW premises, CHPW will provide Contractor the space, furniture, fixtures, equipment, and supplies that CHPW, in its sole discretion, deems reasonably necessary for the provision of Services. Contractor shall use any space, furniture, fixtures, equipment, or supplies provided by CHPW only for the performance of the Services covered by this Agreement, and not for any other purpose, including Contractor’s own private use. If Contractor provides Services on CHPW premises, Contractor on-site personnel will be required to follow applicable CHPW protocols and complete any required training for on-site personnel.

4.3 **Ultimate Legal Responsibility.** Nothing in this Agreement terminates or modifies CHPW’s legal responsibility to carry out its obligations under the HCA Contracts. CHPW shall remain responsible for oversight of all functions and responsibilities subcontracted to Contractor.

4.4 **Oversight and Ongoing Monitoring.** CHPW will monitor Contractor performance hereunder on an ongoing basis and subject Contractor to formal review, consistent with Compliance Requirements, CHPW Policies, and industry standards. Formal review will be completed at least once every three (3) years. Such review shall be based on the specific activities contracted hereunder and shall address compliance with applicable Compliance Requirements.

4.5 **CHPW’s Grievance and Appeals System.** CHPW has provided Contractor information regarding CHPW’s grievance system, including: (i) the toll-free numbers to file oral grievances and appeals; (ii) the availability of assistance in filing; (iii) a Member’s right to request continuation of benefits during an appeal or hearing and, if CHPW’s action is upheld, the Member’s responsibility to pay for the continued benefits; (iv) a Member’s right to file grievances and appeals, the ability of their provider to file a grievance or appeal on the Member’s behalf, and the requirements and timeframes for filing; and (v) a Member’s right to a hearing, how to obtain a hearing, and representation rules at a hearing. Information regarding CHPW’s grievance system is available online at <https://www.chpw.org/for-members/grievances-and-appeals/>.

5. **COMPENSATION AND PAYMENT**

5.1 All fees, reimbursement, payment, and other compensation related to Contractor's performance hereunder are set forth in Exhibit C.

5.2 Contractor shall accept as payment in full the compensation set forth in Exhibit C and shall make no request for payment from HCA or any Member for services rendered under this Agreement. Contractor, for itself and its representatives, employees, agents, and subcontractors, shall hold HCA, HCA employees, and all Members, harmless in the event of non-payment by CHPW under the Agreement.

5.3 **Overpayment or Underpayment**. Contractor shall reimburse CHPW for any overpayment made hereunder within thirty (30) days of either Contractor's discovery or CHPW's written notification of such overpayment. CHPW shall remit to Contractor any underpayment within thirty (30) days of receipt of Contractor's invoice substantiating such underpayment. Upon reasonable notice of intent, each party has the right of offset as to any amounts owed to either party against any amount owed by the other party.

5.4 **Federal Funds**. Each party is subject to the laws applicable to individuals and entities receiving federal funds, and shall inform all related entities and subcontractors that payments they receive are, in whole or in part, from federal funds. This Agreement shall be interpreted and performed in a manner that results in compliance with such laws.

6. **TERM and TERMINATION**

6.1 **Term**. This Agreement shall be effective upon the Effective Date and shall terminate on June 30, 2022 ("Term"), unless extended by mutual written agreement of the parties, or terminated as provided herein.

6.2 **Termination**. This Agreement may be terminated prior to the expiration of the Term as follows:

6.2.1 **Termination For Cause**. Either party may terminate this Agreement for cause upon ninety (90) days' prior written notice to the other party specifying the cause for termination. The alleged violating party shall have ninety (90) days to rectify the specified cause, and if the cause is not rectified within that ninety (90) day period, the terminating party may terminate this Agreement upon written notice to the other party. "Cause" for termination includes a party's material breach of its obligations under this Agreement.

6.2.2 **Exclusion**. If either party is excluded from participation in Medicare or Medicaid or if for any reason a party's performance under this Agreement is deemed illegal or unethical by a recognized body in the insurance or healthcare industry, then this Agreement shall automatically terminate.

- 6.2.3 Termination of HCA Contract(s) or Service Area(s). In the event that one or more HCA Contracts expires or is terminated, or CHPW is no longer contracted as a Medicaid Managed Care Organization in an applicable service area, CHPW may terminate the Agreement upon written notice to Contractor.
- 6.2.4 Termination of BH-ASO Contract. In the event that Contractor's BH-ASO contract with HCA expires or is terminated prior to the end of the Term of this Agreement, this Agreement shall immediately terminate.
- 6.2.5 Bankruptcy. If an assignment of a party's business for the benefit of creditors is made, if a petition in bankruptcy is filed by or against a party, if a receiver or similar officer is appointed to take charge of all or part of a party's property, or if a party is adjudicated bankrupt, the other party may terminate this Agreement upon written notice to the other party.
- 6.2.6 Failure to Meet Pre-Conditions of Delegation. If Contractor's performance under this Agreement contemplates performance of any part of a Delegated Function, and Contractor fails to meet CHPW's pre-delegation requirements, then the Parties agree that CHPW may suspend the implementation of Contractor's performance hereunder to permit Contractor to cure the identified deficiencies or instances of non-compliance or may, in its discretion, terminate this Agreement upon written notice to Contractor.

6.3 Effect of Termination or Expiration.

- 6.3.1 Termination or Suspension of Delegated Function. Termination or suspension of Contractor's performance of a Delegated Function, in whole or in part, shall not terminate or suspend this Agreement.
- 6.3.2 Existing Obligations Not Released. Rights, liabilities, and other obligations of the parties arising or incurred prior to the date of termination or expiration of this Agreement are not terminated by the termination or expiration hereof.
- 6.3.3 Ongoing Cooperation. The parties shall cooperate to ensure an efficient transition of the Services. Contractor shall provide to CHPW all Program Data, and any other documentation or information necessary to transition the Services to CHPW or its third-party designee. If requested by a party, Contractor and CHPW will develop a mutually agreed upon transition plan to ensure the orderly transition of the Services and each party's ongoing compliance with applicable Compliance Requirements.
- 6.3.4 Financial Reconciliation. The parties shall reconcile and true up their financial relationship upon termination or expiration of this Agreement.

6.3.5 Survival. All terms and conditions of this Agreement, which expressly or by their nature should survive termination or expiration hereof, shall survive termination or expiration of this Agreement.

7. CONFIDENTIALITY

7.1 This Agreement, including all exhibits, attachments and other addenda hereto, contains the Work Product and other confidential and/or proprietary information of the parties. Neither party will disclose any term or condition hereof to a third party, except: as expressly permitted herein; to ensure a Party's compliance with applicable Compliance Requirements; or with the express, written permission of the other party.

7.2 Confidential Information. Each party shall keep confidential the other party's proprietary or confidential information, including the terms and conditions of this Agreement, and all information related to finances, methods of operation and competition, pricing, operations, personnel, Members, patients, computer programs and files, business strategies including cost data, utilization review techniques, medical management, quality assurance protocols, patents, trade secrets, know-how and other proprietary processes, and information included in manuals or memoranda, as they may now exist or may be developed or amended, including all Project Data and any Work Product or other information that Contractor generates in its performance hereunder (collectively, "Confidential Information").

7.3 No Disclosure of Confidential Information. Neither party shall disclose the other party's Confidential Information, in whole or in part, directly or indirectly, to any person, firm, association or other entity for any unauthorized purpose, nor shall a party use any Confidential Information for its own purposes or for the benefit of any other person, firm, or entity unless: (i) such information is or becomes generally available to the public other than as a result of an unauthorized disclosure by the disclosing party; (ii) such information is required to be disclosed by law or by a judicial, administrative, or regulatory authority; or (iii) as necessary to enforce its rights and perform its agreements and obligations hereunder. Neither party shall reverse engineer, disassemble, or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information. Neither party shall use the other's name, logo, trademark, or other identifying information or make any public communication or advertisement without the express written consent of the other party.

7.4 Confidentiality limitation. All provisions of this Article 7 are subject to the limitations set forth in section 3.4 hereof.

8. DATA SHARING; DATA SECURITY.

8.1 Additional Definitions.

8.1.1 Data Breach. "Data Breach" means unauthorized disclosure or exposure of Project Data in Contractor's possession or provided by Contractor to a third party.

8.1.2 HIPAA. “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996.

8.1.3 HIPAA Rules. “HIPAA Rules” shall mean the Privacy Rule, Security Rule, Breach Notification Rule, and Enforcement Rule.

8.2 **Data Management**.

8.2.1 Contractor shall not access, use, or disclose Project Data in any manner that would constitute a violation of state or federal law or regulation, or this Agreement.

8.2.2 Contractor shall not outsource, share, or retransfer Project Data to any person or entity, except to employees, agents, or subcontractors of Contractor who must access or use Project Data in the performance of Contractor’s duties under this Agreement.

8.2.3 Contractor will not permit any third party to access Project Data unless such third party is subject to a written agreement with Contractor that incorporates the Data Management and Data Security requirements of this Article 8 of the Agreement. Contractor will ensure that each such third party complies with all of the terms of this Agreement related to Project Data.

8.2.4 Contractor will not access, use, process, or disclose Project Data other than as necessary to perform its obligations under this Agreement. Notwithstanding the foregoing, Contractor may disclose Project Data as required by law. In such cases, Contractor shall provide CHPW with prompt written notice of any such legal or governmental demand and shall cooperate with CHPW in any effort to seek a protective order or otherwise contest such required disclosure.

8.2.5 CHPW possesses and retains all rights, title, and interest in and to Project Data, and Contractor’s use and possession of Project Data is solely on CHPW’s behalf and for the benefit of CHPW. CHPW may access and copy any Project Data in Contractor’s or a third party’s possession at any time, and Contractor will reasonably facilitate such access and copying promptly after CHPW’s request.

8.2.6 In its handling of Project Data, Contractor will comply with applicable Compliance Requirements and CHPW Policies.

8.2.7 Unless prohibited by Article 10 or Contractor’s independent legal obligations, upon expiration or termination of this Agreement, Contractor will return to CHPW or destroy all Project Data in whatever form or medium, including all copies thereof and all data, compilations, and other works derived therefrom. This provision shall

apply to any Project Data that is in Contractor's possession or the possession of any individual or entity that received Project Data from Contractor.

8.2.7.1 Contractor will identify, in the form and manner requested by CHPW, any Project Data, including any Project Data that Contractor has disclosed to third parties, that cannot feasibly be returned to CHPW or destroyed, and explain why return or destruction is infeasible. Contractor will limit its further use or disclosure of such Project Data to those purposes that make return or destruction infeasible. Contractor will, by its written agreement with any third party, require such third party to limit its further use or disclosure of the Project Data that the third party cannot feasibly return or destroy to those purposes that make the return or destruction of such information infeasible. Contractor will complete these obligations as promptly as possible, but not later than thirty (30) calendar days following the effective date of termination or expiration of this Agreement.

8.2.7.2 Contractor shall require any such third party to certify to Contractor that it has returned or destroyed all Project Data that could be returned or destroyed. Contractor will require any such third party to complete these obligations as promptly as possible, but not later than thirty (30) calendar days following the effective date of termination or expiration of this Agreement.

8.2.7.3 Contractor's obligations to protect the privacy and safeguard the security of Project Data as specified in this Agreement will be continuous and will survive the termination or conclusion of this Agreement.

8.3 Data Security. In addition to the requirements of this Article 8, Contractor will, at all times, exercise reasonable efforts to prevent the unauthorized access, use, or disclosure of Project Data.

8.3.1 Contractor will maintain, implement, and comply with a written data security program that requires commercially reasonable policies and procedures to ensure compliance with the Data Security requirements of this Agreement as well as applicable Compliance Requirements.

8.3.1.1 Contractor's data security policies and procedures will contain administrative, technical, and physical safeguards, including without limitation:

8.3.1.1.1 Guidelines on the proper disposal of Project Data after it is no longer needed to carry out the purposes of the Agreement;

8.3.1.1.2 Access controls on electronic systems used to store, maintain, access, or transmit Project Data;

8.3.1.1.3 Access restrictions at physical locations containing Project Data;

- 8.3.1.1.4 Encryption of electronic Project Data;
- 8.3.1.1.5 Two-Factor Authentication;
- 8.3.1.1.6 Testing and monitoring of electronic systems; and
- 8.3.1.1.7 Procedures to detect actual and attempted attacks on or intrusions into the systems containing or accessing Project Data.

8.3.1.2 Contractor will review its data security policies and procedures and all other Project Data security precautions regularly, but no less frequently than annually, and will update and maintain policies, procedures, and practices to comply with applicable Compliance Requirements, changes in technology, and industry best practices.

8.3.1.3 Contractor’s written data security program shall meet or exceed the requirements of the HIPAA Rules, as currently in effect or later amended.

8.3.2 Contractor will implement and maintain a program for managing actual or suspected Data Breaches.

8.3.2.1 Contractor will report to CHPW’s Compliance Officer any actual or potential Data Breach immediately and not more than seventy-two (72) hours after Contractor discovers such actual or potential Data Breach. Contractor’s report will include at least the following, provided that the absence of any information will not be cause for Contractor to delay the report, and additional information will be provided in a subsequent report as soon as reasonably possible:

- 8.3.2.1.1 Identify the nature of the Data Breach, including a brief description of what happened, the date of the Data Breach and the date of the discovery of the Data Breach, and the number of individuals whose information may have been the subject of the Data Breach;
- 8.3.2.1.2 Identify the types of information that were involved in the Data Breach, and to the extent the Data Breach involved PHI, identify the types of PHI;
- 8.3.2.1.3 Identify who made the non-permitted use or disclosure and who received the non-permitted disclosure;
- 8.3.2.1.4 Identify what corrective of investigational action Contractor took or will take to prevent further non-permitted uses or

disclosures, to mitigate harmful effects, and to protect against any further Data Breaches;

8.3.2.1.5 Identify what steps the individuals who were the subjects of or affected by the Data Breach should take to protect themselves; and

8.3.2.1.6 Provide such other information as CHPW may request.

8.3.2.2 In the event of a Data Breach, Contractor shall immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of the Data Breach.

8.3.2.3 Contractor shall cooperate with CHPW and law enforcement agencies, where applicable, to investigate and resolve the Data Breach, including without limitation by providing reasonable assistance to CHPW in notifying affected individuals and/or entities. Contractor will give CHPW prompt access to such records related to a Data Breach as CHPW may reasonably request; *provided*, that such records will be Contractor's Confidential Information and Contractor will not be required to provide CHPW with records belonging to its other customers. The provisions of this subsection do not limit CHPW's other rights or remedies, if any, resulting from a Data Breach.

8.3.2.4 Contractor shall defend, indemnify, and hold CHPW harmless from and against any claims, actions, loss, liability, damage, costs, or expenses, including but not limited to reasonable attorneys' fees, arising from any or all Data Breaches. The indemnification provided hereunder includes the full costs of forensic analysis, system remediation to eliminate the cause of the Data Breach, and notice to affected individuals, including but not limited to the services of a third-party firm.

8.4 Disaster Plan. Contractor will maintain a Disaster Recovery and Business Continuation Plan ("Disaster Plan") that sets forth a strategy to reasonably respond to an event that impacts Contractor's ability to timely perform its obligations under this Agreement, including a system breakdown and natural or man-made disasters. The Disaster Plan will include application and system recovery and/or manual procedures as well as operating procedures to enable continued provision of Services within forty-eight (48) hours of a disaster or system failure.

8.4.1 Contractor will maintain or contract for a computing environment which includes the required hardware, software, network, power, and other related equipment or supplies necessary to execute the Disaster Plan.

8.4.2 Contractor will test its Disaster Plan in accordance with the requirements of the HIPAA Security Rule, and at least annually and in the event of a material change

in the computing environment. Contractor will provide CHPW with the results of such tests.

8.4.3 CHPW or its designee may audit Contractor's Disaster Plan to monitor compliance with this Section 8.4.

8.5 **Business Associate Agreement.** Under this Agreement, Contractor is a Business Associate, as that term is defined in 45 C.F.R. §160.103, of CHPW. As such, the parties have entered a Business Associate Agreement, which is attached hereto and by this reference incorporated herein as Exhibit D. In the event of a conflict between the terms of the Business Associate Agreement and these Data Security requirements, the terms of the Business Associate Agreement shall prevail in all cases involving PHI. Notwithstanding the foregoing, Contractor shall be obligated to comply with the Data Security requirements so long as such compliance does not violate the terms of the Business Associate Agreement.

8.6 **Alcohol and Substance Abuse Records.** Each party acknowledges and agrees that if it receives, stores, processes, has access to, maintains, or otherwise deals with Patient Identifying Information from an alcohol or drug abuse "program", as defined in 42 C.F.R. §2.11, that is federally assisted in the manner described in 42 C.F.R. §2.12(b), then it is fully bound by the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, with respect to such information and records, including but not limited to the duty to resist in judicial proceedings any efforts to obtain access to such information or records, other than as permitted by law.

9. **INDEMNIFICATION**

9.1 **CHPW Indemnity.** CHPW, for itself, its legal representatives, and its lawful successors and assigns, shall indemnify, defend, and hold harmless Contractor, and its officers, employees, and agents, from any claim, liability, loss, demand, cost, and expense of any kind, including reasonable attorney's fees and any disbursements, or regulatory penalties (collectively, the "Loss") that Contractor may hereafter incur, sustain, or be required to pay by reason of (i) CHPW's breach of the Agreement, (ii) from the reckless, negligent, or intentional acts or omissions of CHPW or its officers, employees, subcontractors, or agents related to CHPW's performance hereunder, or (iii) CHPW's failure to comply with federal or state laws or regulations in a manner that proximately causes compensatory damage, recoverable by a third party from Contractor.

9.2 **Contractor Indemnity.** Contractor, for itself, its legal representatives, and its lawful successors and assigns, shall indemnify, defend, and hold harmless CHPW, and its officers, employees, and agents, from any claim, liability, demand, cost and expense of any kind, including reasonable attorney's fees and disbursements, or regulatory penalties (collectively, the "Loss") that CHPW may hereafter incur, sustain, or be required to pay by reason of Contractor's (i) breach of the Agreement, (ii) from the reckless, negligent, or intentional acts or omissions of Contractor or its officers, employees, subcontractors, or agents related to Contractor's performance hereunder, or (iii) Contractor's failure to comply with federal or state laws or regulations in a manner that

proximately causes compensatory damage, recoverable by a third party from CHPW. Contractor shall further indemnify and hold harmless HCA and HCA employees against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses which may in any manner accrue against HCA or its employees through the intentional misconduct, negligence, or omission of Contractor or its officers, employees, subcontractors, or agents.

9.3 Notice and Process. Once the party entitled to indemnification under this Article 9 receives notice of a Loss for which such party will seek indemnification from the other party, the indemnified party will promptly notify the other party in writing. Such notice will describe any matters related to or with respect to the Loss of which the indemnified party has knowledge. However, failure to notify the indemnifying party of such a Loss will not relieve the indemnifying party of its obligations under this Article 9, except to the extent that the indemnifying party is prejudiced by such failure. The indemnified party will give the indemnifying party the opportunity to control the response to the Loss, and any defense thereof, including without limitation, any agreement related to the settlement thereof; provided, however, that the indemnified party may participate, at its own expense, in any defense and any settlement, directly or through counsel of its choice. As soon as reasonably practicable after receiving written notice of the Loss, the indemnifying party will notify the indemnified party in writing as to whether the indemnifying party elects to assume control of the response, or any defense or settlement related to such Loss. If the indemnifying party elects not to assume such control, the indemnified party will have the right to respond to, defend, or settle the Loss as it may deem appropriate, at the cost and expense of the indemnifying party, which will promptly reimburse the indemnified party for such costs, expenses, and settlement amounts.

9.4 Subrogation. If an indemnifying party is obligated to indemnify an indemnified party under this Article 9, then, upon paying that indemnity in full, the indemnifying party will be subrogated to all rights of the indemnified party concerning the Loss to which the indemnification relates.

10. MONITORING AND OVERSIGHT; RECORD RETENTION

10.1 Records. Each party shall prepare, protect, and maintain appropriate records, including administrative, medical, and financial records, covering its performance under this Agreement, including the provision of Services, for at least ten (10) years from the later of (i) the date the Agreement terminates or expires, (ii) the date any inspection, audit, litigation or other action related to the records or their content concludes, or (iii) the date of final payment under the applicable HCA Contract(s). Financial records will follow generally accepted accounting principles. Upon reasonable notice, each party shall provide access to the other to inspect or audit its records related to this Agreement.

10.2 Government Inspection and Auditing. Each party shall permit, at any time, the State of Washington, including HCA, the Washington Medicaid Fraud Control Division (“MFCD”), and State Auditor’s Office, the Secretary of the U.S. Department of Health and Human Services (“HHS”), the HHS Office of the Inspector General, CMS, the U.S. Government

Accountability Office, the U.S. Office of Management and Budget, the Comptroller General, and their respective designees, to access, inspect and audit any records or documents of CHPW, Contractor or its subcontractors, and shall permit inspection of the premises, physical facilities, and equipment where Medicaid-related activities or work is conducted at any time.

10.2.1 Each party shall forthwith produce all documents, records and other data requested as part of such an inspection, audit, review, investigation or evaluation. If the requesting agency asks for copies of records, documents, or other data, each party shall make copies of such records at no charge to the requestor and shall deliver them to the requestor within 30 calendar days of the request, or any shorter time as authorized by law or court order.

11. **DISPUTE RESOLUTION**

11.1 **Informal Resolution.** Each party shall cooperate in good faith and deal fairly in its performance hereunder to accomplish the parties' objectives and avoid disputes. The parties will promptly meet and confer to resolve any disputes that may arise.

11.2 **Mediation.** If a dispute is not resolved through conference, the parties will participate and equally share in the expenses of a mediation conducted by a neutral third-party professional in Seattle, Washington.

11.3 **Arbitration.** If the dispute is not resolved through mediation, either party may request binding arbitration. If the other party agrees, such arbitration shall be conducted in Seattle, Washington in accordance with the American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration. The final decision of the arbitrator shall be set forth in writing and signed by the arbitrator and be binding on each party. Nothing herein will prevent either party from seeking injunctive relief or provisional relief in an appropriate forum to protect or preserve such party's rights.

12. **COMPLIANCE WITH LAWS**

12.1 **Compliance with Laws.** Each party will comply with applicable federal, state, and local laws and regulations, as amended, including but not limited to those specifically identified under the *Compliance with Applicable Law* Sections in the respective HCA Contracts.

12.2 **Non-Discrimination.** Neither party shall discriminate against any person because of race, color, national origin, ancestry, religion, gender, marital status, age, sexual orientation, gender identity (including gender presentation), health status, presence of a sensory, mental or physical disability, use of a service animal, or any other reason(s) prohibited by law. Neither party shall use any policy or procedure which has the effect of discriminating on the basis of any of the foregoing.

12.3 **Accommodations.** Contractor shall make reasonable accommodations, as required by state and federal law, to ensure Members with disabilities are able to access and take full advantage of the Services on an equal basis with all other Members.

12.4 **Enrollee Rights.** Contractor shall comply with any applicable federal and state laws that pertain to Member rights, and ensure that its staff and providers protect and promote those rights when furnishing Services to Members.

13. **GENERAL**

13.1 **Independent Contractor.** CHPW and Contractor are separate legal entities and independent contracting parties. Each party shall exercise ultimate control over its assets, operations, employees, and subcontractors, and retain ultimate authority and responsibility in exercising its powers, duties, and responsibilities, subject to the rights and responsibilities assumed under this Agreement.

13.2 **Work Product.** CHPW shall retain full ownership and title to, and all other rights in, any data, materials, forms, equipment, and supplies obtained by Contractor from or on behalf of CHPW, including Project Data and all CHPW Confidential Information. Works of authorship, reports, deliverables, and inventions that are designed, created, developed, or conceived in connection with the Services (collectively, the “Work Product”) will be considered “works made for hire” as defined in the Copyright Act at 17 U.S.C. § 101. To the extent the Work Product is not “works made for hire,” Contractor hereby assigns all rights in the Work Product to CHPW. Contractor will execute any assignments and any other documents, and take any other action CHPW reasonably requests, without payment of additional consideration, as may be necessary or advisable to convey full ownership of all intellectual property rights to the Work Product and to protect CHPW’s interest in the Work Product. This ownership provision does not apply to Contractor’s pre-existing intellectual property or to any invention or other creative works for which no CHPW data, equipment, supplies, facility, or Confidential Information was used, which was developed entirely on Contractor’s own time, and which do not relate to CHPW activities or the Services.

13.3 **Use of a Party’s Marks.** Neither party shall use the other’s name, logo, trademark, or other identifying information, or make any public communication or advertisement related to this Agreement or a party’s performance hereunder, without the express written consent of the other party.

13.4 **Notice.** All notices or other communications required or permitted to be given hereunder shall be in writing and deemed to have been delivered to a party upon: (i) personal delivery to that party; (ii) if simultaneously mailed as provided herein, upon electronically confirmed delivery by facsimile to the telephone number provided by the party for such purposes; (iii) upon deposit for overnight delivery with a bonded courier holding itself out to the public as providing such services, with charges prepaid; or (iv) four (4) business days following deposit with

the United States Postal Service, postage prepaid, and in any case addressed to the party as set forth below, or to another address that the party provides by notice to the other party:

TO: Community Health Plan of Washington Attn: Director, Integrated Managed Care 1111 Third Ave., Suite 400 Seattle, WA 98101-3207 Email: Connie.Mom-Chhing@chpw.org With copy to Legal Department	TO: Salish Behavioral Health Administrative Services Organization Attn: Salish BH-ASO Regional Administrator 614 Division St, MS-23 Port Orchard, WA 98366 Email: _____
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13.5 **Expenses.** Except as specifically provided herein, each party shall bear its own expenses related to its performance hereunder, including legal and accounting fees.

13.6 **Assignment.** Contractor may not assign or transfer this Agreement without CHPW's prior written consent. Any assignment without such consent shall be of no force and effect. CHPW may not assign this Agreement without the prior written approval of the HCA. This Agreement shall be binding on the parties' successors and lawful assigns.

13.7 **State Subrogation.** In the event that any government entity undertakes a criminal, civil, or administrative action recovery against an entity that has directly or indirectly received funds under this Agreement, Contractor agrees to subrogate to the State of Washington any claims arising under this Agreement that Contractor has or may have against the entity from which recovery is sought.

13.8 **Choice of Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without reference to conflict of laws principles, except to the extent pre-empted by federal law. All disputes arising from or relating to this Agreement will be within the exclusive jurisdiction of the state and/or federal courts located in Seattle, Washington, and the parties hereby consent to such exclusive jurisdiction and waive any objections to venue.

13.9 **No Third Party Rights.** Nothing herein shall be construed or be deemed to create any rights or remedies in or for the benefit of any third party.

13.10 **Entire Agreement.** This Agreement, including all attachments, exhibits, and addenda hereto, constitutes the entire agreement between the parties with respect to its subject matter and supersedes all previous or contemporaneous agreements and understandings with respect to such subject matter.

13.11 **Construction.** This Agreement may be amended only by a writing signed by an authorized representative of each party. If a term or provision of this Agreement is held invalid or unenforceable, the invalid term or provision will be amended to achieve as nearly as possible the same economic and operational effect as the original, and all other terms and provisions of this Agreement will remain in full force. Waiver by either party of a breach of any provision herein by the other party will not operate or be construed as a waiver of any subsequent, similar, or other breach. The captions and headings appearing herein are for reference only and will not be considered in construing this Agreement. As used in this Agreement, “including” means “including without limitation.” Ambiguities shall be reasonably construed in accordance with all relevant circumstances, and shall not be construed against either party, irrespective of which party is deemed to have authored the ambiguous provision. The rights of each party granted herein are cumulative and are in addition to any others that a party is entitled to by law. This Agreement may be executed in any number of counterparts, each of which will be an original and all of which together will constitute one and the same instrument.

// signature page follows //

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

For CHPW:

DATED this 24th day of June, 2021.

COMMUNITY HEALTH PLAN OF WASHINGTON



~~LEANNE BERGE, Chief Executive Officer~~
Alan Lederman, Chief Operating Officer

For Contractor:

DATED this 14th day of June, 2021.

SALISH BEHAVIORAL HEALTH ORGANIZATION, BY KITSAP COUNTY BOARD COMMISSIONERS, Its Administrative Entity.



ROBERT GELDER, Chair



EDWARD E. WOLFE, Commissioner



CHARLOTTE GARRIDO, Commissioner

ATTEST:

Dana Daniels, Clerk of the Board

EXHIBIT A DELEGATION AGREEMENT

This Exhibit A: Delegation Agreement (“Exhibit A”) is attached to and a part of the Administrative Services Agreement (the “Agreement”) by and between Community Health Plan of Washington (“CHPW”) and Salish Behavioral Health Administrative Services Organization, through Kitsap County, its Administrative Entity (“CONTRACTOR”), and is effective as of July 1, 2021.

This Exhibit A sets forth additional requirements applicable to CONTRACTOR’s performance and CHPW’s oversight of CONTRACTOR’s performance of all Delegated Functions under the Agreement.

1. **DEFINITIONS.** Capitalized terms not otherwise defined in this Exhibit A shall have the meanings given under the Agreement.

1.1 **BH-ASO.** “Behavioral Health Administrative Services Organization” or “BH-ASO” means the entity selected by HCA to administer crisis behavioral health services and programs for residents in a defined regional services area, regardless of ability to pay, including Medicaid eligible individuals.

1.2 **BH-ASO Contract.** “Behavioral Health Administrative Services Organization Contract” or “BH-ASO Contract” means CONTRACTOR’s contract with the HCA for the provision of BH-ASO services.

1.3 **General Fund State.** “General Fund State” or “GFS” means the source of funding for services provided pursuant to CHPW’s *Apple Health – Fully Integrated Managed Care – Behavioral Health Services wrap-around contract*.

1.4 **Grievance.** “Grievance” means an expression of dissatisfaction about any matter other than an adverse benefit determination, as defined under the applicable HCA Contract(s). Possible subjects for Grievances may include the quality of care or services provided, aspects of interpersonal relationships such as rudeness of a provider or an employee, or failure to respect a Member’s rights.

1.5 **HEDIS.** “HEDIS” means the Healthcare Effectiveness Data and Information Set developed and published by the National Committee for Quality Assurance. HEDIS includes technical specifications for the calculation of performance measures.

1.6 **NCQA Standards.** “NCQA Standards” means certain National Committee for Quality Assurance (“NCQA”) standards and guidelines applicable to CHPW and/or the Services, published by NCQA and modified from time to time

1.7 **Program Documents.** “Program Documents” means, for each Delegated Function, CONTRACTOR’s comprehensive set of documents and materials that describe and govern one or more of the services or activities provided or performed by CONTRACTOR in carrying out

each Delegated Function. Program Documents shall, at a minimum: (i) define the purpose and objectives of each Delegated Function; (ii) describe the manner in which the activities and services related to the Delegated Function are performed; (iii) roles and responsibilities related to performance and oversight of the Delegated Function; (iv) whether any of the activities or services will be subdelegated; and (v) CONTRACTOR's processes, policies, desk procedures, job aides, and other information and materials, related to the performance of the Delegated Function.

2. **DELEGATED FUNCTIONS.**

2.1 For each Delegated Function, CONTRACTOR shall ensure that all services and activities related to that Delegated Function are performed (i) in a professional manner and in accordance with industry standards; (ii) as outlined in the applicable exhibits and any attachments or other addenda thereto; (iii) in accordance with CONTRACTOR's Program Documents; and (iv) in accordance with the Agreement.

2.2 **Joint Oversight.** Throughout the Term of the Agreement, the Parties shall conduct joint oversight to monitor and improve CONTRACTOR's performance of the Delegated Functions. Oversight activities will include, at a minimum: established roles and responsibilities related to oversight and reporting; CONTRACTOR's timely preparation and CHPW's review of regularly delivered reports; annual and ad hoc audits of CONTRACTOR's performance, including file and other documentation review; regular and ad hoc operational review and performance improvement meetings; and development and implementation of appropriate correctives actions, as needed and as set forth herein and in any attachments and addenda hereto.

3. **SPECIFIC DELEGATIONS.**

3.1 **Crisis Administration Services.** Crisis Administration Services are delegated to CONTRACTOR, and shall be performed by CONTRACTOR in accordance with Exhibit B and Attachment A-1, which is attached to this Exhibit A and by this reference incorporated herein.

3.2 **Delegated Provider Credentialing.** Credentialing activities related to CONTRACTOR's subcontracted Crisis Services providers are delegated to CONTRACTOR, and shall be performed by CONTRACTOR in accordance with Attachment A-2, which is attached to this Exhibit A and by this reference incorporated herein.

3.3 **Delegated Encounter Data Services.** Encounter Data Services related to CONTRACTOR's administration of Crisis Services are delegated to CONTRACTOR in accordance with Attachment A-4, which is attached to this Exhibit A and by this reference incorporated herein.

4. **PRE-CONDITIONS OF DELEGATION.** The delegation of any part of a Delegated Function is contingent upon CHPW's determination that CONTRACTOR is capable of and willing to perform such Delegated Function(s), and all related services and activities, in a manner that complies with the Agreement, including this Exhibit A and all attachments and addenda hereto.

4.1 **Pre-Delegation Assessment and Corrective Actions.** CHPW shall conduct a pre-delegation assessment to determine whether CONTRACTOR is capable of performing each Delegated Function in accordance with applicable Compliance Requirements and CHPW's established standards for quality and efficiency. If CHPW's pre-delegation assessment indicates that CONTRACTOR is unable to perform a Delegated Function in full compliance with the terms and conditions hereof, or otherwise fails to meet established standards, CONTRACTOR shall submit, implement and comply with a Corrective Action Plan ("CAP"), acceptable to CHPW, within a mutually agreed upon time frame and prior to performing any part of the Delegated Function(s).

4.2 **Failure to Meet Pre-Conditions.** If CONTRACTOR is not able to complete the CAP, or is otherwise unable to perform the Delegated Function(s) as required hereunder, to CHPW's satisfaction, CHPW may, in addition to any other available remedies, suspend or terminate CONTRACTOR's performance under this Exhibit A or any attachment or addenda hereto.

5. **CONTACT WITH MEMBERS.**

5.1 **Definitions.** Consistent with the requirements of 42 C.F.R. §438.10(c)(4)(i), any managed care terms used by CONTRACTOR in communications with Members shall have meanings consistent with the definitions of the managed care terms provided in HCA's model managed care contracts found here: <https://www.hca.wa.gov/billers-providers/programs-and-services/model-managed-care-contracts>.

5.2 **Equal Access.** CONTRACTOR will provide all information, including both oral and written information, in a manner and format that is easily understood and readily accessible to the Member(s) receiving the information.

5.3 **Interpreter Services.** CONTRACTOR shall provide or arrange for appropriate interpreter services for all interactions between CONTRACTOR and a Member who is deaf or hearing impaired, or whose primary language is other than English.

5.4 **Written Information.** CONTRACTOR shall ensure that all written information it provides to Members is accurate, not misleading, comprehensible to its intended audience, designed to provide the greatest degree of understanding, and is written at a sixth (6th) grade reading level. Wherever appropriate or required, CONTRACTOR shall use form letters and notices provided by CHPW. Generally applicable written communications, including educational materials, must be reviewed and approved by CHPW prior to use.

5.4.1 Generally available written communications must be translated into each language spoken by five percent (5%) of Members, or 1,000 Members, whichever is less. CHPW will provide to CONTRACTOR a list of languages meeting this requirement upon request.

5.4.2 For Members whose primary language is not translated or whose need cannot be addressed by translation, CONTRACTOR will use one of the following

alternatives to address the Member's communication needs: (i) translating the material into the Member's primary reading language; (ii) providing the material in an audio format in the Member's primary language; (iii) having an interpreter read the material to the Member in the Member's primary language; (iv) providing the material in another alternative medium or format acceptable to the Member, in which case CONTRACTOR shall document the Member's acceptance of the material in the alternative medium or format in the Member's record; or (v) providing the material in English, if CONTRACTOR documents the Member's preference for receiving written materials in English.

5.5 Telephonic Communication. Neither CONTRACTOR nor its subcontractors may use an automated call system to make outbound calls to Members for care coordination, or for calls related to behavioral health or prescription verification.

5.6 Marketing. Unless otherwise agreed to by the parties in writing, CONTRACTOR shall not perform marketing activities on CHPW's behalf or in manner that suggests CONTRACTOR is acting under the authority or as a representative of CHPW. The Parties acknowledge that door-to-door, telephonic and other cold-call marketing, are not permitted. CONTRACTOR shall at all times comply 42 C.F.R. §§ 438.10 and 438.104 and HCA's Managed Care Marketing Guidelines.

6. GRIEVANCES. CHPW maintains a Grievance Process consistent with applicable state and federal requirements, including those that apply to General Fund State-funded services. CHPW retains, and does not delegate to CONTRACTOR, responsibility for responding to and resolving Grievances. Not later than the end of the next business day following the day of CONTRACTOR's receipt, CONTRACTOR shall transfer or refer to CHPW any Grievance CONTRACTOR receives, irrespective of whether such Grievance is related to CONTRACTOR, a CONTRACTOR subcontractor, including any Subdelegates, CHPW, or a provider. CHPW shall undertake an initial review of all Grievances. After CHPW's initial review and upon CHPW's request, CONTRACTOR shall provide all reasonable assistance to CHPW in its investigation and resolution of a Grievance that relates to a Service provided by CONTRACTOR or a CONTRACTOR subcontractor, or relates to or involves information held by CONTRACTOR. CHPW shall be responsible for providing notice of the resolution of a Grievance to the affected Member or provider.

6.1 CONTRACTOR shall promptly refer to CHPW any non-Grievance inquiries or requests it receives from Members or CHPW providers that are unrelated to the Services provided by CONTRACTOR under this Agreement.

7. CHPW OBLIGATIONS.

7.1 Ultimate Legal Responsibility and Oversight. CHPW shall at all times retain ultimate responsibility for and oversight of all Delegated Functions.

- 7.1.1 CHPW will review CONTRACTOR's regular (e.g., daily, weekly, monthly, and semi-annual) reports related to each Delegated Functions, identified in the attachments and addenda hereto.
- 7.1.2 At least annually, and more often as CHPW deems reasonably necessary, CHPW will conduct an audit of CONTRACTOR's performance of each Delegated Function. Such audits will evaluate, at a minimum, the extent to which CONTRACTOR's performance of each Delegated Function meets applicable Compliance Requirements. Where possible, CHPW will provide CONTRACTOR at least than thirty (30) days' written notice of an audit, including the scope and format of the audit.

7.2 **Termination of Contractor Responsibilities.** CHPW retains the right to suspend or terminate a Subdelegate of CONTRACTOR, if CHPW reasonably determines that such Subdelegate's performance under the Agreement is deficient, non-compliant, or otherwise unsatisfactory, and CHPW provides written notice to CONTRACTOR regarding such deficiency, non-compliance, or dissatisfaction.

7.3 **HCA Reporting.** CHPW shall be responsible for submitting reports or other information related to the Services to the HCA.

8. **CONTRACTOR OBLIGATIONS.**

8.1 CONTRACTOR shall employ, subcontract or otherwise arrange for sufficient staff to provide each Delegated Function in a manner which permits the parties to satisfy applicable Compliance Requirements.

8.2 CONTRACTOR shall ensure that its other business relationships do not interrupt the continuity of services provided to CHPW Members under this Exhibit A.

8.3 **NCQA Compliance.** CHPW is accredited by NCQA and operates in accordance with the NCQA Standards. CONTRACTOR shall comply with the most current version of the NCQA Standards and shall cooperate with and assist CHPW in demonstrating CHPW's compliance with NCQA Standards.

8.4 **Record Keeping; Reporting.** CONTRACTOR shall maintain a record keeping system or systems adequate to fully document its performance of each Delegated Function. CONTRACTOR will prepare and timely submit to CHPW regular (e.g., daily, weekly, monthly, and semi-annual) reports or other documentation as identified in the attachments or addenda hereto, related to each Delegated Function. CONTRACTOR will investigate and, if necessary, correct any issues or concerns, including errors or inconsistencies, CHPW or CONTRACTOR identifies related to CONTRACTOR's reports, and will resubmit corrected reports, as needed.

8.5 **Audits.** CONTRACTOR shall promptly respond to and cooperate with all requests for information from CHPW related to audits and other oversight activities.

8.6 **Eligibility.** CONTRACTOR and, where applicable, CONTRACTOR's subcontractors, shall adhere to CHPW's established protocols for determining an individual's eligibility for the Services. CONTRACTOR and its subcontractors shall ensure that patient funding information is updated upon a change to the funding source.

8.7 **HCA Compliance.** CONTRACTOR shall comply with the applicable terms and conditions of the HCA Contracts. In the event HCA makes changes to the applicable terms and conditions of the HCA Contracts, CONTRACTOR shall accept such changes without modification.

8.7.1 If CONTRACTOR receives GFS funds hereunder CONTRACTOR shall cooperate with CHPW- and HCA-sponsored Quality Improvement activities.

8.7.2 CONTRACTOR shall provide to CHPW all information needed to support care coordination activities.

8.7.3 CONTRACTOR shall participate in training as requested or required by CHPW or the HCA.

8.7.4 CONTRACTOR shall respond to law enforcement inquiries regarding an individual's eligibility possess a firearm under RCW 9.41.040(2)(a), and shall concurrently provide to CHPW a copy of the inquiry and response.

8.8 **Contractor Program Documents.** CONTRACTOR will develop and maintain Program Documents related to each Delegated Function. At least sixty days prior to commencement of CONTRACTOR's performance of any Delegated Function hereunder, or a shorter period of time to which the parties agree, CONTRACTOR shall provide CHPW copies of its Program Documents. CONTRACTOR shall provide CHPW at least fifteen (15) business days advance written notice of any material change to CONTRACTOR's Program Documents.

8.9 **Oversight of Contractor's Subdelegates.** CONTRACTOR shall obtain CHPW's written approval prior to subdelegating any portion of its performance hereunder. Subdelegation agreements must be in writing and comply with the requirements set forth in Section 3.6 of the Agreement. CONTRACTOR shall provide, and document its provision of, active and ongoing oversight of any approved Subdelegate(s). CONTRACTOR shall have a written oversight plan, including a process to evaluate, on at least an annual basis, each Subdelegate's performance relative to the applicable Compliance Requirements and the terms and conditions of the written subdelegation agreement between CONTRACTOR and the Subdelegate. CONTRACTOR's written process must include a process for issuing a corrective action and revoking subdelegation. CONTRACTOR shall maintain and provide to CHPW upon request a record of its oversight of each Subdelegate's performance, including CONTRACTOR's monitoring process and activities, and any finds or other results.

8.10 CONTRACTOR shall provide written notification to CHPW at least thirty (30) days prior to implementing any change expected to materially alter CONTRACTOR's performance of a Delegated Function.

8.11 **HCA Data Reporting.** CONTRACTOR shall provide to CHPW timely, complete, and accurate reports and data, including encounter data in accordance with the HCA’s Encounter Data Transaction Guide. CONTRACTOR shall ensure that its subcontractors, who are required to report data, have the capacity to submit all HCA required data to enable CHPW to meet the reporting requirements under the HCA Contracts. CONTRACTOR shall ensure that its subcontractor(s) comply with data submission requirements established by the HCA for all Services.

8.12 **Program Integrity.** Where possible, CONTRACTOR shall perform ongoing analysis of utilization and claims, billing, or encounter data to detect overpayments or other errors or inconsistencies. Such oversight will include audits and investigations of CONTRACTOR’s subcontractors, including provider entities, and a process to verify that services billed by providers were actually provided to Members.

8.13 **Authorizations and Coverage Decisions.** If the Delegated Functions include authorizations, CONTRACTOR shall comply with 42 C.F.R. § 438.210, Chapters 182-538 and 182-550 WAC, WACs 182-501-0160, 182-501-0169, and WAC 284-43-410, and applicable terms of CHPW’s HCA Contracts. Where applicable, CONTRACTOR shall follow the coverage decision of the Washington Health Technology Assessment program.

8.14 **Provider Agreements.** CONTRACTOR shall enter into written agreements with its subcontracted Crisis Services Providers (“Provider Agreements”) and enforce the terms thereof. CONTRACTOR will provide to CHPW copies of each of its template Provider Agreements issued to Crisis Services Providers, for the purpose of review and approval of such templates by the Washington State Office of the Insurance Commissioner (“OIC”). CONTRACTOR will provide CHPW with copies of its individually executed Provider Agreement(s) upon request. All Provider Agreements will require that each Provider expressly agree to be bound by and comply with all of the applicable terms and conditions of this Agreement, as well as with all applicable federal and state laws, regulations, and other requirements. Prior to amending a previously-approved Provider Agreement template, CONTRACTOR shall provide CHPW at least forty-five (45) days’ notice to allow for refile with and approval by the OIC.

9. **PERFORMANCE IMPROVEMENT AND CORRECTIVE ACTIONS.**

9.1 **Deficiencies and Non-Compliances.** If CHPW reasonably determines that CONTRACTOR’s performance of a Delegated Function, including any service or activity related thereto, does not meet applicable Compliance Requirements or is otherwise deficient, CHPW shall provide CONTRACTOR written notice describing the non-compliances and/or deficiencies. In addition to its other remedies available under this Agreement, CHPW may take one or more of the following steps to address a non-compliance or deficiency:

9.1.1 **Audit.** Upon reasonable notice to CONTRACTOR, conduct an audit of CONTRACTOR’s performance of the non-compliant or deficient Delegated

Function, service or activity to further investigate the nature, source and extent of the non-compliance or deficiency.

9.1.2 **Corrective Action Plan(s)**. Following notice of a non-compliance or deficiency, require CONTRACTOR to prepare and submit to CHPW, within a reasonable time-frame, a corrective action plan (“CAP”) designed to correct the identified non-compliance or deficiency. Such CAP shall be in the form of a written response to CHPW’s notice of non-compliance or deficiency and shall detail CONTRACTOR’s process for correcting the identified issue(s) within a proposed time period, not to exceed thirty (30) days, including implementation and completion, or such other period as is reasonable given the nature or severity of the non-compliance or deficiency. CHPW shall review and approve each CAP prior to CONTRACTOR’s implementation.

9.1.3 **Suspension of Performance, Compensation**. If, in CHPW’s sole judgment, CONTRACTOR’s non-compliance or deficiency poses unreasonable risk to the well-being of Members, the timely provision of medically necessary health care and other services, or otherwise materially jeopardizes the quality or continuity of CHPW operations, then CHPW may suspend part or all of CONTRACTOR’s performance of the non-compliant or deficient Delegated Function until such time as CONTRACTOR has corrected the non-compliance or deficiency to CHPW’s satisfaction. In such event, CHPW reserves the right to suspend CONTRACTOR’s compensation related to the suspended Delegated Function(s) until such time as the non-compliance or deficiency has been resolved to CHPW’s satisfaction.

9.2 **CAP Implementation and Completion**. CHPW shall oversee CONTRACTOR’s implementation of a CAP to ensure that the instance(s) of non-compliance or deficiency is fully resolved. At the earlier of CONTRACTOR’s completion of the CAP or the time-frame for correction stated in the CAP, CHPW shall review evidence of CONTRACTOR’s implementation and/or completion of the CAP.

9.2.1 Upon CHPW’s finding that all issues related to the CAP are resolved, CHPW shall provide written notice to CONTRACTOR of closure of the CAP.

9.2.2 CHPW may, in its sole discretion, permit CONTRACTOR additional time to provide satisfactory evidence of CAP completion.

9.3 **Suspension or Termination of Delegation**. If, in CHPW’s reasonable judgment, CONTRACTOR’s performance remains non-compliant or deficient after the agreed-to time-frame for correction, CHPW may suspend or terminate part or all of CONTRACTOR’s performance of the non-compliant or deficient Delegated Function, or take any other remedial action permitted under this Exhibit A or the Agreement. In the event CHPW suspends CONTRACTOR’s performance of all or part of a Delegated Function, CHPW reserves the right to suspend CONTRACTOR’s compensation related to the suspended Delegated Function(s) until such time as the non-compliance or deficiency has been resolved to CHPW’s satisfaction. In the

event CHPW revokes delegation and terminates CONTRACTOR's performance of all or part of a Delegated Function, CONTRACTOR acknowledges and agrees that it has no right to and shall not seek any compensation related to the revoked Delegated Function(s) as of the effective date of revocation.

Attachment A-1 to Exhibit A
Community Health Plan of Washington (CHPW)
Crisis Services Delegation Requirements Grid

The purpose of this Crisis Services Delegation Grid is to specify the responsibilities of Salish Behavioral Health-Administrative Services Organization, through Kitsap County, its Administrative Entity (“Delegate”) under the Agreement with respect to the specific activities that are delegated for Crisis Services, including reporting requirements.

“Crisis Services,” as defined by the HCA, means evaluation and treatment of mental health crisis to all Medicaid-enrolled individuals experiencing a crisis. A mental health crisis is defined as a turning point in the course of anything decisive or critical, a time, a stage, or an event or a time of great danger or trouble, whose outcome decides whether possible bad consequences will follow. Crisis Services shall be available on a 24-hour basis. Crisis Services are intended to stabilize the person in crisis, prevent further deterioration and provide immediate treatment and intervention in a location best suited to meet the needs of the individual and in the least restrictive environment available. Crisis Services may be provided prior to completion of an Intake Evaluation. Services are provided by or under the supervision of a Mental Health Professional.

The delegation grid may be amended from time to time during the term of this Agreement by CHPW to reflect changes in delegation standards; delegation status; performance measures; reporting requirements; and other provisions.

The sections that follow describe the process by which CHPW evaluates Delegate’s performance and the remedies available to CHPW if Delegate does not fulfill its obligations. The statements below shall not supersede any term or condition of Exhibit A, the Delegation Agreement, and all obligations and remedies set forth in the parties’ Agreement remain in full force and effect. In the event of a conflict between the descriptions below and any term or condition of the Agreement, including Exhibit A, the terms and conditions of the Agreement shall prevail.

Process of Evaluating Delegate’s Performance

CHPW will require routine reports and documentation as listed in the delegation grid and will use this documentation to evaluate Delegate performance on an ongoing basis. In addition, CHPW will:

- Conduct an annual audit to ensure all delegated activities comply with applicable Compliance Requirements,
- Provide written feedback on the results of the annual audit, and
- Require Delegate to implement corrective action plans if the delegate does not fully meet Compliance Requirements.

If CHPW determines that Delegate has failed to adequately perform the delegated activities, CHPW may:

- Change or revoke the scope of delegation if corrective action is not adequate; and/or
- Discontinue contracting with Delegate.



Ongoing performance of accredited delegates is evaluated through the semi-annual and routine monitoring of reports. CHPW reserves the right to conduct annual and ad hoc audits of documentation, processes and files in order to ensure service levels, quality and compliance with regulatory requirements.

Corrective Action Plans

If Delegate fails to meet any of its responsibilities, including contracted responsibilities and NCQA accreditation or certification standards, CHPW will work with Delegate to create a corrective action plan to identify areas of improvement and actions plans to ensure compliance with all elements and categories. If Delegate does not take corrective action, or fails to meet improvement goals, CHPW reserves the right to revise the delegation agreement and scope, or revoke the delegation agreement all together.

Subdelegation

It may be allowable for Delegate to subdelegate specific activities that relate to Crisis Services. As provided for under the Agreement and as set forth herein, subdelegation requires the prior written approval of CHPW. In addition to the requirements for subdelegation set forth in the Agreement, Delegate will submit to MCO a Delegation Chart (template to be provided by CHPW). If a subdelegation is approved, the Delegate will be responsible for ongoing oversight of the subdelegate’s performance and will be required to report performance results to CHPW.

Function	Delegate Activities	Reporting: Data, Frequency, & Submission	CHPW Activities
24-7 Availability	Crisis Services shall be available 24-7-365, including regional crisis hotline that provides screening and referral services		
Immediate Access	Crisis Services shall be available to Members without the need for the member to complete an intake evaluation or other screening or assessment processes.		

Function	Delegate Activities	Reporting: Data, Frequency, & Submission	CHPW Activities
Encounter Data	Require submission of complete and accurate encounter data related to the provision of Crisis Services in HCA-prescribed formats	Weekly basis provide to CHPW batches of such data	
Crisis Services standards- Washington Administrative Code	Crisis services shall be performed in accordance with all state agency requirements, including Washington Department of Health and HCA regulatory requirements, applicable to Crisis Services and Crisis Services providers		
Telephone Access	Telephones are answered by a live voice within 30 seconds with an abandonment rate within 5 percent.	Submission to CHPW staff of a monthly summary report that includes total calls, call answer time and abandonment rate. Reports provided in electronic copy.	Manager of Delegation will receive and review monthly reports for performance review.
Daily Crisis Service Log	Daily Crisis Services will be kept on a standardized log and submitted each business day to CHPW.	Daily (business day)	CHPW will assist as needed to coordinate any services.

Attachment A-2 to Exhibit A

Community Health Plan of Washington (CHPW)

Credentialing Delegation Grid

The purpose of the following grid is to specify the responsibilities of Salish Behavioral Health Administrative Services Organization, through Kitsap County, its Administrative Entity (“Delegate”) under the Agreement with respect to the specific activities that are delegated for Credentialing. The grid also describes the semi-annual reporting requirements, which are in addition to any applicable reporting requirements stated in the Agreement. The grid below applies to the delegation of Credentialing for Crisis Services by CHPW to Delegate.

The delegation grid may be amended from time to time during the term of the Agreement by CHPW to reflect changes in delegation standards; delegation status; performance measures; reporting requirements; and other provisions.

The sections that follow describe the process by which CHPW evaluates Delegate’s performance and the remedies available to CHPW if Delegate does not fulfill its obligations. The statements below shall not supersede any term or condition of Exhibit A, the Delegation Agreement, and all obligations and remedies set forth in the parties’ Agreement remain in full force and effect. In the event of a conflict between the descriptions below and any term or condition of the Agreement, including Exhibit A, the terms and conditions of the Agreement shall prevail.

Process of Evaluating Delegate’s Performance

CHPW will require routine reports and documentation as listed in the delegation grid and will use this documentation to evaluate Delegate performance on an ongoing basis. In addition, CHPW will:

- Conduct an annual audit to ensure all delegated activities comply with applicable Compliance Requirements,
- Provide written feedback on the results of the annual audit, and
- Require Delegate to implement corrective action plans if the delegate does not fully meet Compliance Requirements.

If CHPW determines that Delegate has failed to adequately perform the delegated activities, CHPW may:

- Change or revoke the scope of delegation if corrective action is not adequate; and/or
- Discontinue contracting with Delegate.

Ongoing performance of accredited delegates is evaluated through the semi-annual and routine monitoring of reports. CHPW reserves the right to conduct annual and ad hoc audits of documentation, processes and files in order to ensure service levels, quality and compliance with regulatory requirements.



Corrective Action Plans

If Delegate fails to meet any of its responsibilities, including contracted responsibilities and NCQA accreditation or certification standards, CHPW will work with Delegate to create a corrective action plan to identify areas of improvement and actions plans to ensure compliance with all elements and categories. If Delegate does not take corrective action, or fails to meet improvement goals, CHPW reserves the right to revise the delegation agreement and scope, or revoke the delegation agreement altogether.

Subdelegation

It may be allowable for Delegate to subdelegate specific activities that relate to Credentialing. As provided for under the Agreement and as set forth herein, subdelegation requires the prior written approval of CHPW. In addition to the requirements for subdelegation set forth in the Agreement, Delegate will submit to MCO a Delegation Chart (template to be provided by CHPW). If a subdelegation is approved, the Delegate will be responsible for ongoing oversight of the subdelegate’s performance and will be required to report performance results to CHPW.

DELEGATION GRID				
Function	Delegation Status	Delegate Activities	Reporting: Data, Frequency, & Submission	CHPW Activities
CR 7: Assessment of Organizational Providers	<input checked="" type="checkbox"/> Delegated <input type="checkbox"/> Not Delegated	ALL	N/A	N/A
Ongoing Monitoring	<input checked="" type="checkbox"/> Delegated <input type="checkbox"/> Not Delegated	State Exclusion Website OIG SAM	Completed by 15 th of Month- Delegate is to maintain documentation	N/A
Disclosure and/or Ownership Form	<input checked="" type="checkbox"/> Delegated <input type="checkbox"/> Not Delegated	Collected at initial contracting and 36 months after or if any changes	N/A	If applicable to MCO

Attachment A-4 to Exhibit A

Community Health Plan of Washington (CHPW)

Claims and Encounters Delegation Grid

The purpose of the following grid is to specify the responsibilities of Salish Behavioral Health Administrative Services Organization, through Kitsap County, its Administrative Entity (“Delegate”) under the Agreement with respect to the specific activities that are delegated regarding Claims and Encounter Data. The grid also describes the reporting requirements, which are in addition to any applicable reporting requirements stated in the Agreement. The grid below applies to the delegation of Claims Processing and Payment and Encounter Data Submission by MCO to Delegate.

The delegation grid may be amended from time to time during the term of the Agreement by MCO to reflect changes in delegation standards; delegation status; performance measures; reporting requirements; and other provisions.

The sections that follow describe the process by which MCO evaluates Delegate’s performance and the remedies available to MCO if Delegate does not fulfill its obligations. The statements below shall not supersede any term or condition of Exhibit A, the Delegation Agreement, and all obligations and remedies set forth in the parties’ Agreement remain in full force and effect. In the event of a conflict between the descriptions below and any term or condition of the Agreement, including Exhibit A, the terms and conditions of the Agreement shall prevail.

Process of Evaluating Delegate’s Performance

MCO will require routine reports and documentation as listed in the delegation grid and will use this documentation to evaluate Delegate performance on an ongoing basis. In addition, MCO will:

- Conduct an annual audit to ensure all delegated activities comply with applicable Compliance Requirements,
- Provide written feedback on the results of the annual audit, and
- Require Delegate to implement corrective action plans if the delegate does not fully meet Compliance Requirements.

If MCO determines that Delegate has failed to adequately perform the delegated activities, MCO may:

- Change or revoke the scope of delegation if corrective action is not adequate; and/or
- Discontinue contracting with Delegate.

Ongoing performance of accredited delegates is evaluated through the semi-annual and routine monitoring of reports. MCO reserves the right to conduct annual and ad hoc audits of documentation, processes and files in order to ensure service levels, quality and compliance with regulatory requirements.



Corrective Action Plans

If Delegate fails to meet any of its responsibilities, including contracted responsibilities and NCQA accreditation or certification standards, MCO will work with Delegate to create a corrective action plan to identify areas of improvement and actions plans to ensure compliance with all elements and categories. If Delegate does not take corrective action, or fails to meet improvement goals, MCO reserves the right to revise the delegation agreement and scope, or revoke the delegation agreement altogether.

Subdelegation

It may be allowable for Delegate to subdelegate specific activities that relate to Claims and Encounter Data. As provided for under the Agreement and as set forth herein, subdelegation requires the prior written approval of MCO. In addition to the requirements for subdelegation set forth in the Agreement, Delegate will submit to MCO a Delegation Chart (template to be provided by MCO). If a subdelegation is approved, the Delegate will be responsible for ongoing oversight of the subdelegate’s performance and will be required to report performance results to MCO.

CLAIMS/ENCOUNTER BUSINESS REQUIREMENTS				
Function	Delegation Status	Delegate Activities	Reporting: Data, Frequency, & Submission	MCO Activities
1. Encounter Data Definition of Encounter Data	<input checked="" type="checkbox"/> Delegated <input type="checkbox"/> Not Delegated	Encounter Data means records of physical or behavioral health care services submitted as electronic data files created by the Delegate’s system in the standard 837 format and the National Council for Prescription Drug Programs (NCPDP) Batch format.	N/A	N/A
2. Encounter Data Dedicated Resource	<input checked="" type="checkbox"/> Delegated	Designate a person dedicated to work collaboratively with MCO on quality	N/A	MCO resource will partner with Delegate resource for quality control

	<input type="checkbox"/> Not Delegated	control and review of encounter data submitted to HCA.		and review of encounter data.
3. Encounter Data Reporting requirements	<input checked="" type="checkbox"/> Delegated <input type="checkbox"/> Not Delegated	Submit complete, accurate, and timely data for all services for which the Delegate has incurred any financial liability, whether directly or through subcontracts or other arrangements in compliance with current encounter submission guidelines as published by HCA.	Weekly	MCO will provide oversight of Delegate encounter data.
4. Encounter Data Expected turnaround time reporting encounter data	<input checked="" type="checkbox"/> Delegated <input type="checkbox"/> Not Delegated	Encounter data must be submitted to MCO at a minimum weekly, and no later than thirty (30) calendar days from the end of the month in which the Delegate paid the financial liability.	Weekly	MCO will monitor turnaround.
5. Encounter Data Submission and edits	<input checked="" type="checkbox"/> Delegated <input type="checkbox"/> Not Delegated	Submitted encounters and encounter records must pass all system edits with a disposition of accept and listed in the Encounter Data Reporting Guide or sent out in communications from HCA to the Delegate.	N/A	N/A

<p>6. Encounter Data</p> <p>Duplicates</p>	<p><input checked="" type="checkbox"/> Delegated</p> <p><input type="checkbox"/> Not Delegated</p>	<p>Submitted encounters or encounter records must not be a duplicate of a previously submitted and accepted encounter or encounter record unless submitted as an adjustment or void per HIPAA Transaction Standards.</p>	<p>N/A</p>	<p>N/A</p>
<p>7. Encounter Data RCW 42.56.270(11)</p>	<p><input checked="" type="checkbox"/> Delegated</p> <p><input type="checkbox"/> Not Delegated</p>	<p>The Delegate must report the paid date, paid unit, and paid amount for each encounter. The “paid amount” data is considered the Delegate’s proprietary information and is protected from public disclosure.</p> <p>“Paid amount” is defined as the amount paid for the service, or zero pay for cost based/invoice payments.</p>	<p>N/A</p>	<p>N/A</p>
<p>8. Encounter Data 42 C.F.R. § 438.606</p> <p>Attestations</p>	<p><input checked="" type="checkbox"/> Delegated</p> <p><input type="checkbox"/> Not Delegated</p>	<p>The Delegate shall send attestation to MCO to certify the accuracy and completeness of all encounter data concurrently with each file upload.</p>	<p>Weekly</p>	<p>MCO will receive monthly attestations from the Delegate. MCO will review and complete the monthly certification letter and send to the</p>

				HCA.
9. Encounter Data 837 Requirements	<input checked="" type="checkbox"/> Delegated <input type="checkbox"/> Not Delegated	THE Delegate must be able to meet the requirements outlined in the attached requirements document.	N/A	N/A
10. Encounter Data Quality Assurance	<input checked="" type="checkbox"/> Delegated <input type="checkbox"/> Not Delegated	The Delegate must validate the accuracy and completeness of all encounter data for behavioral health care services compared to the year-to-date general ledger of paid claims for the health care services.	Quarterly	MCO will oversee the quality assurance of the Delegate encounters.
11. Encounter Data Form D	<input type="checkbox"/> Delegated <input type="checkbox"/> Not Delegated	Within sixty (60) calendar days of the end of each calendar quarter, the Delegate shall provide aggregate totals of all encounter data submitted and accepted during that quarter on the Apple Health - Integrated Managed Care Quarterly Encounter/General Ledger Reconciliation (Form D). Delegate	Quarterly	MCO will submit Form D to HCA.

		<p>shall reconcile the cumulative encounter data submitted and accepted for the quarter and contract year with the general ledger paid claims for the quarter. The Delegate shall provide justification for any discrepancies.</p> <p>Delegate will complete Form D and send to MCO.</p> <p>HCA will approve or reject the discrepancy justifications and notify the MCO of the decision 120 calendar days of the end of each calendar quarter.</p>		
<p>12. Claims Payment Standards</p> <p>Section 1902(a)(37) of the Social Security Act</p> <p>42 C.F.R. § 447.46</p> <p>WAC 284-170-431</p>	<p><input checked="" type="checkbox"/> Delegated</p> <p><input type="checkbox"/> Not Delegated</p>	<p>The Delegate shall meet the timeliness of payment standards. These standards shall also be applicable to State-only and federal block grant fund payments.</p> <p>To be compliant with payment standards the Delegate shall pay</p>	Monthly	MCO will monitor timeliness of claims payment standards.

		<p>or deny 95 percent of clean claims within thirty (30) calendar days of receipt, 95 percent of all claims within sixty (60) calendar days of receipt and 95 percent of clean claims within ninety (90) calendar days of receipt.</p> <p>The Delegate shall provide a monthly report to the MCO of claims timeliness results. If standard is not met, provide root cause and corrective action until performance expectation is met.</p>		
13. TPL Reporting	<input checked="" type="checkbox"/> Delegated <input type="checkbox"/> Not Delegated	<p>The Delegate shall submit a quarterly <i>Recovery and Cost Avoidance Report</i> that includes any recoveries for third party resources as well as claims that the Delegate denies due to TPL coverage. The report shall include recoveries or denied claim payments for any covered service. The Delegate shall calculate cost savings in</p>	Monthly	MCO will review and report outcome to the HCA.

		<p>categories. The Delegate shall treat funds recovered from third parties as offsets to claims payments and reflect those offsets in encounter data. The report is due by the sixtieth (60th) calendar day following the end of the quarter.</p> <p>The Delegate shall submit to the MCO on the 15th of the month following the end of the monthly reporting period a report (Enrollees with Other Health Care Insurance) of Enrollees with any other health care insurance coverage with any carrier, including the Delegate.</p> <p>The Delegate shall submit to the MCO on the 20th of the following month a report (Subrogation Rights of Third Party Liability (TPL) – Investigations) of any Enrollees who the Delegate newly becomes aware of</p>		
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		a cause of action to recover health care costs for which the Delegate has paid under the Agreement.		
14. Participating and Non-Participating Reporting	<input checked="" type="checkbox"/> Delegated <input type="checkbox"/> Not Delegated	<p>The Delegate shall track and record all payments to Participating Providers and Non-Participating Providers in a manner that allows for reporting to the MCO the number, amount, and percentage of claims paid to Participating Providers and Non-Participating Providers separately. The Delegate shall identify the type of providers and Subspecialty. The Delegate shall also track, document and report to the MCO any known attempt by Non-Participating Providers to balance bill Enrollees.</p> <p>The Delegate shall provide annual reports to the MCO for the preceding state fiscal</p>		MCO will monitor, and may report up to the HCA.

		<p>year (July 1 through June 30). The reports shall indicate the proportion of services provided by the Delegate's Participating Providers and Non-Participating Providers, by county, and including hospital-based physician services. Delegate shall submit the reports to the MCO no later than August 15 of each year.</p>		
<p>15. Sub-delegation Agreements</p> <p>Delegate sub-delegation agreements with a vendor</p>	<p><input type="checkbox"/> Delegated</p> <p><input checked="" type="checkbox"/> Not Delegated</p>	<p>Notify the MCO of sub-delegation vendor agreements the Delegate has; what duties do they perform, and how often.</p>		N/A
<p>16. Claims/Encounter Delegation Oversight Audit</p> <p>Quality Assurance Audits</p>	<p><input type="checkbox"/> Delegated</p> <p><input checked="" type="checkbox"/> Not Delegated</p>	<p>MCO is required to perform an annual oversight delegation audit of encounter data reporting/ claims processing.</p> <p>The objective of this audit is to assess the effectiveness of key internal controls by ensuring the accuracy, completeness, and</p>	Annual	<p>MCO will review the claims data set for the following:</p> <ul style="list-style-type: none"> • Review encounter/claims universe sample of all claims paid or denied for 1 year; • Verify the member was eligible for benefits on the dates of service; • Review encounter submission and

		<p>timeliness of the encounter/claims processing functions.</p> <p>Delegate will provide MCO claims data set for specified time period.</p>		<p>reconciliation to ensure requirements are met;</p> <ul style="list-style-type: none"> • Review claim payment calculations and verify that claims were paid accurately; • Verify claims were submitted by the provider within 365 days of dates of service; • Review responses to audit questionnaire to ensure compliance.
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Appendix 1 to Attachment A-4 to Exhibit A

Business Requirements for sending 837-I & 837-P:

Encounter/File Format must be ANSI ASC X12N Version 5010 per State & Federal Guidelines.

Resources For Creating Files:

- 837 Healthcare Claim Professional and Institutional Guide (IG) version 5010. To purchase the IGs visit the <http://www.wpc-edi.com/> (www.wpc-edi.com) or call (425) 562-2245.
- HIPAA 837I and 837P Implementation Guide @ www.wpc-edi.com/hipaa/HIPAA_40.asp
- 837 Encounter Data Companion Guide from State of Washington <http://www.hca.wa.gov/>
- Encounter Data Reporting Guide from State of Washington <http://www.hca.wa.gov/>
- Service Encounter Reporting Instructions (SERI) <https://www.hca.wa.gov/billers-providers-partners/behavioral-health-recovery/service-encounter-reporting-instructions-seri>
- Note: MCO requirements supersede SERI guidelines.

High Level Requirements of the Delegate:

1. Own the claim adjudication process for claims.
2. Create and submit encounter data for all processed claims except completely denied claims.
3. The encounter data shall include the paid date and amount paid for each encounter header and line.
4. SFTP will need to be set up for transmitting encounter files.
5. Encounter data will be submitted weekly in accordance with the Encounter Data Reporting Guide and the BHO Service Encounter Reporting Instructions (SERI).
6. Separate file submissions will be created for IMC and BHSO. Every MCO has a unique Trading Partner ID (TPID) for each program. MCOs will coordinate with the Delegate to share TPID.
7. Encounter data to be submitted accurately and timely to send to the HCA within 30 days of claim payment.
8. Retrieve and track the file transmission responses sent. The MCOs will send the response files to monitor and resolve.
9. If files fail, correct the files and resubmit. Add an R to the file naming convention original file name portion of the first resubmission, R, R1, R2, etc. until file is accepted.
10. Submitted encounters and encounter records must pass all HCA ProviderOne system edits with a disposition of accept as listed in the Encounter Data Reporting Guide.
11. Submitted encounters or encounter records must not be a duplicate of a previously submitted and accepted encounter or encounter record unless submitted as an adjustment or void per HIPAA Transaction Standards.
12. Review the response file and perform tracking to ensure each encounter sent receives a response file response of "accepted" or "rejected".
13. If you are missing response file on any submitted encounters, allow 2 weeks (2 more response files) for slow returns from HCA. Encounters without a response file beyond two weeks need to be reported to MCO to investigate.
14. If encounters are rejected, you should correct the errors and resubmit them per EDRG guidelines.
15. Submit a weekly report to each MCO of Submitted, Accepted and Rejected encounters with claim counts, line counts and paid dollar amounts.
16. Provide weekly reports of quarterly data to ensure Rejected encounters are less than 1% of total encounters paid each quarter (does not apply for zero paid encounters).
17. Provide a designated team member from your encounter data team to work collaboratively with our encounter data team on control and review of encounter data submitted to each MCO.

EXHIBIT B
ADMINISTRATION OF CRISIS SERVICES

This Exhibit B: Administration of Crisis Services (“Exhibit B”) is attached to and a part of the Administrative Services Agreement (the “Agreement”) by and between Community Health Plan of Washington (“CHPW”) and Salish Behavioral Health Administrative Services Organization, through Kitsap County, its Administrative Entity (“BH-ASO”), and is effective as of July 1, 2021.

BH-ASO shall provide the services described in this Exhibit B related to BH-ASO’s administration of Crisis Services on behalf of CHPW Members enrolled in the Covered Programs listed in Section 2, below.

1. General

1.1. During the Term of the Agreement, BH-ASO will provide the BH-ASO services necessary and sufficient for CHPW to fulfill its obligations for “Crisis Service” provision as outlined in Section 9.17 of CHPW’s Apple Health- Integrated Managed Care (“AH-IMC”) Contract. (Note: All references to sections of the AH-IMC Contract are based on the version dated 01/01/2020. In the event that HCA revises the AH-IMC Contract and changes the applicable section numbers, the obligations of BH-ASO and CHPW related to the fulfillment of “Crisis Service” remain intact and the section numbers referred to herein are assumed to change accordingly.)

2. Covered Programs

2.1. BH-ASO’s services apply to Members in BH-ASO’s Regional Service Area enrolled in the following benefit plans: Apple Health Integrated Managed Care, and Apple Health Behavioral Health Services Only.

3. Covered Crisis Services

3.1. “Crisis Services” means evaluation and treatment of behavioral health crisis to all Members experiencing a crisis. A behavioral health crisis is defined as a turning point in the course of anything decisive or critical, a time, a stage, or an event or a time of great danger or trouble, whose outcome decides whether possible bad consequences will follow. Crisis services shall be available on a 24-hour basis. Crisis Services are intended to stabilize the person in crisis, prevent further deterioration and provide immediate treatment and intervention in a location best suited to meet the needs of the individual and in the least restrictive environment available. Crisis Services may be provided prior to completion of an Intake Evaluation. Services are provided by or under the supervision of a Mental Health Professional.

3.2. BH-ASO shall arrange for the provision of Crisis Services under this Agreement in a manner that complies with applicable terms and conditions of the AH-IMC Contract, including but not limited to the provisions of Section 9.17 of the AH-IMC Contract.

3.3. Crisis Services shall be available twenty (24) hours per day, seven (7) days per week, three hundred sixty five (365) days per year. This shall include availability of a 24/7 regional crisis hotline that provides screening and referral to CHPW’s network of local providers, where applicable, and availability of a 24/7 mobile crisis outreach team.

3.3.1. BH-ASO shall ensure that individuals are able to access Crisis Services without full completion of intake evaluations and/or other screening and assessment processes.

3.4. BH-ASO shall collaborate with CHPW to develop and implement strategies to coordinate care with community behavioral health providers for individuals with a history of frequent crisis system utilization. Coordination of care strategies will seek to reduce utilization of Crisis Services by promoting relapse/crisis prevention planning and early intervention and outreach that addresses the development and incorporation of wellness recovery action plans and mental health advance directives in treatment planning consistent with requirements in Section 14 of the AH-IMC Contract.

3.4.1. For CHPW’s Members calling for crisis services who already receive WISE or PACT services, BH-ASO and/or its Subdelegate will attempt to coordinate with existing case management support.

3.5. BH-ASO will evaluate and monitor the performance of the crisis system and develop corrective action where needed. Examples of how evaluation and monitoring may be carried out include, but are not limited to, the following:

3.5.1. Comparison of current and historical utilization.

3.5.2. Analysis of member and provider feedback.

3.5.3. Participation in region-level discussions led by the ACH.

3.6. Covered Crisis Services codes shall include:

3.6.1. H0030

3.6.2. H2011(UC, U8, UC – U8)

The Parties acknowledge that this list may be modified by a signed amendment hereto to add or delete covered Crisis Services codes based on changes to the SERI, Member needs, BH-ASO capacity, or as otherwise agreed to by the Parties.

4. IT Implementation

4.1. BH-ASO shall establish information systems to support data exchange with CHPW consistent with the requirements of the AH-IMC Contract, including, but not limited to eligibility interfaces, exchange of claims and encounter data for Crisis Services provided or

arranged by BH-ASO pursuant to the Agreement, and sharing of care plans and mental health advance directives necessary to coordinate service delivery in accordance with applicable privacy laws, including HIPAA and 42 C.F.R. Part 2.

4.1.1. For each transaction type noted above, BH-ASO will collaborate with CHPW to develop and obtain approval of all business requirement documents, conduct necessary end-to-end testing and establish agreed upon service level agreements (SLAs); each of which will become an amendment to this Agreement.

4.1.2. To ensure compliance with Section 9.17.3 of the AH-IMC Contract, and based upon the defined and agreed upon business requirements and completed acceptance testing performed by CHPW, BH-ASO will submit complete, accurate and timely encounter data related to the provision of Crisis Services to CHPW in formats prescribed by HCA, and in accordance with deadlines that CHPW must adhere to in order to avoid financial penalties imposed by HCA. CHPW will provide BH-ASO with applicable file format and submission schedule information.

4.1.3. BH-ASO will collaborate with CHPW to develop business requirements, technical specifications, conduct end-end testing and obtain CHPW's approval prior to moving any system changes into its production systems.

4.2. Where applicable, CHPW shall make provisions for BH-ASO to access a Member's individual service plan on a 24/7 basis for clients receiving BH services.

5. Metrics and Monitoring

5.1. BH-ASO will hold all of its subcontractors to the service level agreements and performance guarantees mandated by the HCA for handling of calls to the crisis line. BH-ASO will provide CHPW with the service level targets as well as monthly reports of service level performance. BH-ASO will work with subcontractors to provide calls for audit upon CHPW request.

6. Data and Reporting

6.1. BH-ASO shall provide to CHPW the following data related to Crisis Services on a monthly basis:

6.1.1. The number of CHPW Members served by the crisis system.

6.1.2. The number and percentage of CHPW Members referred for mobile outreach regardless of referral point (i.e., source of referral to the crisis line).

6.1.3. The estimated percentage of calls to the crisis hotline successfully diverted from Emergency Departments and/or ITA commitments.

6.1.4. BH-ASO and CHPW will collaborate to reach mutual agreement on the content and format of daily reporting, for the purpose of providing CHPW timely

information regarding Members in potential need of care management services. This may include reports of Members scheduled for release from jail, to allow CHPW to connect Members with behavioral health services prior to release.

6.1.5. BH-ASO will compile and report directly to DSHS or HCA, as applicable, Behavioral Health Non Encounter Transactional Data related to crisis and involuntary treatment services, conforming to the applicable DSHS and/or HCA data dictionary specifications. This data will also be provided to CHPW.

EXHIBIT C
COMPENSATION

This Exhibit C: Compensation (“Exhibit C”) is attached to and a part of the Administrative Services Agreement (the “Agreement”) by and between Community Health Plan of Washington (“CHPW”) and Salish Behavioral Health Administrative Services Organization, through Kitsap County, its Administrative Entity (“BH-ASO”), and is effective as of July 1, 2021.

1. Compensation

1.1. CHPW shall pay a fee of three dollars and sixty-one cents (\$3.61) per Member per month (“PMPM”) to BH-ASO in consideration for the services provided pursuant to Exhibit B (the “Crisis PMPM”). Three dollars and twenty-five cents (\$3.25) PMPM will be reconciled to direct service cost on a semi-annual basis as described below.

1.2. CHPW shall pay an additional fee of seven cents (\$.07) PMPM in consideration for BH-ASO’s administration of Ombuds services on behalf of CHPW’s Apple Health and BHSO Members in the Salish Region (the “Ombuds Fees”). The Ombuds Fees paid by CHPW shall be excluded from the reconciliation process described below.

1.3. CHPW shall pay to BH-ASO the Crisis PMPM and the Ombuds Fees on a monthly basis. Payments from CHPW to BH-ASO shall be made by electronic funds transfer on a monthly basis no later than the 10th day of the month, or prior business day preceding the 10th day of the month if the 10th day is a weekend or a federal holiday. The Crisis PMPM and Ombuds Fees shall be calculated based on the number of Apple Health and BHSO Members in the Salish Region for the then current month included in the monthly eligibility file that CHPW shall provide BH-ASO.

1.4. BH-ASO will work with CHPW to clearly identify healthcare expenses linked with State Only funds.

1.5. BH-ASO and CHPW shall participate in a semi-annual financial reconciliation process, related to predicted versus actual Crisis Services utilization and fees and expense for direct services provided to CHPW Members, based on CHPW Members’ share of actual utilization. Administrative fees and expenses and Ombuds Fees will not be reconciled. Reconciliation may result in the identification of an overpayment or underpayment by CHPW to BH-ASO for the Crisis Services provided under this Agreement. In the event there is a positive balance after reconciliation, such that CHPW overpaid for Crisis Services, CHPW reserves the right to reclaim that balance after the semi-annual reconciliation is completed. In the event there is a negative balance after reconciliation, BH-ASO reserves the right to request reimbursement of additional funds if the reconciliation shows the currently negotiated PMPM did not cover the costs of Member utilization of Crisis Services.

1.6. At CHPW’s request, BH-ASO will provide to CHPW documentation sufficient to validate the costs associated with services rendered to CHPW Members.

1.7. Per Section 16.5.2.3 of the BH-ASO Contract, BH-ASO shall submit claims and/or encounters for Crisis Services consistent with the provisions of the BH-ASO Contract including, but not limited to Section 2.3, Billing Limitations.

1.8. BH-ASO and CHPW agree the BH-ASO's compensation related to the administrative of Crisis Services is dependent upon CHPW's receipt of complete, accurate and timely encounter data for all services rendered to a Member, for which BH-ASO has incurred financial liability, whether directly or through a subcontracted provider. BH-ASO will submit complete and accurate encounter data on a weekly basis, and no later than thirty (30) days from the end of the month in which BH-ASO paid the financial liability. All encounter data will be submitted in accordance with the HCA's Encounter Data Transaction Guide. BH-ASO acknowledges and agrees that its failure to meet these requirements constitutes a material breach of the Agreement and may result in appropriate remedial actions, such as a corrective action plan, or suspension of payments.

EXHIBIT D
BUSINESS ASSOCIATE AGREEMENT

This Exhibit D, Business Associate Agreement ("BAA"), is attached to and a part of that certain Administrative Services Agreement (the "Agreement") by and between Community Health Plan of Washington ("Covered Entity") and Salish Behavioral Health Administrative Services Organization, through Kitsap County, its Administrative Entity ("Business Associate"), and is effective as of the first date Business Associate receives or accesses Covered Entity PHI.

RECITALS

A. Covered Entity is a covered entity under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Covered Entity must comply with the Administrative Simplification Provisions of HIPAA and with the applicable provisions of the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act"), including the HIPAA Rules (defined in Article 1 of this BAA).

B. Covered Entity has engaged Business Associate to furnish certain services to Covered Entity pursuant to the Agreement, as defined below.

C. Business Associate is a business associate under HIPAA. Business Associate must comply with the provisions of the HIPAA Rules made applicable to Business Associates pursuant to the HITECH Act, and with all other applicable provisions of the HITECH Act.

D. Covered Entity is not permitted to allow Business Associate to create, receive, maintain, or transmit Protected Health Information on behalf of Covered Entity without satisfactory assurances that Business Associate will appropriately use and safeguard the information. Covered Entity will only disclose Protected Health Information to Business Associate or allow Business Associate to create or receive Protected Health Information on behalf of Covered Entity in accordance with the requirements of HIPAA, the HITECH Act, applicable state law, and the provisions of this BAA.

AGREEMENT:

In consideration of the mutual promises below and for other good and valuable consideration, the parties agree:

I. Definitions. Where used in this Business Associate Agreement, the terms below have the following definitions:

(a) *Agreement.* "Agreement" shall mean the certain Administrative Services Agreement between Covered Entity and Business Associate to which this BAA is attached.

(b) *Breach.* "Breach" shall have the same meaning as the term "breach" in 45 CFR §164.402.

(c) *Breach Notification Rule.* "Breach Notification Rule" shall mean the Standards and Implementation Specifications for Notification of Breaches of Unsecured Protected Health Information under 45 CFR Parts 160 and 164, subparts A and D.

(d) *Business Associate.* "Business Associate" shall mean Salish Behavioral Health Administrative Services Organization, through Kitsap County, its Administrative Entity, a – Washington government organization, formed through an interlocal agreement between Clallam, Jefferson and Kitsap Counties.

(e) *Covered Entity.* "Covered Entity" shall mean Community Health Plan of Washington, a Washington non-profit corporation.

(f) *Data Aggregation.* "Data Aggregation" shall have the same meaning as the term "data aggregation" under the Privacy Rule, including, but not limited to, 45 CFR § 164.501.

(g) *Designated Record Set.* "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR §160.501.

(h) *Electronic Protected Health Information.* "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information" in 45 CFR §160.103.

(i) *Electronic Transactions Rule.* "Electronic Transactions Rule" shall mean the final regulations issued by HHS concerning standard transactions and code sets under 45 CFR Parts 160 and 162.

(j) *Enforcement Rule.* "Enforcement Rule" shall mean the Enforcement Provisions set forth in 45 CFR Part 160.

(k) *Genetic Information.* "Genetic Information" shall have the same meaning as the term "genetic information" in 45 CFR §160.103.

(l) *HHS.* "HHS" shall mean the Department of Health and Human Services.

(m) *HIPAA.* "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996.

(n) *HIPAA Rules.* "HIPAA Rules" shall mean the Privacy Rule, Security Rule, Breach Notification Rule, and Enforcement Rule.

(o) *HITECH Act.* "HITECH Act" shall mean the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009.

(p) *Privacy Rule.* "Privacy Rule" shall mean the Privacy Standards and Implementation Specifications at 45 CFR Parts 160 and 164, subparts A and E.

(q) *Protected Health Information.* "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR §160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity (including from another business associate of Covered Entity) pursuant to this BAA.

(r) *Required by Law.* "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR §164.103.

(s) *Security Incident.* "Security Incident" shall have the same meaning as the term "security incident" in 45 CFR §164.304.

(t) *Security Rule.* "Security Rule" shall mean the Security Standards and Implementation Specifications at 45 CFR Parts 160 and 164, subparts A and C.

(u) *Subcontractor.* "Subcontractor" shall have the same meaning as the term "subcontractor" in 45 CFR §160.103.

(v) *Transaction.* "Transaction" shall have the meaning given the term "transaction" in 45 CFR §160.103.

(w) *Unsecured Protected Health Information.* "Unsecured Protected Health Information" shall have the meaning given the term "unsecured protected health information" in 45 CFR §164.402.

II. Privacy and Security of Protected Health Information.

(a) **Permitted Uses and Disclosures.** Business Associate is permitted to access, use or disclose Protected Health Information only as set forth below.

(i) **Functions and Activities on Covered Entity's Behalf.** Business Associate is permitted to access, use or disclose Protected Health Information to provide services and perform its obligations pursuant to the Agreement. For clarification, Business Associate is not permitted to access, use or disclose Protected Health Information to perform Data Aggregation or to de-identify the Protected Health Information as described at 45 C.F.R. §164.514 or otherwise.

(ii) **Business Associate's Operations.** Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate or to carry out Business Associate's legal responsibilities, provided that—

(A) The disclosure is Required by Law; or

(B) Business Associate obtains reasonable assurance from any person or entity to which Business Associate will disclose Protected Health Information that the person or entity will—

(1) Hold the Protected Health Information in confidence and use or further disclose the Protected Health Information only for the purpose for which Business Associate disclosed Protected Health Information to the person or entity or as Required by Law; and

(2) Promptly notify Business Associate of any instance of which the person or entity becomes aware in which the confidentiality of Protected Health Information was breached.

(iii) **Minimum Necessary.** Business Associate will, in its performance of the functions, activities, services, and operations specified above, make reasonable efforts to use, disclose, and request only the minimum amount of Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure, or request, except that Business Associate will not be obligated to comply with this minimum-necessary limitation if neither Business Associate nor Covered Entity is required to limit its use, disclosure, or request to the minimum necessary under the HIPAA Rules. Business Associate and Covered Entity acknowledge that the phrase "minimum necessary" shall be interpreted in accordance with the HITECH Act and the HIPAA Rules.

(b) **Prohibition on Unauthorized Use or Disclosure.** Business Associate will neither use nor disclose Protected Health Information, except as permitted or required by this BAA or in writing by Covered Entity or as Required by Law. This BAA does not authorize Business Associate to use or disclose Covered Entity's Protected Health Information in a manner that would violate the HIPAA Rules or the applicable provisions of state laws, whichever is more protective of Protected Health Information, if done by Covered Entity, except as permitted for Business Associate's proper management and administration, as described above.

(c) **Information Safeguards.**

(i) **Privacy of Protected Health Information.** Business Associate will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of Protected Health Information. The safeguards must reasonably protect Protected Health Information from any intentional or unintentional use or disclosure in violation of the Privacy Rule and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this BAA. To the extent the parties agree that the Business Associate will carry out directly one or more of Covered Entity's obligations under the Privacy Rule, the Business Associate will comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligations.

(ii) **Security of Covered Entity's Electronic Protected Health Information.** Business Associate will comply with the Security Rule and will use appropriate administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that Business Associate

creates, receives, maintains, or transmits on Covered Entity's behalf. Contractor will review its data security policies and procedures regularly, but no less frequently than annually, and will update and maintain policies, procedures, and practices to comply with applicable laws, regulations, technology changes, and industry best practices. Specifically, Contractor's data security policies and procedures will contain administrative, technical, and physical safeguards, including without limitation:

- (A) access controls on electronic systems used to store, maintain, access, or transmit PHI;
- (B) access restrictions at physical locations containing PHI;
- (C) encryption of electronic PHI;
- (D) dual control procedures;
- (E) testing and monitoring of electronic systems; and
- (F) procedures to detect actual and attempted attacks or intrusions into the systems containing or accessing PHI.

(iii) **No Transfer of Protected Health Information Outside United States.**

Business Associate will not transfer Protected Health Information outside the United States without the prior written consent of the Covered Entity. In this context, a "transfer" outside the United States occurs if Business Associate's workforce members, agents, or subcontractors physically located outside the United States are able to access, use, or disclose Protected Health Information.

(d) **Subcontractors.** Business Associate will require each of its Subcontractors to agree, in a written agreement with Business Associate, to comply with the provisions of the Security Rule; to appropriately safeguard Protected Health Information created, received, maintained, or transmitted on behalf of the Business Associate; and to apply the same restrictions and conditions that apply to the Business Associate with respect to such Protected Health Information.

(e) **Prohibition on Sale of Protected Health Information.** Business Associate shall not engage in any sale (as defined in the HIPAA Rules) of Protected Health Information.

(f) **Prohibition on Use or Disclosure of Genetic Information.** Business Associate shall not use or disclose Genetic Information for underwriting purposes in violation of the HIPAA Rules.

(g) **Penalties for Noncompliance.** Business Associate acknowledges that it is subject to civil and criminal enforcement for failure to comply with the HIPAA Rules, to the extent provided by the HITECH Act and the HIPAA Rules.

III. Compliance With Electronic Transactions Rule. If Business Associate conducts in whole or part electronic Transactions on behalf of Covered Entity for which HHS has established standards, Business Associate will comply, and will require any Subcontractor it involves with the conduct of such Transactions to comply, with each applicable requirement of the Electronic Transactions Rule and of any operating rules adopted by HHS with respect to Transactions.

IV. Individual Rights.

(a) **Access.** Business Associate will, within fifteen (15) calendar days following Covered Entity's request, make available to Covered Entity (or, at Covered Entity's written direction, to an individual or the individual's designee) for inspection and copying Protected Health Information about the individual that is in a Designated Record Set in Business Associate's custody or control, so that Covered Entity may meet its access obligations under 45 CFR §164.524. If Covered Entity requests an electronic copy of Protected Health Information that is maintained electronically in a Designated Record Set in the Business Associate's custody or control, Business Associate will provide an electronic copy in the form and format specified by the Covered Entity if it is readily producible in such format; if it is not readily producible in such format, Business Associate will work with Covered Entity to determine an alternative form and format that enable Covered Entity to meet its electronic access obligations under 45 CFR §164.524.

(b) **Amendment.** Business Associate will, upon receipt of written notice from Covered Entity, promptly amend or permit Covered Entity access to amend any portion of an individual's Protected Health Information that is in a Designated Record Set in the custody or control of the Business Associate, so that Covered Entity may meet its amendment obligations under 45 CFR §164.526.

(c) **Disclosure Accounting.** To allow Covered Entity to meet its obligations to account for disclosures of Protected Health Information under 45 CFR §164.528:

(i) **Disclosures Subject to Accounting.** Business Associate will record the information specified below ("Disclosure Information") for each disclosure of Protected Health Information, not excepted from disclosure accounting as specified below, that Business Associate makes to Covered Entity or to a third party.

(ii) **Disclosures Not Subject to Accounting.** Business Associate will not be obligated to record Disclosure Information or otherwise account for disclosures of Protected Health Information if Covered Entity need not account for such disclosures under the HIPAA Rules.

(iii) **Disclosure Information.** With respect to any disclosure by Business Associate of Protected Health Information that is not excepted from disclosure accounting under the HIPAA Rules, Business Associate will record the following Disclosure Information as applicable to the type of accountable disclosure made:

(A) **Disclosure Information Generally.** Except for repetitive disclosures of Protected Health Information as specified below, the Disclosure Information that Business Associate must record for each accountable disclosure is (i) the disclosure date, (ii) the name and (if known) address of the entity to which Business Associate made the disclosure, (iii) a brief description of the Protected Health Information disclosed, and (iv) a brief statement of the purpose of the disclosure.

(B) **Disclosure Information for Repetitive Disclosures.** For repetitive disclosures of Protected Health Information that Business Associate makes for a single purpose to the same

person or entity (including Covered Entity), the Disclosure Information that Business Associate must record is either the Disclosure Information specified above for each accountable disclosure, or (i) the Disclosure Information specified above for the first of the repetitive accountable disclosures; (ii) the frequency, periodicity, or number of the repetitive accountable disclosures; and (iii) the date of the last of the repetitive accountable disclosures.

(iv) **Availability of Disclosure Information.** Business Associate will maintain the Disclosure Information for at least six (6) years following the date of the accountable disclosure to which the Disclosure Information relates. Business Associate will make the Disclosure Information available to Covered Entity within ten (10) calendar days following Covered Entity's request for such Disclosure Information to comply with an individual's request for disclosure accounting.

(d) **Restriction Agreements and Confidential Communications.** Covered Entity shall notify Business Associate of any limitations in the notice of privacy practices of Covered Entity under 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information. Business Associate will comply with any notice from Covered Entity to (1) restrict use or disclosure of Protected Health Information pursuant to 45 CFR §164.522(a), or (2) provide for confidential communications of Protected Health Information pursuant to 45 CFR §164.522(b), provided that Covered Entity notifies Business Associate in writing of the restriction or confidential communications obligations that Business Associate must follow. Covered Entity will promptly notify Business Associate in writing of the termination of any such restriction or confidential communications requirement and, with respect to termination of any such restriction, instruct Business Associate whether any of the Protected Health Information will remain subject to the terms of the restriction agreement.

V. Breaches and Security Incidents.

(a) Reporting.

(i) **Impermissible Use or Disclosure.** Business Associate will report to Covered Entity any use or disclosure of Protected Health Information not permitted by this BAA immediately and not more than seventy-two (72) hours after Business Associate discovers such non-permitted use or disclosure.

(ii) **Breach of Unsecured Protected Health Information.** Business Associate will report to Covered Entity any potential Breach of Unsecured Protected Health Information immediately and not more than seventy-two (72) hours after discovery of such potential Breach. Business Associate will treat a potential Breach as being discovered in accordance with 45 CFR §164.410. Business Associate will make the notice and report to Covered Entity's Privacy Officer. If a delay is requested by a law-enforcement official in accordance with 45 CFR §164.412, Business Associate may delay notifying Covered Entity for the applicable time period. Business Associate's report will include at least the following, provided that absence of any information will not be cause for Business Associate to delay the report and available information will be provided in a subsequent report as soon as reasonably possible:

(A) Identify the nature of the Breach, which will include a brief description of what happened, including the date of any Breach and the date of the discovery of any Breach, and the number of individuals who are subject to a Breach;

(B) Identify the types of Protected Health Information that were involved in the Breach (such as whether full name, Social Security number, date of birth, home address, account number, diagnosis, or other information were involved);

(C) Identify who made the non-permitted use or disclosure and who received the non-permitted disclosure;

(D) Identify what corrective or investigational action Business Associate took or will take to prevent further non-permitted uses or disclosures, to mitigate harmful effects, and to protect against any further Breaches;

(E) Identify what steps the individuals who were subject to a Breach should take to protect themselves;

(F) Provide such other information, including a written report and risk assessment under 45 CFR §164.402, as Covered Entity may reasonably request.

(iii) **Security Incidents.** Business Associate will report to Covered Entity any Security Incident of which Business Associate becomes aware. Business Associate will make this report and treat a Security Incident as provided in the provisions set forth above.

(b) **Mitigation.** Business Associate shall mitigate, to the extent practicable, any harmful effect known to the Business Associate resulting from a use or disclosure in violation of this BAA. Business Associate at its sole expense, or, if Covered Entity elects to carry out some or all mitigation efforts, reimburse Covered Entity for its reasonable costs and expenses (including without limitation administrative costs, costs of legal action and attorney engagement, and payment of fines, settlements and damages) incurred in connection with mitigation efforts.

(c) **Indemnification.** Contractor shall defend, indemnify, and save Covered Entity harmless from and against any claims, actions, loss, liability, damage, costs, or expenses, including, but not limited to, reasonable attorneys' fees, arising from any or all Breaches and Security Incidents. The indemnification provided hereunder includes the full costs of forensics analysis, System remediation to eliminate the cause of the Breach or Security Incident, and notice to affected individuals, including, but not limited to, the services of a third party firm.

VI. Term and Termination.

(a) **Term.** This BAA is effective on the date set forth above and shall terminate on termination of the Agreement, subject to the provisions regarding return or destruction of Protected Health Information. Any provision related to the use, disclosure, access, or protection of Protected Health Information or that by the terms of this BAA that should survive termination of this BAA shall survive termination.

(b) **Right to Terminate for Cause.** Covered Entity may terminate this BAA and the Agreement if it determines, in its sole discretion, that Business Associate has breached any provision of this BAA, and after written notice to Business Associate of the breach, Business Associate has failed to cure the breach within thirty (30) calendar days after receipt of the notice. Any such termination shall take effect immediately, or at such other date as provided in the notice of termination.

If for any reason, Covered Entity determines that Business Associate has breached the terms of this BAA and such breach has not been cured, but covered Entity determination that termination of the BAA is not feasible, Covered Entity may report such breach to HHS.

(c) **Treatment of Protected Health Information on Termination.**

(i) **Return or Destruction of Covered Entity's Protected Health Information Is Feasible.** Upon termination of this BAA, Business Associate will, if feasible, return to Covered Entity or destroy all Protected Health Information in whatever form or medium, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of the Protected Health Information. This provision shall apply to Protected Health Information that is in the possession of any Subcontractors of Business Associate. Further, Business Associate shall require any such Subcontractor to certify to Business Associate that it has returned or destroyed all such information which could be returned or destroyed. Business Associate will complete these obligations as promptly as possible, but not later than thirty (30) calendar days following the effective date of the termination of this BAA.

(ii) **Procedure When Return or Destruction Is Not Feasible.** Business Associate will identify any Protected Health Information, including any Protected Health Information that Business Associate has disclosed to Subcontractors, that cannot feasibly be returned to Covered Entity or destroyed and explain why return or destruction is infeasible. Business Associate will limit its further use or disclosure of such information to those purposes that make return or destruction of such information infeasible. Business Associate will, by its written contract with any Subcontractor, require such Subcontractor to limit its further use or disclosure of the Protected Health Information that such Subcontractor cannot feasibly return or destroy to those purposes that make the return or destruction of such information infeasible. Business Associate will complete these obligations as promptly as possible, but not later than thirty (30) calendar days following the effective date of the termination or other conclusion of this BAA.

(iii) **Continuing Privacy and Security Obligation.** Business Associate's obligation to protect the privacy and safeguard the security of Protected Health Information as specified in this BAA will be continuous and survive termination or other conclusion of this BAA.

VII. General Provisions.

(a) **Definitions.** All terms that are used but not otherwise defined in this BAA shall have the meaning specified under HIPAA, including its statute, regulations, and other official government guidance.

(b) **Inspection of Internal Practices, Books, and Records.** Business Associate will make its internal practices, books, and records relating to its use and disclosure of Protected Health Information available to Covered Entity and to HHS to determine compliance with the HIPAA Rules.

(c) **Amendment to BAA.** This BAA may be amended only by a written instrument signed by the parties. In case of a change in applicable law, the parties agree to negotiate in good faith to adopt such amendments as are necessary to comply with the change in law.

(d) **No Third-Party Beneficiaries.** Nothing in this BAA shall be construed as creating any rights or benefits to any third parties.

(e) **Interpretation.** Any ambiguity in the BAA shall be resolved to permit Covered Entity and Business Associate to comply with the applicable requirements under the HIPAA Rules.

(f) **Indemnification.** Each party to this BAA agrees to indemnify and hold harmless the other party and any affiliate, officer, director, employee or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted use or disclosure of Covered Entity's PHI or other breach of this BAA by the indemnifying party.

(g) **Governing Law, Jurisdiction, and Venue.** This BAA shall be governed by the law of Washington, except to the extent preempted by federal law. Jurisdiction and venue for any dispute arising under this BAA is governed by the provisions of the Agreement.

(h) **Severability.** The invalidity or unenforceability of any provisions of this BAA shall not affect the validity or enforceability of any other provision of this BAA, which shall remain in full force and effect.

(i) **Construction and Interpretation.** The section headings contained in this BAA are for reference purposes only and shall not in any way affect the meaning or interpretation of this BAA. This BAA has been negotiated by the parties at arm's-length and each of them has had an opportunity to modify the language of this BAA. Accordingly, this BAA shall be treated as having been drafted equally by the parties, and the language shall be construed as a whole and according to its fair meaning. Any presumption or principle that the language is to be construed against any party shall not apply. This BAA may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

(j) **Notices.** All notices and communications required by this BAA shall be in writing. Such notices and communications shall be given as provided in the Agreement.

(k) **Entire BAA.** This BAA constitutes the entire agreement between the parties with respect to its subject matter and constitutes and supersedes all prior agreements, representations and understandings of the parties, written or oral, with regard to this same subject matter.

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