

**WASHINGTON STATE  
DEPARTMENT OF CORRECTIONS  
MEDICAL GENERAL TERMS AND CONDITIONS**

1. DEFINITIONS - The definitions used in the Offender Health Plan are incorporated by reference herein. As used throughout this Contract, the terms defined in the OHP and the following terms herein have the meanings herein or therein set forth.
  - A. "Contracts Administrator" means the Administrator of the DOC's Contracts and Legal Affairs office, or delegate.
  - B. "Contracts and Legal Affairs" shall mean the Department of Corrections (DOC) headquarters contracting office, or successor section or office.
  - C. "Department" shall mean the Department of Corrections (DOC) of Washington State, any division, section, office, unit or other subdivision of the Department, or any of the officers or other officials lawfully representing the Department.
  - D. "DSHS" means Department of Social and Health Services.
  - E. "DOC" or "Department" means the Department of Corrections (DOC) of Washington State, any division, section, office, unit or other entity of the DOC, or any of the officers or other officials lawfully representing the DOC.
  - F. "Healthcare practitioner" means an individual or firm licensed or certified to actively engage in a regulated health profession.
  - G. "Health profession" means those licensed or regulated professions set forth in 18.120.020(4) RCW.
  - H. "Healthcare facility" means any hospital, hospice care center, licensed or certified Health care facility, health maintenance organization regulated under Chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.
  - I. "Healthcare services" means medical, dental, mental health care services.
  - J. "Minority Business Enterprise", "Minority-Owned Business Enterprise", or "MBE" means a business organized for profit, performing a commercially useful function, which is owned and controlled by one or more minority individuals and which is certified by the OMWBE.
  - K. Offender Health Plan means the document published by the DOC that defines and describes the health and mental health care services that are medically necessary and available to Incarcerated Individuals, as well as the services that are limited.
  - L. "OMWBE" means the Office of Minority and Women's Business Enterprises of Washington State.
  - M. "Provider" as used in this Contract means the legal entity providing healthcare under this Contract. It shall include any Subcontractor retained by the Provider as permitted under the terms of this Contract. The Provider is not an employee or agent of the DOC. Provider, as used in the OHP, means the individual Healthcare practitioner in the employ of the Provider.
  - N. "Secretary" means the Secretary of the Department of Corrections and delegates authorized in writing to act on Secretary's behalf.
  - O. "Subcontractor" means one not in the employment of the Provider, who is performing all or

part of those services under this Contract under a separate Contract with the Provider. The terms "Subcontractor" and "Subcontractors" mean Subcontractor(s) in any tier.

- P. "Women's Business Enterprise", "Women-owned Business Enterprise", or "WBE" means a business organized for profit, performing a commercially useful function.

## 2. ACCESS TO DATA

- 2.1 At no additional cost all records relating to the Provider's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by the Department, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Provider shall provide access to its facilities for this purpose.
- 2.2 Incarcerated Individuals are under the jurisdiction of the DOC, and access to Incarcerated Individual patient information is limited to DOC medical staff, designated DOC personnel, or another HIPAA covered entity for the purposes of continuity of care or continued treatment. Third parties, including "patient portals" or family members of an Incarcerated Individual, are strictly prohibited from accessing or sharing an Incarcerated Individual's patient information.

## 3. ACCESSIBILITY COMPLIANCE

Provider hereby warrants that any technology provided under this Agreement currently complies, and will continue to comply, with Washington State Office of Chief Information Officer ("OCIO") Policy 188 (<http://ocio.wa.gov/policy/accessibility>) and Minimum Accessibility Standard 188.10 (<http://ocio.wa.gov/policy/minimum-accessibility-standard>). Provider agrees to promptly respond to and resolve any complaint brought to its attention regarding accessibility of its products or services. Provider further agrees to indemnify and hold harmless the Washington State Department of Corrections from any claim arising out of Provider's failure to comply with the aforesaid requirements.

## 4. AMERICANS WITH DISABILITIES ACT (ADA)

The Provider must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications. (See Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, also referred to as the "ADA" 28CFR Part 35.)

## 5. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the Department.

## 6. AMENDMENTS AND MODIFICATIONS

- 6.1 Amendments and modifications to this contract shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.
- 6.2 The Secretary may, at any time, by written notification to the Provider, and without notice to any guarantor or surety, unilaterally amend the scope of work to be performed under the Contract, the period of performance, or the compensation to be paid to the Provider. These unilateral changes shall be effective as set forth in the amendment or upon signature by the Contracts Administrator, if no date has been set forth.

- 6.3 The Provider will be deemed to have accepted any such unilateral amendment unless, within fifteen (15) calendar days after the date the amendment is signed by the Contracts Administrator, the Provider notifies the Contract Manager, in writing, of its non-acceptance of such unilateral change. The Provider and the Department will then use good faith efforts to negotiate an amendment acceptable to both parties.
- 6.4 Failure to reach agreement shall constitute a dispute concerning a question of fact within the meaning of the Disputes provision contained in this Contract. However, nothing in this provision shall excuse the Provider from proceeding with the Contract as amended. Provider must continue to provide the contracted services, including any unilaterally amended services, during any period of non-acceptance or negotiation of a unilateral amendment.

## 7. ASSIGNMENT

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the Provider without prior written consent of the Department.

## 8. ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

## 9. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

9.1 "Confidential Information" as used in this section includes:

- i) All material provided to the Provider by the DOC that is designated as "confidential" by the DOC;
- ii) All material produced by the Provider that is designated as "confidential" by the DOC; and
- iii) All personal information in the possession of the Provider that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

9.2 The provider must comply with HIPAA, which is a Federal law that sets national standards of how health care plans, health care clearinghouses, and most health care providers protect the privacy of a patient's health information.

9.3 In the event Provider participates on a DOC Quality Assurance or Peer Review committee, unless required by law, Provider shall keep all documents, including complaints and incident reports, created specifically for, collected and maintained for such review confidential.

9.4 The Provider shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Provider shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the DOC or as may be required by law. The Provider shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential

Information or violation of any state or federal laws related thereto. Upon request, the Provider shall provide the DOC with its policies and procedures on confidentiality. The DOC may require changes to such policies and procedures as they apply to this Contract whenever the DOC reasonably determines that changes are necessary to prevent authorized disclosures. The Provider shall make the changes within the time period specified by the DOC. Upon request, the Provider shall immediately return to the DOC any Confidential Information that the DOC reasonably determines has not been adequately protected by the Provider against unauthorized disclosure.

9.5 The Provider shall notify the DOC within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

9.6 Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The Provider agrees to indemnify and hold harmless the DOC for any damages related to the Provider's unauthorized use of personal information.

9.7 The Provider agrees to abide by all present and future federal and state laws and regulations in maintaining the confidentiality of DOC files and records, including Criminal History Record Information (CHRI). In the event CHRI is provided to the Provider, the Provider shall also abide by all present and future DOC rules and regulations governing the use of CHRI.

9.8 The provisions of this section shall survive any termination or expiration of this Contract.

## 10. CONFLICT OF INTEREST/ETHICS

10.1 Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Department may, in its sole discretion, by written notice to the Provider, terminate this Contract if it is found after due notice and examination by the Contracts Administrator that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Provider in the procurement of or performance under this Contract.

10.2 In the event this Contract is terminated as provided above, the Department shall be entitled to pursue the same remedies against the Provider as it could pursue in the event of a breach of the Contract by the Provider. The rights and remedies of the Department provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Contracts Administrator makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Contract.

## 11. CONSTRUCTION

Nothing in this Contract shall be construed to create a right enforceable by or in favor of any third party.

## 12. COPYRIGHT PROVISIONS

12.1 Unless otherwise provided, all materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Department. The Department shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, Provider hereby irrevocably assigns

all right, title, and interest in materials, including all intellectual property rights, to the Department effective from the moment of creation of such materials.

- 12.2 Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.
- 12.3 For materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, Provider hereby grants to the Department a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Provider warrants and represents that Provider has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Department.
- 12.4 The Provider shall use all reasonable effort to advise the Department, at the time of delivery of materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this Contract.
- 12.5 The Department shall receive prompt written notice of each notice or claim of infringement received by the Provider with respect to any data delivered under this Contract. The Department shall have the right to modify or remove any restrictive markings placed upon the data by the Provider.

### 13. COVENANT AGAINST CONTINGENT FEES

- 13.1 The Provider warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Provider for the purpose of securing business.
- 13.2 The Department shall have the right, in the event of breach of this clause by the Provider, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage, or contingent fee. The provisions of this section shall survive any termination or the expiration of this Contract.

### 14. DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts and Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing.

### 15. DISALLOWED CHARGES

The Provider is not allowed to charge the Department for a Medicaid service. If the Department has

erroneously paid for a Medicaid service charged by the Provider, that payment is considered an overpayment and shall be deducted from the Provider's future payments by the Department.

#### 16. ENTIRE AGREEMENT

This Contract, all attachments, and future amendments hereto, constitute the entire agreement between the Provider and the Department and no other statements or representations, written or oral, shall be deemed a part hereof.

#### 17. EQUALITY IN COMPENSATION

17.1 The Provider must ensure that similarly employed individuals in its workforce are compensated as equals, consistent with the following:

Employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.

Provider may allow differentials in compensation for its workers based in good faith on any of the following:

- i. A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
- ii. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience, that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
- iii. A bona fide regional difference in compensation level must be: consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

17.2 This Contract may be terminated if the Department or the Department of Enterprise Services determines that the Provider is not in compliance with this provision.

#### 18. FEDERAL IMMIGRATION REFORM AND CONTROL ACT (IRCA)

During the performance of this Contract, the Provider shall comply with all requirements of the federal Immigration Reform and Control Act (IRCA) and any regulations adopted by the Department of Justice Bureau of Immigration and Naturalization Services to implement the IRCA. The provisions of this paragraph shall be in addition to any other requirements set forth in the text of the Contract.

#### 19. GOVERNING LAW

This contract shall be construed and interpreted according to the laws of Washington State, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

#### 20. HEALTH and SAFETY

20.1 Health. The Provider shall ensure that all of its personnel assigned to DOC sites are trained in the

requirements of Chapter 296-823 WAC, blood borne pathogens. Further, the Provider shall provide all such personnel with protections from blood borne and other body fluid diseases that meet or exceed the WAC standards for such protection. If the Provider is a health care provider whose duties include the medical or physical care of Incarcerated Individuals or emergency or medical treatment of employees, the Provider shall abide by the requirements of Chapter 296-823 WAC as well as standard medical practice.

20.2 Safety. For all work performed under this Contract, the Provider agrees to comply with Department policies and procedures relative to custody of Incarcerated Individuals and security/operation of the institution such as, but not limited to, fingerprinting, photographs for identification purposes, and searches.

## 21. INDEMNIFICATION

21.1 To the fullest extent permitted by law, Provider shall indemnify, defend, and hold harmless State, agencies of State, and all officials, agents, and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the Contract. "Claim" as used in this Contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

21.2 Provider's obligation to indemnify, defend and hold harmless includes any claim by Provider's agents, employees, representatives, or any Subcontractor or its employees.

21.3 Provider expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Provider's or any Subcontractor's performance or failure to perform the Contract. Provider's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees, and officials.

21.4 Provider waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless State and its agencies, officials, agents, or employees.

21.5 The provisions of this paragraph shall not apply to any act or omission by the Provider for which the Department, in the text of this Contract, has agreed to defend and hold the Provider harmless. The provisions of this section shall survive any termination or the expiration of this Contract.

## 22. INDEPENDENT CONTRACTOR STATUS

22.1 The Provider is not an employee of the Department of Corrections. By signing this Contract, the Provider certifies that he is not a current DOC employee, and will advise the DOC immediately should this status change. The Provider shall not hold himself out as nor claim to be an officer or employee of Washington State by reason hereof. The Provider agrees not to make any claim, demand, or application to or for any right or privilege applicable to a DOC employee or Washington State employee including but not limited to, workmen's compensation coverage or retirement membership or credit or any other benefit which would accrue to a civil service employee. Provider is and shall at all times remain an independent contractor to DOC. Nothing in this Agreement shall create, or be construed to create, any relationship between Provider and DOC other than that of an independent contractor

22.2 Provider's obligations under this agreement relate primarily to the provision of Services during agreed Coverage Periods and compliance with applicable state and federal laws and requirements for clinical practice at client facilities. This Agreement permits Provider to, and contemplates that Provider will, conduct any and all other personal, business, or professional activities that are not expressly limited or conditioned by this Agreement.

## 23. INSURANCE

23.1 Contractor shall maintain insurance coverage in full force and effect during the entire term of this Contract as set out below. The insurance required shall be issued by an insurance company authorized to do business within Washington State, and shall name Washington State, its agents and employees as additional insureds. All policies shall be primary to any other valid and collectable insurance. Contractor shall instruct the insurers to give the Department 30 days advance notice of any insurance cancellation.

23.2 Professional Liability: Contractor shall maintain professional liability insurance during the term of this Contract, including coverage for losses caused by errors or omissions. Such policy shall contain the following limits: Each occurrence - \$1,000,000; General Aggregate - \$2,000,000.

23.3 Commercial Form General Liability Insurance (contractual liability included) with minimum limits of \$1,000,000.00 for each occurrence and \$2,000,000.00 for general aggregate. If the insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Contract. The insurance shall have a retroactive date of placement prior to or coinciding with the commencement of the Term of this Contract

23.4 In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned or unowned by the Contractor, Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident.

23.5 The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. The Department will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Contractor, or any Sub-contractor, or employee of the Contractor, which might arise under these industrial insurance laws during performance of duties and services under this Contract.

23.6 The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The State will not be held responsible in any way for claims filed by the Contractor or their employees for services performed under the terms of this Contract.

23.7 Contractor will provide the Department with one copy of the certificate of insurance for each coverage required under the Contract. Each copy shall be sent to the Contracts and Legal Affairs Section at [docclacontractassist@doc1.wa.gov](mailto:docclacontractassist@doc1.wa.gov). Contractor shall immediately notify the Contracts and Legal Affairs Section in the event such policy is terminated, canceled, or modified.

## 24. LICENSING AND ACCREDITATION STANDARDS

The Provider shall comply with all applicable local, state and federal licensing and accrediting standards, required by law and necessary in the performance of this Contract.



## 25. LIMITATION OF CONTRACTING AUTHORITY

Only the Secretary, Secretary's designee, or Contracts Administrator shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Contract is not effective or binding unless made in writing and signed by the Secretary, Secretary's designee, or Contracts Administrator.

## 26. MAINTENANCE OF RECORDS

26.1 The Provider shall maintain such records as required by the Provider's Healthcare professional practices and as necessary to accurately reflect the treatment provided. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the Department.

26.2 During the term of this Contract and for six (6) years following its termination or expiration, the Contractor shall maintain, and provide DOC or its designee, at no additional cost, with reasonable access to Contractor's records sufficient to:

- iv. Document performance of all services required by this Contract; and
- v. Substantiate the Contractor's statement of its organization's structure, tax status, capabilities, performance and principals; and
- vi. Demonstrate accounting procedures, practices, and records, which sufficiently and properly document the Contractor's invoices to DOC and all expenditures made by the Contractor to perform as required by this Contract.

26.3 If any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

26.4 The provisions of this section shall survive termination or expiration of this Contract.

## 27. NATIONAL PROVIDER IDENTIFIER (NPI)

During the term of this Contract the Provider will provide to DOC a list by assigned National Provider Identifiers of individual health care providers (Entity Type 1) and organizational health care providers (Entity Type 2) providing services under this Contract. This list will be updated by Provider as necessary.

## 28. INCARCERATED INDIVIDUALS ELIGIBLE FOR MEDICAL ASSISTANCE

Provider acknowledges that some Incarcerated Individuals provided services under this Contract may meet eligibility requirements to receive services under the Department of Social and Health Services' ("DSHS") medical assistance programs as authorized under Section 1905 of Title XIX of the Social Security Act and chapter 74.09 RCW. When the Incarcerated Individual's eligibility is certified by DSHS, a medical coupon will be provided to the Provider. The Provider will bill and be reimbursed pursuant to chapter 74.09 RCW, in accordance with the rates and benefits established by DSHS. The Provider shall accept such reimbursement provided by DSHS as full compensation for services provided. No additional compensation for services provided Incarcerated Individuals meeting eligibility requirements shall be sought from or paid by the Incarcerated Individual or the DOC. Provider agrees that certification of DSHS eligibility or Programs coverage will most likely exceed

thirty days and therefore agrees that payment will be considered timely when made by the Department within ninety days from date of properly completed invoice.

## 29. OVERPAYMENTS AND REFUNDS

- 29.1 Erroneous or overpayments. If the Provider realizes DOC has paid any duplicate, excess, or otherwise erroneous or overpayment, the Provider will notify DOC promptly. DOC might learn of an erroneous or overpayment from the Provider, from internal review of claims, or otherwise.
- 29.2 Refund requests by DOC. DOC will request in writing that the Provider refund the amount of any erroneous or overpayment. If the Provider does not make the refund within thirty days of that notification and does not contest it, DOC may deduct the overpaid amount from any payments otherwise due to the Provider (whether in relation to the same Incarcerated Individual patient or not) and take such other action as it may consider appropriate. In the event ProviderOne is utilized for billing and payment, recoupment is accomplished through reprocessing the claim.
- 29.3 Refund Appeal Process. If the Provider does not agree with the Department's determination that an erroneous or overpayment has been made, the Provider shall send a letter stating why they disagree with the determination along with any supporting documentation to:

Health Services Contracts, Claims and Benefits Unit  
PO Box 41107  
Olympia, WA 98504

DOC will review the information provided and issue a decision.

### 29.4 Time limits for refund requests.

- i. Subject to subparagraph (ii) below, the Provider or DOC will not owe any refund, and no deduction will be made under this subsection, if DOC or the Provider requests the refund more than 12 months after it made the overpayment.
- ii. Notwithstanding subparagraph (i) above, the Provider will refund overpayments to DOC and DOC will correct its payments as follows:
  - (a) There is no time limit in cases of fraud; and
  - (b) There is no time limit in cases where a third party has paid or will pay the same claim, and that party will not pay DOC.

## 30. POLICIES AND PROCEDURES

In connection with such services rendered hereunder, the Provider agrees to comply with applicable DOC/ Institution policies and procedures relative to custody of Incarcerated Individuals and security/operation of the institution such as, but not limited to, fingerprinting, photographs for identification purposes, and searches.

## 31. PREA - CUSTODIAL AND SEXUAL MISCONDUCT

- 31.1 This contract provision shall apply to any person having direct contact with Incarcerated Individuals under DOC jurisdiction. This includes, but is not limited to, all Providers and their

employees, vendors and their employees, and volunteers (Providers). Electronic access to the documents cited in subsection A, Authorities, below is available from the DOC Contract Manager.

31.2 Authorities. In the performance of services under this Contract, Providers shall comply with all federal and state laws and DOC policies regarding sexual misconduct, including, but not limited to, the Prison Rape Elimination Act of 2003 (PREA); RCW 72.09.225, Sexual misconduct by state employees, Providers; RCW 9A.44.010, Definitions; RCW 9A.44.160 Custodial sexual misconduct in the first degree; RCW 9A.44.170, Custodial sexual misconduct in the second degree; DOC 490.800, Prevention and Reporting of Sexual Misconduct; DOC 490.850, Response to Investigation of Sexual Misconduct, and DOC 610.025, Sexual Abuse, Sexual Assault, and Staff Sexual Misconduct.

i. Definitions.

- (a) Sexual Misconduct includes, but is not limited to, Incarcerated Individuals -on-Incarcerated Individuals sexual assault, sexual abuse, and consensual sex acts. It also includes Custodial Sexual Misconduct, Custodial Misconduct of a Sexual Nature, and Sexual Harassment as defined below.
- (b) Custodial Sexual Misconduct includes, but is not limited to, the following acts directed toward any Incarcerated Individual and performed by DOC staff, contract workers, volunteers, or any other person having direct contact with Incarcerated Individuals under DOC jurisdiction:
  - a. Engaging in sexual intercourse with an Incarcerated Individual. Sexual intercourse shall include (a) vaginal intercourse, anal intercourse, and oral intercourse as well as the penetration of an Incarcerated Individual's vagina or anus with an object, when such penetration is not performed for the purpose of providing medical care or is not authorized by DOC policy for the purpose of maintaining security, or (b) allowing an Incarcerated Individual to engage in sexual intercourse, as defined above, with any contract worker or volunteer.
  - b. Without a legitimate penological purpose, intentionally physically touching, either directly or through clothing, the genitalia, anus, groin, thighs, or buttocks of an Incarcerated Individual or the breasts of a female Incarcerated Individual.
  - c. Without a legitimate penological purpose, compelling or permitting an Incarcerated Individual to touch, either directly or through clothing the genitalia, breasts, or buttocks of an employee, contract worker, or volunteer.
  - d. Kissing an Incarcerated Individual, or allowing oneself to be kissed by an Incarcerated Individual, (this does not include an uninvited surprise kiss by an Incarcerated Individual).
  - e. Knowingly exposing one's genitals, breasts, or buttocks to an Incarcerated Individual.
  - f. Observing without legitimate penological purpose an Incarcerated Individual's partially or fully naked body or an Incarcerated Individual engaging in a sexual act with him/herself or another Incarcerated

- Individual (not to include inadvertent or unavoidable observation).
- g. Making threats, bribes, or acts of coercion toward an Incarcerated Individual for the purpose of causing an Incarcerated Individual to engage in any of the acts prohibited in this section.
  - h. Taking one or more substantial steps toward engaging in or performing any of the acts prohibited in this section.
  - i. Helping another person perform any of the acts prohibited in this section by acting or failing to act to aid in the commission of such act, with the knowledge that the action or inaction will promote or facilitate the prohibited act.
- ii. Custodial Misconduct of a Sexual Nature includes but is not limited to:
- (a) Staff, Provider, vendor, or volunteer-on-Incarcerated Individual sexual harassment; inappropriate relationships; exchange of personal information or items of financial or sentimental value; threatening, intimidating, coercing, or using abusive language towards an Incarcerated Individual for other than legitimate corrections purposes; cross gender pat searches; and
  - (b) Failing to report suspected or known sexual misconduct or other acts prohibited by this contract provision; and discouraging, preventing, or otherwise interfering with good faith reporting of sexual misconduct where an Incarcerated Individual is the alleged victim.
- iii. Sexual Harassment:
- (a) Making comments about an Incarcerated Individual's body intended to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person present; and
  - (b) Making other gender-based sexually oriented or demeaning statements or gestures.

31.3 Provider Requirements include but are not limited to:

- i. Adhering to the DOC zero tolerance standard for sexual misconduct, whether or not consensual.
- ii. Maintaining boundaries and professionalism at work and when in direct contact with Incarcerated Individuals.
- iii. Providing the DOC Contract Manager with the names of all contract and volunteer staff who have access to Incarcerated Individuals under DOC jurisdiction, for enrollment in a DOC PREA/Sexual Misconduct training regarding:
  - (a) DOC policies on Prevention and Reporting of Sexual Misconduct, DOC 490.800 and response to Investigation of Sexual Misconduct, DOC 490.850;
  - (b) The meaning of DOC jurisdiction;
  - (c) The prohibitions against engaging in behaviors described in Section 2, Definitions, above;
  - (d) Signs of sexual misconduct in both victims and predators;
  - (e) Reporting requirements and investigation procedures for suspected or known

instances of sexual misconduct;

- (f) The resources available to Incarcerated Individual/victims of sexual misconduct;
- (g) The confidentiality requirements associated with assisting Incarcerated Individual/victims; and
- (h) The consequences of failing to conform to all requirements of this Section 3, which include, but are not limited to:
  - a. Removal of person(s) from proximity to Incarcerated Individuals;
  - b. Removal of person(s) from contract work at DOC;
  - c. Contract termination;
  - d. Criminal and or civil prosecution;
  - e. Liability for damages to the Incarcerated Individual/victim.

### 32. PRICING

32.1 In the event ProviderOne fee schedules are utilized for this contract, the DOC fee schedules and reimbursement methodologies are applicable.

32.2 In the event unique pricing is based on mutual negotiation between the DOC and the Provider, the negotiated price is applicable.

### 33. PUBLICITY

The Provider agrees not to publish or use any advertising or publicity materials in which Washington State or the DOC's name is mentioned, or language used from which the connection with Washington State's or the DOC's name may reasonably be inferred or implied, without the prior written consent of the DOC.

### 34. PUBLIC RECORDS ACT

34.1 This Agreement and all records associated with the performance of this Agreement shall be available from the Department for inspection and copying by the public when required by the Public Records Act, Chapter 42.56 RCW (the "Act").

34.2 If records in the custody of the Provider are needed by the Department to respond to a request under the Act, as determined by the Department, the Provider agrees to make them promptly available to the Department. Upon request by the Department, the Provider further agrees to provide a detailed index of records associated with its performance of the Contract. This index will allow for more efficient and accurate identification of potentially responsive records.

34.3 If the Provider considers any portion of any record associated with the Provider's performance under this Agreement to be protected from disclosure under law, the Provider shall clearly identify the specific information that it claims to be confidential or proprietary when the records are provided to the Department in response to a public records request. The Department retains sole discretion in the appropriateness and application of withholdings and redactions on all records.

34.4 If the Department receives a request under the Act to inspect or copy information identified by the Provider as confidential or proprietary and the Department determines that release of the

information is required by the Act or otherwise is appropriate, the Department's sole obligation shall be to notify the Provider (a) of the request and (b) of the date that such information will be released to the requester unless the Provider obtains a court order to enjoin that disclosure pursuant to 42.56.540 RCW. If the Provider fails to timely obtain a court order enjoining disclosure, the Department will release the requested information on the date specified with whatever withholdings and redactions it deems proper.

- 34.5 The Department is not obligated to claim any exemption from disclosure under the Act on behalf of the Provider. The Department shall not be liable to the Provider for releasing records not clearly identified by the Provider as confidential or proprietary. The Department shall not be liable to the Provider for releasing any records in compliance with this section, in compliance with the Act, or in compliance with an order of a court of competent jurisdiction.

### 35. RECAPTURE OF FUNDS

- 35.1 In the event that the Provider fails to perform this Contract in accordance with state laws and/or the provisions of this Contract, the Department reserves the right to recapture funds in an amount to compensate the Department for the noncompliance in addition to any other remedies available at law or in equity.
- 35.2 Repayment by the Provider of funds under this recapture provision shall occur within the time period specified by the Department. In the alternative, the Department may recapture such funds from payments due under this Contract.
- 35.3 Such right of recapture shall exist for a period not to exceed six years following Contract termination. In the event that the Department is required to institute legal proceedings to enforce the recapture provision, the Department shall be entitled to its costs thereof, including attorneys' fees.

### 36. RELEASE OF INCARCERATED INDIVIDUAL HEALTH INFORMATION

- 36.1 To provide quality health care for Incarcerated Individuals who are patients and ensure continuity of care, community health care providers and the DOC staff must exchange health care information. The DOC staff must make pertinent information from the DOC's Incarcerated Individual health records available to community providers treating them. In turn, community providers must give the DOC healthcare staff information necessary to support discharge planning, follow up care and treatment, and payment of claims for services rendered. All of this information can be exchanged without Incarcerated Individual consent under the HIPAA privacy rules and the WA State Health Records Act.
- 36.2 Incarcerated Individuals are under the jurisdiction of the DOC, and access to Incarcerated Individual patient records is limited to DOC medical staff, designated DOC personnel, or another HIPAA covered entity for the purposes of continuity of care or continued treatment. Incarcerated Individual medical record information is strictly prohibited from transfer to "patient portals" or to family members of an Incarcerated Individual.

### 37. RETIREMENT BENEFIT SUSPENSION – PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS)

- 37.1 The Provider certifies by signing this Contract that that the Provider is not a Public Employee Retirement System (PERS) retiree who retired early under the Public Employees Retirement System (PERS) 41.40.630(3) RCW; and if it is found that the Provider did retire early under the

PERS, the Provider's retirement benefits may be suspended for the duration of this Contract.

37.2 Further, if the Provider was a PERS retiree, the Provider agrees to notify the Department of Retirement Systems (DRS), regarding the execution of this Contract, failure to do so is considered a material breach and may subject the Provider to damages. In addition, the Provider certifies that the Provider does not have a beneficial interest in this Contract as defined in the Executive Ethics Board's Advisory Opinion 97-07).

#### 38. NONDISCRIMINATION

38.1 During the performance of this Contract, the Contactor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies.

38.2 In the event of the Provider's non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Contract may be rescinded, canceled, or terminated, in whole or in part, and the Provider may be declared ineligible for further contracts with the Department. The Provider may be given a reasonable time in which to cure this noncompliance. Any dispute shall be resolved in accordance with the "Disputes" procedure set forth herein.

#### 39. PUBLICITY

The Provider agrees to submit to the Department all advertising and publicity matters relating to this Contract wherein the Department's name is mentioned or language used from which the connection of the Department's name may, in the Department's judgment, be inferred or implied. The Provider agrees not to publish or use such advertising and publicity matters without the prior written consent of the Department.

#### 40. REGISTRATION WITH DEPARTMENT OF REVENUE

The Provider shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

#### 41. REGISTRATION WITH OFFICE OF FINANCIAL MANAGEMENT

The Provider shall complete registration as a statewide vendor with the Washington State Office of Financial Management (OFM) at <http://www.ofm.wa.gov/isd/vendors.asp>.

#### 42. REGISTRATION WITH PROVIDERONE

In the event ProviderOne is utilized for this contract, the Provider shall complete enrollment at <https://www.hca.wa.gov/billers-providers-partners/apple-health-medicaid-providers/enroll-provider>.

#### 43. RIGHTS AND REMEDIES

The rights and remedies of the Department provided in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

#### 44. SEVERABILITY

The terms and conditions of this Contract are severable. If any term or condition of this Contract is held invalid by any court, such invalidity shall not affect the validity of the other terms or conditions of this

Contract.

#### 45. SITE SECURITY

While on Department premises, Provider, its agents, employees, or Subcontractors shall conform in all respects to site security requirements relative to custody of Incarcerated Individuals and security operations, including but not limited to, background check, fingerprinting, photographs for identification, physical safety, fire, and security policies or regulations.

#### 46. SUBCONTRACTING

46.1 Neither the Provider nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining the prior written approval of the Contracts Administrator. If the Department approves subcontracting, the Provider shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the Department in writing may:

- i. Require the Provider to amend its subcontracting procedures as they relate to this Contract;
- ii. Prohibit the Provider from subcontracting with a particular person or entity; or
- iii. Require the Provider to rescind or amend a subcontract.

46.2 In no event shall the existence of any subcontract operate to release or reduce the liability of the Provider to the Department for any breach in the performance of the Provider's duties. Additionally, the Provider is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are carried forward to any subcontracts.

#### 47. TAXES

The Professional Fees set forth in this Contract are inclusive of all applicable sales, use, gross receipts, excise, value-added, withholding, and other taxes that may be due based on DOC's payments to Provider under this Contract, all of which taxes shall be Provider's sole obligation. Provider acknowledges and agrees that (a) DOC will not withhold on behalf of Provider pursuant to this Contract any sums for income tax, unemployment insurance, social security or any other withholding pursuant to any law or requirement of any governmental body relating to Provider or make available to Provider any of the benefits afforded to employees of DOC, and (b) all such withholdings and benefits, if any, are the sole responsibility of Provider.

#### 48. TB TESTING

The Provider must, at his/her expense, provide evidence of a negative TB test prior to treating Incarcerated Individuals and shall provide evidence of a negative test result annually thereafter.

#### 49. TERMINATION

49.1 BY PROVIDER - The Provider may terminate the Contract by giving the DOC written notice of such termination. No such termination shall be effective until sixty (60) days after the DOC has received the Provider's written notice of termination, or until such later date as established by the Provider in the Provider's written notice of termination. Provider shall mail or deliver the Provider's written notice of termination to the Contracts Administrator. If the Provider terminates the Provider Agreement, the DOC shall be liable only for payment in accordance with the terms



of this Contract for services rendered prior to the effective date of termination.

49.2 BY DEPARTMENT FOR CAUSE. The Secretary may, by written notice, terminate this Contract in whole or in part, for failure of the Contractor to perform any of the Contract provisions. In such event, the Contractor shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, i.e., cost of the competitive bidding, mailing, advertising, and staff time. If it is determined for any reason that the Contractor was not in default or that the default was beyond Contractor's or Subcontractor's control, fault or negligence, then the Termination for Default shall convert to Termination for Convenience.

In the alternative, the Department upon written notice may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, the Department may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Contract. Failure by the Contractor to take timely corrective action shall allow the Department to terminate the Contract.

49.3 BY DEPARTMENT FOR CONVENIENCE. The Secretary or designee may terminate this Contract, in whole or in part, when it is in the best interests of the Department. The Department shall give the Contractor written notice of termination at least five days in advance of the effective termination date. When a contract is terminated for convenience, the Department shall only pay, in accordance with the terms of this Contract, for services rendered prior to the effective date of termination.

49.4 BY DEPARTMENT FOR NON-AVAILABILITY OF FUNDS. If the funds the Department relied upon to establish this Contract are withdrawn or reduced, or if new or modified conditions are placed on such funds, the Secretary may terminate this Contract immediately. If this Contract is so terminated, the Department shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination.

49.5 IMMEDIATE TERMINATION IN GENERAL – This subsection controls if it conflicts with subsection BY DEPARTMENT FOR CAUSE. DOC may terminate this Agreement immediately and without advance notice if it determines that:

- i. The practices of the Provider or any practitioner pose an immediate danger to the health or safety of Incarcerated Individuals; or
- ii. the Provider or any practitioner is arrested for, charged with, or indicted for any felony; or
- iii. the license, certification, or registration of the Provider or practitioner to practice in any jurisdiction is revoked, suspended, limited, or put on probation; or
- iv. Reduction of allotments by the Governor pursuant to 43.88.110(20) RCW; or
- v. Reduction by the Legislature of appropriated funds; or
- vi. When, in the opinion of the Secretary, continuing the agreement would seriously disrupt or prevent substantial performance of the operations or activities of the DOC.

## 50. TERMINATION PROCEDURE

50.1 Upon termination of this contract the Department shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Department, and the amount agreed upon by the Contractor and the Department for:

- i. Completed work and services for which no separate price is stated;
- ii. Partially completed work and services;
- iii. Other property or services that are accepted by the Department; and
- iv. The protection and preservation of property, unless the termination is for default, in which case the Contracts Administrator shall determine the extent of the liability of the Department. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Department may withhold from any amounts due the Contractor such sum as the Contracts Administrator determines to be necessary to protect the Department against potential loss or liability.

50.2 The rights and remedies of the Department provided in this "Termination Procedures" provision shall not be exclusive and are in addition to any other rights and remedies provided by law or equity under this Contract. After receipt of a notice of termination, and except as otherwise directed by the Notice, the Contractor shall:

- i. Stop work under the contract on the date, and to the extent specified, in the notice;
- ii. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- iii. Assign to the Department, in the manner, at the times, and to the extent directed by the Department, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Department has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- iv. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Department to the extent Department may require, which approval or ratification shall be final for all the purposes of this clause;
- v. Transfer title to the Department and deliver in the manner, at the times, and to the extent directed by the Department any property which, if the contract had been completed, would have been required to be furnished to the Department;
- vi. Complete performance of such part of the work as shall not have been terminated by the Department; and
- vii. Take such action as may be necessary, or as the Department may direct, for the protection and preservation of the property related to this Contract, which is in the possession of the Contractor and in which the Department has or may acquire an interest.

## 51. TREATMENT OF PROPERTY

51.1 The Department, in addition to any other rights provided in this Contract, may require the Provider to deliver to the Department any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. In all such cases, this "Treatment

of Property" provision shall apply.

- 51.2 Title to all property furnished by the Department shall remain in the Department. Title to all property furnished by the Provider, for the cost of which the Provider is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in the Department upon delivery of such property by the Provider. Title to other property, the cost of which is reimbursable to the Provider under this Contract, shall pass to and vest in the Department upon i) issuance for use of such property in the performance of this Contract, or ii) commencement of use of such property in the performance of this Contract, or iii) reimbursement of the cost thereof by the Department in whole or in part, whichever first occurs.
- 51.3 Any property of the Department furnished to the Provider shall, unless otherwise provided herein or approved by the Department, be used only for the performance of this Contract.
- 51.4 The Provider shall be responsible for any loss or damage to Department property that results from the negligence of the Provider or the failure of the Provider to maintain and administer that property in accordance with sound management practices.
- 51.5 If any Department property is lost, destroyed or damaged, the Provider shall immediately notify the Department and shall take all reasonable steps to protect the property from further damage.
- 51.6 The Provider shall surrender all Department property to the Department prior to settlement upon completion, termination, or cancellation of this Contract.
- 51.7 All equipment purchased by the Provider for the Provider's use under the terms of this Contract, that as defined in this Contract provision, is actually owned by the Department, shall be shipped or delivered to the institution/location designated by the Contract Manager for tagging and entry into the DOC Capital Asset Management System (CAMS) before distribution to the Provider for use.

## 52. UTILIZATION OF MINORITY-OWNED AND WOMEN-OWNED BUSINESSES

- 52.1 During the performance of this Contract, the Provider shall comply with Chapter 39.19 RCW, as now existing or hereafter amended, any rule adopted under Chapter 39.19 by OMWBE and/or any policy or regulation adopted by the Department to effect agency compliance with Chapter 39.19 RCW.
- 52.2 If the Provider fails to comply with any contract requirements relative to the utilization of minority and/or women-owned businesses, the Department may take any or all such actions available to the Department under Chapter 39.19 RCW.
- 52.3 If the Provider prevents or interferes with any Subcontractor's compliance with Chapter 39.19 RCW, or submits false or fraudulent information to the Department regarding compliance, the Provider shall be subject to a fine not to exceed one thousand dollars (\$1,000) in addition to any other penalties or sanctions prescribed by law.

## 53. WAIVER

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by authorized representative of the Department.