



***REQUEST FOR PROPOSALS***

***KITSAP COUNTY***

***2023-003***

***ALCOHOL MONITORING***

***Posted: January 12, 2023***

**Proposal Response Deadline:**

**February 2, 2023, 2:00 p.m.**

## **1. PROJECT OVERVIEW**

The Kitsap County Superior Court (KCSC) is seeking a contract with one (1) qualified firm to provide electronic monitoring with GPS and transdermal alcohol monitoring equipment. KCSC currently uses radio-frequency devices, GPS devices both passive and real-time, and multiple levels of alcohol monitoring devices.

## **2. BACKGROUND**

Kitsap County is located on the Kitsap Peninsula due west from Seattle across the Puget Sound. The County is comprised of four established cities – Port Orchard, Bremerton, Poulsbo and Bainbridge Island – and unincorporated areas which include a centrally-located economic hub in unincorporated Silverdale. Kitsap County has an estimated population of 275,611 (as of 2020), and the county seat is located in Port Orchard.

The Kitsap County Superior Court is the Court of general jurisdiction in and for Kitsap County, having original and appellate jurisdiction as authorized by the Washington State Constitution and the laws of the State of Washington. The Superior Court exists to resolve criminal felony cases, civil cases, juvenile offender and dependency cases, family law cases, guardianship cases, adoptions, domestic violence cases, mental health cases, and appeals from the District and Municipal Courts in the County. The Superior Court received approximately 9,000 filings per year pre-COVID and anticipates approximately 6,500 filings in 2022 as regular operations are restored. The Superior Court operates multiple therapeutic courts, including an Adult Drug Court and a Veterans Treatment Court, to resolve some felony criminal cases.

The Adult Drug Court/Veterans Treatment Court team consists of a Treatment Court Manager, an Office Support Coordinator, and three Compliance Specialists. At full capacity, each Compliance Specialist carries a caseload of fifty (50) active and monitored cases, some requiring electronic home detention (GPS) cases and alcohol monitoring. One Compliance Specialist also carries a Veterans Treatment Court participant caseload of up-to an additional twenty-five (25) participants, some of whom may also require electronic home detention (GPS) cases and alcohol monitoring. Presently, the Office Support Coordinator and Compliance Specialists perform their own participant installs, monitoring, and reporting for both the Global Positioning System (GPS) and alcohol monitoring.

## **3. SCOPE OF SERVICES**

The successful Vendor will provide software and electronic monitoring devices capable of passive, active, or hybrid monitoring as well as all required tools for installation and removal of devices. The supplier must provide devices capable of continuous transdermal alcohol monitoring. All equipment must be fully functional and include all necessary parts and components including but not limited to straps, batteries, clips, and

other related accessories. It is expected that the supplier will provide the necessary tools needed to install and operate the devices.

The Vendor shall direct bill the KCSC monthly. Each proposal should detail the cost structure for each device as well as radio frequency, GPS passive, GPS active, GPS hybrid, each level of alcohol monitoring, etc.

Should technological advancements occur during the term of this contract, they must be made available to KCSC. KCSC has the option to add any services offered by the Vendor.

#### **4. EQUIPMENT REQUIREMENTS AND ESTIMATES**

The program requires both alcohol and GPS monitoring equipment. Estimates are based on current annual usage.

1. Alcohol Ankle Monitors - estimated monthly usage is 10 units.
2. GPS Monitors - estimated monthly usage is 15 units.

#### **5. STOCK UNITS**

KCSC seeks to have shelf units in stock. At no additional charge to KCSC, the Vendor must provide a minimum of three (3) shelf units or 20% of the average units utilized of each device.

#### **6. ELECTRONIC MONITORING DEVICES**

1. **Radio Frequency Devices** – the proposed equipment must provide a radio frequency device that will monitor an individual at a specific location. The device needs to be cellular based as not all individuals will have access to phone landlines. A thorough description of the monitoring system, the capability of each equipment type and program for replacement of lost, damaged, or replacement of units must be included in the proposal.
2. **Electronic Monitoring Devices** – Global Positioning Satellite Tracking (GPS) – the proposed equipment must provide passive, active, and hybrid GPS surveillance equipment in conventional unit types. A thorough description of the monitoring system, the capability of each equipment type and program for replacement of lost, damaged, or replacement of units must be included in the proposal.
3. **Alcohol Monitoring Devices** – the proposed equipment must provide passive, active and hybrid alcohol monitoring services. The proposed equipment should include a continuous supervision option. A thorough description of the monitoring system, the capability of each equipment type and program for replacement of lost, damaged or replacement of units must be included in the proposal.

#### **7. EQUIPMENT EXPECTATIONS**

It is expected that:

1. GPS and radio frequency devices will attach to the individual's ankle and adjust to accommodate the individual wearing the device.
2. GPS devices will track, record, and store the location data. The current service tracks, records, and stores every 1 minute. This is the desired service for the contract from this RFP.

Additionally, the proposed equipment must be:

- Provided by the supplier and will remain the property of the supplier.

- In good repair, the latest design, and model equipment unless otherwise requested by KCSC.
- Shock resistant, water and moisture-proof, and function reliably under normal environmental conditions.
- Equipped with a battery warning and notification if battery powered.
- Contain technology that uniquely identifies the device that is securely attached to each individual.
- Capable of being attached to the individual in a manner that detects any efforts to tamper or remove it.
- Able to report when the device is tampered with, cut, or removed. The alert must continue until it is canceled by an authorized person.
- Able to detect, record, and notify Court staff for the following events: low battery, battery charging, lost GPS coverage, zone violation, curfew violation, communication lost, and strap tamper.

## 8. **MONITORING SYSTEM REQUIREMENTS**

The Monitoring System must:

- Be web-based, allowing Court personnel access for review.
- Allow multiple users simultaneous access.
- Have multiple levels of data protection and must require users to provide passwords or other security measures to access data.
- Categorize individuals such as, Adult Drug Court (ADC), Veterans Treatment Court (VTC), etc. and display the information accordingly.
- List all individuals with the functionality to further refine the population by category.
- Allow Court personnel to program and prioritize violations. Additionally, it must have the capability to provide program notifications for each violation and individual.
- Be capable of recording and storing the individual's name and information related to the nature and type of event, alert, violation, and alarms generated for the individual, including the date and time of the event.
- Produce reports as required by KCSC. KCSC will need to be able to report on violations, whereabouts, etc.
- Not delete or alter any data without first notifying and receiving approval from KCSC.

## 9. **SUPPLIER RESPONSIBILITIES**

It is the responsibility of the supplier to provide:

- On-site support.
- Technical services during the entirety of the contract period.
- Initial and ongoing training as deemed necessary or appropriate by the supplier or KCSC to accommodate any changes in staff, equipment, or modifications.
- Overnight delivery on all units, upon request. Shipping will be at no additional cost to KCSC.

- A Customer restorable copy of the Customer's database in Microsoft SQL server format as of December 31 of each calendar year.
- Upon KCSC's written request, one (1) mid-year copy of KCSC's database in a restorable Microsoft SQL Server format each calendar year, in addition to such end-of-year database copy. The restorable Microsoft SQL server database provided to KCSC shall be within the extended support phase of the Microsoft Support Lifecycle policy.

It is desired that the Vendor provide Single-Sign-On (SSO) to provide KCSC the capability to establish a session and user authentication service that permits a user to use one set of login credentials from the Kitsap County Superior Court. This must be facilitated through the use of Microsoft Active Directory Federation Services and Windows Azure AD Single Sign-On.

**10. COURT TESTIFYING SERVICES**

On an as needed basis, the awarded Vendor must provide expert legal testimony under subpoena or formal County Government notification for legal hearings which might include Superior Courts, Federal Courts and Administrative Judicial Hearings.

**11. KITSAP COUNTY SUPERIOR COURT RESPONSIBILITIES**

It is the responsibility of the Kitsap County Superior Court to:

- Install the equipment.
- Monitor the individual.
- Notify the supplier of any lost or damaged equipment.

**12. ADDITIONAL SERVICES**

The Kitsap County Superior Court reserves the right to make changes, additions to, or deductions from the Scope of Work provided that the change conforms to the general scope of services. The Vendor shall not affect any change without the prior written approval of the Kitsap County Superior Court. For example, should technological advancements occur during the term of this contract or any subsequent renewal periods, they must be made available to KCSC.

**13. CONTRACT TRANSITION**

In the event of a follow-on contract award to another provider, the Vendor shall ensure a cooperative and smooth transition to a new contract provider and shall provide all records, status reports and contract files as agreed with the provided notice of termination.

**14. PRICING ADJUSTMENTS**

Prices shall remain firm for the duration of the contract period. All price reductions at the manufacturers or distributor's level shall be reflected in a reduction of the contract price(s) to the Kitsap County Superior Court retroactive to the effective date of the price reductions.

**15. PAYMENT**

Within thirty (30) days after delivery, acceptance of items ordered and a properly prepared invoice but not more often than once per month the Kitsap County Superior Court will pay the successful Vendor according to the prices stated on the price sheet.

No down payment or advance payment of any kind will be made. Washington State law requires proof that the materials have been furnished, the services rendered, or the labor performed as described before payment may be made. Invoices are to be submitted to the following address:

Fiscal Support Specialist  
Kitsap County Superior Court  
614 Division Street, MS-24  
Port Orchard, WA 98366

**16. CONTRACT LENGTH**

The contract term will be effective upon the date of contract execution for two years with the option to renew for additional one-year terms subject to the "Time of Performance" and the "Termination" provisions of Kitsap County's standard Contract for Professional Services. Contract prices shall remain firm fixed during the contract term.

**17. PROPOSAL (SUBMITTAL) REQUIREMENTS**

To ensure that all information provided is properly evaluated, please organize and label proposals in the structure provided below (17A, 17B, 17C, etc.).

Proposals (submittals) shall include, at a minimum, the following:

- A. Experience with Similar Projects:** Describe your experience providing GPS and alcohol monitoring equipment to criminal justice programs and/or adult treatment court programs in Washington. Your description should include your provision of radio-frequency devices, GPS devices both passive and real-time, and multiple levels of alcohol monitoring devices.
- B. References:** Provide three client references for similar projects in size and scope within the past three years. Briefly describe each project and for each reference provide up-to-date individual contact name with e-mail and phone number. Provide the size, scope, and dates of each project.
- C. Qualification/Experience of Personnel Assigned:** Qualifications and experience of key personnel who will be assigned to this project and the percentage of time committed to the contract. Identify each by their proposed role and the percentage of time that will be committed to the County. Include for each their name and up-to-date, pertinent resume.
- D. Equipment Monitoring Requirements:** Please provide a description of the monitoring system capabilities that are available through your proposal as contemplated under #8, above. Include in your description any special, innovative or unique features of your monitoring system(s) that may be advantageous for the population(s) described in this RFP.
- E. Cost:** Please provide a unit price for each device, service, and/or charge necessary to meet the terms of this contract according to the following elements:
  - (1) Unit cost per alcohol monitoring device
  - (2) Unit cost per GPS monitoring device
  - (3) Cost for lost or damaged alcohol monitoring device

- (4) Cost for lost or damaged GPS monitoring device
- (5) Cost for lost or damaged charging cord, battery(ies), or other charging implements
- (6) Cost of training if not included in the device charge, above
- (7) Cost of device delivery if not included in the device charge, above
- (8) Costs and/or services not included under categories above. Please be specific.

**F. Sustainability:** The County has adopted an environmentally preferable purchasing policy which requires to the greatest extent feasible and practicable and in a manner that balances fiscal and environmental stewardship, the County shall procure and utilize environmentally preferable materials, products, and services.

Proposer shall include any sustainable related strategies, practices, services, or products that may reduce the environmental and/or economic impact of the services proposed. Proposer shall provide information on any sustainability related goals, accomplishments, and/or programs or other factors that may be of benefit to the County.

**G. Professional Services Contract Terms & Conditions:** By this reference, the Kitsap County's standard Contract for Professional Services is made a part of this RFP and will be used as the basis for preparing a final agreement with the successful proposer compliant with applicable law and in the best interests of the County. The Contract for Professional Services will include the County's HIPAA Business Associates Agreement. Proposers are advised to carefully read the standard Contract for Professional Services and HIPAA Business Associates Agreement, and to indicate general acceptance of the Professional Services Contract with the submission of their proposals. The proposal should identify any additional contract provisions to be sought by the proposer and should also identify Professional Services Contract provisions the proposer considers unacceptable and suggest alternate language.

**H. Legal Action:** Disclose any current or recent (within past five years) legal action in progress or taken against the firm or individuals.

**I. Disclosure:** List all business transactions and relations within the past five years that may create or be perceived to create a conflict of interest. Any business dealings or recommendations of a product or firm that may conflict with this project shall be disclosed.

**J. Transmittal Page:** The first page of this RFP shall be signed in ink, completed and included in the Proposal Submittal Package. **Submittal Form 1**

## 18. DEADLINES

Below is a table of relevant deadlines by which the actions must be completed. Dates and times are subject to change. If the County changes any of date or time, the change will be made by addendum.

ITEM	DUE DATE, TIME, AND LOCATION
Issuance of Request for Bid	January 12, 2023
Written Questions Due	January 20, 2023
Addendum Issued	January 27, 2023
Bid Due Date	February 2, 2023, by 2:00 pm

**19. QUESTIONS, COMMUNICATIONS**

All communications concerning this Solicitation must be in writing directed to the Purchasing Supervisor identified above via email. Written questions will be accepted up to the deadline. Correspondence concerning the Solicitation should refer to the Solicitation number, page, and section number. Bidders are to obtain written clarification from the Purchasing Supervisor regarding any inadequacy, omission, or conflict prior to submitting a bid. Failure to do so will not relieve the Bidder of any responsibilities under this Solicitation or any subsequent Contract. Oral statements or instructions will not constitute an amendment to this Solicitation. Bidders may only rely on written answers issued by the Purchasing Supervisor. Bidders that communicate with other county staff regarding the Solicitation without prior authorization from the Purchasing Supervisor may be disqualified.

**20. PROPOSAL SUBMITTAL**

Bids shall be submitted to the Purchasing Supervisor in a sealed envelope or package provided by the Bidder and identify the: 1) Bidder’s name and address, 2) Solicitation name and number, and 3) submittal date clearly identified on the outside of the envelope or package. The Bidder is to return all exhibits and addenda signed by a person authorized to sign on behalf of the Bidder. Unsigned bids may be rejected by the County as incomplete. Bidders shall submit: one (1) original, marked “original”, five (1) hard copies, and one (1) electronic copy of their bid with their submittal. Bids submitted by email or fax will not be considered.

Please submit by mail to:  
 Glen S McNeill, Buyer  
 Kitsap County Purchasing  
 614 Division Street, MS-21  
 Port Orchard, WA 98366

**OR**

Hand deliver to:  
 Glen S McNeill, Buyer  
 Kitsap County Administration Building  
 Purchasing Office – Fourth Floor  
 619 Division Street  
 Port Orchard, WA 98366



**CONTRACT NO.** [Contract Number]  
[TITLE]

This Professional Services Contract (“Contract”) is between Kitsap County, a Washington state political subdivision (“County”) and [Contractor Name], a [Contractor Type] having its principal offices at [Contractor Addr] (“Contractor”).

In consideration of the terms and conditions of this Contract, the parties agree as follows:

**SECTION 1. TERM AND EFFECTIVE DATE**

1.1 The Contract will become effective [Contract Start Date] and terminate [Contract End Date], unless terminated or extended. The Contract may be extended for additional consecutive terms at the mutual agreement of the parties, not to exceed a total of [Contract Length]. In no event will the Contract become effective unless and until it is approved and executed by the duly authorized representative of Kitsap County.

**SECTION 2. SERVICES**

2.1. Scope of Work. The Contractor shall provide all “Services” identified in Attachment A: (Scope of Work), which is incorporated herein by reference. The Contractor shall provide its own equipment, labor, and materials.

2.2. Contract. “Contract” means this Contract and any exhibits, amendments, and solicitation documents accepted by the County, and Attachments A (Scope of Work), B (Compensation)[List Additional Attachments, if any]. All such documents are incorporated herein in full by this reference.

2.3. Personnel. Contractor shall have and maintain complete responsibility for its Personnel. “Personnel” means Contractor and Contractor’s employees, subcontractors, volunteers, interns, agents, and any other person utilized by the Contractor directly or indirectly or through third parties to perform any Services under the Contract. Contractor shall promptly remove any Personnel performing Services on request from the County Representative.

2.4. Standards. Contractor warrants that i) Contractor has the qualifications, knowledge, experience, skills, and resources necessary to provide all Services; ii) all Services shall be provided by Personnel experienced in their respective fields and in a manner consistent with the standards of care, skill, diligence, and knowledge commonly possessed and exercised by experienced professionals in the same discipline in the same or similar circumstances; and iii) all Services shall be performed to the County’s reasonable satisfaction and according to the schedule agreed to by the parties.

2.5. Communication. Contractor shall keep the County informed of the progress of the Services in the manner, method, and intervals requested by the County.

**SECTION 3. COMPENSATION AND PAYMENT**

3.1. Compensation. The maximum amount of compensation paid under the Contract by the County shall not exceed \$[Contract Amount]. A description of the compensation is provided in Attachment B: Compensation, which is incorporated herein by reference.

3.2. Invoice. The Contractor will submit one invoice to the County per month for payment of Services completed to date, unless otherwise provided herein. Each invoice shall identify the Services performed, dates performed, and any other information requested by the County.

3.3. Payment. The County will make reasonable efforts to pay the Contractor within 30 days from the date the County receives a complete and correct invoice, unless otherwise provided herein. All funds disbursed to the Contractor will be processed by Direct Deposit via Automated Clearing House (ACH), unless otherwise agreed to by the parties.

- 3.4. Insurance/W-9 Compliance. All payments are expressly conditioned upon the Contractor's compliance with all insurance requirements and submission of a current IRS W-9 form to the County. Payments may be suspended in full in the event of noncompliance. Upon full compliance, payments will be released to Contractor unless otherwise provided herein.
- 3.5. Restrictions. The Contractor will only be entitled to receive payment for Services expressly authorized in the Contract, and received during the Contract term and accepted by the County. Contractor acknowledges oral requests and approvals of additional services or additional compensation are prohibited and unenforceable. Advance payments are not authorized.

#### **SECTION 4. TERMINATION**

- 4.1. For Convenience. The County may terminate the Contract, in whole or in part, without penalty, for any reason or no reason, with ten days prior notice to the Contractor.
- 4.2. For Funding issues. If any funding for Services is not available, withdrawn, reduced, or limited in any way, or if additional or modified conditions are placed on the funding after the Contract becomes effective, the County may: (1) accept a decreased price offered by Contractor; (2) terminate the Contract; or (3) terminate the Contract and re-solicit the requirements.
- 4.3. Termination for Default. The County may immediately terminate the Contract, in whole or part, due to the failure of the Contractor to comply with any Contract term or condition, or to make satisfactory progress in performing the Contract, subject to the provisions of 11.1, or if the County determines the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity. Contractor shall immediately notify the County if the Contractor becomes suspended or debarred.
- 4.4. Procedures. Upon receipt of notice of termination, the Contractor shall stop all Services as directed in the notice, notify Personnel of the termination date, and minimize further costs. All goods, materials, documents, data, and reports prepared by the Contractor under the Contract shall become the property of, and delivered to, the County on demand. A final payment will be made to the Contractor only for Services performed and accepted by the County through the effective date of termination. No costs incurred after the effective date of the termination will be paid.

#### **SECTION 5. INDEMNIFICATION**

- 5.1. To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless Kitsap County and its elected and appointed officials, officers, employees, and agents (collectively "Indemnitees") from and against all Claims resulting from or arising out of the performance of the Contract, whether such Claims arise from the acts, errors, or omissions of Contractor, its Personnel, third parties, or Kitsap County, or anyone directly or indirectly employed by any of them or anyone for whose acts, errors, or omissions any of them may be liable. It is the specific intent of the parties that the Indemnitees shall, in all instances, except Claims arising from the sole negligence or willful misconduct of the Indemnitees, be indemnified by Contractor from and against any and all Claims.
- 5.2. With regard to any Claim against any Indemnitee by any of Contractor's Personnel, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, Contractor's indemnification obligation shall not be limited in any way by a limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or Contractor's Personnel under workers compensation acts, disability benefit acts, or other employee benefit acts. Solely for the purposes of this indemnification provision, Contractor expressly waives its immunity under Title 51 RCW (Industrial Insurance) and acknowledges this waiver was mutually negotiated by the parties.

- 5.3. Architectural, Landscape Architectural, Engineering, or Land Surveying Services. Should a court of competent jurisdiction determine the Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the County, its officers, officials, employees, and agents, the Contractor's liability hereunder, including the duty and cost to defend, will be only to the extent of the Contractor's negligence.
- 5.4. Claim. "Claim" means all losses, claims, suits, actions, liabilities, damages, demands, judgments, settlements, expenses, fines, or other liabilities of any kind or nature whatsoever, including without limitation, all costs including costs of Claim processing, investigation, reasonable attorneys' fees, consequential damages, and punitive damages, for any personal or bodily injury, sickness, disease, disability, or death, or loss or damage to tangible or intangible business or property, including the loss of use. Claim includes any infringement of copyright, patent, trademark, or other proprietary rights of any third parties arising out of Contract performance or use by the County of materials furnished or work performed under the Contract.
- 5.5. Obligations/Notice of Claim. The County will provide the Contractor notice of the assertion of liability by a third party that may give rise to a Claim by County against the Contractor based on the indemnity contained herein. Contractor shall respond to the County's tender of defense of a claim in writing within 14 calendar days from the notice date, and will advise the County if Contractor accepts or denies tender of the claim. The County may in its discretion withhold all or part of any payment due Contractor under the Contract until Contractor responds to such notice. Contractor shall keep the County timely and fully informed through all stages of the defense and promptly respond to and comply with County's requests for information. The County at all times reserves the right, but has no obligation to participate in the defense and settlement of any Claim. Such participation shall not constitute a waiver of Contractor's indemnity and defense obligations under the Contract. Contractor shall not settle or compromise any Claim in any manner that imposes any obligations upon the County without the prior written consent of the County. Contractor shall promptly advise the County of any occurrence or information known to the Contractor that could reasonably result in a Claim against the County. The violation of any provisions of this Section, including improper refusal to accept tender, is a material breach.

## **SECTION 6. INSURANCE**

- 6.1. Minimum Insurance Required. Contractor and its subcontractors, if any, shall procure and maintain, until all of Contract obligations have been fully discharged, including any warranty period, all insurance required in this Section with an insurance company duly licensed in Washington State with an A.M. Best Company ratings of not less than A-VIII and a category rating of not less than "8", with policies and forms satisfactory to the County. Use of alternative insurers requires prior written approval from the County. Coverage limits shall be at minimum the limits identified in this Section, or the limits available under the policies maintained by Contractor without regard to the Contract, whichever is greater.
- 6.2. Professional Liability. Not less than \$1,000,000 per claim and \$2,000,000 annual aggregate. Coverage will apply to liability for professional error, act or omission arising out of or in connection with Contractor's Services under the Contract. The coverage shall not exclude bodily injury, property damage or hazards related to the work rendered as part of the Contract or within the scope of the Contractor's services under the Contract, including testing, monitoring, measuring operations or laboratory analysis where such Services are rendered under the Contract.
- 6.3. Commercial General Liability ("CGL"). Not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Coverage shall include personal injury, bodily injury, and property damage for premise-operations liability, products/completed operations, personal/advertising injury, contractual liability, independent contractor liability, and stop gap/employer's liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required herein, without the prior written approval of the County. The certificate of insurance for the CGL policy shall expressly cover the indemnification obligations required by the Contract.
- 6.4. Automobile Liability.  
 Contractor shall maintain personal automobile insurance on all vehicles used for Contract purposes as required by law.

- Not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Coverage shall include liability for any and all owned, hired, and non-owned vehicles. Coverage may be satisfied with an endorsement to the CGL policy.
  - Not less than \$100,000 per occurrence and \$300,000 annual aggregate. If a personal automobile liability policy is used to meet this requirement, it must include a business rider and cover each vehicle to be used in the performance of the Contract. If Contractor will use non-owned vehicles in performance of the Contract, the coverage shall include owned, hired, and non-owned automobiles.
- 6.5. Umbrella or Excess Liability. Contactor may satisfy the minimum liability limits required for the CGL and Automobile Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the annual aggregate limit shall not be less than the highest "Each Occurrence" limit for either CGL or Automobile Liability. Contractor agrees to an endorsement naming the County as an additional insured as provided in this Section, unless the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- 6.6. Workers' Compensation and Employer Liability. If applicable, Contractor shall maintain workers' compensation insurance as required under the Title 51 RCW (Industrial Insurance), for all Contractor's Personnel eligible for such coverage. If the Contract is for over \$50,000, then the Contractor shall also maintain employer liability coverage with a limit of not less than \$1,000,000.
- 6.7. Primary, Non-Contributory Insurance/Subcontractors. The Contractor's and its subcontractors' insurance policies and additional named insured endorsements will provide primary insurance coverage and be non-contributory. Any insurance or self-insurance programs maintained or participated in by the County will be excess and not contributory to such insurance policies. All Contractor's and its subcontractors' liability insurance policies must be endorsed to show as primary coverage. The Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All subcontractors shall comply with all insurance and indemnification requirements herein.
- 6.8. Review of Policy Provisions. Upon request, Contractor shall provide a full and complete copy of all requested insurance policies to the County. The County reserves the right without limitation, but has no obligation to revise any insurance requirement, or to reject any insurance policies that fail to meet the requirements of the Contract. The County also has the right, but no obligation to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington. The County has the right to request and review the self-insurance retention limits and deductibles, and Contractor's most recent annual financial reports and audited financial statements, as conditions of approval. Failure to demand evidence of full compliance with the insurance requirements or failure to identify any insurance deficiency shall not relieve the Contractor from, nor be construed or deemed a waiver, of its obligation to maintain all the required insurance at all times as required herein.
- 6.9. Waiver of Subrogation. In consideration of the Contract award, Contractor agrees to waive all rights of subrogation against the County, its elected and appointed officials, officers, employees, and agents. This waiver does not apply to any policy that includes a condition that expressly prohibits waiver of subrogation by the insured or that voids coverage should the Contractor enter into a waiver of subrogation on a pre-loss basis.
- 6.10. Additional Insured, Endorsement and Certificate of Insurance. All required insurance coverage, other than the workers' compensation and professional liability, shall name the County, its elected and appointed officials, officers, employees, and agents, as additional insureds and be properly endorsed for the full available limits of coverage maintained by Contractor and its subcontractors. Endorsement is not required if Contractor is a self-insured government entity, or insured through a government risk pool authorized by Washington State.

The Certificate of Insurance and endorsement shall identify the Contract number and shall require not less than 30 days' prior notice of termination, cancellation, nonrenewal or reduction in coverage. At the time of execution, Contractor shall provide the Certificate of Insurance, endorsement, and all insurance notices to: Risk Management Division, Kitsap County Department of Administrative Services, 614 Division Street, MS-7, Port Orchard, Washington 98366.

- 6.11. General. The coverage limits identified herein are minimum requirements only and will not in any manner limit or qualify the liabilities or obligations of the Contractor under the Contract. All insurance policy deductibles and self-insured retentions for policies maintained under the Contract shall be paid by the Contractor. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County, its elected and appointed officials, officers, employees, or agents. Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, subject to the limits of the insurer's liability.
- 6.12. Claims-Made. If Contractor's liability coverage is written as a claims-made policy, Contractor shall purchase an extended-reporting period or "tail" coverage for a minimum of three (3) years following completion of the performance or attempted performance of the provisions of this Contract.

**SECTION 7. NOTICE AND CONTRACT REPRESENTATIVES**

- 7.1. Any notices, demands and other communications required by the Contract will be effective if personally served upon the other party or if mailed by registered or certified mail, postage prepaid, return receipt requested, to the other party's Contract Representative at the address below. Notice may also be given by facsimile with the original to follow by regular mail. Notice will be deemed to be given three days following the date of mailing, or immediately if personally served. For service by facsimile, service will be effective at the beginning of the next working day. Each party will designate a "Contract Representative", which may be changed by providing 15 days prior notice to the other party.

County's Contract Representative

Name: [County Rep Name]

Title: [County Rep Title]

Address: [County Rep Addr]

Phone: [County Rep Phone]

Email: [County Rep Email]

Contractor's Contract Representative

Name: [Contractor Rep Name]

Title: [Contractor Rep Title]

Address: [Contractor Rep Addr]

Phone: [Contractor Rep Phone]

Email: [Contractor Rep Email]

## **SECTION 8. AMENDMENTS, SUBCONTRACTS, INDEPENDENT CONTRACTOR**

- 8.1. Amendment. No amendment or modification to the Contract will be effective without the prior written consent of the authorized representatives of the parties.
- 8.2. Successors and Assigns. To the extent permitted by law, the Contract is binding on the parties' respective partners, successors, assigns, executors, and legal representatives.
- 8.3. Assignments. Except with the prior written consent of the other party, each party shall not assign or transfer, including by merger (whether that party is the surviving or disappearing entity), consolidation, dissolution, or operation of law any right, duty, obligation, or remedy under the Contract. Any purported assignment or transfer in violation of this section shall be void.
- 8.4. Subcontracts. Contractor shall provide the County a list of all subcontractors and the subcontractors' proposed responsibilities. "Subcontract" means any contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or service for the performance of the Contract. All subcontracts shall incorporate by reference the terms and conditions of this Contract. Contractor is solely responsible for the performance and payment of its subcontractors.
- 8.5. Independent Contractor. Each party under the Contract shall be for all purposes an independent contractor. Nothing contained herein will be deemed to create an association, a partnership, a joint venture, or a relationship of principal and agent, or employer and employee between the parties. Contractor shall have complete responsibility and control over its Personnel. Neither Contractor nor its Personnel shall be, or be deemed to be, or act or purport to act, as an employee, agent or representative of the County. Contractor and its Personnel shall have no County employee-type benefits of any kind whatsoever, including without limitation, insurance, pension plan, vacation pay or sick pay, or other right or privilege afforded to County employees. Contractor and its Personnel shall be responsible for payment of all insurance, taxes, and benefits.

## **SECTION 9. OWNERSHIP, CONFIDENTIAL INFORMATION AND BREACH**

- 9.1. Ownership. Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films, or any other materials created, prepared, produced, constructed, assembled, made performed, or otherwise produced by the Contractor or its Personnel for delivery to the County under this Contract shall be the sole and absolute property of the County. All such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material the Contractor uses to perform this Contract that is not created, prepared, constructed, assembled, made, performed, or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of the Contract.
- 9.2. Confidential Information/Breach. Contractor shall ensure that all personal identifying information, financial information, and other information submitted or made available to Contractor by, or on behalf of, the County, or acquired or developed by Contractor in the performance of the Contract (unless publicly available) is kept confidential, secured, and protected to prevent unauthorized access. Such information will be utilized by Contractor solely as necessary for the performance of Services under the Contract and not made available to any other person without the County's prior written consent. In the event of unauthorized access or other security breach, Contractor shall immediately notify the Contract Representative and shall at its sole expense comply with all requirements of RCW 19.255.010, in effect at any given time. Upon expiration or termination of the Contract, all confidential information shall be returned to the County or destroyed at the County's discretion.

## **SECTION 10. REPRESENTATIONS AND RECORDS**

- 10.1. No Fee. Contractor certifies it has not received, nor paid or agreed to pay, another person or entity, other than a bona fide employee working exclusively for Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of the Contract.
- 10.2. Licenses, Permits and Taxes. Contractor shall, at its own expense, have and maintain all licenses, registrations, permits, and approvals necessary for the performance of the Contract, including without limitation, registration with the Washington State Department of Revenue. Contractor shall pay all fees (including licensing fees) and applicable federal, state, and local taxes.
- 10.3. Compliance. Contractor and its Personnel, and the Services provided by Contractor and its Personnel, shall comply with all applicable laws, codes, and standards in effect at any given time regardless as to whether such laws are referred to by the County. If required for the Services provided, Contractor and its Personnel shall submit to a background check as directed by the County.
- 10.4. Nondiscrimination. Contractor and its Personnel shall not discriminate against any person on the basis of race, color, creed, religion, national origin, age, sex, marital status, sexual orientation, veteran status, disability, or other circumstance prohibited by federal, state, or local law, and shall comply with Title VI of the Civil Rights Act of 1964, P.L. 88-354 and Americans with Disabilities Act of 1990 in the performance of the Contract.
- 10.5. Public Records. Contractor acknowledges the Contract and all public records associated with the Contract shall be available to the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (“Act”). To the extent that public records in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor shall make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under the Contract, whether electronic or hard copy, to be protected from disclosure under the law, the Contractor shall clearly identify all specific information it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information that has been identified by the Contractor as protected from disclosure and the County determines that release of the information is required by the Act or otherwise appropriate, the County’s sole obligation will be to make a reasonable effort to notify the Contractor of the request and the date that such protected information will be released to the requester unless the Contractor obtains a court order to enjoin disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified. The County has, and by this Section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County will not be liable to the Contractor for releasing records in compliance with the Act, this Section or court order.
- 10.6. Advertising, Logo. Contractor shall not use, advertise, or promote for commercial benefit information concerning the Contract or use any trade name, trademark, or logo of the County, without the County’s prior written consent.
- 10.7. Audit and Record Retention. Contractor and its Personnel shall retain all books, documents, and records relating to performance of the Contract and Services provided in connection with this Contract for six years after completion of the Contract or longer if requested by the County. All records shall be subject to inspection and audit by the County. Upon request, Contractor shall promptly make available to the County a legible copy of all books, documents, and records at no cost to the County.

## **SECTION 11. RIGHTS AND REMEDIES**

- 11.1. Failure to Perform. If County determines Contractor has failed to perform any material obligation of the Contract, and such failure has not been cured within 10 days’ following notice from the County, the County may without penalty, in its discretion, withhold all monies due the Contractor until such failure is cured to the reasonable satisfaction of the County.

- 11.2. Right of Assurance. If the County in good faith has reason to believe the Contractor does not intend, or is unable to perform or continue performing under the Contract, the County may demand in writing that the Contractor give a written assurance of intent to perform. Should the Contractor fail to provide adequate assurance to the reasonable satisfaction of the County, by the date specified the demand, the County may terminate all or part of the Contract and pursue all other rights and remedies available at law and in equity.
- 11.3. Responsibility for Errors. All Services shall be completed to the reasonable satisfaction of the County and as required herein. Upon request, Contractor shall provide any clarifications and/or explanations regarding any Services provided as required by the County, at no additional cost to the County. In the event of an error or omission under the Contract, Contractor shall, at no cost to the County, provide all necessary design drawings, estimates, and all other professional services the County deems necessary to rectify and correct the matter to the satisfaction of the County. The Contractor shall continue to be responsible for the accuracy of Services, even after the Work is accepted by the County and the termination or expiration of the Contract.
- 11.4. Remedies. All County rights and remedies under the Contract are in addition to, and shall in no way limit, any other rights and remedies that may be available to County at law and in equity.
- 11.5. Right of Off-Set; Reimbursement. The County will be entitled to offset against any sums due Contractor and to reimbursement from the Contractor for any damages, expenses, or costs incurred by the County due to Contractor's nonconforming performance or failure to perform the Services under the Contract.
- 11.6. Waiver. Either party's failure to insist upon the strict performance of any provision of the Contract, or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach, will not constitute a waiver of any right or remedy under the Contract unless expressly so agreed in writing by an authorized representative.
- 11.7. Breach. In the event of a material breach by the Contractor, the County may procure, on terms and in the manner that it deems appropriate, Services to replace those under the Contract. The Contractor shall be liable to the County for any and all costs, expenses, penalties, and fees incurred by the County in procuring such Services in substitution for those due from the Contractor under the Contract.

## **SECTION 12. GOVERNING LAW, DISPUTES**

- 12.1. Governing Law; Venue. The Contract will be governed in all respects by the laws of the State of Washington, both as to interpretation and performance, without regard to conflicts of law or choice of law provisions. Any action arising out of or in connection with the Contract may be instituted and maintained only in a court of competent jurisdiction in Kitsap County, Washington or as provided by RCW 36.01.050.
- 12.2. Disputes. Conflicts and disagreements between the parties related to the Contract will be promptly brought to the attention of the County. Any dispute relating to the quality or acceptability of performance or compensation due the Contractor will be decided by the County's Contract Representative. All decisions of the County's contract Representative are considered final; however, nothing herein prohibits either party from seeking judicial relief.

## **SECTION 13. PREVAILING WAGE**

[Prevailing Wage]

## **SECTION 14. GENERAL PROVISIONS**

- 14.1. Implied Contract Terms. Each provision of law and any terms required by law to be in the Contract are made a part of the Contract as if fully stated in it.
- 14.2. Headings/Captions. Headings and captions used are for convenience only and are not a part of the Contract and do not in any way limit or amplify the terms and provisions hereof.
- 14.3. No Party the Drafter. The Contract is the product of negotiation between the parties, and no party is deemed the drafter of the Contract.



- 14.4. No Third Party Beneficiary. No provision of the Contract is intended to, nor will it be construed to, create any third party beneficiary or provide any rights or benefits to any person or entity other than the County and Contractor.
- 14.5. Severability. If a court of competent jurisdiction holds any provision of the Contract to be illegal, invalid, or unenforceable, in whole or in part, the validity of the remaining provisions will not be affected, and the parties' rights and obligations will be construed and enforced as if the Contract did not contain the particular provision held to be invalid. If any provision of the Contract conflicts with any statutory provision of the State of Washington, the provision will be deemed inoperative to the extent of the conflict or modified to conform to statutory requirements.
- 14.6. Counterparts. The Contract may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.
- 14.7. Non-Exclusive Contract. The County may at its discretion enter into multiple agreements to obtain the same or similar services that are the subject of this Contract or may have its own employees perform the same or similar services contemplated by the Contract.
- 14.8. Survival. Those provisions of this Contract that by their sense and purpose should survive expiration or termination of the Contract shall so survive. Those provisions include, without limitation: Sections 5 (Indemnification), 6 (Insurance), 8.5 (Independent Contractor), 9 (Ownership, Confidential Information and Breach), 11 (Rights and Remedies), 12 (Governing Law, Disputes), and 14 (General Provisions).
- 14.9. Entire Agreement. The parties acknowledge the Contract is the product of negotiation between the parties and represents the entire agreement of the parties with respect to its subject matter. All previous agreements and representations, whether oral or written, entered into prior to this Contract are hereby revoked and superseded by the Contract.
- 14.10. Authorization. Each party signing below warrants to the other party, that they have the full power and authority to execute this Contract on behalf of the party for whom they sign.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

**CONTRACTOR NAME**

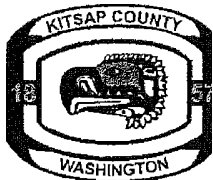
**KITSAP COUNTY, WASHINGTON**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
SIGNATORY NAME

SIGNATORY TITLE

\_\_\_\_\_



## HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (“Agreement”) is made part of the Contract between Kitsap County (“Covered Entity”) and Contractor (“Business Associate”) as a condition of the Contract. The parties agree as follows:

### SECTION 1. PURPOSE

The Contract for Professional Services may require the Covered Entity to make certain information available to the Business Associate for business purposes, some of which may constitute Protected Health Information (“PHI”). Accordingly, the Covered Entity is required to enter into a Business Associate Agreement with the Business Associate to protect the privacy and security of PHI pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as modified by the American Recovery and Reinvestment Act of 2009, Sec. 13400-13424, J.R. 1 (2009) and 45 CFR Part 160 and Part 164.

### SECTION 2. DEFINITIONS

- 2.1 Business Associate means the “Contractor” and shall have the same meaning as the term “business associate” at 45 CFR 160.103. Any reference to Business Associate in this Agreement includes the Business Associate’s employees, agents, Subcontractors, independent contractors, and representatives.
- 2.2 Covered Entity means the “County” and shall have the same meaning as the term “Covered Entity” in 45 CFR 160.103.
- 2.3 HIPAA means the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as modified by the American Recovery and Reinvestment Act of 2009 (ARRA), Sec. 13400-13424, H.R.1 (2009).
- 2.4 HIPAA Rules means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164 and the Washington State Uniform Health Care Information Act, Chapter 70.02 RCW (“UHICIA”), as in effect.
- 2.5 Subcontractor means, in addition to the Contract definition, a Business Associate that uses, creates, receives, maintains, or transmits PHI on behalf of another Business Associate.
- 2.6 Catch-All Definition. The following terms used in this Agreement shall have the same meaning as those terms have been defined by the HIPAA Rules unless otherwise provided herein: Breach, Covered Entity, Designated Record Set, Disclosure, Electronic Protected Health Information (“E PHI”), Health Care Operations, Individual(s), Minimum Necessary, Notice of Privacy Practices, Protected Health Information (“PHI”), Required by Law, Secretary, Security Incident, Subcontractor, Unauthorized Use, Unsecured PHI, and Use.

### SECTION 3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- 3.1 Compliance. Business Associate shall perform all Contract duties, activities, and tasks in compliance with HIPAA, the HIPAA Rules, and all applicable law.
- 3.2 Use and Disclosure. Business Associate shall Use or disclose PHI only as necessary to perform the Services specified in the Contract and in compliance with this Agreement and as required by state and federal confidentiality and security laws. Business Associate shall not Use or disclose such PHI in any manner that would violate Subpart E of 45 CFR Part 164 (Privacy of Individually Identifiable Health Information) if done by Covered Entity.
- 3.3 Minimum Necessary Standard. Business Associate shall apply the HIPAA Minimum Necessary standard to any Use or disclosure of PHI as necessary to achieve the lawful purpose of the Contract. See 45 CFR 164.514(d)(1) - (d)(5).
- 3.4 Duty to Protect PHI. Business Associate shall implement and Use appropriate safeguards to maintain and ensure the confidentiality, privacy, and security of all PHI and comply with Subpart C of 45 CFR Part 164 with respect to EPHI to prevent unauthorized Use or disclosure of EPHI other than as provided for in the Contract or as required by law, for the duration that PHI is within its possession and control, even after the termination or expiration of the Contract. Business Associate shall Use, store, and transmit PHI in an encrypted format as required by the HIPAA Rules.
- 3.5 Use for Proper Management and Administration. Business Associate may Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 3.6 Proper Management, Administration, and Disclosure. Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided such disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information shall remain confidential and be Used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.
- 3.7 Obligations. To the extent the Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164 (Privacy of Individually Identifiable Health Information), Business Associate shall comply with all requirements that would apply to the Covered Entity in the performance of such obligation(s).
- 3.8 Liability. Within ten (10) business days, Business Associate must notify the Covered Entity of any complaint, enforcement, or compliance action initiated by the Office for Civil Rights based on an allegation of violation of the HIPAA Rules and must inform the Covered Entity of the outcome of that action. Business Associate bears all responsibility for any penalties, fines, or sanctions imposed against the Business Associate for violations of the HIPAA Rules and for any imposed against its Subcontractors or agents for which it is found liable.

- 3.9 Business Associate shall at no cost, within five (5) days of a request from and in a manner designated by the Covered Entity, comply as follows:
- 3.9.1 When a request is made by an Individual to the Business Associate or if the Covered Entity asks the Business Associate to respond to a request, the Business Associate shall comply with requirements in 45 CFR 164.524 on form, time, and manner of access.
  - 3.9.2 Provide the Covered Entity all PHI in a designated record set as necessary to satisfy the Covered Entity's obligations under 45 CFR 164.524.
  - 3.9.3 Maintain and provide all PHI and other information necessary to provide an accounting of disclosures to the Covered Entity sufficient to satisfy the Covered Entity's obligations under 45 CFR 164.525 and 45 CFR 164.528.
  - 3.9.4 Make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526 and take other measures as necessary to satisfy the Covered Entity's obligations under 45 CFR 164.526.
- 3.10 Disclosure to Third Parties. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate shall require that any agent, including its subcontractors, that create, receive, maintain, or transmit PHI on behalf of the Business Associate shall agree in writing to the same restrictions and conditions that apply to the Business Associate under this Agreement. Business Associate shall ensure that such agents and subcontractors agree to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity. Business Associate shall be fully liable to Covered Entity for any acts, failures, or omissions of such agents and subcontractors providing the Services as if they were Business Associate's own acts, failures, or omissions, to the extent permitted by law. Business Associate further expressly warrants that its agents and Subcontractors shall be specifically advised of, and shall comply in all respects with, the terms of this Agreement.
- 3.11 Rights of Proprietary Information. The Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate.

#### SECTION 4. AUDIT AND ACCESS TO RECORDS

- 4.1 Audits, Inspection, and Enforcement. Within ten (10) business days of a request from the Covered Entity, Business Associate shall provide the Covered Entity reasonable access to inspect, at a reasonable time, the facilities, systems, books, records, agreements, policies, and procedures relating to the Use and disclosure of PHI and security safeguards required herein to ensure compliance with this Agreement and HIPAA Rules. The fact that the Covered Entity inspects or fails to inspect or inspects and fails to notify Business Associate of its deficiencies shall not constitute acceptance of any deficiency or waiver of the Covered Entity's enforcement rights under this Agreement.
- 4.2 Internal Practices, Books, and Records. Business Associate shall make available its internal practices, books, and records relating to the Use and disclosure of PHI received from, created, or received by

Business Associate on behalf of the Covered Entity to the U.S. Department of Health and Human Services or its agents for the purpose of determining the Covered Entity's compliance with the HIPAA Rules, or any other health oversight agency, or to the Covered Entity.

#### SECTION 5. INDIVIDUAL RIGHTS, ACCOUNTING OF DISCLOSURES

- 5.1 Business Associate shall document all disclosures, except those disclosures that are exempt under 45 CFR 164.528, of PHI and information related to such disclosures.
- 5.2 Within ten (10) business days of a request from the Covered Entity, Business Associate shall make available to the Covered Entity the information in Business Associate's possession that is necessary for the Covered Entity to respond in a timely manner to a request for an accounting of disclosures of PHI by the Business Associate. See 45 CFR 164.504(e)(2)(ii)(G) and 164.528(b)(1).
- 5.3 At the request of the Covered Entity or in response to a request made directly to the Business Associate by an Individual, Business Associate shall respond, in a timely manner and in accordance with HIPAA and the HIPAA Rules, to requests by Individuals for an accounting of disclosures of PHI.
- 5.4 Business Associate record keeping procedures shall be sufficient to respond to a request for an accounting under this section for the six (6) years prior to the date on which the accounting was requested.

#### SECTION 6. IMPROPER USE OR DISCLOSURE OF PHI AND BREACH

- 6.1 Improper Use or Disclosure. Business Associate shall report to the Covered Entity in writing all Uses or disclosures of PHI not provided for by this Agreement within three (3) business days of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410 (Notification by a Business Associate), and any Security Incident of which it becomes aware.
- 6.2 Mitigation. If Business Associate violates this Agreement or the HIPAA Rules, Business Associate agrees to mitigate any damage caused by such breach.
- 6.3 "Breach" is defined in the Breach Notification Rule ("Rule"), 45 CFR Sections 164.400-414. The time when a Breach is considered to have been discovered is set forth in the Breach Notification Rule.
- 6.4 In the event of a Breach of unsecured PHI or disclosure that compromises the privacy or security of PHI received from the Covered Entity, or created, maintained, or received on behalf of the Covered Entity, Business Associate shall take all measures required by state and federal law.
- 6.5 Business Associate shall notify the Covered Entity both in writing and by telephone within three (3) business days of any acquisition, access, Use or disclosure of PHI, of which it becomes aware, that may potentially compromise the security or privacy of the PHI by the Business Associate or its Subcontractors or agents and is not authorized by this Agreement, the HIPAA Rules, or required by law. Such notice shall include a written explanation of the Breach, to include the following: date and time of the Breach, the date the Breach was discovered, location and nature of the PHI, type of Breach, origination and

destination of PHI, Business Associate unit and personnel associated with the Breach, detailed description of the Breach, anticipated mitigation steps, and the name, address, telephone number, fax number, and e-mail of the individual who is responsible as the primary point of contact. Business Associate shall address communications to the Contract Representative. Business Associate shall work cooperatively with the Covered Entity and provide a copy of its investigation and any other information requested by the Covered Entity including advance copies of any required notifications for prior review by the Covered Entity.

- 6.6 If Business Associate does not have full details at that time, it shall promptly report the information it has, and provide full details within 10-days' of discovery. The initial report may be oral, with a written report to be provided as soon as possible. The Business Association shall promptly provide all information required for notification pursuant to 45 CFR Sections 164.410 and 164.402, and any other information the Covered Entity reasonably requests, as soon as the information becomes available. Business Associate shall promptly notify the Covered Entity if it determines it has or may have an independent notification obligation under any federal or state breach notification laws and advise the Covered Entity of its intent to give notice and a copy of the notice for prior review.
- 6.7 If either the Covered Entity or Contractor determines that Business Associate or its Subcontractor(s) or agent(s) is responsible for a Breach within the meaning of the Breach Notification Rule, and notification of is required under the Breach Notification Rule, or RCW 42.56.590 or chapter 19.215 RCW, or other law or rule, then:
- 6.7.1 The Covered Entity may choose to make any notifications to affected individuals, the Secretary, the media, and/or governmental agencies, or direct the Business Associate to make all or part of them.
- 6.7.2 In any case, Business Associate bears the responsibility and costs for: i) notifying the affected individuals, media, the Secretary, and governmental agencies; ii) receiving and responding to questions and requests for additional information from the affected Individuals, the media, the Secretary, and governmental agencies; and iii) such other actions reasonably appropriate to protect the information as requested by the Covered Entity or required provided by Law.
- 6.7.3 Business Associate shall compensate the Covered Entity and others for harm caused to them by the Breach or possible Breach described above.
- 6.7.4 The Covered Entity will take appropriate remedial measures up to termination of the Contract.
- 6.8 Failure to Cure. If the Covered Entity learns of a pattern or practice of the Business Associate that constitutes a violation of the Business Associate's obligations under the terms of the Contract and reasonable steps by the Covered Entity do not end the violation, the Covered Entity shall terminate the Contract, if feasible. In addition, If Business Associate learns of a pattern or practice of its Subcontractors that constitutes a violation of the Business Associate's obligations under the terms of the Contract and reasonable steps by the Business Associate do not end the violation, Business Associate shall terminate the Subcontract, if feasible.

## SECTION 7. EFFECTIVE DATE AND TERMINATION

- 7.1 Term. This Agreement is effective when the Contract is executed by the parties and shall survive the expiration or termination of the Contract as long as Business Associate continues to Use or retains PHI received from the Covered Entity, or created, maintained, or received on behalf of the Covered Entity in any form, unless otherwise provided herein.
- 7.2 Termination for Cause. The Covered Entity may terminate this Agreement if the Covered Entity determines the Business Associate has violated a material term of this Agreement. The Covered Entity may, at its sole option, offer Business Associate an opportunity to cure a violation of this Agreement before exercising a termination for cause. Termination shall be effective as of the date stated in the notice of termination.
- 7.3 Failure to Cure. If the Covered Entity learns of a pattern or practice of the Business Associate that constitutes a violation of the Business Associate's obligations under the terms of this Agreement and reasonable steps by the Covered Entity do not end the violation, the Covered Entity shall terminate this Agreement, if feasible. In addition, if Business Associate learns of a pattern or practice of its Subcontractors that constitutes a violation of the Business Associate's obligations under the terms of this Agreement and reasonable steps by the Business Associate do not end the violation, Business Associate shall terminate the Subcontract, if feasible.
- 7.4 Return or Destruction. Upon expiration or termination of this Agreement for any reason, Business Associate shall return to the Covered Entity all PHI received from the Covered Entity, or created, maintained, or received on behalf of the Covered Entity that Business Associate still maintains in any form or, if agreed to by the Covered Entity, destroy the same, unless otherwise required by law. For purposes of this subsection, to destroy PHI is to render it unusable, unreadable, or indecipherable to the extent necessary to establish it is not Unsecured PHI, and Business Associate shall provide the Covered Entity with appropriate evidence of destruction within ten (10) days of the destruction. The Business Associate shall retain no copies of PHI unless otherwise agreed to by the parties.
- 7.5 Retained PHI. Upon written consent of the Covered Entity, the Business Associate may retain only that PHI necessary to continue its proper management and administration or to carry out its legal responsibilities. In such an event, Business Associate shall:
- 7.5.1 Continue to use appropriate safeguards and comply with the terms and conditions of this Agreement and HIPAA Rules;
  - 7.5.2 Not Use or disclose the PHI retained by Business Associate or any Subcontractors other than for the purposes for which such PHI was retained and subject to the terms and conditions of this Agreement; and
  - 7.5.3 Return to the Covered Entity or destroy in compliance with subsection 7.4 the PHI retained by Business Associate when it is no longer needed for its proper management and administration or to carry out its legal responsibilities.

SECTION 8. INDEMNIFICATION

To the extent permitted by law, Business Associate shall indemnify, defend, and hold harmless the Covered Entity, and all elected officials, officers, employees, and agents of the Covered Entity from and against all claims, demands, liabilities, judgments, or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, attorney's fees, defense costs, and equitable relief), for any damage or loss incurred by the Covered Entity arising out of, resulting from, or attributable to any acts or omissions or other conduct of Business Associate or its agents in connection with the performance of Business Associate's or its agents' duties under this Agreement. This indemnity shall not be construed to limit Covered Entity's rights, if any, to common law indemnity.

SECTION 9. MISCELLANEOUS PROVISIONS

- 9.1 Disclaimer. The Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement will be adequate or satisfactory for Business Associate's own purpose. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- 9.2 Survival. The obligations of the Business Associate in this Agreement shall survive the expiration or termination of the Contract.
- 9.3 Regulatory References. A reference in this Agreement to a section in HIPAA, the HIPAA Rules or UHCIA means the section as in effect or as amended.
- 9.4 Amendment. The parties agree to take all actions to amend this Agreement from time to time as is necessary to remain in compliance with HIPAA, the HIPAA Rules, and applicable law.
- 9.5 Severability. If any provision in this Agreement is invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- 9.6 Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA, the HIPAA Rules and UHCIA.
- 9.7 Covered Entity Contact for Reporting and Notification Requirements. Business Associate shall address all reporting and notification communications required in this Agreement to the Covered Entity Representative as identified in the Contract.