

**SALISH BEHAVIORAL HEALTH ADMINISTRATIVE SERVICES ORGANIZATION  
STANDARD CONTRACT**

Contract Number: KC-357-22

Contractor: Discovery Behavioral Health

Amount: \$381,209

Contract Term: July 1, 2022 – June 30, 2023

CFDA#: NA

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Purpose: The R.E.A.L. Program Team to provide outreach services to individuals within the community. The Priority Population includes individuals with substance use or co-occurring needs, individuals with frequent contact with law enforcement or first responders, and individuals who have had challenges accessing services under the traditional service model

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This contract is made between Discovery Behavioral Health (hereinafter “Contractor”) and the Salish Behavioral Health Administrative Services Organization (hereinafter “SBHASO”). This notification of contract, including all material incorporated by reference, contains all terms and conditions agreed to by the parties hereto. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto. The Kitsap County Department of Human Services shall act as administrator of this contract on behalf of the SBHASO.

The rights and obligations of the parties shall be subject to, and governed by, the terms and conditions contained herein and by the Statement of Work, General Agreement, Special Terms and Conditions, Business Associate Agreement and the Budget/Rate Sheet. In the event of any inconsistency in this notification of contract, including the items incorporated herein by reference, the inconsistency shall be resolved by giving precedence in the following order: (1) General Agreement; (2) Special Terms and Conditions; (3) Statement of Work; (4) Budget/Rate Sheet.

As evidenced by signatures hereon, the parties accept the terms and conditions of this contract.

## GENERAL AGREEMENT

### SECTION I. CONTRACTOR REQUIREMENTS

Contractor agrees to perform the services as set forth in the Statement of Work Attachment B, as attached herein.

A. Authority

Contractor possesses legal authority to apply for the funds covered under this contract.

B. Assignment/ Subcontract

1. Contractor shall not assign its rights and/or duties under this contract without the prior written consent of the SBHASO.
2. Contractor shall obtain written approval for assignment from the Contract Administrator prior to entering into any subcontract for the performance of any services contemplated by this contract; provided, however, that approval shall not be unreasonably withheld.
  - a. In the event that the Contractor enters into any subcontract agreement funded with money from this contract, the Contractor is responsible for subcontractor:
    - Compliance with applicable terms and conditions of this contract;
    - Compliance with all applicable law; and.
    - Provision of insurance coverage for its activities.

C. Limitations on Payments

1. Contractor shall pay no wages in excess of the usual and accustomed wages for personnel of similar background, qualifications and experience.
2. Contractor shall pay no more than reasonable market value for equipment and/or supplies.
3. Any cost incurred by Contractor over and above the year-end sums set out in the budgets shall be at Contractor's sole risk and expense.

D. Compliance with Laws

1. Contractor shall comply with all applicable provisions of the Americans with Disabilities Act and all regulations interpreting or enforcing such act.
2. Contractor shall comply with all applicable federal, state and local statutes, regulations, rules and ordinances. Applicable laws and regulations include, but are not limited to:
  - a. Title XIX and Title XXI of the Social Security Act.
  - b. Title VI of the Civil Rights Act of 1964.
  - c. Title IX of the Education Amendments of 1972, regarding any education programs and activities.
  - d. The Age Discrimination Act of 1975.
  - e. The Rehabilitation Act of 1973.
  - f. The Budget Deficit Reduction Act of 2005.
  - g. The Washington Medicaid False Claims Act and the Federal False Claims Act (FCA).
  - h. The Health Insurance Portability and Accountability Act (HIPPA).
  - i. The American Recovery and Investment Act (ARRA).
  - j. The Patient Protection and Affordable Care Act (PPACA or ACA).
  - k. The Health Care and Education Reconciliation Act.
  - l. The Mental Health Parity and Addiction Equity Act (MHPAEA) and final rule.
  - m. 21 C.F.R. Food and Drugs, Chapter 1 Subchapter C – Drugs – General.
  - n. 42 C.F.R. Subchapter A, Part 2- Confidentiality of Alcohol and Drug Abuse Patient Records.
  - o. 42 C.F.R. Subchapter A, Part 8 – Certification of Opioid Treatment Programs.
  - p. 45 C.F.R. Part 96 Block Grants.
  - q. 45 C.F.R § 96.126 Capacity of Treatment for Intravenous Substance Abusers who Receive Services under Block Grant funding.
  - r. Chapter 70.02 RCW Medical Records – Health Care Information Access and Disclosure.
  - s. Chapter 71.05 RCW Mental Illness.
  - t. Chapter 71.24 RCW Community Mental Health Services Act.
  - u. Chapter 71.34 RCW Mental Health Services for Minors.
  - v. Chapter 246-341 WAC.
  - w. Chapter 43.20 A RCW Department of Social and Health Services.
  - x. Senate Bill 6312 (Chapter 225. Laws of 2014) State Purchasing of Mental Health and Chemical Dependency Treatment Services.
  - y. All federal and State professional and facility licensing and accreditation requirements/standards that apply to services performed under the terms of this Contract.
  - z. Reporting of abuse as required by RCW 26.44.030.

- aa. Federal Drug and Alcohol Confidentiality Laws in 42 C.F.R. Part 2.
  - bb. Copeland Anti-Kickback Act.
  - cc. Davis-Bacon Act.
  - dd. Byrd Anti-Lobbying Amendment.
  - ee. Any services provided to an individual enrolled in Medicaid are subject to applicable Medicaid rules.
3. Contractor shall comply with SBHASO policies, procedures and practices.
4. Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, marital status, religion, sex, sexual orientation, national origin, Vietnam era or disabled veteran's status, age, the presence of any sensory, mental or physical disability; provided, that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the individual from performing the essential functions of his or her employment position, even with reasonable accommodation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination, rates of pay or other forms of compensations, and selection for training, including apprenticeship.

*E. Indemnification*

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the Salish Behavioral Health Administrative Services Organization, Kitsap County, Jefferson County and Clallam County, and the elected and appointed officials, officers, employees and agents of each of them, from and against all claims resulting from or arising out of the performance of this contract, whether such claims arise from the acts, errors or omissions of Contractor, its subcontractors, third parties, the Salish Behavioral Health Administrative Services Organization, Kitsap County, Jefferson County or Clallam 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. "Claim" means any loss, claim, suit, action, liability, damage or expense of any kind or nature whatsoever, including but not limited to attorneys' fees and costs, attributable to personal or bodily injury, sickness, disease or death, or to injury to or destruction of property, including the loss of use resulting therefrom. Contractor's duty to indemnify, defend and hold harmless includes but is not limited to claims by Contractor's or any subcontractor's officers, employees or agents. Contractor's duty, however, does not extend to claims arising from the sole negligence or willful misconduct of the Salish Behavioral Health Administrative Services Organization, Kitsap County, Jefferson County or Clallam County, or the elected and appointed officials, officers, employees and agents of any of them. For the purposes of this indemnification provision, Contractor expressly waives its immunity under Title 51

of the Revised Code of Washington and acknowledges that this waiver was mutually negotiated by the parties. This provision shall survive the expiration or termination of this contract.

F. Insurance

1. For the duration of the contract and until all work specified in the contract is completed, Contractor shall maintain in effect all insurance as required herein. Work under this contract shall not commence until evidence of all required insurance and bonding is provided to the SBHASO. Evidence of such insurance shall consist of a completed copy of the Certificate of Insurance, signed by the insurance agent for the Contractor and returned to

Program Lead, Salish Behavioral Health Administrative Services  
Organization  
Kitsap County Department of Human Services  
614 Division Street, MS-23  
Port Orchard, WA 98366.

2. The Contractor's insurer shall have a minimum A.M. Best's Rating of A-VII.
3. Coverage shall include the following terms and conditions:
  - a. The policy shall be endorsed and certificate shall reflect that the SBHASO and Clallam, Jefferson and Kitsap Counties are named as an additional insureds on the Contractor's General Liability Policy with respect to the activities under this Contract.
  - b. The policy shall provide and the certificate shall reflect that the insurance afforded applies separately to each insured against which a claim is made or a suit is brought except with respect to the limits of the Contractor's liability.
  - c. The policy shall be endorsed and the certificate shall reflect that the insurance afforded therein shall be primary insurance and any insurance or self-insurance carried by Kitsap County on behalf of the SBHASO shall be excess and not contributory insurance to that provided by the Contractor.
  - d. If for any reason, any material change occurs in the coverage during the course of this contract, such changes shall not become effective until forty-five (45) days after Kitsap County Risk Management has received written notice of changes.

- e. SBHASO and Clallam, Jefferson and Kitsap Counties have no obligation to report occurrences unless a claim is filed with the SBHASO; and SBHASO or Clallam, Jefferson or Kitsap Counties have no obligation to pay premiums.
4. The Contractor shall insure that every officer, director, or employee who is authorized to act on behalf of the Contractor for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks or other instruments of payment for program costs shall be bonded to provide protection against loss.
- a. Fidelity bonding secured pursuant to this contract must have coverage of \$100,000 or the highest planned advance or reimbursement for the program year, whichever is greater.
  - b. If requested, the Contractor will provide a copy of the bonding instrument or a certification of the same from the bond issuing agency.
5. Workers' Compensation and Employer Liability. The Contractor will maintain workers' compensation insurance as required by Title 51, Revised Code of Washington, and will provide evidence of coverage to the Kitsap County Risk Management Division. If the contract is for over \$50,000, then the Contractor will also maintain employer liability coverage with a limit of not less than \$1 million.
6. The Contractor shall have insurance coverage and limits as follows:

a. Comprehensive Liability

Comprehensive General Liability Insurance and Comprehensive Automobile Liability Insurance with limits of not less than:

<b>COVERAGE</b>	<b>LIMITS OF LIABILITY</b>
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**Comprehensive General Liability Insurance**

- |                              |                             |
|------------------------------|-----------------------------|
| a. Bodily Injury Liability   | \$1,000,000 each occurrence |
| b. Property Damage Liability | \$1,000,000 each occurrence |

OR

- |   |                       |
|---|-----------------------|
| c. Combined Bodily Injury/Property Damage Liability | \$2,000,000 aggregate |
|---|-----------------------|

**Comprehensive Automobile Liability Insurance**

- |                            |                         |
|----------------------------|-------------------------|
| a. Bodily Injury Liability | \$1,000,000 each person |
|----------------------------|-------------------------|

**COVERAGE**

**LIMITS OF LIABILITY**

b. Property Damage Liability

\$1,000,000 each  
occurrence  
\$1,000,000 each  
occurrence

OR

c. Combined Single Limit Coverage of \$2,000,000

b. Professional Liability Insurance with limits of not less than:

**Professional Liability Insurance \$1,000,000 each occurrence**

G. Conflict of Interest

Contractor agrees to avoid organizational conflict of interest and the Contractor's employees will avoid personal conflict of interest and the appearance of conflict of interest in disbursing contract funds for any purpose and in the conduct of procurement activities.

H. Documentation

1. Contractor shall maintain readily accessible records and documents sufficient to provide an audit trail needed by the SBHASO to identify the receipt and expenditure of funds under this contract, and to keep on record all source documents such as time and payroll records, mileage reports, supplies and material receipts, purchased equipment receipts, and other receipts for goods and services.
2. The Contractor is required to maintain property record cards and property identification tabs as may be directed by SBHASO codes and changes thereto. This applies only to property purchased from funds under this contract specifically designated for such purchases. Ownership of equipment purchased with funds under this contract so designated for purchase shall rest in the SBHASO and such equipment shall be so identified.
3. The Contractor shall provide a detailed record of all sources of income for any programs it operates pursuant to this contract, including state grants, fees, donations, federal funds and others for funds outlined in appropriate addenda. Expenditure of all funds payable under this contract must be in accordance with the approved Statement of Work.
4. The SBHASO shall have the right to review the financial and service

components of the program as established by the Contractor by whatever means are deemed expedient by the SBHASO, or their respective delegates. Such review may include, but is not limited to, with reasonable notice, on-site inspection by SBHASO agents or employees, inspection of all records or other materials which the SBHASO deems pertinent to this contract and its performance, except those deemed confidential by law.

5. All property and patent rights, including publication rights, and other documentation, including machine-readable media, produced by the Contractor in connection with the work provided for under this contract shall vest in the SBHASO. The Contractor shall not publish any of the results of this contract work without the advance written permission of the SBHASO. Such material will be delivered to the SBHASO upon request.

## **SECTION II. RELATIONSHIP OF THE PARTIES**

The parties intend that an independent contractor relationship will be created by this contract, and the conduct and control of the services will lie solely with the Contractor. No official, officer, agent, employee, or servant of the Contractor shall be, or deemed to be, an official, officer, employee, servant, or otherwise of the SBHASO for any purpose; and the employees of the Contractor are not entitled to any of the benefits the SBHASO provides for SBHASO employees. It is understood that the SBHASO does not agree to use Contractor exclusively. Contractor will be solely and entirely responsible for its acts and for the acts of its officials, officers, agents, employees, servants, subcontractors, or otherwise during the performance of this agreement.

In the performance of the services herein contemplated, Contractor is an independent contractor with the authority to control and direct the performance of the details of the work, SBHASO being interested only in the results obtained. However, the work contemplated herein must meet the approval of the SBHASO and shall be subject to SBHASO's general right of inspection and supervision to secure the satisfactory completion thereof.

In the event that any of the Contractor's officials, officers, employees, agents, servants or otherwise, carry on activities or conduct themselves in any manner which may either jeopardize the funding of this agreement or indicate said officials, officers, employees, agents or servants are unfit to provide those services as set forth within, the Contractor shall be responsible for taking adequate measures to prevent said official, officer, employee, agent or servant from performing or providing any of the services as called for within.

## **SECTION III. MODIFICATION**

No change, addition or erasure of any portion of this agreement shall be valid or binding upon either party. There shall be no modification of this agreement, except in writing,



executed with the same formalities as this present instrument. Either party may request that the contract terms be renegotiated when circumstances, which were neither foreseen nor reasonably foreseeable by the parties at the time of contracting, arise during the period of performance of this contract. Such circumstances must have a substantial and material impact upon the performance projected under this contract and must be outside of the control of either party.

#### **SECTION IV. TERMINATION**

A. *Failure to Perform*

This contract may be terminated, in whole, or in part, without limiting remedies, by either party to this contract if the other party materially fails to perform in accordance with the terms of this contract. In this event, the aggrieved party shall deliver ten (10) working days advance written notification to the other party specifying the performance failure and the intent to terminate.

B. *Without Cause*

Either party to this contract may elect to terminate this contract without cause by delivering a ninety (90) day written notice of intent to terminate to the other party.

C. *Funding*

The SBHASO may unilaterally terminate or negotiate modification of this contract at any time if its federal, or state grants are suspended, reduced, or terminated before or during this contract period, or if federal or state grant terms and regulations change significantly.

In the event of early contract termination initiated by either party for whatever reason, the Contractor is only entitled to costs incurred prior to the time of contract termination.

#### **SECTION V. LEGAL REMEDIES**

Nothing in this contract shall be construed to limit either party's legal remedies including, but not limited to, the right to sue for damages or specific performance should either party materially violate any of the terms of this contract. Failure to act on any default shall not constitute waiver of rights on such default or on any subsequent default.

## **SECTION VI. VENUE AND CHOICE OF LAW**

Any action at law, suit in equity, or other judicial proceeding for the enforcement of this contract or any provision thereof shall be instituted only in the courts of the State of Washington, County of Kitsap. It is mutually understood and agreed that this contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

## **SECTION VII. WAIVER**

No official, officer, employee, or agent of SBHASO has the power, right, or authority to waive any of the conditions or provisions of this contract. No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this agreement or at law shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law. The failure of the SBHASO to enforce at any time any of the provisions of this contract, or to require at any time performance by Contractor of any provisions hereof, shall in no way be construed to be a waiver of such provisions, or in any way affect the validity of this contract or any part, hereof, or the right of SBHASO to thereafter enforce each and every provision.

## **SECTION VIII. NOTICES**

All notices called for or provided for in this contract shall be in writing and must be served on the party either personally or by certified mail and shall be deemed served when deposited in the United States mail. Such notice shall be made to:

Jim Novelli  
Executive Director  
884 W Park Ave  
Port Townsend, WA 98368

Stephanie Lewis, Administrator  
Kitsap County Human Services  
614 Division St., MS-23  
Port Orchard, WA 98366-4676

## **SECTION IX. PAYMENTS**

- A. All payments to be made by Kitsap County, on behalf of the SBHASO, under this agreement shall be made to: Discovery Behavioral Health, City of Port Townsend, County of Jefferson, State of Washington.
- B. This contract shall not exceed the amount set forth in the contract compensation/rate sheet, Attachment C. Contractor agrees to participate in and be bound by determinations arising out of the SBHASO's disallowed cost resolution process.

## **SECTION X. DURATION**

The Contractor is authorized to commence July 1, 2022 providing services pursuant to this contract. This agreement shall terminate on June 30, 2023, unless terminated sooner as provided herein.

## **SECTION XI. WHOLE AGREEMENT**

This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this contract shall supersede all previous communications, representations, or agreements, either verbal or written, between parties.

## **SECTION XII. SEVERABILITY**

It is understood and agreed by the parties that if any part, term, or provision of this contract is held by the courts to be illegal or in conflict with any law of the state where made, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this contract did not contain the particular part, term, or provision held to be invalid.

**SECTION XIII. ATTACHMENTS.** The parties acknowledge that the following attachments, which are attached to this Contract, are expressly incorporated by this reference:

- Attachment A – Special Terms and Conditions
- Attachment B – Statement of Work
- Attachment C – Budget/Rate Sheet
- Attachment D – Business Associate Agreement
- Attachment E – Data Security and Confidentiality
- Attachment F – Certification Regarding Lobbying
- Attachment G – Debarment Certification

The rights and obligations of the parties shall be subject to, and governed by, the terms and conditions contained herein and by the Statement of Work, General Agreement, Special Terms and Conditions, Business Associate Agreement and the Budget. In the event of any inconsistency in this notification of contract, including the items incorporated herein by reference, the inconsistency shall be resolved by giving precedence in the following order: (1) General Agreement; (2) Special Terms and Conditions; (3) Statement of Work; (4) Budget/Rate Sheet.

Dated this 25 day of July, 2022.

**SALISH BEHAVIORAL HEALTH  
ADMINISTRATIVE SERVICES  
ORGANIZATION, By  
KITSAP COUNTY BOARD OF  
COMMISSIONERS, Its Administrative  
Entity**

*Edward E. Wolfe*  
Edward E. Wolfe, Chair

*Charlotte Garrido*  
Charlotte Garrido, Commissioner

*Robert Gelder*  
Robert Gelder, Commissioner

DATE 7/25/2022

ATTEST  
*Dana Daniels*  
Dana Daniels, Clerk of the Board

**CONTRACTOR:  
Discovery Behavioral Health**

*Jim Novelli*  
Name: Jim Novelli  
Title: Executive Director

I attest that I have the authority to sign  
this contract on behalf of Discovery  
Behavioral Health.

7/1/2022  
DATE



## ATTACHMENT A: SPECIAL TERMS AND CONDITIONS

### A. PROGRAM REQUIREMENTS

#### 1. General

- a. Contractor shall participate in training when requested by SBHASO on behalf of the HCA. Exceptions must be in writing and include a plan for how the required information shall be provided to them.
- b. Contractor shall not differentiate or discriminate in providing services to clients because of race, color, religion, national origin, ancestry, age, marital status, gender identity, sexual orientation, physical, sensory or mental handicap, socioeconomic status, or participation in publicly financed programs of health care services, or any other basis prohibited by law. Contractor shall render services to clients in the same location, in the same manner, in accordance with the same standards, and within the same time availability regardless of payor.
- c. Contract shall provide Individuals with access to translated information and interpreter services as described in the Materials and Information Section of this Contract.

#### 2. Quality Improvement

- a. Contractors receiving GFS or FBG funds shall cooperate with SBHASO or HCA-sponsored Quality Improvement (QI) activities.
- b. Contractor shall report Critical Incidents involving individuals receiving SBHASO funded services in accordance with SBHASO Critical Incident Reporting Policy and Procedure.
- c. Contractor shall adequately document services provided to Individuals for all delegated activities including QI, Utilization Management, and Individual Rights and Protections.
- d. Contractor shall implement a Grievance process that complies with WAC 182-538C-110.

#### 3. Program Integrity

- a. Contractor shall have and comply with policies and procedures that guide its officers, employees and agents to comply with Program Integrity requirements.
- b. Contractor shall investigate and disclose to HCA immediately upon becoming aware of any person in their employment who has been convicted of a criminal offense related to that person's involvement under Medicare, Medicaid, or Title XX of the Social Security Act since the inception of those programs.

- c. Contractor shall have a Fraud, Waste and Abuse program which includes:
- i. A process to inform officers, employees, agents and subcontractors about the False Claims Act.
  - ii. Administrative procedures to detect and prevent Fraud, waste and abuse, and a mandatory compliance plan.
  - iii. Standards of conduct that articulate the Contractor's commitment to comply with all applicable federal and state standards.
  - iv. The designation of a compliance officer and compliance committee that is accountable to senior management.
  - v. Training for all affected parties.
  - vi. Effective lines of communication between the compliance officer and the Contractor's staff.
  - vii. Enforcement of standards through well-publicized disciplinary policies.
  - viii. Provision for internal monitoring and auditing.
  - ix. Provision for prompt response to detected violations, and for development of corrective action initiatives.
- d. Contractor shall subrogate, to the state of Washington for all criminal, civil and administrative action recoveries undertaken by any government entity, including, but not limited to, all claims the Contractor has or may have against any entity or individual that directly or indirectly receives funds under this Contract.
- i. For the purpose of this section, "subrogation" means the right of any state of Washington government entity or local law enforcement to stand in the place of a Contractor or Individual in the collection against a third party.
- e. Contractor shall conduct criminal background checks and maintain related policies and procedures and personnel files consistent with the requirements in Chapter 43.43 RCW and, Chapter 246-341 WAC.
- f. Contractor shall complete monthly Exclusion Checks for all employees, volunteers, and all individuals identified on the Disclosure of Ownership Form to include:
- i. Office of Inspector General – <https://exclusions.oig.hhs.gov/>
  - ii. System for Award Management – <https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf>
  - iii. Washington State – <https://www.hca.wa.gov/billers-providers-partners/apple-health-medicaid-providers/provider-termination-and-exclusion-list>
    - HCA Medicaid and DSHS social services list.
- g. Contractor shall submit an attestation of completion of all Exclusion checks to SBHASO by the last business day of the month.

- h. Information about Individuals, including their medical records, shall be kept confidential in a manner consistent with state and federal laws and Regulations.
- i. SBHASO may pursue contract termination as outlined in General Terms and Conditions, Failure to Perform, if Contractor becomes excluded from participation in the Medicaid program.

5. Health Information Systems

Contractor shall establish and maintain a health information system that complies with the requirements of OCIO Security Standard 141.10, and the Data, Security and Confidentiality Exhibit, and provides the information necessary to meet Contractor's obligations under this Contract. OCIO Security Standards are available at: <https://ocio.wa.gov>.

6. Records Retention

Records retention during the term of this Contract is for ten (10) years following termination or expiration of this Contract, or if any audit, claim, litigation, or other legal action involving the records is started before expiration of the ten (10) year period. The records shall be retained until completion and resolution of all issues arise there from or until the end of the ten (10) year period, whichever is later.

7. Public Records

All records required to be maintained by this Contract or by state law, except medical, treatment and personnel records, shall be considered to be public records and maintained in accordance with applicable laws. Medical and treatment records shall be confidential and shall not be published or open to public inspection except that such records may be inspected by the Director of the Health Care Authority, or designee; and Contract Administrator for the purpose of program review, monitoring and comparative cost studies.

B. FISCAL REQUIREMENTS AND MONITORING

1. Withhold of Payment

Failure of the Contractor to comply with the terms of this Contract shall give the SBHASO the right to withhold payment of any further funds under this Contract

2. Reimbursement

In the event that it is determined that any funds were distributed under color of this contract, which violate the terms and conditions herein, such sums shall be reimbursed to the SBHASO upon written demand. Neither payment of any funds under color of this contract, nor any action of the SBHASO or its officials, officers, agents or employees, prior to the discovery of the violation, shall constitute a waiver thereof.

3. Right to Hearing

All notices shall be given in writing specifying the reasons for such demands, reimbursement, termination, or amendment or such other actions contemplated in this Contract and the Contractor shall have the right to a hearing within ten

(10) days from such determination before the SBHASO Executive Board for determination of the action and prior to commencement of any civil litigation, by the Contractor.

4. Monitoring

- a. SBHASO conducts on-going monitoring of Contractor's performance under this Contract. If deficiencies are identified in Contractor's performance, SBHASO will follow the Corrective Action process defined in Section G. In addition to on-going monitoring:
  - i. SBHASO shall conduct Contractor review which shall include at least one (1) onsite visit every three (3) years to each contractor site providing state funded or FBG funded treatment services during the period of performance of this contract in order to monitor and document compliance with requirements.
  - ii. SBHASO shall ensure that Contractor has complied with data submission requirements established by HCA for all services funded under the Contract.
  - iii. SBHASO shall ensure that Contractor updates patient funding information when the funding source changes.
  - iv. SBHASO requires Contractor to identify funding sources consistent with the Payments and Sanctions Section of this Contract, FBG reporting requirements, and the rules for payer responsibility found in the table, "How do providers identify the correct payer" within the Apple Health Mental Health Services Billing Guide" which is available on the Health Care Authority's website (<https://www.hca.wa.gov>)
  - iv. SBHASO shall maintain written or electronic records of all Contractor monitoring activities and make them available to HCA upon request.

5. Audit Requirements

- a. Contractor shall comply with all applicable required audits including to conduct a facility inspection, and the federal Office of Management and Budget (OMB) Super Circular 2 C.F.R. 200.501 and 45 C.R.R 75.501 audits.
  - i. SBHASO shall submit a copy of the OMB audit performed by the State Auditor to the HCA Contact within ninety (90) days of receipt by the SBHASO of the completed audit.
    - a. If Contractor is subject to OMB Super Circular audit, the SBHASO shall require a copy of the completed Single Audit and ensure corrective action is taken for any audit finding, per OMB Super Circular requirements
    - b. If Contractor is not subject to OMB Super Circular audit, the SBHASO shall perform Contractor monitoring in compliance with federal requirements.

7. Suspension, Debarment and Lobbying



The Contractor shall certify, on a separate for (Attachment F), that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency. Contractor shall actively monitor its employees for excluded status in accordance with SBHASO Policies and Procedures. The Contractor, on a separate form (Attachment G), will certify that it does not use Federal funds for lobbying purposes.

C. REPORTING REQUIREMENTS

1. Data Reporting Requirements

- a. Contractor shall comply with all data reporting requirements promulgated by the Health Care Authority (HCA).
- b. Contractor shall provide data to the SBHASO as needed for performance improvement or other projects.
- c. Data shall be provided in the format prescribed by SBHASO.

D. BILLING PROCEDURES

The Contractor shall be paid within the limits established within Attachment C: Budget/Rate Sheet. Any costs incurred by the Contractor over and above the total sums set out in Attachment C: Budget/Rate Sheet, shall be at the Contractor's sole risk and expense.

The Contractor shall submit invoices for payment no later than 45 calendar days following the end of month that service was provided. Invoices for psychiatric inpatient treatment may be submitted within 90 calendar days following the end of month of discharge.

The SBHASO shall pay the Contractor monthly for services identified in the Statement of Work of this Contract, subject to the availability of funds from the Health Care Authority and Contractor's compliance with this Contract. Such payment shall be made within thirty (30) days of the SBHASO's receipt of an invoice from the Contractor.

E. FAITH BASED ORGANIZATIONS (FBO)

1. SBHASO requires FBO to meet the requirements of 42 C.F.R. Part 54 as follows:
  - a. Individuals requesting or receiving SUD services shall be provided with a choice of SUD treatment providers.
  - b. The FBO shall facilitate a referral to an alternative provider within a reasonable time frame when requested by the recipient of services.
  - c. The FBO shall report to the SBHASO all referrals made to alternative providers.
  - d. The FBO shall provide Individuals with a notice of their rights.

- e. The FBO shall provide Individuals with a summary of services that includes any religious activities.
- f. Funds received from the FBO must be segregated in a manner consistent with federal Regulations.
- g. No funds may be expended for religious activities.

F. Indemnification

Contractor agrees to hold harmless HCA and its employees, and all Individuals served under the terms of this Contract in the event of non-payment by the SBHASO. Contractor further agrees to indemnify and hold harmless HCA and its employees against all injuries, deaths, losses, damages, 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 SBHASO, its agents, officers, employees or contractors.

G. Corrective Action Process

The SBHASO conducts reviews of Contractors. During the course of any review conducted, if performance is below Contract standards, the SBHASO will request that the Contractor provide a Corrective Action Plan. SBHASO will work with Contractor staff in creating Corrective Action Plans, when requested.

If the Contract Administrator finds indications of ongoing potential non-compliance during the contract monitoring processes or learns that the Contractor, or its subcontractors, are out of compliance with any of the terms or conditions of this Contract, the follow process will be pursued.

1. Informal Meeting

Informal process wherein the Administrator alerts the appropriate Contractor's staff of the potential non-compliance and an agreeable solution is reached.

2. Official Verbal Notification

If the informal meeting does not result in resolution, the SBHSAO will contact the Contractor for the purpose of official verbal notification of possible non-compliance to establish a date when representatives of the SBHASO and the Contractor shall meet and discuss areas of contention and attempt to resolve the issues.

3. Written Summary

Within five (5) working days of such verbal notification, the SBHASO will provide the Contractor representative a written summary of the areas of non-compliance or potential non-compliance by certified mail. Notice shall be sent to the individual identified in the General Agreement.

4. Discussion

Within twenty (20) days of the date of the written notification, a discussion between SBHASO and Contractor staff shall be conducted to address areas of non-compliance or potential non-compliance.

5. Withhold Payments

If the SBHASO and the Contractor cannot agree upon a resolution within ten (10) working days of the discussion described in the previous paragraph, the SBHASO shall withhold contract payments related to the area(s) of non-compliance or potential non-compliance, unless a written, time-limited extension of the period to agree upon corrective action is issued by the SBHASO.

## ATTACHMENT B: STATEMENT OF WORK -REAL Program

1. The SBH-ASO REAL Program embraces and advances the following core principles:
  - a. Law Enforcement Assisted Diversion (LEAD), e.g. Let Everyone Advance with Dignity (LEAD) core principles ([www.leadbureau.org](http://www.leadbureau.org)).
    - i. Harm Reduction Framework
    - ii. Participant-identified and driven
    - iii. Intensive Case Management
    - iv. Peer Outreach and Counseling
    - v. Trauma-Informed Approach.
    - vi. Culturally competent services
  
2. The SBH-ASO REAL Program subcontractor provides community-based outreach services throughout the region:
  - a. The REAL Program provides field-based engagement and services.
  - b. Expected response time to referral for the Salish Region is sixty (60) to ninety (90) minutes.
  - c. Services are ideally provided face-to-face. If barriers exist, virtual or telephone visits may be utilized.
  - d. There is no specified time limitations for participation in the REAL Program. Timelines are individually self-determined.
  - e. Participation is a voluntary and is non-coercive.
  - f. Employs staff with lived experiences with substance use disorder.
  - g. Prioritizes staffing that reflects the diversity of the community they serve, e.g. Black Indigenous and People of Color (BIPOC) peers, trans peers, LGBTQ peers, peers with visible and non-visible disabilities.
  - h. Engages in and facilitates Cross Agency Coordination with Golden Thread Service Coordination
  - i. Engages in Overdose Prevention and Response.
  - j. Does not require abstinence from drug or alcohol use for program participation.
  
3. The priority population of the REAL Program are individuals with substance use disorders and/or co-occurring substance use disorder and mental health who are at risk of arrest and/or have frequent contact with first responders (including law enforcement and emergency medical services), community members, friends, family, and who could benefit from being connected to supportive resources and public health services when appropriate. The REAL Program providers will provide referrals to crisis services (e.g. voluntary and involuntary options), as needed.

4. The REAL Program providers will provide the following services to youth and adults with behavioral health conditions, including:
  - a. Community-based outreach;
  - b. Brief Wellbeing Screening
  - c. Referral services;
  - d. Needs assessments;
  - e. Connection to services; and
  - f. Warm handoffs to treatment recovery support services along the continuum of care.

Additional services to be provided as appropriate, include, but are not limited to:

- a. Long-term intensive outreach support/care management.
- b. Development of Individual Intervention Plan.
- c. Recovery coaching.
- d. Recovery support services.
- e. Coordinating treatment services (excludes provision of treatment services).

5. The REAL Program referral Process:
  - a. Law Enforcement is considered a priority referral and REAL providers will accept all referrals.
    - i. For counties with multiple REAL Program providers, it will be based on referent or individual choice and assessed needs.
      - a. REAL Program providers will coordinate and transition individuals upon request.
    - ii. "No wrong door" for an individual to be referred to REAL Program.
  - b. Referrals may be completed by direct access phone number, online referral form, and/or in-person referrals.
    - i. During business hours REAL Program staff will accept referral and coordinate appropriate response.
      - a. All referrals to be expected to occur where the individual is at, engaging them through any referral venue, as well as known locations, like shelters or community-based programs.
      - b. Expected in person response time will be one hour to one and a half hours.
    - ii. After hours referrals can be left by voicemail. REAL Program staff will provide follow up on the next calendar day.
6. The REAL Program Involuntary Discharge protocol:
  - a. Individuals may be involuntarily discharged from the program due to lack of contact.
    - i. There will be at least 5 attempted contacts over a 60-day period prior to program discharge.

- ii. If contact is made after that 60-day timeframe, there will be no barriers to re-engaging with the REAL Program.
- b. Individuals may be discharged if expected incarceration of more than 1 year or
- c. Individuals presenting significant safety risk to team members (e.g., threats to staff or agency with plan and means).
- d. Upon discharge, appropriate referrals to other community resources or, if possible, another REAL Program, will be assessed.

7. The REAL Program Staff Training Plan includes:

- a. *Prior to First Contact:*
  - i. LEAD CORE Principles
  - ii. CPR and Medical First Aid
  - iii. Safety Training
  - iv. Confidentiality, HIPAA, and 42 CFR Part 2 training
  - v. Harm reduction
  - vi. Trauma- informed responses
  - vii. Cultural appropriateness
  - viii. Conflict resolution and de-escalation techniques
  - ix. Crisis Intervention
  - x. Introduction to Regional Crisis System
  - xi. Overdose Prevention/Naloxone Training, Recognition, and Response
  - xii. Local Resources, *e.g., meal programs, hygiene/showers, veterans, domestic violence, bus passes, transportation, medical providers, behavioral health, furniture, clothing, tents/tarps, etc.*
- b. *Within 90 days:*
  - i. Diversity training
  - ii. Suicide Prevention
  - iii. Outreach strategies
  - iv. Working with American Indian/Alaska Native individuals
  - v. Basic cross-system access, *e.g., Program for Assertive Community Treatment (PACT), Wraparound with Intensive Services (WISe), Housing and Recovery through Peer Services (HARPS), Community Behavioral Health Rental Assistance Program (CBRA), Program for Adult Transition to Health (PATH), Foundational Community Supports (FCS), etc.—Regional Specific*
  - vi. GAINS
  - vii. Ethics
  - viii. CMS Benefits Training
  - ix. Housing and Homelessness
  - x. OST/MAT Treatment options
  - xi. Working with People with Intellectual/Developmental Disorders
  - xii. Early intervention/prevention
  - xiii. Ombuds
  - xiv. Cross-training between Law Enforcement and REAL PROGRAM Outreach/Care Managers (LEAD National Support Bureau WA State)
  - xv. Building relationships (LEAD National Support Bureau WA State)
  - xvi. Shared Decision-Making Processes for Services

c. *Additional Trainings Recommended:*

- i. Peer Certification Training (Optional)
- ii. SOAR Training (Optional)
- iii. Mental Health First Aid
- iv. Vicarious Trauma/Secondary Trauma
- v. Stigma
- vi. Motivational Interviewing
- vii. Government to Government Training for collaborating with Tribes
- viii. CIT

8. The REAL Program Operational Workgroup:

The REAL Program Operational Work Group (OWP) will partner the REAL Program providers with Law Enforcement agencies, court agencies, fire department, EMS, and other community support programs to review day-to-day operations.

9. The REAL Program Policy Coordinating Group:

The REAL Program Policy Coordinating Group (PCG), facilitated by the REAL Program providers Project Manager, will be composed of community leadership who are authorized to make decisions on behalf of their respective offices.

10. REAL Program Reporting Requirements:

Monthly submission of the REAL Program Logs by the 10<sup>th</sup> of the month following month of service to the SBH-ASO via Provider Portal or other agreed method. SBH-ASO will require supplemental data reporting and for enrolled case management individuals

**Budget Summary**

Contractor: Discovery Behavioral Health  
Jefferson County R.E.A.L. Program

Contract No: KC-357-22  
Contract Period: 07/01/2022-6/30/2023

Contract Period: July 1, 2022-June 30, 2023

	Current	Contract total
R.E.A.L. Program	\$381,209	\$381,209

Contract Total: \$381,209

Administration fund limit: 10%

Funding Source:  
General Fund State



## ATTACHMENT D: BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “**Agreement**”) is effective as of the 1st day of July, 2022 (“**Effective Date**”) by and between SALISH BEHAVIORAL HEALTH-ADMINISTRATIVE SERVICES ORGANIZATION (SBHASO) and XXXXX (Contractor) (individually, a “**Party**” and, collectively, the “**Parties**”).

- A. The Parties wish to enter into this Agreement to comply with the administrative simplification section of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as may be amended from time to time (collectively, “**HIPAA**”).
- B. SBHASO is a behavioral health-administrative services organization, a Business Associate of certain upstream Covered Entities (“**Upstream Covered Entities**”), and a lawful holder of Part 2 Information, as defined below, as provided under the Confidentiality of Alcohol and Drug Abuse Patient Records regulations at 42 CFR Part 2 (“**Part 2**”). SBHASO also formerly was a Covered Entity and may continue to Use, Disclose, and maintain PHI from when it was a Covered Entity.
- C. The Parties have entered into one or more arrangements (collectively, the “**Service Contract**”) under which Contractor will provide certain services to SBHASO that may involve Contractor creating, receiving, maintaining, or transmitting PHI, as defined below, and Contractor may be considered a Subcontractor Business Associate of SBHASO under HIPAA and a subcontractor of a lawful holder under Part 2.

NOW, THEREFORE, in consideration of the Parties’ continuing obligations under the Service Contract, their compliance with HIPAA and Part 2, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to this Agreement.

- I. **DEFINITIONS.** Except as otherwise defined in this Agreement, capitalized terms in this Agreement shall have the definitions set forth in HIPAA. “**Individual**” shall have the same meaning as the term “Individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g). “**Part 2 Information**” means alcohol abuse, drug abuse, or substance use disorder information covered by Part 2. “**PHI**” shall have the same meaning as the term “Protected Health Information” that is created, received, maintained, or transmitted by Contractor from or on behalf of SBHASO. PHI includes, without limitation, Electronic PHI, mental health information, sexually transmitted disease information, and Part 2 Information. “**PII**” means personally identifiable information as defined under Washington law.

### II. **PERMITTED USES AND DISCLOSURES BY CONTRACTOR.**

- 2.1 **Performance of Service Contract.** Contractor may use and disclose PHI and PII to perform functions, activities, or services for, or on behalf of, SBHASO as specified in the Service Contract as long as the use or disclosure would not violate HIPAA, Part 2, and state and federal laws (collectively, “**Law**”), if done by Salish BH-ASO or an Upstream Covered Entity.
- 2.2 **Management; Administration; Legal Responsibilities.** Contractor may use PHI and PII for its proper management and administration and to fulfill its legal responsibilities, as long as the uses are permitted under Law for an Upstream Covered Entity, SBHASO, and Contractor.
- 2.3 **Required by Law.** Except as otherwise limited in this Agreement, Contractor may disclose PHI and PII as Required by Law. Contractor shall: (i) to the extent permitted by Law, immediately notify SBHASO prior to the disclosure; (ii) cooperate with SBHASO in making any disclosures Required by Law, including efforts to challenge or limit the disclosure; and (iii) provide a copy of all information disclosed relating to this Agreement or the Service Contract.

- 2.4 **De-Identified Information.** Contractor may not use or disclose PHI or PII to create de-identified information or Limited Data Sets or to otherwise anonymize or aggregate PHI or PII for its own use or disclosure, without prior, express, written approval from SBHASO.
- 2.5 **Minimum Necessary.** Contractor shall make all reasonable efforts to access, use, disclose, or request only the minimum necessary amount of PHI or PII to accomplish the intended, permitted purpose of the access, use, disclosure, or request. Contractor shall comply with SBHASO's policies and procedures concerning minimum necessary requirements. The Parties shall collaborate in determining what quantum of information constitutes the "minimum necessary" amount for Contractor to accomplish its intended purposes.

### **III. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR.**

- 3.1 **Compliance with this Agreement.** Notwithstanding anything to the contrary, Contractor agrees to not use or further disclose PHI or PII other than as permitted or required by this Agreement or as Required by Law.
- 3.2 **Safeguards.** Contractor agrees to: (i) use appropriate safeguards to prevent use or disclosure of PHI and PII other than as provided for by this Agreement; (ii) implement the administrative, physical, and technical safeguards of the Security Standards for the Protection of Electronic Protected Health Information (the "**Security Rule**") that reasonably and appropriately protect the confidentiality, integrity, and availability of any PHI; (iii) comply with those requirements under the Security Rule that apply to Business Associates; and (iv) implement appropriate safeguards to protect Part 2 Information.
- 3.3 **Notification.**
- 3.3.1 **Impermissible Use or Disclosure.** Contractor shall report to SBHASO any use or disclosure of PHI or PII not permitted under this Agreement, regardless of whether the use or disclosure rises to the level of a Breach.
- 3.3.2 **Security Incident.** Contractor shall report to SBHASO any Security Incident of which Contractor becomes aware, regardless of whether the Security Incident rises to the level of a Breach. This Agreement constitutes notification of "unsuccessful" Security Incidents that do not present a risk to PHI or PII such as: (i) "pings" on an information system firewall; (ii) port scans; and (iii) attempts to log on to an information system or enter a database with an invalid password or user name.
- 3.3.3 **Breach Notification.** Contractor shall report any Breach of Unsecured PHI, as required by the Notification of a Breach of Unsecured Protected Health Information Standards (the "**Breach Notification Rule**").
- 3.3.4 **Part 2 Information.** Contractor shall report to SBHASO unauthorized uses, disclosures, or breaches of Part 2 Information.
- 3.3.5 **Reporting Requirements.** Contractor shall make the report as soon as practical and in any event within five (5) business days of Contractor's discovery of one of the events described in Sections 3.3.1, 3.3.2, 3.3.3, and 3.3.4 (each, an "**Event**"). Contractor shall supplement the information provided in the report as it becomes available. An Event shall be treated as discovered by Contractor as of the first day on which the Event is known to Contractor or, through the exercise of reasonable diligence, would have been known to Contractor.
- 3.3.6 **Content of Notification.** Contractor shall provide: (i) information as required by the Breach Notification Rule and to fully inform SBHASO of each Event; and (ii) any additional

information requested by SBHASO. At a minimum, the report of an Event shall include, to the extent possible:

- (a) The identification of each Individual whose PHI or PII has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during or as a result of the Event;
- (b) A brief description of what happened, including the date of the Event and the date of discovery of the Event;
- (c) A description of the types of PHI or PII involved in the Event (such as whether full name, Social Security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
- (d) Any steps Individuals should take to protect themselves from potential harm resulting from the Event;
- (e) A brief description of what Contractor is doing to investigate the Event, to mitigate harm to Individuals, and to protect against any further Events; and
- (f) Contact procedures for SBHASO or Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

- 3.4 **Subcontractors**. Contractor shall ensure any Subcontractor whom Contractor permits to create, receive, maintain, or transmit PHI or PII on behalf of Contractor or SBHASO, agrees in writing: (i) to the same restrictions and conditions that apply through this Agreement to Contractor; and (ii) to comply with the requirements of the Security Rule that apply to Business Associates. Contractor shall not permit a Subcontractor to create, receive, maintain, or transmit PHI or PII unless Contractor has performed adequate due diligence on the Subcontractor and found Subcontractor's safeguards appropriate.
- 3.5 **Restrictions**. Contractor agrees to comply with any requests for restrictions on certain uses and disclosures of PHI or PII of which SBHASO informs Contractor.
- 3.6 **Access**. At the request of SBHASO, within ten (10) business days, unless a shorter time period is requested, in the manner, form, and format requested by SBHASO, Contractor shall make available PHI and PII so that SBHASO or an Upstream Covered Entity may respond to an Individual's request for access to PHI and PII in accordance with the Standards for Privacy of Individually Identifiable Health Information (the "**Privacy Rule**") and other Law. In the event an Individual requests from Contractor access to PHI or PII, Contractor, to the extent permitted by Law, shall forward the request to SBHASO within two (2) business days.
- 3.7 **Amendment**. At the request of SBHASO in a reasonable time and manner and in the form and format requested by SBHASO, Contractor shall make amendments to PHI and PII so that SBHASO or an Upstream Covered Entity may respond to an Individual's request for an amendment by SBHASO in accordance with the Privacy Rule and other Law. In the event an Individual requests from Contractor any amendments, to the extent permitted by Law, Contractor shall forward the request to SBHASO within two (2) business days.
- 3.8 **Accounting of Disclosures**. Contractor shall document any disclosures that are required to be in an accounting of disclosures under the Privacy Rule and, upon request, shall provide information required to be included in an accounting of disclosures to SBHASO to permit SBHASO or an Upstream Covered Entity to comply with the Privacy Rule and other Law. In the event an Individual requests from Contractor, an accounting of disclosures, to the extent permitted by law, Contractor shall forward the request to Salish BH-ASO within two (2) business days.

- 3.9 **Disclosures to the Secretary.** Contractor agrees that it will make its internal practices, books, and records available to the Secretary of the United States Department of Health and Human Services (the “Secretary”), for the purpose of determining an Upstream Covered Entity’s, SBHASO’s or Contractor’s compliance with HIPAA, and to SBHASO for the purpose of determining Contractor’s compliance with this Agreement, HIPAA, and other Law, in a time and manner designated by the Secretary or SBHASO. Contractor: (i) immediately shall notify Salish BH-ASO of any requests from the Secretary pertaining to an investigation of an Upstream Covered Entity’s, SBHASO’s, or Contractor’s compliance with HIPAA; (ii) cooperate with Salish BH-ASO in responding to the Secretary’s request; and (iii) provide to SBHASO a copy of all documents provided to the Secretary.
- 3.10 **Part 2 Information.**
- 3.10.1 **Part 2 Obligations of Contractor.** To the extent that, in performing services for or on behalf of SBHASO under the Service Contract, Contractor uses, discloses, maintains, or transmits Part 2 Information, Contractor acknowledges and agrees that it: (i) is fully bound by Part 2; (ii) with respect to Part 2 Information received by SBHASO pursuant to an authorization or consent, will limit its use and disclosure of Part 2 Information to Payment and Health Care Operations purposes; and (iii) if necessary, will resist in judicial proceedings any efforts to obtain access to Part 2 Information except as permitted by Part 2.
- 3.10.2 **Notice.** 42 CFR Part 2 prohibits unauthorized disclosure of these records.
- 3.10.3 **Redisclosure.** Contractor shall not redisclose Part 2 Information to a third party unless the third party is a contract agent of Contractor helping Contractor provide services under the Service Contract and only as long as the agent further discloses Part 2 Information only back to Contractor or SBHASO.
- 3.10.4 **Compliance.** Contractor acknowledges that any unauthorized disclosure of Part 2 Information may be a federal criminal offense.
- 3.11 **Sexually Transmitted Disease Information Notice.** With respect to sexually transmitted disease information: This information has been disclosed to you (Contractor) from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written authorization for the release of medical or other information is NOT sufficient for this purpose.
- 3.12 **Covered Entity Obligations.** To the extent that Contractor is to carry out one or more of Covered Entity obligations under the Privacy Rule, Contractor shall comply with the requirements of the Privacy Rule that apply to a Covered Entity in the performance of the obligations.
- 3.13 **On-Site Services.** Contractor agrees that, while present at any SBHASO facility and/or when accessing SBHASO’s computer networks, it and all of its Workforce, agents, and Subcontractors at all times will comply with any network access and other security practices, policies, and procedures established by SBHASO including, without limitation, those established pursuant to HIPAA.
- 3.14 **No Sale of PHI.** Contractor agrees that it will not directly or indirectly receive remuneration in exchange for any PHI or PII without: (a) the written authorization of each applicable Individual, except when expressly permitted by the Privacy Rule; and (b) the advance written permissions of SBHASO.

- 3.15 **No Impermissible Marketing or Fundraising Communication.** Contractor agrees that it will not engage in Marketing or fundraising communications that would not be permitted by SBHASO or an Upstream Covered Entity under HIPAA.
- 3.16 **Mitigation.** Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI or PII by Contractor in breach of this Agreement, failure to comply with applicable Law, and any Event, as defined in Section 3.3.
- 3.17 **Compliance with Applicable Law.** Contractor shall comply with applicable Law. Contractor shall not act or fail to act in a manner that causes SBHASO to not be in compliance with applicable Law.

IV. **OBLIGATIONS OF SBHASO.** SBHASO shall not request Contractor to act in a manner that is not permissible under HIPAA.

V. **TERM AND TERMINATION.**

- 5.1 **Term.** The term of this Agreement shall be effective as of the Effective Date and shall terminate upon the expiration or termination of the Service Contract.
- 5.2 **Termination.** Upon SBHASO's knowledge of a material breach by Contractor of its obligations under this Agreement, SBHASO may notify Contractor, and Contractor shall have thirty (30) days from receipt of that notice to cure the breach or end the violation. Notwithstanding anything to the contrary in the Service Contract, if Contractor fails to cure the breach or end the violation within the designated time period, then SBHASO immediately may terminate the Service Contract upon notice.
- 5.3 **Effect of Termination.**
- 5.3.1 **Return or Destruction.** Except as provided in 5.3.2, upon termination of this Agreement, Contractor, within ten (10) days, shall return or destroy all PHI and PII. Any destruction shall be in a manner consistent with HIPAA and related guidance. This provision also shall apply to PHI and PII that is in the possession of agents or Subcontractors of Contractor. Neither Contractor nor its agents or Subcontractors shall retain copies of the PHI. Upon request, Contractor shall provide a certificate of appropriate destruction of the PHI and PII.
- 5.3.2 **Continued Protections.** In the event that Contractor determines that returning or destroying the PHI and PII is infeasible, Contractor shall provide within ten (10) days to SBHASO notification of the conditions that make return or destruction infeasible of PHI and PII. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible and to the extent Contractor retains knowledge of the PHI and PII, Contractor shall extend the protections of this Agreement to the PHI and PII and limit further uses and disclosures of the PHI and PII to those purposes that make the return or destruction infeasible, for as long as Contractor maintains, or retains knowledge of, the PHI or PII.

VI. **MISCELLANEOUS.**

- 6.1 **Indemnification Obligation.** Notwithstanding anything to the contrary in the Service Contract, Contractor will indemnify, defend at SBHASO's request, and hold harmless SBHASO, its Workforce, County Authorities Executive Committee, Advisory Board, partners, agents, and Subcontractors (collectively "**SBHASO Indemnified Parties**") from and against any and all claims, actions, investigations, proceedings, losses, liability, damages, costs, and expenses (including attorneys' fees, costs of defense, and costs of investigation, mitigation, remediation, and notification) incurred or suffered by an SBHASO Indemnified Party (collectively, "**Damages**") that

arise out of, result from, allege, or relate to any of the following: (i) Contractor's breach of this Agreement, including any breach of any representation or warranty; (ii) any Event reported by Contractor under this Agreement; (iii) any violation of Law by or caused by Contractor or its Workforce, agents, or Subcontractors; or (iv) any negligent act or omission, willful misconduct, strict liability, or fraud by or of Contractor or its Workforce, agents, or Subcontractors.

- 6.2 **Coverage of Costs.** In addition, and without limitation of Supplier's obligations under Section 6.1, Supplier will pay the reasonable costs incurred by SBHASO and any affected Upstream Covered Entities in connection with the following items with respect to any Event: (a) any investigation to determine the cause of an Event, including forensic consultations; (b) legal advice regarding an Event; (c) provision of notification of an Event to affected Individuals, applicable government, relevant industry self-regulatory agencies, and the media; (d) provision of credit monitoring and/or identity theft services to affected Individuals; (e) operation of a call center to respond to questions from Individuals; and (f) other reasonable mitigation efforts as deemed necessary or appropriate by SBHASO and any affected Upstream Covered Entity.
- 6.3 **Process for Indemnification.** SBHASO will notify Contractor of any Damages for which it seeks indemnification. Upon a SBHASO request for defense, Contractor will use counsel reasonably satisfactory to the SBHASO Indemnified Parties to defend each claim related to the Damages and will keep the SBHASO Indemnified Parties informed of the status of the defense of each of the Damages. SBHASO will give Contractor reasonable assistance, at Contractor's expense, as Contractor may reasonably request. SBHASO will provide Contractor the opportunity to assume sole control over defense and settlement, as long as Contractor will not consent to the entry of any judgment or enter into any settlement without the SBHASO Indemnified Parties' prior written consent, which will not be unreasonably withheld. Any SBHASO Indemnified Party may participate in the defense at its own expense. Contractor's duty to defend is independent of its duty to indemnify, to mitigate, or to cover costs.
- 6.4 **Not Limited by Insurance Coverage.** Contractor's indemnification, mitigation, coverage of costs, and defense obligations will not be limited in any manner whatsoever by any required or other insurance coverage maintained by Contractor.
- 6.5 **No Limitations on Liability.** Notwithstanding any other provision of this Agreement or the Service Contract, in no event will any exclusions, disclaimers, waivers, or limitations of any nature whatsoever apply to any damages, liability, rights, or remedies arising from or in connection with: (i) Contractor's indemnification and defense obligations under this Agreement; (ii) Contractor's breach of this Agreement, including any breach of any representation or warranty; (iii) any Event reported by Contractor; (iv) any violation of Law by or caused by Contractor or its Workforce, agents, or Subcontractors; or (v) any negligent act or omission, willful misconduct, strict liability, or fraud by or of Contractor or its Workforce, agents, or Subcontractors.
- 6.6 **Ownership of Information.** The Parties agree that Contractor shall not have an ownership interest in PHI or PII or any derivations of the PHI or PII.
- 6.7 **Insurance.** Contractor shall maintain appropriate and adequate insurance coverage, including cyber insurance, to cover Contractor's obligations pursuant to this Agreement. Contractor's cyber insurance shall be no less than one million dollars (\$1,000,000) per occurrence. Upon request, Contractor shall provide evidence of insurance coverage.
- 6.8 **Equitable and Injunctive Relief.** The Parties acknowledge that the use or disclosure of PHI or PII in a manner inconsistent with this Agreement may cause SBHASO and its Upstream Covered

Entities irreparable damage and that SBHASO and its Upstream Covered Entities shall have the right to equitable and injunctive relief, without having to post bond, to prevent the unauthorized use or disclosure of PHI or PII and to damages as are occasioned by an Event in addition to other remedies available at law or in equity. SBHASO's and Upstream Covered Entities' remedies under this Agreement and the Service Contract shall be cumulative, and the exercise of any remedy shall not preclude the exercise of any other.

- 6.9 **Third Party Beneficiaries.** Notwithstanding anything to the contrary in the Service Contract or this Agreement, Individuals who are the subject of PHI shall be third party beneficiaries to this Agreement. Subject to the foregoing, nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 6.10 **Interpretation.** This Agreement shall be interpreted in a manner consistent with the Parties' intent to comply with HIPAA, Part 2, and other Law. Any ambiguity of this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with HIPAA, Part 2, and other Law. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of HIPAA, HIPAA shall control. In the event of any inconsistency between this Agreement and the Service Contract or any other agreement between the Parties, the terms of this Agreement shall control. Nothing in this Agreement shall be construed as a waiver of any legal privilege or protection, including for trade secrets or confidential commercial information.
- 6.11 **Survival.** The obligations of Contractor under Sections 3.2, 3.3, 3.6, 3.8, 3.10, 3.11, 3.14, 3.16, 5.3, 6.1, 6.2, 6.3, 6.4, 6.6, 6.8, and 6.9 of this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Service Contract, and/or the business relationship of the Parties, and shall continue to bind Contractor, its Workforce, agents, employees, subcontractors, successors, and assigns as set forth in this Agreement.
- 6.12 **Amendment.** This Agreement may be amended or modified only in a writing signed by the Parties. The Parties agree that they will negotiate amendments to this Agreement to conform to any changes in HIPAA and Part 2.
- 6.13 **Assignment.** Neither Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.
- 6.14 **Independent Contractor.** None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. No agency relationship is deemed created by this Agreement.
- 6.15 **Governing Law.** To the extent this Agreement is not governed exclusively by HIPAA, Part 2, or other Law, it will be governed by and construed in accordance with the laws of the State of Washington.
- 6.16 **No Waiver.** No change, waiver, or discharge of any liability or obligation under this Agreement on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- 6.17 **Severability.** In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.

- 6.18 **Notice.** Any notification required in this Agreement shall be made in writing to the representative of the Party who signed this Agreement or the person currently serving in that representative's position with the other Party.
- 6.19 **Entire Agreement.** This Agreement constitutes the entire understanding of the Parties with respect to its subject matter and supersedes all prior agreements, oral or written.



## ATTACHMENT E: DATA USE, SECURITY AND CONFIDENTIALITY

### 1 Definitions

The definitions below apply to this Attachment:

- 1.1 **“Authorized User”** means an individual or individuals with an authorized business need to access HCA’s Confidential Information under this Contract.
- 1.2 **“Breach”** means the unauthorized acquisition, access, use, or disclosure of Data shared under this Contract that compromises the security, confidentiality or integrity of the Data.
- 1.3 **“Business Associate”** means a Business Associate as defined in 45 CFR 160.103, who performs or assists in the performance of an activity for or on behalf of HCA, a Covered Entity that involves the use or disclosure of protected health information (PHI). Any reference to Business Associate in this DSA includes Business Associate’s employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.
- 1.4 **“Business Associate Agreement”** means the HIPAA Compliance section of this Exhibit and includes the Business Associate provisions required by the U.S. Department of Health and Human Services, Office for Civil Rights.
- 1.5 **“Covered Entity”** means HCA, which is a Covered Entity as defined in 45 C.F.R. § 160.103, in its conduct of covered functions by its health care components.
- 1.6 **“Data”** means the information that is disclosed or exchanged as described by this Contract. For purposes of this Attachment, Data means the same as “Confidential Information.”
- 1.7 **“Designated Record Set”** means a group of records maintained by or for a Covered Entity, that is: the medical and billing records about Individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or Used in whole or part by or for the Covered Entity to make decisions about Individuals.
- 1.8 **“Disclosure”** means the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information.
- 1.9 **“Electronic Protected Health Information (ePHI)”** means Protected Health Information that is transmitted by electronic media or maintained as described in the definition of electronic media at 45 C.F.R. § 160.103.
- 1.10 **“Hardened Password”** after July 1, 2019 means a string of characters containing at least three of the following character classes: upper case letters; lower case letters; numerals; and special characters, such as an asterisk, ampersand or exclamation point.
  - 1.10.1 Passwords for external authentication must be a minimum of 10 characters long.
  - 1.10.2 Passwords for internal authentication must be a minimum of 8 characters long.
  - 1.10.3 Passwords used for system service or service accounts must be a minimum of 20 characters long.

- 1.11 **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, as amended, together with its implementing regulations, including the Privacy Rule, Breach Notification Rule, and Security Rule. The Privacy Rule is located at 45 C.F.R. Part 160 and Subparts A and E of 45 C.F.R. Part 164. The Breach Notification Rule is located in Subpart D of 45 C.F.R. Part 164. The Security Rule is located in 45 C.F.R. Part 160 and Subparts A and C of 45 C.F.R. Part 164.
- 1.12 **“HIPAA Rules”** means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and Part 164.
- 1.13 **“Medicare Data Use Requirements”** refers to the four documents attached and incorporated into this Exhibit as Schedules 1, 2, 3, and 4 that set out the terms and conditions Contractor must agree to for the access to and use of Medicare Data for the Individuals who are dually eligible in the Medicare and Medicaid programs.
- 1.14 **“Minimum Necessary”** means the least amount of PHI necessary to accomplish the purpose for which the PHI is needed.
- 1.15 **“Portable/Removable Media”** means any Data storage device that can be detached or removed from a computer and transported, including but not limited to: optical media (e.g. CDs, DVDs); USB drives; or flash media (e.g. CompactFlash, SD, MMC).
- 1.16 **“Portable/Removable Devices”** means any small computing device that can be transported, including but not limited to: handhelds/PDAs/Smartphones; Ultramobile PC’s, flash memory devices (e.g. USB flash drives, personal media players); and laptops/notebook/tablet computers. If used to store Confidential Information, devices should be Federal Information Processing Standards (FIPS) Level 2 compliant.
- 1.17 **“PRISM”** means the DSHS secure, web-based clinical decision support tool that shows administrative data for each Medicaid Client and is organized to identify care coordination opportunities.
- 1.18 **“Protected Health Information”** or “PHI” has the same meaning as in HIPAA except that it in this Contract the term includes information only relating to individuals.
- 1.19 **“ProviderOne”** means the Medicaid Management Information System, which is the State’s Medicaid payment system managed by HCA.
- 1.20 **“Security Incident”** means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
- 1.21 **“Tracking”** means a record keeping system that identifies when the sender begins delivery of Confidential Information to the authorized and intended recipient, and when the sender receives confirmation of delivery from the authorized and intended recipient of Confidential Information.
- 1.22 **“Transmitting”** means the transferring of data electronically, such as via email, SFTP, web-services, AWS Snowball, etc.
- 1.23 **“Transport”** means the movement of Confidential Information from one entity to another, or within an entity, that: places the Confidential Information outside of a Secured Area or system (such as a local area network); and is accomplished other than via a Trusted System.

- 1.24 **“Trusted System(s)”** means the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service (“USPS”) first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.
- 1.25 **“U.S.C.”** means the United States Code. All references in this Exhibit to U.S.C. chapters or sections will include any successor, amended, or replacement statute. The U.S.C. may be accessed at <http://uscode.house.gov/>
- 1.26 **“Unique User ID”** means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase, or other mechanism, authenticates a user to an information system.
- 1.27 **“Use”** includes the sharing, employment, application, utilization, examination, or analysis, of Data.

## **2 Data Classification**

- 2.1 The State classifies data into categories based on the sensitivity of the data pursuant to the Security policy and standards promulgated by the Office of the state of Washington Chief Information Officer. (See Section 4 of this Exhibit, Data Security, of Securing IT Assets Standards No. 141.10 in the State Technology Manual at <https://ocio.wa.gov/policies/141-securing-information-technology-assets/14110-securing-information-technology-assets.>)

The Data that is the subject of this Contract is classified as Category 4 – Confidential Information Requiring Special Handling. Category 4 Data is information that is specifically protected from disclosure and for which:

- 2.1.1 Especially strict handling requirements are dictated, such as by statutes, regulations, or agreements;
- 2.1.2 Serious consequences could arise from unauthorized disclosure, such as threats to health and safety, or legal sanctions.

## **3 PRISM Access- N/A**

## **4 Constraints on Use of Data**

- 4.1 This Contract does not constitute a release of the Data for the Contractor’s

discretionary use. Contractor must use the Data received or accessed under this Contract only to carry out the purpose of this Contract. Any ad hoc analyses or other use or reporting of the Data is not permitted without SBHASO's and HCA's prior written consent.

- 4.2 Data shared under this Contract includes data protected by 42 C.F.R. Part 2. In accordance with 42 C.F.R. § 2.32, this Data has been disclosed from records protected by federal confidentiality rules (42 C.F.R. Part 2). The federal rules prohibit Receiving Party from making any further disclosure of the Data that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed or as otherwise permitted by 42 C.F.R. Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (42 C.F.R. § 2.31). The federal rules restrict any use of the SUD Data to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at 42 C.F.R. § 2.12(c)(5) and § 2.65.
  - 4.2.1 The information received under subsection 7.7 of the Contract is also protected by federal law, including 42 C.F.R. Part 2, Subpart D, § 2.53, which requires HCA and their Subcontractors to:
    - 4.2.1.1 Maintain and destroy the patient identifying information in a manner consistent with the policies and procedures established under 42 C.F.R. § 2.16;
    - 4.2.1.2 Retain records in compliance with applicable federal, state, and local record retention laws; and
    - 4.2.1.3 Comply with the limitations on disclosure and Use in 42 C.F.R. Part 2, Subpart D, § 2.53(d).
- 4.3 Any disclosure of Data contrary to this Contract is unauthorized and is subject to penalties identified in law.
- 4.4 The Contractor must comply with the *Minimum Necessary Standard*, which means that Contractor will use the least amount of PHI necessary to accomplish the Purpose of this Contract.
  - 4.4.1 Contractor must identify:
  - 4.4.2 Those persons or classes of persons in its workforce who need access to PHI to carry out their duties; and
  - 4.4.3 For each such person or class of persons, the category or categories of PHI to which access is needed and any conditions appropriate to such access.

- 4.4.4 Contractor must implement policies and procedures that limit the PHI disclosed to such persons or classes of persons to the amount reasonably necessary to achieve the purpose of the disclosure, in accordance with this Contract.

## 5 Security of Data

### 5.1 Data Protection

- 5.1.1 The Contractor must protect and maintain all Confidential Information gained by reason of this Contract, information that is defined as confidential under state or federal law or regulation, or Data that HCA has identified as confidential, against unauthorized use, access, disclosure, modification or loss. This duty requires the Contractor to employ reasonable security measures, which include restricting access to the Confidential Information by:

- 5.1.1.1 Allowing access only to staff that have an authorized business requirement to view the Confidential Information.

- 5.1.1.2 Physically securing any computers, documents, or other media containing the Confidential Information.

### 5.2 Data Security Standards

- 5.2.1 Contractor must comply with the Data Security Requirements set out in this section and the Washington OCIO Security Standard, 141.10, which will include any successor, amended, or replacement regulation (<https://ocio.wa.gov/policies/141-securing-information-technology-assets/14110-securing-information-technology-assets>.) The Security Standard 141.10 is hereby incorporated by reference into this Contract.

#### 5.2.2 Data Transmitting

- 5.2.2.1 When transmitting Data electronically, including via email, the Data must be encrypted using NIST 800-series approved algorithms (<http://csrc.nist.gov/publications/PubsSPs.html>). This includes transmission over the public internet.

- 5.2.2.2 When transmitting Data via paper documents, the Contractor must use a Trusted System.

- 5.2.3 Protection of Data. The Contractor agrees to store and protect Data as described.

- 5.2.3.1 Data at Rest:

#### 5.2.3.1.1

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

#### 5.2.3.2 Data stored on Portable/Removable Media or Devices

##### 5.2.3.2.1

Confidential Information provided by SBHASO or HCA on Removable Media will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the Data.

##### 5.2.3.2.2

HCA's Data must not be stored by the Contractor on Portable Devices or Media unless specifically authorized within the Contract. If so authorized, the Contractor must protect the Data by:

- a. Encrypting with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data;
- b. Controlling access to the devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics;
- c. Keeping devices in locked storage when not in use;
- d. Using check-in/check-out procedures when devices are shared;

- e. Maintaining an inventory of devices; and
- f. Ensuring that when being transported outside of a Secured Area, all devices containing Data are under the physical control of an Authorized User.

5.2.3.3 Paper Documents. Any paper records containing Confidential Information must be protected by storing the records in a Secured Area that is accessible only to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.

#### 5.2.4 Data Segregation

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

5.2.4.2 HCA's Data must be kept in one of the following ways:

5.2.4.2.1 On media (e.g. hard disk, optical disc, tape, etc.) which contains only HCA Data;

5.2.4.2.2 In a logical container on electronic media, such as a partition or folder dedicated to HCA's Data;

5.2.4.2.3 In a database that contains only HCA Data;

5.2.4.2.4 Within a database – HCA data must be distinguishable from non- HCA Data by the value of a specific field or fields within database records;

5.2.4.2.5 Physically segregated from non-HCA Data in a drawer, folder, or other container when stored as physical paper documents.

5.2.4.3 When it is not feasible or practical to segregate HCA's Data from non-HCA data, both HCA's Data

and the non-HCA data with which it is commingled must be protected as described in this Exhibit.

### 5.3 Data Disposition

- 5.3.1 Upon request by SBHASO or HCA, at the end of the Contract term, or when no longer needed, Confidential Information/Data must be returned to HCA or disposed of as set out below, except as required to be maintained for compliance or accounting purposes.
- 5.3.2 Media are to be destroyed using a method documented within NIST 800-88 (<http://csrc.nist.gov/publications/PubsSPs.html>).
- 5.3.3 For Data stored on network disks, deleting unneeded Data is sufficient as long as the disks remain in a Secured Area and otherwise meet the requirements listed in Section 4.b.iii, above. Destruction of the Data as outlined in this section of this Exhibit may be deferred until the disks are retired, replaced, or otherwise taken out of the Secured Area.

## 6 Data Confidentiality and Non-Disclosure

### 6.1 Data Confidentiality.

- 6.1.1 The Contractor will not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of this Contract for any purpose that is not directly connected with the purpose of this Contract, except:
  - 6.1.1.1 as provided by law; or
  - 6.1.1.2 with the prior written consent of the person or personal representative of the person who is the subject of the Confidential Information.

### 6.2 Non-Disclosure of Data

- 6.2.1 The Contractor will ensure that all employees or Subcontractors who will have access to the Data described in this Contract (including both employees who will use the Data and IT support staff) are instructed and aware of the use restrictions and protection requirements of this Attachment before gaining access to the Data identified herein. The Contractor will ensure that any new employee is made aware of the use restrictions and protection requirements of this Attachment before they gain access to the Data.



6.2.2 The Contractor will ensure that each employee or Subcontractor who will access the Data signs a non-disclosure of confidential information agreement regarding confidentiality and non-disclosure requirements of Data under this Contract. The Contractor must retain the signed copy of employee non-disclosure agreement in each employee's personnel file for a minimum of six years from the date the employee's access to the Data ends. The Contractor will make this documentation available to SBHASO or HCA upon request.

### 6.3 Penalties for Unauthorized Disclosure of Data

6.3.1 The Contractor must comply with all applicable federal and state laws and regulations concerning collection, use, and disclosure of Personal Information and PHI. Violation of these laws may result in criminal or civil penalties or fines.

6.3.2 The Contractor accepts full responsibility and liability for any noncompliance with applicable laws or this Contract by itself, its employees, and its Subcontractors.

## 7 Data Shared with Subcontractors

If Data access is to be provided to a Subcontractor under this Contract, the Contractor must include all of the Data security terms, conditions and requirements set forth in this Attachment in any such Subcontract.

However, no subcontract will terminate the Contractor's legal responsibility to HCA for any work performed under this Contract nor for oversight of any functions and/or responsibilities it delegates to any subcontractor. Contractor must provide an attestation by January 31, each year that all Subcontractor meet, or continue to meet, the terms, conditions, and requirements in this Attachment.

## 8 Data Breach Notification

8.1 The Breach or potential compromise of Data must be reported to the SBHASO Privacy Officer at [IClauson@co.kitsap.wa.us](mailto:IClauson@co.kitsap.wa.us) and to the SBHASO Contract Manager at [Sjlewis@co.kitsap.wa.us](mailto:Sjlewis@co.kitsap.wa.us) within five (5) business days of discovery. If the Contractor does not have full details, it will report what information it has, and provide full details within fifteen (15) business days of discovery. To the extent possible, these reports must include the following:

8.1.1 The identification of each non-Medicaid Individual whose PHI has been or may have been improperly accessed, acquired, used, or disclosed;

8.1.2 The nature of the unauthorized use or disclosure, including a brief description of what happened, the date of the event(s), and the date of discovery;

- 8.1.3 A description of the types of PHI involved;
  - 8.1.4 The investigative and remedial actions the Contractor or its Subcontractor took or will take to prevent and mitigate harmful effects, and protect against recurrence;
  - 8.1.5 Any details necessary for a determination of the potential harm to Individuals whose PHI is believed to have been used or disclosed and the steps those Individuals should take to protect themselves; and
  - 8.1.6 Any other information SBHASO or HCA reasonably requests.
- 8.2 The Contractor must take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or HCA including but not limited to 45 C.F.R. Part 164, Subpart D; RCW 42.56.590; RCW 19.255.010; or WAC 284-04-625.
- 8.3 The Contractor must notify SBHASO in writing, as described in 8.a above, within two (2) business days of determining notification must be sent to non-Medicaid Individuals.
- 8.4 At SBHASO's or HCA's request, the Contractor will provide draft Individual notification to HCA at least five (5) business days prior to notification, and allow HCA an opportunity to review and comment on the notifications.
- 8.5 At SBHASO's or HCA's request, the Contractor will coordinate its investigation and notifications with HCA and the Office of the state of Washington Chief Information Officer (OCIO), as applicable.

## **9 HIPAA Compliance**

This section of the Attachment is the Business Associate Agreement (BAA) required by HIPAA. The Contractor is a "Business Associate" of SBHASO as defined in the HIPAA Rules.

- 9.1 HIPAA Point of Contact. The point of contact for the Contractor for all required HIPAA-related reporting and notification communications from this Section and all required Data Breach Notification from Section 8, is:

Salish Behavioral Health Administrative Services Organization  
Attention: Ileea Clauson, Privacy Officer  
614 Division St., MS-23  
Port Orchard, WA 98366  
Telephone: (360) 337-4833  
Email: [IClauson@co.kitsap.wa.us](mailto:IClauson@co.kitsap.wa.us)

- 9.2 Compliance. Contractor must perform all Contract duties, activities, and

tasks in compliance with HIPAA, the HIPAA Rules, and all attendant regulations as promulgated by the U.S. Department of Health and Human Services, Office for Civil Rights, as applicable.

- 9.3 Use and Disclosure of PHI. Contractor is limited to the following permitted and required uses or disclosures of PHI:
  - 9.3.1 Duty to Protect PHI. Contractor must protect PHI from, and will use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164, Security Standards for the Protection of Electronic Protected Health Information, with respect to ePHI, to prevent unauthorized Use or disclosure of PHI for as long as the PHI is within Contractor's possession and control, even after the termination or expiration of this Contract.
  - 9.3.2 Minimum Necessary Standard. Contractor will apply the HIPAA Minimum Necessary standard to any Use or disclosure of PHI necessary to achieve the purposes of this Contractor. See 45 C.F.R. § 164.514(d)(2) through (d)(5).
  - 9.3.3 Disclosure as Part of the Provision of Services. Contractor will only Use or disclose PHI as necessary to perform the services specified in this Contract or as required by law, and will not Use or disclose such PHI in any manner that would violate Subpart E of 45 C.F.R. Part 164, Privacy of Individually Identifiable Health Information, if done by Covered Entity, except for the specific Uses and disclosures set forth below.
  - 9.3.4 Use for Proper Management and Administration. Contractor may Use PHI for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor.
  - 9.3.5 Disclosure for Proper Management and Administration. Contractor may disclosure PHI for the proper management and administration of Contractor, subject to HCA approval, or to carry out the legal responsibilities of the Contractor, provided the disclosures are required by law, or Contractor obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and 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 Contractor of any instances of which it is aware in which the confidentiality of the information has been Breached.
  - 9.3.6 Impermissible Use or Disclosure of PHI. Contractor must report to the HIPAA Point of Contact, in writing, all Uses or disclosures of PHI not provided for by this Contract within five (5) business days of becoming aware of the unauthorized Use or disclosure of PHI, including Breaches of unsecured PHI as required at 45 C.F.R. §

164.410, Notification by a Business Associate, as well as any Security Incident of which Contractor becomes aware. Upon request by SBHASO or HCA, Contractor will mitigate, to the extent practicable, any harmful effect resulting from the impermissible Use or disclosure.

- 9.3.7 Failure to Cure. If SBHASO learns of a pattern or practice of the Contractor that constitutes a violation of Contractor's obligations under the term of this Attachment and reasonable steps by the Contractor do not end the violation, SBHASO may terminate this Contract, if feasible. In addition, if Contractor learns of a pattern or practice of its Subcontractor(s) that constitutes a violation of Contractor's obligations under the terms of their contract and reasonable steps by the Contractor do not end the violation, Contractor must terminate the Subcontract, if feasible.
- 9.3.8 Termination for Cause. Contractor authorizes immediate termination of this Contract by SBHASO, if SBHASO determines Contractor has violated a material term of this Business Associate Agreement. SBHASO may, at its sole option, offer Contractor an opportunity to cure a violation of this Business Associate Agreement before exercising a termination for cause.
- 9.3.9 Consent to Audit. Contractor must give reasonable access to PHI, its internal practices, records, books, documents, electronic data, and/or all other business information received from, or created, received by Contractor on behalf of SBHASO or HCA, to the Secretary of the United States Department of Health and Human Services (DHHS) and/or to HCA for use in determining compliance with HIPAA privacy requirements.
- 9.3.10 Obligations of Business Associate upon Expiration or Termination. Upon expiration or termination of this Contract for any reason, with respect to PHI received from SBHASO or HCA, or created, maintained, or received by Contractor, or any Subcontractors, on behalf of SBHASO or HCA, Contractor must:
  - 9.3.10.1 Retain only that PHI which is necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities;
  - 9.3.10.2 Return to SBHASO or HCA or destroy the remaining PHI that the Contractor or any Subcontractors still maintain in any form;
  - 9.3.10.3 Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164, Security Standards for Protection of Electronic Protected Health Information, with respect to ePHI to prevent Use or disclosure of the PHI,

other than as provided for in this Section, for as long as Contractor or any Subcontractor retains PHI;

9.3.10.4 Not Use or disclose the PHI retained by Contractor or any Subcontractors other than for the purposes for which such PHI was retained and subject to the same conditions set out in Section 9.3, Use and Disclosure of PHI, that applied prior to termination; and

9.3.10.5 Return to SBHASO or HCA or destroy the PHI retained by Contractor, or any Subcontractors, when it is no longer needed by Contractor for its proper management and administration or to carry out its legal responsibilities.

9.3.11 Survival. The obligations of Contractor under this Section will survive the termination or expiration of the Contract.

#### 9.4 Individual Rights.

##### 9.4.1 Accounting of Disclosures.

9.4.1.1 Contractor will document all disclosures, except those disclosures that are exempt under 45 C.F.R. § 164.528, of PHI and information related to such disclosures.

9.4.1.2 Within ten (10) business days of a request from SBHASO or HCA, Contractor will make available to HCA the information in Contractor's possession that is necessary for HCA to respond in a timely manner to a request for an accounting of disclosures of PHI by the Contractor. See 45 C.F.R. §§ 164.504(e)(2)(ii)(G) and 164.528(b)(1).

9.4.1.3 At the request of SBHASO or HCA, or in response to a request made directly to the Contractor by an Individual, Contractor will 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.

9.4.1.4 Contractor record keeping procedures will be sufficient to respond to a request for an accounting under this section for the ten (10) years prior to the date on which the accounting was requested.

##### 9.4.2 Access.

9.4.2.1 Contractor will make available PHI that it holds that is part of a Designated Record Set when requested by HCA or the Individual as necessary to satisfy HCA's

obligations under 45 C.F.R. § 164.524, Access of Individuals to Protected Health Information.

9.4.2.2 When the request is made by the Individual to the Contractor or if SBHASO or HCA ask the Contractor to respond to a request, the Contractor must comply with requirements in 45 C.F.R. § 164.524, Access of Individuals to Protected Health Information, on form, time and manner of access. When the request is made by HCA, the Contractor will provide the records to HCA within ten (10) business days.

9.4.3 Amendment.

9.4.3.1 If SBHASO or HCA amends, in whole or in part, a record or PHI contained in an Individual's Designated Record Set and SBHASO or HCA has previously provided the PHI or record that is the subject of the amendment to Contractor, then SBHASO will inform Contractor of the amendment pursuant to 45 C.F.R. § 164.526(c)(3), Amendment of Protected Health Information.

9.4.3.2 Contractor will make any amendments to PHI in a Designated Record Set as directed by SBHASO or HCA or as necessary to satisfy SBHASO's and HCA's obligations under 45 C.F.R. § 164.526, Amendment of Protected Health Information.

9.5 Subcontracts and other Third Party Agreements. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii), 164.504(e)(1)(i), and 164.308(b)(2), Contractor must ensure that any agents, Subcontractors, independent contractors, or other third parties that create, receive, maintain, or transmit PHI on Contractor's behalf, enter into a written contract that contains the same terms, restrictions, requirements, and conditions as the HIPAA compliance provisions in this Contract with respect to such PHI. The same provisions must also be included in any contracts by a Contractor's Subcontractor with its own business associates as required by 45 C.F.R. §§ 164.314(a)(2)(b) and 164.504(e)(5).

9.6 Obligations. To the extent the Contractor is to carry out one or more of HCA's obligation(s) under Subpart E of 45 C.F.R. Part 164, Privacy of Individually Identifiable Health Information, Contractor must comply with all requirements that would apply to HCA in the performance of such obligation(s).

9.7 Liability. Within ten (10) business days, Contractor must notify the HIPAA Point of Contact 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 HCA of the outcome of that action. Contractor bears all responsibility for any penalties, fines or sanctions

imposed against the Contractor for violations of the HIPAA Rules and for any imposed against its Subcontractors or agents for which it is found liable.

**9.8 Miscellaneous Provisions.**

9.8.1 Regulatory References. A reference in this Contract to a section in the HIPAA Rules means the section as in effect or amended.

9.8.2 Interpretation. Any ambiguity in this Exhibit will be interpreted to permit compliance with the HIPAA Rules.

**10 Inspection**

SBHASO and HCA reserve the right to monitor, audit, or investigate the use of Personal Information and PHI of Individuals collected, used, or acquired by Contractor during the terms of this Contract. All SBHASO and HCA representatives conducting onsite audits of Contractor agree to keep confidential any patient-identifiable information which may be reviewed during the course of any site visit or audit.

**11 Indemnification**

The Contractor must indemnify and hold SBHASO and HCA and its employees harmless from any damages related to the Contractor's or Subcontractor's unauthorized use or release of Personal Information or PHI of Individuals.

## ATTACHMENT F: CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and believe, that:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**Contractor Organization**

  
Signature of Certifying Official

7/1/2022  
Date



**ATTACHMENT G: CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
AND OTHER RESPONSIBILITY MATTERS** Primary Covered Transactions 45 CFR 76

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principles:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
  - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connections with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1.b. of this certification; and
  - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participants are unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

This Certification is executed by the person(s) signing below who warrant they have authority to execute this Certification.

**CONTRACTOR:**

Jim Novelli  
Name:

Executive Director  
Title:

Date: 7/1/2022





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