



**REQUEST FOR PROPOSALS
KITSAP COUNTY
2022-151**

ANIMAL CONTROL HEARING EXAMINER

Posted: Date

**Proposal Response Deadline:
December 6, 2022, 2:00 p.m.**

SCOPE OF WORK

Kitsap County is seeking a qualified person to fill the role of its Animal Control Hearing Examiner (“Examiner”). The Examiner routinely hears appeals from the following decisions of the Kitsap Humane Society (currently the animal control authority via contract for Kitsap County).

- Dangerous and Potentially Dangerous Dog designation; and
- Dangerous Dog conditions.

Historically, Examiners have heard fewer than four cases per year but must be available for up to ten hearings.

The Examiner shall receive and examine available information, conduct public hearings, preparing findings in accordance with adopted County code and render decisions in writing that are clear (complete and internally consistent), factually accurate and legally sufficient. Formal rules of evidence need not be followed, but witnesses shall be sworn by the Examiner.

The County will provide facilities for the conduct of the hearings, including hearing room and recording equipment. The County will also provide staff support at the hearing, will carry out all public notice requirements, record keeping, and will provide clerical services for finalizing and distributing decisions and any correspondence.

A contract awarded as a result of this RFP will be for a 12 month period and is intended to start January 1, 2023 and end December 31, 2023. The County reserves the right to extend the contract resulting from this RFP for a period of two (2) one (1) year periods, with the same terms and conditions by execution of a contract amendment prior to the contract termination date.

Relevant Code Excerpt

Procedures and role of the hearing examiner are further described in Kitsap County Code Sub-section 7.12.010 excerpted below:

7.12.010 Potentially dangerous animals

(g) Appeal to Hearing Examiner. The owner of an animal declared potentially dangerous shall have fourteen calendar days from receipt of the written declaration to appeal the declaration to the Clerk of the Board of County Commissioners. Within fourteen calendar days of receiving the written notice of appeal, the Clerk of the Board of County Commissioners shall schedule an appeal hearing before the hearing examiner and provide written notice of the hearing to the owner of the potentially dangerous animal, the animal control authority, and the hearing examiner.

(h) Hearing Before Hearing Examiner. At the appeal hearing before the hearing examiner, the animal control authority shall have the burden of proving that the animal is potentially dangerous by a preponderance of the evidence. The owner of the animal may present evidence in defense of the animal. The hearing examiner shall weigh the evidence presented by both the animal control authority and the owner (if applicable), and shall issue a written decision to the appealing animal owner and animal control authority that either sustains or reverses the animal control authority’s declaration. If the declaration is sustained or reversed by the hearing examiner, the appealing animal owner or the animal control authority shall be notified of the right to appeal. If the declaration is reversed and an appeal is not timely filed by the animal control authority, any restrictions on the animal previously imposed shall be annulled.

Submittal Requirements

- Bidder Certificate Exhibit A (Attached) Returned with Submission
- Contractor References Exhibit B (Attached) Returned with Submission

- **Project Team** If not a sole proprietorship, what resources do you have available in managing these cases?
- **Approach** Define how you propose to conduct a hearing both in person and virtually; describe how you have dealt with hostile witnesses or parties.
- **Respondent's Capabilities** Show your capability i.e. Resume/previous work history/samples etc.
- **Project Approach and Understanding** What examples can you provide to show your understanding of the work of a Hearings Examiner, and your approach to completing the work defined here?
- **Proposed Cost** An hourly rate should be shown, split out if the rate varies for time during hearing versus preparatory and report writing of findings.

Selection Criteria

Kitsap County is seeking a contractor that meets the following criteria:

- Have education and experience in regulatory and code enforcement matters;
- Have experience in adjudicating and /or participation in administrative and quasi-judicial hearings;
- Have experience in mediation, dispute, or conflict resolution techniques;
- Demonstrated ability to coherently express opinions in writing.
- Be in good standing with the Washington State Bar Association

Each proposal received in response to the RFP will be objectively evaluated and rated according to a specified point system.

A one hundred (100) point system will be used, weighted against the following criteria:

Proposal approach/quality	10
Demonstrated Experience	30
Cost approach	25
References	35
Total Points	100

PROCUREMENT SCHEDULE

Item	Action	Date
1.	Kitsap County Issues Request Proposals	November 22 nd , 2022
2.	Proposer may submit written questions and comments until 3 p.m. Pacific Time	November 29 th , 2022
3.	Kitsap County will Issue responses.	December 2 nd , 2022
5.	Proposals due	December 6 th , 2022
8.	Interviews/demonstration (If Needed)	Will Schedule as needed
9.	Contract Execution	January 1,2023 (Anticipated)

PROPOSAL SUBMISSION

All responses to this Request for Proposals (RFP) must be complete. All proposals shall be on plain white bond paper (8.5 x 11 inches) and stapled once in the upper left corner. No binding or folders will be accepted. Binder clips may be used to keep pages together. The original response with five (2) additional printed copies and one electronic form (thumb drive), including all supporting material, must be sealed in an envelope or box and submitted to:

Please submit by mail to:

Glen McNeill, Purchasing Supervisor
Kitsap County Purchasing Office
614 Division Street, MS-7
Port Orchard, WA 98366

OR

For hand delivery, express , or courier:

Glen McNeill, Purchasing Supervisor
Kitsap County Administration Building
Purchasing Office – Fourth Floor
619 Division Street
Port Orchard, WA 98366

Please ensure that the box or envelope has this address clearly marked on it.

CONTRACT LENGTH

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



**EXHIBIT A
BIDDER CERTIFICATION**

Purchasing Department
 619 Division St., MS-7
 Port Orchard, WA 98366
 Phone: (360) 337-4789
 Purchasing@co.kitsap.wa.us

All information requested below must be provided. Failure to properly complete, sign and return this Bidder’s Certification form may cause the bid to be rejected. Bidder, through the duly authorized undersigned representative (“Representative”) makes this certification as a required element of submitting a responsive bid. Bidder certifies, to the best of its knowledge and belief, that the following are true, complete, correct, and made in good faith:

BIDDER AND REPRESENTATIVE INFORMATION			
Legal Name of Bidder: (Provide <i>full legal name</i>)			
Bidder’s Trade Names			
Bidder’s Street Address:			
Bidder’s Website			
Bidder Organization Type: (Check applicable box)	Corporation:	<input type="checkbox"/> Domestic	<input type="checkbox"/> Foreign
	Limited Liability Company (LLC):	<input type="checkbox"/> Domestic	<input type="checkbox"/> Foreign
	Partnership:	<input type="checkbox"/> Domestic	<input type="checkbox"/> Foreign
	Sole Proprietorship:	<input type="checkbox"/>	
State and Date of Formation:	Identify the state where the corporation, LLC, or partnership is formed – e.g., ‘Washington’ if domestic and the name of the state if ‘Foreign’ (i.e., not Washington)		
Federal Tax ID No.			
Washington State UBI No.			
State Industrial Acct ID No.			
Name/Title of Bidder’s Representative:			
Representative’s Address:			
Representatives Phone Nos			
Representative’s Email Address:			

Identify all Addenda received by Bidder:	Addendum No/Date Addendum No/Date Addendum No/Date Addendum No/Date Addendum No/Date
Did an outside individual/agency assist with the bid preparation? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please identify the individual/agency:	

1. UNDERSTANDING. Bidder certifies that Bidder has read, thoroughly examined, and fully understands all of the provisions, requirements and scope of the Solicitation (including all exhibits and attachments), the extent the local conditions affect the services to be provided, and the terms and conditions of the Contract and any amendments or clarifications to the Solicitation, and agrees to abide by the same. Bidder will make no claim against the County based upon ignorance of conditions or misunderstanding of the solicitation documents, or the goods and/or services to be provided.
2. ACCURACY. While the County has used considerable efforts to ensure the information in the solicitation is accurate, the County does not guarantee or warrant the information to be accurate nor is it necessarily comprehensive or exhaustive. Nothing in this solicitation is intended to relieve the Bidder from forming their own opinions and conclusions with respect to the matters addressed in the solicitation. Bidder certifies that Bidder has carefully prepared and reviewed its bid and fully supports the accuracy of the same. Bidder understands and acknowledges that the County shall not be responsible for any errors or omissions on the part of Bidder in preparing its bid and that the continuing compliance with these statements and all requirements of the Solicitation are conditions precedent to the award or continuation of the resulting Contract.
3. LEGAL CONSIDERATION. Bidder understands and acknowledges that it is the Bidder's responsibility to comply with all applicable federal, state, and local laws, ordinances, rules, and regulations applicable to the goods and services to be provided under this Solicitation.
4. LIABILITY FOR ERRORS. While the County has used considerable efforts to ensure the information in the solicitation is accurate, the County does not guarantee or warrant the information to be accurate nor is it necessarily comprehensive or exhaustive. Bidder understands and acknowledges that nothing in this solicitation is intended to relieve the Bidder from forming their own opinions and conclusions with respect to the matters addressed in the solicitation.
5. NO COLLUSION OR ANTI-COMPETITIVE PRACTICES. Bidder certifies that Bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this Solicitation. Bidder certifies that Bidder's bid prices have been arrived at independently, without engaging in collusion, bid rigging, or any other illegal activity, and without for the purpose of restricting competition any consultation, communication, or agreement with any other bidder or competitor relating to (a) those prices, (b) the intention to submit a bid, or (c) the methods or factors used to calculate the prices offered. Bidder certifies that Bidder has not been and will not knowingly disclose its bid prices, directly or indirectly, to any other bidder or competitor before award of a Contract, unless otherwise required by law. Bidder certifies that Bidder has made no attempt and shall not make any attempt to induce any other person or firm to submit or not to submit a bid for the purpose of restricting competition. However, Bidder may join with other persons or organizations for the purpose of presenting a bid.
6. FIRM OFFER. Bidder certifies that its bid, attached hereto, is a firm offer which cannot be withdrawn for a period of **ninety (90)** days following the bid due date and time. County may accept such bid, with or without further negotiation, at any time within such period. In the event of a protest, Bidder's bid shall remain valid for such period or until the protest and any related court action is resolved, whichever is later.
7. CONFLICT OF INTEREST. Bidder certifies that, in preparing this bid, Bidder has not been assisted by any current or former employee of the County whose duties relate (or did relate) to this Solicitation, or prospective Contract, and

who was assisting in other than his or her official, public capacity. Neither does such a person nor any member of his or her immediate family have any financial interest in the outcome of this bid.

8. **NO REIMBURSEMENT.** Bidder certifies that Bidder understands that the County will not reimburse Bidder for any costs incurred in preparing, submitting, developing, demonstrating, presenting, negotiating, or providing a response, and/or samples, for this solicitation. All such activities are done at the bidder's own expense.
9. **PERFORMANCE.** Bidder certifies that Bidder understands that its submittal of a bid and execution of this Bidder's Certification certifies bidder's willingness to comply with the Contract, if awarded such. By submitting this bid, Bidder hereby offers to furnish the goods and/or services solicited pursuant to this Solicitation in compliance with all terms, conditions, and performance requirements contained in this Solicitation and the resulting Contract.
10. **PUBLIC RECORDS.** Bidder understands and acknowledges that all bids and other records submitted to the County in response to the Solicitation are the property of the County and subject to the Public Records Act (Act), chapter 42.56 RCW. If a bidder considers any portion of its bid, electronic or hard copy, to be protected from inspection and copying under Washington law, it is the responsibility of the bidder to specifically identify each page and item the bidder claims to be exempt from disclosure. If the County receives a request under the Act to inspect or copy the information that has been identified by the bidder as exempt from disclosure, the County's sole obligation will be to make a reasonable effort to notify the bidder of the request and the date the exempt information will be released to the requestor unless the bidder obtains a court order to enjoin disclosure pursuant to RCW 42.56.540. The County will release the information unredacted on the date specified, absent receipt of a court order enjoining such disclosure. The County has, and by this section assumes, no obligation to claim any exemption from disclosure under the Act on behalf of the bidder. The County will not be liable to the bidder for the County's release of records that have been marked by the bidder as exempt.
11. **INSURANCE.** Bidder certifies that Bidder will provide a current, valid Certificate of Insurance for each and all of the required insurance coverages as specified in the Contract within the timeframe requested by the County, but no later than the execution date of the Contract.
12. **DEBARMENT.** Bidder certifies as follows (must check one):
 - NO DEBARMENT.*** Bidder and/or its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from contracting with any federal, state, or local governmental entity; OR
 - DEBARRED.*** As detailed on the attached explanation (Bidder to provide), Bidder and/or its principals presently are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from contracting with a federal, state, or local governmental entity.
13. **CRIMINAL OFFENSE, CIVIL JUDGMENT.** Bidder certifies as follows (must check one):
 - NO CRIMINAL OFFENSE, CIVIL JUDGMENT.*** Bidder and its officers, directors, and managers have not, within the three (3) year period preceding the date of this Solicitation, been convicted or had a civil judgment rendered against Bidder or such officers, directors, and managers for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a governmental contract; violation of any federal or state antitrust statute; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property. Bidder further certifies that Bidder, and its officers, directors, and managers are not presently indicted or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in this paragraph; **OR**
 - CRIMINAL OFFENSE, CIVIL JUDGMENT.*** As detailed on the attached explanation (Bidder to provide), within the three (3) year period preceding the date of this Solicitation, Bidder or its officers, directors, or managers have been convicted or had a civil judgment rendered against Bidder or such officers, directors, or managers for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a governmental contract; violation of any federal or state antitrust statute; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
14. **WAGE THEFT PREVENTION.** Bidder certifies as follows (must check one):
 - NO WAGE VIOLATIONS.*** Bidder has NOT been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered

by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapters 49.46, 49.48, or 49.52 RCW within three (3) years prior to the above-referenced Solicitation date; **OR**

- VIOLATIONS OF WAGE LAWS.* Bidder has been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, a provision of chapters 49.46, 49.48, or 49.52 RCW within three (3) years prior to the above-referenced Solicitation date.

15. **TERMINATION FOR DEFAULT OR CAUSE.** Bidder certifies as follows (must check one):

- NO TERMINATION FOR DEFAULT OR CAUSE.* Bidder has not, within the three (3) year period preceding the date of this Solicitation, had one (1) or more federal, state, or local governmental contracts terminated for cause or default; **OR**
- TERMINATION FOR DEFAULT OR CAUSE.* As detailed on the attached explanation (Bidder to provide), within the three (3) year period preceding the date of this Solicitation, Bidder has had one (1) or more federal, state, or local governmental contracts terminated for cause or default.

16. **TAXES.** Bidder certifies as follows (must check one):

- TAXES PAID.* Except as validly contested, Bidder is not delinquent and has paid or has arranged for payment of all taxes due by the Bidder and has filed all required returns and reports as applicable; **OR**
- DELINQUENT TAXES.* As detailed on the attached explanation (Bidder to provide), Bidder has not paid or arranged for payment of all taxes due by the Bidder and/or has not timely filed all required returns and reports as applicable.

17. **LAWFUL REGISTRATION.** Bidder, if conducting business other than as a sole proprietorship (e.g., Bidder is a corporation, limited liability company, partnership) certifies as follows (must check one):

- CURRENT LAWFUL REGISTRATION.* Bidder is in good standing in the State of Washington and the jurisdiction where Bidder is organized, including having timely filed all required annual reports; **OR**
- DELINQUENT REGISTRATION.* As detailed on the attached explanation (Bidder to provide), Bidder currently is not in good standing with the State of Washington and/or the jurisdiction where Bidder is organized.

18. **REGISTRATION WITH WASHINGTON STATE DEPARTMENT OF REVENUE.** Bidder certifies as follows (must check one):

- BIDDER IS REGISTERED WITH WASHINGTON STATE DEPARTMENT OF REVENUE.* Bidder is registered with the Washington State Department of Revenue, has a business license to do business in Washington, and has identified its Unified Business Identifier (UBI) number above.
OR
- BIDDER WILL REGISTER WITH WASHINGTON STATE DEPARTMENT OF REVENUE.* Bidder is not registered with the Washington State Department of Revenue but, if designated as the Apparent Successful Bidder, Bidder will register with the Washington State Department of Revenue and obtain a business license within twenty-four (24) hours of such designation or notification by County or be deemed a nonresponsive bid; **OR**
- BIDDER IS NOT REGISTERED WITH WASHINGTON STATE DEPARTMENT OF REVENUE.* Bidder is not registered with the Washington State Department of Revenue and Bidder declines to register with the Washington State Department of Revenue. *Note:* County requires all awarded bidders (including Washington firms and out of state firms) to be registered with the Washington State Department of Revenue. Bidders who are not registered will not be awarded a Contract.

19. **SUBCONTRACTORS.** Bidder certifies as follows (must check one):

- NO SUBCONTRACTORS.* If awarded a Contract, Bidder will not utilize subcontractors to provide the goods and/or services subject to this Solicitation; **OR**
- SUBCONTRACTORS.* As detailed on the attached explanation (Bidder to provide), if awarded a Contract, Bidder will utilize subcontractors to provide the goods and/or services subject to this Solicitation. In such event, Bidder certifies that, as to County, Bidder shall retain responsibility for its subcontractors, including, without limitation, liability for any subcontractor's acts or omissions. Bidder must provide the precise legal name (including state of organization), business address, and federal tax identification number for each subcontractor. Do not provide any social security numbers.

20. REFERENCES. Bidder certifies the references provided to the County have worked with Bidder and that such individuals and firms have full permission, without any additional requirement or release, to provide such references and information to the County. Bidder hereby authorizes the County (or its agent) to contact Bidder's references and others who may have pertinent information regarding Bidder's prior experience and ability to perform the Contract, if awarded. Bidder further authorizes such individuals and firms to provide references and release such information to the County.
21. REQUIRED LICENSES/CERTIFICATIONS. Bidder certifies that Bidder is fully licensed and certified (in good standing) for the type of work to be performed in Washington state as identified in the Solicitation at the time of the bid and will remain so throughout the Contract term.
22. AUTHORIZATION. The undersigned certifies that he/she is an authorized representative of the Bidder identified above; is authorized to submit this bid and make these certifications on behalf of the Bidder; and further certifies under penalty of perjury under the laws of the State of Washington, that the certifications herein are true and correct and made in good faith:

Bidder's Signature (*Authorized Representative*): _____

Print Name and Title of Signer: _____

Dated this ____ day of _____, 20____



**EXHIBIT B
CONTRACTOR REFERENCES**

Purchasing Department
619 Division St., MS-7
Port Orchard, WA 98366
Phone: (360) 337-4789
Purchasing@co.kitsap.wa.us

BIDDER'S NAME: _____

BIDDERS: Provide at least three (3) references that can verify the Bidder's experience and ability to provide the goods and services identified in the solicitation.

Agency Name:	Contract Period:
Contact Person (<i>Name and Title</i>):	
Complete Primary Address:	
Telephone Number:	E-mail Address:
Project Name:	Go Live Date:
Modules/Functionality Installed:	
Other Comments:	

Agency Name:	Contract Period:
Contact Person (<i>Name and Title</i>):	
Complete Primary Address:	
Telephone Number:	E-mail Address:
Project Name:	Go Live Date:
Modules/Functionality Installed:	
Other Comments:	

Agency Name:	Contract Period:
Contact Person (<i>Name and Title</i>):	
Complete Primary Address:	
Telephone Number:	E-mail Address:
Project Name:	Go Live Date:
Modules/Functionality Installed:	
Other Comments:	

Bidder's Signature (*Authorized Representative*): _____

Print Name and Title of Signer: _____

Dated this ____ day of _____, 20____

Contract for Professional Services

Sample

CONTRACT NO. [Contract Number]

[TITLE]

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

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

SECTION 1. TERM AND EFFECTIVE DATE

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

SECTION 2. SERVICES

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

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

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

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

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

SECTION 3. COMPENSATION AND PAYMENT

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

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

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

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

SECTION 4. TERMINATION

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

SECTION 5. INDEMNIFICATION

- 5.1. To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless Kitsap County and its elected and appointed officials, officers, employees, and agents (collectively "Indemnitees") from and against all Claims resulting from or arising out of the performance of the Contract, whether such Claims arise from the acts, errors, or omissions of Contractor, its Personnel, third parties, or Kitsap County, or anyone directly or indirectly employed by any of them or anyone for whose acts, errors, or omissions any of them may be liable. It is the specific intent of the parties that the Indemnitees shall, in all instances, except Claims arising from the sole negligence or willful misconduct of the Indemnitees, be indemnified by Contractor from and against any and all Claims.
- 5.2. With regard to any Claim against any Indemnitee by any of Contractor's Personnel, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, Contractor's indemnification obligation shall not be limited in any way by a limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or Contractor's Personnel under workers compensation acts, disability benefit acts, or other employee benefit acts. Solely for the purposes of this indemnification provision, Contractor expressly waives its immunity under Title 51 RCW (Industrial Insurance) and acknowledges this waiver was mutually negotiated by the parties.
- 5.3. Architectural, Landscape Architectural, Engineering, or Land Surveying Services. Should a court of competent jurisdiction determine the Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the County, its officers, officials, employees, and agents, the Contractor's liability hereunder, including the duty and cost to defend, will be only to the extent of the Contractor's negligence.

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

SECTION 6. INSURANCE

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

Not less than \$100,000 per occurrence and \$300,000 annual aggregate. If a personal automobile liability policy is used to meet this requirement, it must include a business rider and cover each vehicle to be used in the performance of the Contract. If Contractor will use non-owned vehicles in performance of the Contract, the coverage shall include owned, hired, and non-owned automobiles.

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

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

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

SECTION 7. NOTICE AND CONTRACT REPRESENTATIVES

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

County's Contract Representative

Name: [County Rep Name]
Title: [County Rep Title]
Address: [County Rep Addr]
Phone: [County Rep Phone]
Email: [County Rep Email]

Contractor's Contract Representative

Name: [Contractor Rep Name]
Title: [Contractor Rep Title]
Address: [Contractor Rep Addr]
Phone: [Contractor Rep Phone]
Email: [Contractor Rep Email]

SECTION 8. AMENDMENTS, SUBCONTRACTS, INDEPENDENT CONTRACTOR

- 8.1. Amendment. No amendment or modification to the Contract will be effective without the prior written consent of the authorized representatives of the parties.
- 8.2. Successors and Assigns. To the extent permitted by law, the Contract is binding on the parties' respective partners, successors, assigns, executors, and legal representatives.
- 8.3. Assignments. Except with the prior written consent of the other party, each party shall not assign or transfer, including by merger (whether that party is the surviving or disappearing entity), consolidation, dissolution, or operation of law any right, duty, obligation, or remedy under the Contract. Any purported assignment or transfer in violation of this section shall be void.
- 8.4. Subcontracts. Contractor shall provide the County a list of all subcontractors and the subcontractors' proposed responsibilities. "Subcontract" means any contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or service for the performance of the Contract. All subcontracts shall incorporate by reference the terms and conditions of this Contract. Contractor is solely responsible for the performance and payment of its subcontractors.

- 8.5. Independent Contractor. Each party under the Contract shall be for all purposes an independent contractor. Nothing contained herein will be deemed to create an association, a partnership, a joint venture, or a relationship of principal and agent, or employer and employee between the parties. Contractor shall have complete responsibility and control over its Personnel. Neither Contractor nor its Personnel shall be, or be deemed to be, or act or purport to act, as an employee, agent or representative of the County. Contractor and its Personnel shall have no County employee-type benefits of any kind whatsoever, including without limitation, insurance, pension plan, vacation pay or sick pay, or other right or privilege afforded to County employees. Contractor and its Personnel shall be responsible for payment of all insurance, taxes, and benefits.

SECTION 9. OWNERSHIP, CONFIDENTIAL INFORMATION AND BREACH

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

SECTION 10. REPRESENTATIONS AND RECORDS

- 10.1. No Fee. Contractor certifies it has not received, nor paid or agreed to pay, another person or entity, other than a bona fide employee working exclusively for Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of the Contract.
- 10.2. Licenses, Permits and Taxes. Contractor shall, at its own expense, have and maintain all licenses, registrations, permits, and approvals necessary for the performance of the Contract, including without limitation, registration with the Washington State Department of Revenue. Contractor shall pay all fees (including licensing fees) and applicable federal, state, and local taxes.
- 10.3. Compliance. Contractor and its Personnel, and the Services provided by Contractor and its Personnel, shall comply with all applicable laws, codes, and standards in effect at any given time regardless as to whether such laws are referred to by the County. If required for the Services provided, Contractor and its Personnel shall submit to a background check as directed by the County.
- 10.4. Nondiscrimination. Contractor and its Personnel shall not discriminate against any person on the basis of race, color, creed, religion, national origin, age, sex, marital status, sexual orientation, veteran status, disability, or other circumstance prohibited by federal, state, or local law, and shall comply with Title VI of the Civil Rights Act of 1964, P.L. 88-354 and Americans with Disabilities Act of 1990 in the performance of the Contract.

- 10.5. Public Records. Contractor acknowledges the Contract and all public records associated with the Contract shall be available to the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW ("Act"). To the extent that public records in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor shall make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under the Contract, whether electronic or hard copy, to be protected from disclosure under the law, the Contractor shall clearly identify all specific information it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information that has been identified by the Contractor as protected from disclosure and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligation will be to make a reasonable effort to notify the Contractor of the request and the date that such protected information will be released to the requester unless the Contractor obtains a court order to enjoin disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified. The County has, and by this Section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County will not be liable to the Contractor for releasing records in compliance with the Act, this Section or court order.
- 10.6. Advertising, Logo. Contractor shall not use, advertise, or promote for commercial benefit information concerning the Contract or use any trade name, trademark, or logo of the County, without the County's prior written consent.
- 10.7. Audit and Record Retention. Contractor and its Personnel shall retain all books, documents, and records relating to performance of the Contract and Services provided in connection with this Contract for six years after completion of the Contract or longer if requested by the County. All records shall be subject to inspection and audit by the County. Upon request, Contractor shall promptly make available to the County a legible copy of all books, documents, and records at no cost to the County.

SECTION 11. RIGHTS AND REMEDIES

- 11.1. Failure to Perform. If County determines Contractor has failed to perform any material obligation of the Contract, and such failure has not been cured within 10 days' following notice from the County, the County may without penalty, in its discretion, withhold all monies due the Contractor until such failure is cured to the reasonable satisfaction of the County.
- 11.2. Right of Assurance. If the County in good faith has reason to believe the Contractor does not intend, or is unable to perform or continue performing under the Contract, the County may demand in writing that the Contractor give a written assurance of intent to perform. Should the Contractor fail to provide adequate assurance to the reasonable satisfaction of the County, by the date specified the demand, the County may terminate all or part of the Contract and pursue all other rights and remedies available at law and in equity.
- 11.3. Responsibility for Errors. All Services shall be completed to the reasonable satisfaction of the County and as required herein. Upon request, Contractor shall provide any clarifications and/or explanations regarding any Services provided as required by the County, at no additional cost to the County. In the event of an error or omission under the Contract, Contractor shall, at no cost to the County, provide all necessary design drawings, estimates, and all other professional services the County deems necessary to rectify and correct the matter to the satisfaction of the County. The Contractor shall continue to be responsible for the accuracy of Services, even after the Work is accepted by the County and the termination or expiration of the Contract.
- 11.4. Remedies. All County rights and remedies under the Contract are in addition to, and shall in no way limit, any other rights and remedies that may be available to County at law and in equity.
- 11.5. Right of Off-Set; Reimbursement. The County will be entitled to offset against any sums due Contractor and to reimbursement from the Contractor for any damages, expenses, or costs incurred by the County due to Contractor's nonconforming performance or failure to perform the Services under the Contract.

- 11.6. Waiver. Either party's failure to insist upon the strict performance of any provision of the Contract, or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach, will not constitute a waiver of any right or remedy under the Contract unless expressly so agreed in writing by an authorized representative.
- 11.7. Breach. In the event of a material breach by the Contractor, the County may procure, on terms and in the manner that it deems appropriate, Services to replace those under the Contract. The Contractor shall be liable to the County for any and all costs, expenses, penalties, and fees incurred by the County in procuring such Services in substitution for those due from the Contractor under the Contract.

SECTION 12. GOVERNING LAW, DISPUTES

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

SECTION 13. PREVAILING WAGE

[Prevailing Wage]

SECTION 14. GENERAL PROVISIONS

- 14.1. Implied Contract Terms. Each provision of law and any terms required by law to be in the Contract are made a part of the Contract as if fully stated in it.
- 14.2. Headings/Captions. Headings and captions used are for convenience only and are not a part of the Contract and do not in any way limit or amplify the terms and provisions hereof.
- 14.3. No Party the Drafter. The Contract is the product of negotiation between the parties, and no party is deemed the drafter of the Contract.
- 14.4. No Third Party Beneficiary. No provision of the Contract is intended to, nor will it be construed to, create any third party beneficiary or provide any rights or benefits to any person or entity other than the County and Contractor.
- 14.5. Severability. If a court of competent jurisdiction holds any provision of the Contract to be illegal, invalid, or unenforceable, in whole or in part, the validity of the remaining provisions will not be affected, and the parties' rights and obligations will be construed and enforced as if the Contract did not contain the particular provision held to be invalid. If any provision of the Contract conflicts with any statutory provision of the State of Washington, the provision will be deemed inoperative to the extent of the conflict or modified to conform to statutory requirements.
- 14.6. Counterparts. The Contract may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.
- 14.7. Non-Exclusive Contract. The County may at its discretion enter into multiple agreements to obtain the same or similar services that are the subject of this Contract or may have its own employees perform the same or similar services contemplated by the Contract.
- 14.8. Survival. Those provisions of this Contract that by their sense and purpose should survive expiration or termination of the Contract shall so survive. Those provisions include, without limitation: Sections 5 (Indemnification), 6 (Insurance), 8.5 (Independent Contractor), 9 (Ownership, Confidential Information and Breach), 11 (Rights and Remedies), 12 (Governing Law, Disputes), and 14 (General Provisions).

14.9. Entire Agreement. The parties acknowledge the Contract is the product of negotiation between the parties and represents the entire agreement of the parties with respect to its subject matter. All previous agreements and representations, whether oral or written, entered into prior to this Contract are hereby revoked and superseded by the Contract.

14.10. Authorization. Each party signing below warrants to the other party, that they have the full power and authority to execute this Contract on behalf of the party for whom they sign.

Dated this ____ day of _____, 20__

Dated this ____ day of _____, 20__

CONTRACTOR NAME

KITSAP COUNTY, WASHINGTON

Signature

SIGNATORY NAME

SIGNATORY TITLE



HIPAA BUSINESS ASSOCIATE AGREEMENT

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

SECTION 1. PURPOSE

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

SECTION 2. DEFINITIONS

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

SECTION 3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- 3.1 Compliance. Business Associate shall perform all Contract duties, activities, and tasks in compliance with HIPAA, the HIPAA Rules, and all applicable law.
- 3.2 Use and Disclosure. Business Associate shall Use or disclose PHI only as necessary to perform the Services specified in the Contract and in compliance with this Agreement and as required by state and federal confidentiality and security laws. Business Associate shall not Use or disclose such PHI in any manner that would violate Subpart E of 45 CFR Part 164 (Privacy of Individually Identifiable Health Information) if done by Covered Entity.
- 3.3 Minimum Necessary Standard. Business Associate shall apply the HIPAA Minimum Necessary standard to any Use or disclosure of PHI as necessary to achieve the lawful purpose of the Contract. See 45 CFR 164.514(d)(1) - (d)(5).
- 3.4 Duty to Protect PHI. Business Associate shall implement and Use appropriate safeguards to maintain and ensure the confidentiality, privacy, and security of all PHI and comply with Subpart C of 45 CFR Part 164 with respect to EPHI to prevent unauthorized Use or disclosure of EPHI other than as provided for in the Contract or as required by law, for the duration that PHI is within its possession and control, even after the termination or expiration of the Contract. Business Associate shall Use, store, and transmit PHI in an encrypted format as required by the HIPAA Rules.
- 3.5 Use for Proper Management and Administration. Business Associate may Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 3.6 Proper Management, Administration, and Disclosure. Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided such disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information shall remain confidential and be Used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.
- 3.7 Obligations. To the extent the Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164 (Privacy of Individually Identifiable Health Information), Business Associate shall comply with all requirements that would apply to the Covered Entity in the performance of such obligation(s).
- 3.8 Liability. Within ten (10) business days, Business Associate must notify the Covered Entity of any complaint, enforcement, or compliance action initiated by the Office for Civil Rights based on an allegation of violation of the HIPAA Rules and must inform the Covered Entity of the outcome of that action. Business Associate bears all responsibility for any penalties, fines, or sanctions imposed against the Business Associate for violations of the HIPAA Rules and for any imposed against its Subcontractors or agents for which it is found liable.
- 3.9 Business Associate shall at no cost, within five (5) days of a request from and in a manner designated by the Covered Entity, comply as follows:

- 3.9.1 When a request is made by an Individual to the Business Associate or if the Covered Entity asks the Business Associate to respond to a request, the Business Associate shall comply with requirements in 45 CFR 164.524 on form, time, and manner of access.
 - 3.9.2 Provide the Covered Entity all PHI in a designated record set as necessary to satisfy the Covered Entity's obligations under 45 CFR 164.524.
 - 3.9.3 Maintain and provide all PHI and other information necessary to provide an accounting of disclosures to the Covered Entity sufficient to satisfy the Covered Entity's obligations under 45 CFR 164.525 and 45 CFR 164.528.
 - 3.9.4 Make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, and take other measures as necessary to satisfy the Covered Entity's obligations under 45 CFR 164.526.
- 3.10 Disclosure to Third Parties. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate shall require that any agent, including its subcontractors, that create, receive, maintain, or transmit PHI on behalf of the Business Associate shall agree in writing to the same restrictions and conditions that apply to the Business Associate under this Agreement. Business Associate shall ensure that such agents and subcontractors agree to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity. Business Associate shall be fully liable to Covered Entity for any acts, failures, or omissions of such agents and subcontractors providing the Services as if they were Business Associate's own acts, failures, or omissions, to the extent permitted by law. Business Associate further expressly warrants that its agents and Subcontractors shall be specifically advised of, and shall comply in all respects with, the terms of this Agreement.
- 3.11 Rights of Proprietary Information. The Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate.

SECTION 4. AUDIT AND ACCESS TO RECORDS

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

SECTION 5. INDIVIDUAL RIGHTS, ACCOUNTING OF DISCLOSURES

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

SECTION 6. IMPROPER USE OR DISCLOSURE OF PHI AND BREACH

- 6.1 Improper Use or Disclosure. Business Associate shall report to the Covered Entity in writing all Uses or disclosures of PHI not provided for by this Agreement within three (3) business days of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410 (Notification by a Business Associate), and any Security Incident of which it becomes aware.
- 6.2 Mitigation. If Business Associate violates this Agreement or the HIPAA Rules, Business Associate agrees to mitigate any damage caused by such breach.
- 6.3 "Breach" is defined in the Breach Notification Rule ("Rule"), 45 CFR Sections 164.400-414. The time when a Breach is considered to have been discovered is set forth in the Breach Notification Rule.
- 6.4 In the event of a Breach of unsecured PHI or disclosure that compromises the privacy or security of PHI received from the Covered Entity, or created, maintained, or received on behalf of the Covered Entity, Business Associate shall take all measures required by state and federal law.
- 6.5 Business Associate shall notify the Covered Entity both in writing and by telephone within three (3) business days of any acquisition, access, Use or disclosure of PHI, of which it becomes aware, that may potentially compromise the security or privacy of the PHI by the Business Associate or its Subcontractors or agents and is not authorized by this Agreement, the HIPAA Rules, or required by law. Such notice shall include a written explanation of the Breach, to include the following: date and time of the Breach, the date the Breach was discovered, location and nature of the PHI, type of Breach, origination and destination of PHI, Business Associate unit and personnel associated with the Breach, detailed description of the Breach, anticipated mitigation steps, and the name, address, telephone number, fax number, and e-mail of the individual who is responsible as the primary point of contact. Business Associate shall address communications to the Contract Representative. Business Associate shall work cooperatively with the Covered Entity and provide a copy of its investigation and any other information requested by the Covered Entity including advance copies of any required notifications for prior review by the Covered Entity.

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

SECTION 7. EFFECTIVE DATE AND TERMINATION

- 7.1 Term. This Agreement is effective when the Contract is executed by the parties and shall survive the expiration or termination of the Contract as long as Business Associate continues to Use or retains PHI received from the Covered Entity, or created, maintained, or received on behalf of the Covered Entity in any form, unless otherwise provided herein.
- 7.2 Termination for Cause. The Covered Entity may terminate this Agreement if the Covered Entity determines the Business Associate has violated a material term of this Agreement. The Covered Entity may, at its sole option, offer Business Associate an opportunity to cure a violation of this

Agreement before exercising a termination for cause. Termination shall be effective as of the date stated in the notice of termination.

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

SECTION 8. INDEMNIFICATION

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

SECTION 9. MISCELLANEOUS PROVISIONS

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