

## MASTER SERVICES AGREEMENT

On January 9, 2017, the Centers for Medicare & Medicaid Services (CMS) approved Washington State's request for a section 1115(a) Medicaid demonstration entitled Medicaid Transformation Project demonstration (hereinafter MTP or "demonstration"). Part of this demonstration is a Delivery System Reform Incentive Payment (DSRIP) program, through which the State will make performance-based funding available to regionally-based Accountable Communities of Health (ACH) and their partnering providers. Attachment C to the Special Terms and Conditions (STCs) of the MTP Demonstration contains a DSRIP Planning Protocol.

In order to assure consistent management of an accounting for the distribution of DSRIP funds across ACHs, the State has selected a Financial Executor who is responsible for administering the funding distribution plan for the DSRIP program.

This MASTER SERVICES AGREEMENT (MSA) sets forth the basic agreement between an ACH and a partnering provider Participant. In addition, each ACH and Participant shall enter into a PROJECT-SPECIFIC AGREEMENT (PSA) that sets forth each party's responsibilities with respect to a specific DSRIP project submitted for approval to the Health Care Authority (HCA) as well the funding, project milestones, performance metrics, and payment schedules for that project.

### Article I. **Basic Roles and Responsibilities**

Section 1.01 *Roles and Responsibilities of ACH*. The ACH will have the following roles and responsibilities, in accordance with and subject to the MTP Demonstration, this Agreement, the PSAs, and applicable law:

- (a) Establishing and maintaining a governance and organizational structure that complies with the terms of the MTP Demonstration and the DSRIP Planning Protocol;
- (b) Developing and submitting a Project Plan for the approval of the Health Care Authority (HCA) that meets the requirements of the DSRIP Planning Protocol;
- (c) Preparing, filing and certifying progress milestones, performance metrics, and such other reports to HCA as are required under the Project Plan and the DSRIP Planning Protocol; and
- (d) Keeping partnering providers, including Participant, informed of all DSRIP related communications received by the ACH from the State and facilitating communication among the Partners regarding DSRIP matters.

Section 1.02 *Roles and Responsibilities of Participant*. Partnering providers, including Participant, will have the following roles and responsibilities, in accordance with and subject to the MTP Demonstration, this Agreement, the PSAs, and applicable law:

- (a) Collaborating with the ACH and other partnering providers in good faith to implement DSRIP and the Project Plan;
- (b) Complying with Project Plan and PSA requirements, including but not limited to timely and accurate reporting in accordance with the performance measures, project milestones, and timelines specified in the Project Plan and the PSA; and
- (c) Providing such other information as reasonably requested by the ACH.

Section 1.03 *Roles and Responsibilities of the Financial Executor*. Although the Financial Executor is not a party to this MSA, the parties acknowledge that the Financial Executor has the following roles and responsibilities, in accordance with and subject to the terms and conditions of the MTP Demonstration:

- (a) provide accounting and banking management support for DSRIP incentive dollars;
- (b) distribute earned funds in a timely manner to participating providers in accordance with the state-approved funding distribution plans;
- (c) submit scheduled reports to HCA on the actual distribution of transformation project payments, fund balances and reconciliations; and
- (d) develop and distribute budget forms to participating providers for receipt of incentive funds.

## Article II. **Distribution of DSRIP Funds: General Principles**

Section 2.01 *Basis for Payment to Participant*. Participant will receive payment of DSRIP Funds from the Financial Executor in accordance with the payment schedule set forth in the Project Plan and PSA, only if and to the extent that the ACH has achieved the project milestones and performance measures specified in the Project Plan. Any final payment decision is in the sole discretion of HCA.

Section 2.02 *Payments Contingent on Participant Performance*. Payment of DSRIP Funds to the Participant is contingent on Participant complying with the terms of this Agreement and the PSA, including timely submission of data to the ACH to meet the ACH's reporting obligations to HCA; (ii) Participant's performance on the project milestones and performance outcomes established in the Project Plan and PSA; and (iii) such other conditions and criteria as are set forth in the Project Plan and PSA. Participant acknowledges in accordance with this section and Section 2.01, that it may not receive DSRIP funds, and that any such funds received may not cover all the costs or expenses related to Participant's participation in a DSRIP Project Plan.

Section 2.03 *Advance Payments*. In the event that the Project Plan calls for advance payment of DSRIP Funds to Participant for specified purposes ("Specified Purpose Funds"), Participant shall use those Funds only for the purposes specified, and must return any funds not so expended within 30 days of demand by the Financial Executor or the ACH.

## Article III. **Record Retention and Auditing**

Section 3.01 *Retention of Records*. Each party shall retain all records ("Records") relating to its activities related to the DSRIP program for a period of not less than six years, or as otherwise required by applicable law and regulations.

Section 3.02 *Sufficiency of Records*. The Records shall be sufficient to support confirmation that all data submitted by Participant to the ACH and by the ACH to HCA for any and all reports required by the ACH, HCA or CMS is accurate and complete.

Section 3.03 *Audit*. All Records relating to the DSRIP program are subject at all reasonable times to inspection, review, or audit by HCA and other state and federal officials so authorized by law, rule, regulation, or agreement.

## Article IV. **Data Sharing and Privacy**

Section 4.01 *Business Associate Agreement*. The parties agree that in order to implement a Project Plan, they may need to exchange protected health information (PHI). PHI will be shared only in accordance with all federal and state laws, rules, regulations and agency guidelines applicable to the privacy and security of health information, including without limitation, the Health Insurance Portability and Accountability Act of 1996 and its related regulations ("HIPAA"), as modified or amended from time to time. [consider whether to have them execute a standard agreement].

Section 4.02 *Sharing Confidential Information*. The parties acknowledge that, in addition to sharing PHI in accordance with the terms of the Business Associate Agreement, they may need to share other Confidential Information. "Confidential Information" means information of a Party, regardless of the form or media in which it is disclosed, which is identified in writing or other manner as confidential, restricted, or proprietary. The parties shall share Confidential Information in accordance with this Article IV.

Section 4.03 *Obligations of Confidentiality and Restrictions on Use*. A Party receiving Confidential Information from the other Party (the "Receiving Party") shall not: (a) use the Confidential Information of the Party making the disclosure (the "Disclosing Party"), except as necessary to perform its obligations or exercise its rights under this MSA or to carry out the Project Plan or DSRIP Requirements; or (b) disclose or otherwise allow access to the Confidential Information of the Disclosing Party to a third party, except as permitted in this Section. The Receiving Party shall protect the Confidential Information of the Disclosing Party with at least the same level of care as it protects its own Confidential Information of similar nature, but not less than a reasonable level of care.

Section 4.04 *Disclosure of Confidential Information to Representatives*. The Receiving Party may disclose the Disclosing Party's Confidential Information to the Receiving Party's officers, directors, employees, professional advisors, and other agents and representatives to the extent such disclosure is necessary for the performance of their obligations under this Agreement; provided, however, that the Receiving Party shall cause such Confidential Information to be held in confidence by any such recipient.

Section 4.05 *Compelled Disclosure*. If a Receiving Party is requested by a court or state or federal regulatory body to disclose Confidential Information in any legal or administrative proceeding or determines that a disclosure is affirmatively required by applicable laws, the Receiving Party shall promptly notify the Disclosing Party of such request or determination so that the Disclosing Party may take, at its expense, such steps as are necessary to protect the Confidential Information. If the Receiving Party is thereafter required to disclose the Confidential Information to the court or regulatory body compelling such disclosure or to which such disclosure is required to be made, only the part of such Confidential Information as is required by applicable laws shall be disclosed.

Section 4.06 *Exceptions*. The obligations of confidentiality and restrictions on use as set forth in this Agreement shall not apply to any Confidential Information that: (a) is in the public domain or is otherwise publicly known, without any breach hereof; (b) was previously known prior to disclosure by the Disclosing Party hereunder to the Receiving Party free of any obligation to keep it confidential; (c) was rightfully received by the Receiving Party from a third party whose disclosure would not violate a confidentiality obligation owed by such third party to the Disclosing Party and which disclosure was not in breach of the Agreement; (d) was subsequently and independently developed by the Receiving Party without reference to such Confidential Information disclosed under the Agreement; or (e) was expressly approved for release by written authorization of the Disclosing Party.

Section 4.07 *Obligations Upon Termination*. Upon expiration or termination of this Agreement for any reason, each Party shall promptly return, or destroy in a secure manner, any Confidential Information of the other Party and shall retain no copies thereof, except as required by law or to verify or document performance under this Agreement for audit purposes and to enforce its rights and defend itself from any claims or causes of action related to this Agreement or the other Party. Each Party shall extend the protections of this Agreement to any Confidential Information retained pursuant to this section and limit further uses and disclosures to those purposes permitted by this section.

## Article V. **Dispute Resolution**

Section 5.01 *Informal Dispute Resolution*. The parties will use their best, good faith efforts to cooperatively resolve disputes and problems that arise in connection with the Project Plan, this MSA and any applicable PSA. The parties will attempt to resolve their dispute first through an informal dispute resolution process. One party will send a notice to the other party containing a detailed description of the issue under dispute, the good faith basis for the dispute, and a proposed resolution. Within fifteen days of receiving the notice, the disputing parties will meet at a mutually agreeable location or will hold a conference call to attempt to resolve the dispute. Both parties will continue without delay to carry out their respective responsibilities under these Agreements while attempting to resolve any dispute.

## Article VI. **Representations and Warranties**

Section 6.01 Each party represents and warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded in any Washington State or Federal department or agency from participating in transactions (debarred). Participant must immediately notify the ACH if, during the term of this MSA, Participant becomes debarred.

Section 6.02 Each party represents and warrants that it is in compliance with, and will at all times hereafter comply with all local, state, and federal licensing, accreditation and registration requirements and standards necessary for the performance of the Project Plan.

Section 6.03 Each party represents and warrants that it has all requisite corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated herein, and to perform its obligations in accordance with the terms of this MSA.

## Article VII. **Miscellaneous**

Section 7.01 *Independent Contractor*. ACH and Participant understand and agree that the Parties intend to act and perform their respective obligations under this Agreement and any accompanying PSA as independent contractors and that neither is an employee, partner, or joint venture of the other.

Section 7.02 *Required Insurance*. Each Party shall, at its own cost and expense, have in effect insurance coverage of such amounts and types usually maintained by entities such as the Parties, including but not limited to comprehensive general liability insurance, workers compensation, and errors and omissions coverage.

#### Article VIII. **Term and Termination**

Section 8.01 *Term*. This Agreement shall terminate on December 31, 2021, unless terminated earlier in accordance with the provisions of this Article.

Section 8.02 *Termination by Participant*. Participant may terminate the Agreement on 30 days' written notice to the ACH. Participant may also terminate this Agreement by delivering written notice to ACH at least ninety (90) days before the end of any DSRIP Year (i.e., at least 90 days before December 31st of each year). In such event, termination in accordance with this Article shall take effect at the end of the DSRIP year in which notice is provided, or earlier upon the written agreement of the Parties. Participant may terminate this Agreement immediately upon written notice to the ACH if HCA withdraws its approval for the ACH to participate in DSRIP.

Section 8.03 *Termination by ACH*. ACH may terminate this Agreement in the event that Participant breaches a material term of this MSA, any relevant PSA, or the Project Plan and fails to cure such breach within thirty (30) days after receiving written notice from ACH regarding the breach (or such other longer cure period as ACH deems reasonable under the circumstances). In addition, ACH may terminate this Agreement upon twenty-four (24) hours' written notice to Participant if any license, certification or government approval of Participant material to its performance under this Agreement is suspended, terminated, revoked, or surrendered.

Section 8.04 *Termination for Exclusion*. Either Party may terminate this Agreement immediately if the other Party or any of its employees, agents or contractors are excluded from the Medicare or Medicaid program or any other federal or state health care program and, where the exclusion applies to the Party's employees, agents or contractors, the Party fails to terminate such employees, agents or contractors within five (5) business days of becoming aware of the exclusion.

Section 8.05 *Effect and Process in the Event of Termination*. In the event of termination of this Agreement for any reason: (i) the Parties shall work together to assure that there is no interruption in needed services to members of the ACH patient population and Participant's patients and (ii) Participant shall return any unexpended Specified Purpose Funds provided by ACH to Participant. Specified Purpose Funds that were expended by Participant as of the date of termination and DSRIP Funds provided to Participant as a bonus payment for past performance shall not be subject to return by Participant.

Section 8.06 *Termination for Uncured Breach*. Either Party may terminate this Agreement upon the other Party's material breach of its obligations hereunder, which breach is uncured for a period of thirty (30) days after the non-breaching Party has given the breaching Party notice of that breach and requested that the breaching Party cure that breach; provided that no opportunity to cure shall be provided and termination shall be immediate in the event of (a) a breach that cannot reasonably be cured within thirty (30) days, (b) repeated breaches of the same obligation or (c) a breach that would expose the non-breaching Party to civil or criminal liability or would otherwise cause a violation of applicable laws, rules, regulations or accreditation standards applicable to a non-breaching Party. Termination of this Participation Agreement by either Party shall automatically terminate Participant's participation in any Project under this agreement.