



**REQUEST FOR PROPOSALS  
KITSAP COUNTY DEPARTMENT OF HUMAN SERVICES  
2020-110**

***Project Title:*** ***Kinship Caregiver Support Program***

***Estimated Contract Period:*** July 1, 2020 through June 30, 2021.  
Amendments extending the period of performance, if any, shall be at the sole discretion of Kitsap County.

***Letter of Intent Due Date:*** **All responses, whether mailed or hand-delivered, must arrive by 3:00PM Pacific Time, on Thursday, March 26, 2020.**

***Proposal Due Date:*** **Proposals must arrive by 3:00PM Pacific Time Thursday, April 2, 2020.**

**Please submit by mail to:**  
Vicki Martin, Buyer  
Kitsap County Purchasing Office  
614 Division Street, MS-7  
Port Orchard, WA 98366  
360-337-4788  
[vmartin@co.kitsap.wa.us](mailto:vmartin@co.kitsap.wa.us)

**OR** **For hand delivery, express, or courier:**  
Vicki Martin, Buyer  
Kitsap County Administration Building  
Purchasing Office – Fourth Floor  
619 Division Street  
Port Orchard, WA 98366  
360-337-4788  
[vmartin@co.kitsap.wa.us](mailto:vmartin@co.kitsap.wa.us)

## SECTION A. SUMMARY OF PROJECT

### 1. **Background:**

In 1981, Kitsap County Division of Aging and Long-Term Care was designated as the local Area Agency on Aging (AAA). AAA's are responsible to plan, coordinate and advocate for the development of a comprehensive service delivery system that includes a variety of services to meet the needs of older persons and individuals with disabilities.

- The Division is under the authority of the Human Services Department.

The intent of the request for proposals is to identify a qualified subcontractor to administer and provide all services for the Kinship Caregiver Support Program (KCSP) countywide.

Kinship Caregiver Support Program services are to be provided to relatives who live with and have primary caregiving responsibility persons for one or more relative child(ren) eighteen years of age or younger. Kinship Caregiver Support funds are allocated to implement the KCSP for the purpose of providing support services to kinship caregivers raising relative children. The Washington State KCSP funds support kinship caregivers (grandparents, step-grandparents, aunts, uncles, siblings, and other adult relatives) who are at the greatest risk of being unable to maintain the caregiving role without additional financial support. KCSP funds prioritize assistance with emergent basic needs related to essential food, clothing, shelter and supplies required to care for and ensure a safe environment for the child.

### 2. **Goal:**

The Washington State Department of Social and Health Services Aging and Long-Term Care Administration requires each Area Agency on Aging to provide Kinship Caregiver Support Program services.

The Kitsap County Division of Aging and Long-Term Care, as the local Area Agency on Aging, establishes the criteria and subcontracts for the Kinship Caregiver Support Program July 1, 2020-June 30, 2021.

The goal is to subcontract a Kinship Caregiver Support services provider. The goal of this program is to provide support services to family members caring for relative children, particularly those who are at the greatest risk of being unable to maintain the caregiving role.

The expectation is that the subcontractor will utilize funds to meet basic, non-recurrent needs of an emergent nature to provide services to approximately 30 kinship families on an annual basis.

\*These numbers are projections that may change due to funding.

Subcontracting for services includes procuring a service provider, entering a contractual relationship, receiving invoices and reimbursing for service delivery, assessing the quality of the service provider's agency and fiscal management, as well as the quality and efficacy of the services provided.

**3. Minimum Qualifications:**

Local governments, for-profit and non-profit agencies serving Kitsap County are eligible to apply. Contracting with for-profit entities is contingent upon approval obtained from the Washington State Department of Social and Health Services, Aging and Long-Term Support Administration.

- Applicant must demonstrate at least **three (3) years'** experience in providing services to the target population.
- Applicant must have a current Washington State Business License or an explanation of why the agency is exempt from registering the business with the state of Washington.
- Owners, managing employees, and anyone with a controlling interest (board of directors) of the agency have not been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, or Title XVII, XIX, or XX, nor have they been placed on a Federal exclusion list or otherwise suspended or debarred from participation in these programs.
- Applicant must have no multiple cases of lost litigation related to service provision to medically frail and/or functionally disabled persons.
- Current staff, including those with unsupervised access to clients and those with a controlling interest in the organization, must have no findings of abuse, neglect, exploitation, abandonment nor has the agency had any government issued license revoked or denied related to the care of medically frail and/or functionally disabled persons suspended or revoked in any state.
- All employees, volunteers, and subcontractors who may have unsupervised contact with vulnerable adults have passed a criminal history background check, which must be conducted every two years and kept in personnel or subcontractor files. The criminal history background check must at least include Washington State Patrol criminal conviction records.
- If any services will be subcontracted all subcontractors must be identified. All subcontractors must be approved by Aging and Long-Term Care prior to contracting. Determination of eligibility to participate in the Request for Proposal process does not indicate approval of subcontractors.
- Applicant has a demonstrated capacity to ensure adequate administrative and accounting procedures and controls necessary to safeguard all funds

that may be awarded, determined through evaluation of the agency's most recent audit report and the annual operating budget.

- Applicant can demonstrate a capability to meet program expenses in advance of reimbursement, determined through evaluation of the agency's most recent audit report.
- Applicant can demonstrate the ability to meet the match requirement. Older Americans Act, National Family Caregiver Support Program funded programs are required to provide a twenty-five (25) percent non-federal match toward the total program cost. The match may be in the form of cash or in-kind contributions. However, participant donations may not be counted towards the match.
- Applicant currently has, or intends to obtain by contract start date, a staffed office located in Kitsap County (which can be owned, leased, rented, or donated space); and a telephone number with a local area code and/or a toll-free number.
- Applicant must require employees and volunteers who will drive to perform services to maintain a valid Washington State Driver's license in good standing and meet insurance requirements.
- Applicant must have capacity for accurate tracking of contract-related activities, and reporting of demographics, outcomes, expenditures, number of events, and individuals served, and other required reports outlined in Exhibit A Sample Contract.
- Applicant must meet all program and agency requirements outlined in this Request for Proposal.
- Applicant must be able to provide services throughout Kitsap County.
- Applicant must meet additional Kitsap County contract requirements, reference Exhibit A Sample Contract.

Responders who do not meet these minimum qualifications or fail to submit a Letter of Intent shall be deemed unresponsive, will not be evaluated and no score will be assigned.

#### **4. Scope:**

The subcontractor must be able to provide the following:

##### **Kinship Caregiver Support Program**

Washington State Kinship Caregiver Support Funds are allocated to implement the KCSP for the purpose of providing support services to kinship caregivers raising relative children. The Washington State KCSP funds support kinship caregivers (grandparents, step-grandparents, aunts, uncles, siblings, and other adult relatives) who are at the greatest risk of being unable to maintain the caregiving role without additional financial support.

Federal Older Americans Act National Family Caregiver Support Program funds shall be used to provide supportive services to grandparents or other relatives fifty-five (55) years of age or older, who live with, and have primary caregiving



responsibility for one (1) or more relative child(ren) eighteen (18) years of age or younger. Services are intended to support kinship caregivers for the purpose of maintaining the caregiving relationship.

Services funded by the Federal Older Americans Act, (Title 42, Section 3026 of Public Law 109-365) as amended, require subcontractors to “give particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas.” Greatest economic need is defined as being at or below the Federal Poverty Level.

Kinship caregivers served through state or federal funds must meet all of the following eligibility criteria:

- Raising a child(ren), age 18 or younger who is related by blood or marriage;
- Lives with the child(ren) in Kitsap County;
- Is the primary caregiver of the child(ren) because the biological or adoptive parents are unable or unwilling to serve as the primary caregiver of the child(ren);
- Raising the child(ren) either with a legal relationship, such as legal custody or adoption, or informally; and
- At risk of not being able to continue kinship caregiving without additional financial support services.

In all cases, the child(ren) must be living with the kinship caregiver(s), and the parent(s) is/are consistently absent from the home. If the child(ren) has been adopted, the kinship caregiver requesting assistance must not be receiving Adoption Support through the Department of Social and Health Services Children’s Administration.

KCSP funds are limited to Emergent Basic Needs: This is defined as basic need expenses of an emergent nature related to essential food, clothing, shelter and supplies required to care for and ensure a safe environment for the child.

Other services may be available as an exception, as long as services are within the scope of the Washington State Kinship Caregiver Support Program Policies and approved through Kitsap County AAA.

The Washington State Department of Social and Health Services (DSHS) requires that KCSP services be targeted to ensure access by ethnic minority kinship caregivers represented in the population, especially those who are low income and limited English speaking.

#### General Compliance for Kinship Caregiver Support Program

The services specified in any contract awarded shall be provided in accordance with:

- Washington State Kinship Caregiver Support Program Policies;
- Management Bulletins issued by Washington Department of Social and Health Services (DSHS) Aging and Long-Term Support Administration (AL TSA);
- U.S. Department of Health and Human Services Health Insurance Portability and Accountability Act of 1996 (HIPAA); and

- Any DSHS/ALTSA or Kitsap County Aging and Long-Term Care policies, procedures or additional requirements that may be developed for ongoing program management.

The Contractor Shall operate a Kinship Caregiver Support Program in accordance with the Purpose, Service Delivery, Requirements and Definitions sections, as described in the contract statement of work and as required by Aging and Long-Term Support Administration of the Washington State Department of Social and Health Services. Demographics, services provided, and outcomes will be collected and reported monthly. A satisfaction survey collecting participant feedback will be required annually.

**5. Letter of Intent:**

To be an applicant for this Request for Proposals, **the applicant must submit (2) two copies of a Letter of Intent no later than Thursday, March 26, 2020 at 3:00PM** stating the intention to submit a proposal in response to this Request for Proposals.

The Letter of Intent must include a summary of the applicant's qualifications and experience in providing the types of services outlined in the scope for this Request for Proposal.

The letter of intent must be submitted with the RFP number, the date and time of the response deadline and the name and address of the respondent clearly indicated on the outside of the envelope.

If only one qualified applicant submits a Letter of Intent, Kitsap County reserves the right to substitute the proposal and review process with a sole-source contract process. In this event, the sole bidder will be contacted to initiate the sole-source contract process.

## SECTION B. PROCUREMENT PROCESS

**1. Procurement Schedule**

The Procurement Schedule outlines the tentative schedule for important action dates and times. All dates after the proposal submission due date are approximate and may be adjusted as conditions indicate, without amending this document. It is the Responder's sole responsibility to periodically check the County's website for amendments to this document.

Figure 1. **PROCUREMENT SCHEDULE**

Item	Action	Date
1.	Kitsap County Issues Request for Proposals	March 2, 2020
2.	Proposer may submit written questions and comments until 3 p.m. Pacific Time	March 12, 2020
3.	Kitsap County will Issue responses.	March 18, 2020
4.	Letter of Intent is due by 3:00 p.m. Pacific Time	March 26, 2020
5.	Responder must submit Proposal by 3:00 p.m. Pacific Time	April 2, 2020
6.	Kitsap County evaluation of Proposals	April 10, 2020
7.	Announce successful Proposal	April 23, 2020
8.	Contract Execution	June 15, 2020

**2. Contract**

Kitsap County intends to award one contract to provide the services described in this Letter to Request Proposals up to approximately \$45,885. However, depending upon the outcome of the evaluation, the County reserves the right to contract with more than one Responder.

The contract start date is expected to be July 1, 2020, but the actual start date of the activities will be negotiated.

The term of the Contract is expected to last through June 30, 2021. Amendments extending the period of performance through June 30, 2024 shall be at the sole discretion of the County.

**3. Proprietary information/public disclosure**

Materials submitted in response to this Letter to Request Proposals shall become the property of Kitsap County and the proposals shall be deemed public records as defined by RCW 42.56.

The Responder’s Proposal must include a statement identifying the pages of its Proposal, if any, which contain information the Responder considers proprietary. Each page claimed to be proprietary must be clearly marked by printing the word “Proprietary” on the lower right-hand corner. Responders may not mark their entire Proposal proprietary.

If Kitsap County receives a request to view or copy a Responder's Proposal, the County will respond according to applicable law and policy governing public disclosure. The County will not disclose any information marked "Proprietary" in a Proposal without giving the Responder ten (10) days' notice to seek a relief in superior court per RCW 42.56.540.

**4. Communications**

All communications concerning this Letter to Request Proposals must be directed only to Vicki Martin, Buyer. Any communication directed to Kitsap County staff or consultants, other than the Buyer, may result in disqualification. Proposals should be based on the material contained in this Letter to Request Proposals, any related amendment(s), and any questions and answers directed through the Buyer.

**5. Questions and Answers**

Proposer's may e-mail or mail written questions to Vicki Martin, Buyer. Questions will be accepted until the date set forth in the Procurement Schedule. Early submission of questions is encouraged. Questions and answers will be posted on the Kitsap County website by amendment. Proposers may only rely on written statements issued by the Buyer. Any oral communications are unofficial and are not binding on Kitsap County.

**6. Amendments**

Kitsap County reserves the right, at any time before execution of a contract, to amend all, or a portion, of this Letter to Request Proposals. Amendments will be posted on the County website. If there is any conflict between amendments or between an amendment and this document, whichever document was issued last in time shall be controlling.

**7. Retraction of this Letter to Request Proposals**

Kitsap County reserves the right to retract this Letter to Request Proposals in whole, or in part, at any time without penalty.

**8. Submission of Proposals**

**Two (2) copies of the Proposal** must be prepared and submitted no later than the submission date and time specified in the Procurement Schedule. The Proposal is to be sent to Vicki Martin, Buyer either by courier, mail, or hand delivered.

**The Proposal must be submitted with the RFP number, the date and time of the response deadline and the name and address of the respondent clearly indicated on the outside of the envelope.**

Responders should allow enough time to ensure timely receipt by the Buyer. Responders assume the risk for the method of delivery and for any delay in the delivery of the Proposal. **Kitsap County will disqualify any Proposal and withdraw it from consideration if it is received after the proposal submission due date and time.**

All responses and any accompanying documentation and material become the property of Kitsap County and will not be returned.

**9. Non-responsive Proposals**

All Proposals will be reviewed by the Buyer to determine compliance with administrative requirements and instructions specified in this Letter to Request Proposals. Kitsap County may reject or withdraw a Proposal at any time as nonresponsive for any of the following reasons:

- a. Incomplete Proposal
- b. Submission of a proposal that proposes services that deviate from the technical requirements set forth in this document
- c. Failure to comply with any part of this Letter to Request Proposals or any exhibit to this Letter to Request Proposals
- d. Submission of incorrect, misleading, or false information

**10. Minor Irregularities**

Kitsap County may waive minor administrative irregularities related to any Proposal.

**11. Cost to Prepare Proposal**

Kitsap County will not be liable for any costs incurred by the Responder in preparing, submitting, or presenting a Proposal for this Letter to Request Proposals.

**12. Joint Proposals**

If a Responder submitted a joint Proposal, with one or more other Responders, the Responder must designate the prime Responder. The prime Responder will be Kitsap County's sole point of contact, will sign the contract and any amendments, and will bear sole responsibility for performance under the contract.

**13. Withdrawal of Proposals**

After a Proposal has been submitted, a Responder may withdraw its Proposal at any time up to the proposal submission date and time specified in the Procurement Schedule. A written request to withdraw the Proposal, signed by an authorized representative of the Responder, must be submitted to Vicki Martin, Buyer. After withdrawing a Proposal, the Responder may submit another Proposal at any time up to the proposal submission date and time.

**14. Execution of the Contract**

The Apparently Successful Responder is expected to sign a contract with Kitsap County and any subsequent amendments that may be required to address specific work or services as needed. (See Exhibit A – sample contract)

The County reserves the right to negotiate the specific wording of the Statement of Work, based on the requirements of this Letter to Request Proposals and the terms of the winning Proposal.

If the Apparently Successful Responder fails or refuses to sign the contract or any subsequent amendment within ten (10) business days of delivery, Kitsap County may elect to cancel the award and may award the contract to the next-highest ranked finalist.

Any subcontracts necessary to perform the contract shall be subject to the prior written approval of Kitsap County.

If at contract award or anytime thereafter any specifically named individual(s) identified in the Proposal to work on this engagement are not available, Kitsap County has the right to approve or reject any change in Contractor personnel.

## SECTION C. PROPOSAL CONTENTS

### 1. **Proposal:**

- a. General Requirements: In this section, the Responder is to provide a description of the Proposal which is consistent with the activities, goals and objectives of the project. This section demonstrates the Responder's understanding of the skills and resources required to successfully accomplish the objectives of the project and assure timely completion of deliverables.

#### Letter of Intent

To be an applicant for this RFP, the applicant must submit a Letter of Intent no later than March 26, 2020 stating the intention to submit a proposal in response to this Request for Proposals. The Letter of Intent must include a summary of the applicant's qualification and experience in providing the types of services outlined in the scope for this Request for Proposal.

If only one qualified applicant submits a Letter of Intent, Kitsap County reserves the right to substitute the bid proposal and review process with a sole-source contract process. In this event, the sole bidder will be contacted to initiate the sole-source contract process.

- b. Numbering of Responses. Please number each response so that it corresponds to the question number. The response must begin with a restatement of the question followed by the Responder's response to the question. A reference to another section will not suffice, each answer must stand alone.
- c. Points Awarded for Responses. The number in parentheses after each question or requirement represents the maximum number of points that may be awarded for the Responder's response to that question or requirement.
- a. The proposal is to be brief (no longer than five pages) and must include the following:

**The total number of available points is 100.**

1. **Qualifications and Experience. (Maximum 50 points)**  
Describe your understanding of the unique needs of kinship caregiving and specify your qualifications and relevant experience providing services to kinship caregivers. Include experience with outreach and community education.

Reference the specific activities identified in the Scope section.

2. **Program Design. (Maximum 30 points)**  
Describe when and who will provide the services, where and how services will be delivered, plans for agreements or subcontracts, and agency/organization staffing design to meet requirements.

Describe the procedures that will be used to screen referrals for services, methods for collecting demographics and outcome data, as well as determining if an individual or entity needs assistance with a referral services outside program scope. Include details about collaboration with community providers to ensure a comprehensive, coordinated network of services and supports for kinship caregivers

3. **Quality Assurance. (Maximum 10 points)**  
Describe a process to ensure client satisfaction is collected and improves future planning and service delivery. Also include the quality assurance process as it relates to resolving complaints regarding services rendered by the agency.

4. **Internal Record Keeping. (Maximum 10 points)**  
Describe the service delivery documentation and submission of timely and accurate reports. Describe how client information is safeguarded.

## SECTION D. EVALUATION

1. **Evaluation Procedure**

Kitsap County shall designate an evaluation team to review, evaluate and score Responder's Proposals.

2. **Proposal Evaluation**

Kitsap County will initially screen each Proposal to determine if the Responder has complied with the stated instructions. If a Proposal does not meet all requirements, the County may consider the Proposal non-responsive and may withdraw it from consideration at any time. If a Proposal meets all requirements, evaluators will score, and award points up to the maximum points available for each question.

### **3. Scoring of Proposals**

The maximum number of evaluation points available is 100. Minimum Qualifications are evaluated on a pass/fail basis. The following weighting and points will be assigned to the Proposal for evaluation purposes:

For each question, 0 is the lowest possible score and points are awarded for the most complete answers that demonstrate the Responder's expertise and/or experience, up to the maximum number of points listed for each question.

### **4. Final Determination of Apparently Successful Responder(s)**

Kitsap County program staff and/or management may conduct a final review of the evaluation and scoring of finalist(s).

In this final review, the County may consider past or current performance of any County contracts by a finalist(s), and any experience of the program or Kitsap County in working with a finalist(s) under any past or current contract with the County.

Kitsap County management shall make the final determination as to which Responder(s), initially designated as finalist(s), shall be officially selected and notified as the Apparently Successful Responder(s).

In doing so, County management shall be guided, but not bound, by the scores awarded by the evaluators. Program staff and County management shall determine which Proposals reviewed during this final selection process will best meet the needs of Kitsap County.



**CONTRACT FOR HUMAN SERVICES  
AGING AND LONG-TERM CARE PROGRAM SERVICES**

This contract for Human Services (the Contract) is entered into by Kitsap County, a municipal corporation, having its principal offices at 614 Division Street, Port Orchard, Washington, 98366 (the County) and [insert Contractor business name] having its principal office at [insert Contractor address] (the Contractor).

**5 SECTION 1. EFFECTIVE DATE OF CONTRACT**

The Contract will become effective on July 1, 2020 and terminate on June 30, 2021. In no event will the Contract become effective unless and until it is approved and executed by the Kitsap County Board of County Commissioners or the Kitsap County Administrator.

**SECTION 2. SERVICES TO BE PROVIDED**

- 2.1 A description of the services to be performed by the Contractor is set forth in Attachment B: Statement of Work, which is attached to the Contract.
- 2.2 The Contractor agrees to provide its own labor and materials. Unless otherwise provided for in the Contract, no material, labor or facilities will be furnished by the County.
- 2.3 The Contractor will perform the work specified in the Contract according to standard industry practice.
- 2.4 The Contractor will complete its work in a timely manner and in accordance with the schedule agreed to by the parties.
- 2.5 The Contractor will confer with the County from time to time during the progress of the work. The Contractor will prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the County.

**6 SECTION 3. CONTRACT REPRESENTATIVES**

The County and the Contractor will each have a contract representative. A party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

- 7 **County's Contract Representative**  
Stacey Smith, Administrator  
Kitsap County Division of Aging and Long Term Care  
614 Division Street, MS-5  
Port Orchard, WA 98366  
(360) 337-5624

## **8 Contractor's Contract Representative**

(insert Contractor contact information)

## **9 SECTION 4. COMPENSATION**

- 4.1 A description of the compensation to be paid to the Contractor is set forth in Attachment C: Budget Summary, which is attached to the Contract.
- 4.2 The total amount payable under the Contract, by the County to the Contractor in no event will exceed \$45,885. Any cost incurred by the Contractor over and above the year-end sums set out in the budgets shall be at the Contractor's sole risk and expense.
- 4.3 Unless otherwise provided in the Contract, the Contractor may submit an invoice to the County once a month for payment of work actually completed to date. Contractor shall use the Department of Human Services Contractor Invoice Form, available from the County. Subject to the other provisions of the Contract, the County generally will pay such an invoice within 30 days of receiving it.
- 4.4 The County will submit payments for work performed to;  
(insert Contractor contact information)
- 4.5 The Contractor will be paid only for work expressly authorized in the Contract.
- 4.6 Payments shall not be construed as a waiver of the County's right to challenge the level of the Contractor's performance under this Contract, and to seek appropriate legal remedies.
- 4.7 The Contractor will not be entitled to payment for any services that were performed prior to the effective date of the Contract or after its termination, unless a provision of the Contract expressly provides otherwise.
- 4.8 If the Contractor fails to perform any substantial obligation, and the failure has not been cured within 10 days following notice from the County, the County may, in its sole discretion and upon written notice to the Contractor, withhold all monies due the Contractor, without penalty, until such failure to perform is cured.
- 4.9 The Contractor shall pay no wages in excess of the usual and accustomed wages for personnel of similar background, qualifications and experience.
- 4.10 The Contractor shall pay no more than reasonable market value for equipment and/or supplies.
- 4.11 County shall not be liable for payment of any invoice submitted later than thirty (30) days after termination of this Contract.

- 4.12 The Contractor shall complete and submit the Local Match Certification Form with their final invoice as provided by County, as applicable. Final payment will not be made without the completed form.
- 4.13 The Contractor shall not charge or accept additional remuneration from any client or relative, friend, guardian, or attorney of the client, or any other person for services provided under this Contract other than those specifically permitted herein or as authorized in writing by County. In the event that this provision is violated, County shall have the right, but not a duty, to assert a claim against the Contractor on its own behalf and/or on behalf of the client.
- 4.14 In the event that it is determined that any funds are disbursed under the terms of this Contract which were in violation of the terms and conditions herein such sums shall be reimbursed to County upon written demand. Neither payment of any funds under the terms of this Contract, nor any other action of County or its agents or employees, prior to the discovery of the violation, shall constitute a waiver thereof.

## **10 SECTION 5. AMENDMENTS AND CHANGES IN WORK**

- 10.1 In the event of any errors or omissions by the Contractor in the performance of any work required under the Contract, the Contractor will make all necessary corrections without additional compensation. All work submitted by the Contractor will be certified and checked by the Contractor for errors and omissions. The Contractor will continue to be responsible for the accuracy of work even after the work is accepted by the County.
- 10.2 In order to be effective, any contract renewal, amendment or modification must be in writing, be signed by both parties and be attached to the Contract. Work under a renewal, amendment or modification may not commence until the renewal, amendment or modification has been approved by the County and has become effective.
- 10.3 Either party may request that the Contract terms be renegotiated when circumstances, which were neither foreseen nor reasonably foreseeable by the parties at the time of contracting, arise during the period of performance of the Contract. Such circumstances must have a substantial and material impact upon the performance projected under this Contract and must be outside the control of either party.
- 5.4 Any cumulative amount of transfers among the Approved Summary Budget(s) direct cost subject categories, which exceeds five percent (5%) of the total object category budget for any funding source, will require a contract amendment.

## **11 SECTION 6. HOLD HARMLESS AND INDEMNIFICATION**

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the County and its elected and appointed officials, officers, employees and agents 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 subcontractors, third parties or the County, or anyone directly or indirectly employed by any of them or anyone for whose acts, errors or omissions any of them may be liable. "Claim" means any loss, claim, suit, action, liability, damage or expense of any kind or nature whatsoever, including but not limited to attorneys' fees and costs, attributable to personal or bodily injury, sickness, disease or death, or to injury to or destruction of property, including the loss of use resulting therefrom. Contractor's duty to indemnify, defend and hold harmless includes but is not limited to claims by Contractor's or any subcontractor's officers, employees or agents. Contractor's duty, however, does not extend to claims arising from the sole negligence or willful misconduct of the County or its elected or appointed officials, officers or employees. For the purposes of this indemnification provision, Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington and acknowledges that this waiver was mutually negotiated by the parties. This indemnification provision shall survive the expiration or termination of the Contract.

## **12 SECTION 7. INSURANCE**

**7.1 Professional Legal Liability.** The Contractor, if it is a licensed professional, will maintain professional legal liability or professional errors and omissions coverage appropriate to the Contractor's profession. The coverage will have a limit of not less than \$1 million per occurrence. The coverage will apply to liability for a professional error, act or omission arising out of the Contractor's services under the Contract. The coverage will not exclude bodily injury or property damage. The coverage will not exclude 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.

**7.2 Workers' Compensation and Employer Liability.** The Contractor will maintain workers' compensation insurance as required by Title 51, Revised Code of Washington, and will provide evidence of coverage to the Kitsap County Risk Management Division. If the Contract is for over \$50,000, then the Contractor will also maintain employer liability coverage with a limit of not less than \$1 million.

Any additional workers' compensation requirements can be found in Attachment A, Special Terms and Conditions.

**7.3 Commercial General Liability.** The Contractor will maintain commercial general liability coverage for bodily injury, personal injury and property damage, subject to a limit of not less than \$1 million per occurrence. The general aggregate limit will apply separately to the Contract and be no less than \$2 million. The Contractor will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of the Contract. Specialized forms specific to the industry of the Contractor will be deemed equivalent provided coverage is no more restrictive than would be provided under a standard commercial general liability policy, including contractual liability coverage.

7.4 **Automobile Liability.** The Contractor will maintain automobile liability insurance as follows (check ONE of the following options):

Not Applicable.

The Contractor will maintain commercial automobile liability insurance with a limit of not less than \$1 million each accident combined bodily injury and property damage. The aggregate limit will be at least \$2 million. Coverage will include owned, hired and non-owned automobiles.

The Contractor will maintain automobile liability insurance or equivalent form with a limit of not less than \$100,000 each accident combined bodily injury and property damage. The aggregate limit will be at least \$300,000. If a personal lines automobile liability policy is used to meet this requirement, it must include a business rider and must cover each vehicle to be used in the performance of the Contract and the certificates of insurance must evidence that these conditions have been met. If the Contractor will use non-owned vehicles in performance of the Contract, the coverage will include owned, hired and non-owned automobiles.

#### 7.5 **Miscellaneous Insurance Provisions**

- A. The Contractor's liability insurance provision will be primary with respect to any insurance or self-insurance programs covering the County, its elected and appointed officers, officials, employees and agents.
- B. The Contractor's commercial general liability insurance and automobile liability insurance (if applicable) will include the County, its officers, officials, employees and agents as additional insureds with respect to performance of services.
- C. The Contractor's commercial general liability insurance and automobile liability insurance (if applicable) will contain no special limitations on the scope of protection afforded to the County as an additional insured.
- D. Any failure to comply with reporting provisions of the policies will not affect the coverage provided to the County, its officers, officials, employees or agents.
- E. The Contractor's insurance will apply separately to each insured against whom claim is made or suit is brought subject to the limits of the insurer's liability.
- F. The Contractor will include all subcontractors as insureds under its policies or will furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors will be subject to all of the requirements stated in these provisions.

- G. The insurance limits mandated for any insurance coverage required by the Contract are not intended to be an indication of exposure, nor are they limitations on indemnification.
- H. The Contractor will maintain all required policies in force from the time services commence until services are completed. Certificates, policies and endorsements scheduled to expire before completion of services will be renewed before expiration. If the Contractor's liability coverage is written as claims-made-policy, then the Contractor must evidence the purchase of an extended-reporting period or "tail" coverage for a three-year period after completion of the services.

**7.6 Verification of Coverage and Acceptability of Insurers.**

- A. The Contractor will place insurance with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A-VII, with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.
- B. The Contractor will furnish the County with properly executed certificates of insurance or a signed policy endorsement which will clearly evidence all insurance required in this Section before work under this Contract shall commence. The certificate will, at a minimum, list limits of liability and coverage. The certificate will provide that the underlying insurance contract may not be canceled, or allowed to expire, except on 30-days' prior written notice to the County. Any certificate or endorsement limiting or negating the insurer's obligation to notify the County of cancellation or changes must be amended so as not to negate the intent of this provision.
- C. The Contractor will furnish the County with evidence that the additional-insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the County as an additional insured, or a letter of self-insurance from a public entity risk pool which waives the requirement.
- D. Certificates of insurance will show the certificate holder as Kitsap County and indicate "care of" the appropriate County office or department. The address of the certificate holder will be shown as the current address of the appropriate County office or department.
- E. The Contractor will request that the Washington State Department of Labor and Industries, Workers Compensation Representative, send verification to the County that the Contractor is currently paying workers' compensation.
- F. Evidence of such insurance, as required above, shall be provided to the County at the following address:

Stacey Smith, Administrator  
Kitsap County Division of Aging and Long-Term Care  
614 Division Street, MS-5  
Port Orchard, WA 98366

Upon receipt, the Human Services Department will ensure submission of all insurance documentation to the Risk Management Division, Kitsap County Department of Administrative Services.

- G. Written notice of cancellation or change will be mailed to the County Risk Management Division as provided above.
- H. The Contractor or its broker will provide a copy of all insurance policies specified in the Contract upon request of the Kitsap County Risk Manager.

### **13 SECTION 8. TERMINATION**

- 8.1 The County may terminate the Contract in whole or in part whenever the County determines, in its sole discretion, that such termination is in the best interests of the County. The County may terminate the Contract upon giving the Contractor 10 days' written notice. In that event, the County will pay the Contractor for all costs incurred by the Contractor in performing the Contract up to the date of such notice, subject to the other provisions of the Contract.
- 8.2 If funding for the underlying project or matter is withdrawn, reduced or limited in any way after the Contract is signed or becomes effective, the County may summarily terminate the Contract notwithstanding any other termination provision in the Contract. Termination under this provision will be effective upon the date specified in the written notice of termination sent by the County to the Contractor. No costs incurred after the effective date of termination will be paid.
- 8.3 If the Contractor breaches any of its obligations under the Contract and fails to cure the breach within 10 days of written notice to do so by the County, the County may terminate the Contract. In that event, the County will pay the Contractor only for the costs of services accepted by the County. Upon such termination, the County, at its discretion, may obtain performance of the work elsewhere, and the Contractor will bear all costs and expenses incurred by the County in completing the work and all damages sustained by the County by reason of the Contractor's breach.

### **14 SECTION 9. ASSIGNMENT, DELEGATION AND SUBCONTRACTING**

- 9.1 The Contractor will perform under the Contract using only its bona fide employees or agents, and the obligations and duties of the Contractor under the Contract will not be assigned, delegated or subcontracted to any other person or firm without the prior express written consent of the County.

- 9.2 If permitted to use subcontractors, the Contractor is responsible for subcontractor compliance with applicable terms and conditions of this Contract and all applicable laws.
- 9.3 The Contractor warrants that it has not paid, nor has it agreed to pay, any company, person, partnership or firm, other than a bona fide employee working exclusively for the Contractor, any fee, commission percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of the Contract.

**15 SECTION 10. INDEPENDENT CONTRACTOR**

- 10.1 The Contractor's services will be furnished by the Contractor as an independent contractor and not as an employee, agent or servant of the County. The Contractor will perform the services in strict accordance with the provisions of the Contract but will be free from control or direction over the performance of the services.
- 10.2 At least one of the following applies: (a) the services to be provided are outside the usual course of business for which the services are performed; (b) the services to be provided will be performed outside all of the places of business of the Contractor; or (c) the Contractor is responsible for the costs of the principal place of business from which the services will be performed.
- 10.3 The Contractor warrants that it either: (a) is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the Contract; or (b) has a principal place of business for the business it is conducting that is eligible for a business deduction for federal income tax purposes.
- 10.4 The Contractor acknowledges or warrants that it: (a) is responsible for filing at the next applicable filing period a schedule of expenses with the Internal Revenue Service for the type of business the Contractor is conducting; (b) has established an account with the State of Washington Department of Revenue and any other applicable state agencies for the business the Contractor is conducting for the payment of all state taxes normally paid by employers and businesses; and (c) has registered for and received a unified business identifier number from the State of Washington.
- 10.5 The Contractor warrants that it maintains a separate set of books or records that reflect all items of income and expenses of the business that the Contractor is conducting.
- 10.6 The Contractor acknowledges that the entire compensation for the Contract is set forth in the compensation provisions of the Contract and that the Contractor is not entitled to any County benefits, including, but not limited to: vacation pay; holiday pay; sick leave pay; medical, dental or other insurance benefits; fringe benefits; or any other rights or privileges afforded to County employees or agents.



- 10.7 In the event that any of the Contractor's employees, agents, servants or subcontractors, carry on activities or conduct themselves in any manner which may either jeopardize the funding of this Contract or indicates that they are unfit to provide those services as set forth within, the Contractor shall be responsible for taking adequate measure to prevent said employee, agent or servant from performing or providing any such services.
- 10.8 The Contractor will hold harmless, indemnify and defend the County, its officers, officials, employees and agents from and against any loss or expense, including, but not limited to, settlements, judgments, set-offs, attorneys' fees or costs, incurred or suffered by reason of claims or demands arising in connection with the provisions of this Section.

## **16 SECTION 11. COMPLIANCE WITH LAWS**

- 11.1 The Contractor, its employees, assignees, delegates or subcontractors will not discriminate against any person in performance of any of its obligations under the Contract on the basis of race, color, creed, religion, national origin, age, sex, sexual orientation, marital status, veteran status or the presence of disability.
- 11.2 The Contractor, its employees, assignees, delegates and subcontractors will comply with all applicable provisions of the Americans With Disabilities Act and all regulations interpreting and enforcing such act.
- 11.3 The Contractor and its subcontractors, employees, agents, assignees and representatives will comply with all applicable federal, state and local laws, rules and regulations, policies, and the 2016-2019 Area Plan in their performance under the Contract.
- 11.4 STATEMENT OF ASSURANCE
- a) The Contractor shall follow those mandates pertinent to Area Agencies on Aging contained in the Older Americans Act (PL 89 73 as amended) and promulgated as rules and regulations in the Code of Federal Regulations (CFR), especially by assuring that:
- 1) preference shall be given to providing services to older individuals with the greatest economic or social needs;
  - 2) outreach efforts shall be used that identify individuals eligible under the Older Americans Act, with special emphasis on low income minorities, limited English speaking and rural elderly, and such individuals shall be informed of the availability of such assistance; and
  - 3) methods by which priority of services is determined are developed and published.

b) The Contractor shall comply with Omnibus Budget Reconciliation Act (OBRA) of 1990 Advance Directives, as amended, attached hereto as Attachment K.

**17 SECTION 12. DOCUMENTATION AND OWNERSHIP OF MATERIALS**

- 12.1 The Contractor will maintain readily accessible records and documents sufficient to provide an audit trail needed by the County to identify the receipt and expenditure of funds under this Contract, and to keep on record all source documents, such as time and payroll records, mileage reports, supplies and material receipts, purchased equipment receipts, and other receipts for goods and services.
- 12.2 The Contractor will maintain property record cards and property identification tabs as may be directed by County codes and changes thereto. This applies only to property purchased from funds under this Contract specifically designated for such purposes. Ownership of equipment purchased with funds under this Contract so designated for purchase shall rest in the County and such equipment shall be so identified.
- 12.3 The Contractor will provide a detailed record of all sources of income for any programs it operates pursuant to this Contract, including state grants, fees, donations, federal funds and other funds outlined in this Contract, or any amendments or modifications to this Contract. Expenditure of all funds payable under this Contract must be in accordance with the attached Statement of Work.
- 12.4 All reports, drawings, plans, specifications, all forms of electronic media, and data and documents produced in the performance of the work under the Contract will be “works for hire” as defined by the U.S. Copyright Act of 1976 and will be owned by the County. Ownership includes the right to copyright, patent, and register, and the ability to transfer these rights.
- 12.5 All property and patent rights, including publication rights, and other documentation, including, machine-readable media, produced by the Contractor in connection with the work provided for under this Contract shall vest in the County and such materials will be provided to the County upon request.
- 12.6 An electronic copy of all word processing documents will be submitted to the County upon request or at the end of the job using the word processing program and version specified by the County.

**18 SECTION 13. PATENT/COPYRIGHT INFRINGEMENT**

The Contractor will hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any claimed action, cause or demand brought against the County, where such action is based on the claim that information supplied by the Contractor or subcontractor infringes any patent or copyright. The Contractor will be notified promptly in writing by the County of any notice of such claim.

## 19 SECTION 14. DISPUTES

Differences, disputes and disagreements between the Contractor and the County arising under or out of the Contract will be brought to the attention of the County at the earliest possible time so that the matter may be settled, or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance or compensation due the Contractor will be decided by the County's contract representative or designee. All rulings, orders, instructions and decisions of the County's contract representative will be final and conclusive.

## 20 SECTION 15. CONFIDENTIALITY

The Contractor, its employees, subcontractors and their employees will maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of the Contract, except upon the prior express written consent of the County or an order entered by a court of competent jurisdiction. The Contractor will promptly give the County written notice of any judicial proceeding seeking disclosure of such information.

## 21 SECTION 16. CHOICE OF LAW, JURISDICTION AND VENUE

- 16.1 The Contract will be construed as having been made and delivered within the State of Washington, and it is agreed by each party that the Contract will be governed by the laws of the State of Washington, both as to its interpretation and performance.
- 16.2 Any action at law, suit in equity or other judicial proceeding arising under or out of the Contract may be instituted and maintained only in a court of competent jurisdiction in Kitsap County, Washington.
- 16.3 If the Contractor is a federally recognized Indian tribe, the following provision applies: Each party hereby grants a limited waiver of sovereign immunity to suit solely with respect to claims made against it by the other party relating to, or arising under, this Contract. Each party hereby voluntarily consents to the personal jurisdiction of the Superior Court of the State of Washington, County of Kitsap, solely for this purpose.

## 22 SECTION 17. MISCELLANEOUS

- 17.1 **Authority.** The Contractor certifies that it has the legal authority to apply for the funds covered under this Contract.
- 17.2 **No Waiver.** The parties agree that the excuse or forgiveness of performance, or waiver of any provisions of the Contract, does not constitute a waiver of such provision or future performance, or prejudice the right of the waiving party to enforce any of the provisions of the Contract at a later time.
- 17.3 **Remedies.** All remedies provided for in this Contract will be construed as cumulative and will be in addition to any other remedies provided by law.

- 17.4 **Tax Payments.** The Contractor will pay all applicable federal, state and local taxes, fees (including licensing fees) and other amounts.
- 17.5 **Conflict of Interest.** The Contractor will avoid organizational conflicts of interest or the appearance of a conflict of interest in disbursing contract funds for any purpose and in the conduct of procurement activities. The Contractor will ensure that its subcontractors, employees, agents or representatives avoid conflicts of interest or the appearance of a conflict of interest in disbursing contract funds for any purpose and in the conduct of procurement activities.
- 17.6 **Personnel Removal.** The Contractor agrees to remove immediately any of its subcontractors, employees, agents or representative from assignment to perform services under the Contract upon receipt of a written request to do so from the County's contract representative or designee.
- 17.7 **Records Inspection and Retention.** The County may, at reasonable times, inspect the books and records of the Contractor relating to the performance of the Contract. The Contractor will retain for audit purposes all Contract-related records for at least six (6) years after termination of the Contract.
- 17.8 Audit Requirements**

Independent Audits will be submitted annually to the Kitsap County Department of Human Services in the following manner:

The Contractor shall acquire a financial audit by an independent auditing firm to determine at a minimum the fiscal integrity of the financial transaction and reports of the Contractor. Copies of the audit and management letter shall be submitted to Kitsap County Department of Human Services within 9 months of the end of the Contractor's fiscal year.

The Contractor shall provide an independent audit of the entire organization which:

- A. Is performed by an independent Certified Public Accountant, the Washington State Auditor's Office, or another entity, which the County and Contractor mutually agree will produce an audit which meets the requirements described in items B and C below.
- B. Provides statements consistent with the guidelines of AICPA SOP 78-10, Reporting for Other Non-Profit Organizations.
- C. Is performed in accordance with generally accepted auditing standards and with Federal Standards for Audit of Governmental Organizations, Programs, Activities and Functions, and meeting all requirements of OMB Circular A-133, as applicable for agencies receiving federal funding in the amount of \$750,000 or more during their fiscal year.

D. The Contractor shall submit two (2) copies of the audit and the management letter directly to the County immediately upon completion. The audit must be accompanied by documentation indicating the Contractor's Board of Directors has reviewed the audit.

17.9 **Publication.** The Contractor will not publish any results of the works performed under this Contract without the advance written permission of the County.

17.10 **County Review.** The County may, at reasonable times, review and monitor the financial and service components of the program as established by the Contractor by whatever means are deemed expedient by the Board of County Commissioners, or its respective delegates. Such review may include, but is not limited to, with reasonable notice, on-site inspection by County agents or employees, and the inspection of all records or other materials which the County deems pertinent to the Contract and its performance, except those deemed confidential by law.

The Contractor agrees to cooperate with County in the evaluation of the Contractor's project(s) and to make available all information required by any such evaluation process. The Contractor shall implement in a timely manner (within 30 days) any corrective actions identified in the final evaluation report. Address more urgent responses in the time required by AAA.

17.11 **Successors and Assigns.** The County, to the extent permitted by law, and the Contractor each bind themselves, their partners, successors, executors, administrators and assigns to the other party to the Contract and to the partners, successors, administrators and assigns of such other party in respect to all covenants to the Contract.

17.12 **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.

17.13 **Definitions**

The words and phrases listed below, as used in this Contract, shall each have the following definitions:

A. "HITECH" means the Health Information Technology for Economic and Clinical Health Act of 2009. Also referred to as the "HITECH Business Associate Provisions"

B. "Nonexpendable Personal Property" shall mean any single item with a purchase price of \$100 or more and a life expectancy of more than twelve months

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

- Attachment A – Special Terms and Conditions
- Attachment B – Statement of Work
- Attachment C – Budget Summary/Estimated Expenditures
- Attachment C-1 – Budget Summary/Estimated Expenditures
- Attachment C-2 – Budget Reporting Forms
- Attachment D – Interlocal Agreement(s) (D-1: State Federal, D-2: Older Americans Act)
- Attachment E – Data Share and Security Requirements
- Attachment F - Contractor Agreement on Nondisclosure of Confidential Information
- Attachment G – Certification Regarding Debarment, Suspension, and Other Responsibility Matters
- Attachment H– Certification Regarding Lobbying
- Attachment I – Assurance of Compliance Rehabilitation Act
- Attachment J– Assurance of Compliance Civil Rights Acts
- Attachment K – Assurance of Compliance Omnibus Budget Reconciliation
- Attachment L – Contractor Signature Page

In the event of an inconsistency between these General Terms and Conditions and the attachments, precedence shall be given in the following order: (1) General Terms and Conditions; (2) Special Terms and Conditions; (3) Statement of Work; (4) Budget Summary/Estimated Expenditures; (5) Data Share and Security Requirements.

17.15 **Whole Agreement.** The parties acknowledge that the Contract is the complete expression of their agreement regarding the subject matter of the Contract. Any oral or written representations or understandings not incorporated in the Contract are specifically excluded.

17.16 **Notices.** Any notice will be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in the contract representatives' provision of the Contract. 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.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020

**CONTRACTOR**

(Insert Contractor Business Name)

\_\_\_\_\_  
(Insert Contract Signatory Name and Title)

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020

**BOARD OF COUNTY COMMISSIONERS  
KITSAP COUNTY, WASHINGTON**

\_\_\_\_\_  
Robert Gelder, Chair

\_\_\_\_\_  
Edward E. Wolfe, Commissioner

\_\_\_\_\_  
Charlotte Garrido, Commissioner

**ATTEST:**

\_\_\_\_\_  
Dana Daniels, Clerk of the Board

**Approved as to form by the Prosecuting Attorney's Office**

## **ATTACHMENT A: SPECIAL TERMS AND CONDITIONS**

This delivery of services to the elderly is pursuant to: the Older Americans Act of 1965, as Amended, and/or State of Washington Senior Citizens Services Act of 1976, as Amended; and the Kitsap County Division of Aging and Long Term Care Area Plan for Aging Services under Contract #916001348.

The Contractor agrees to abide by the terms of RCW Chapters 74.08, 74.34, 74.36, 74.38, and 74.41 and any rules and regulations promulgated thereunder. All activities conducted under this Contract shall be in accordance with Federal and State regulations as referenced in the Aging and Long Term Support Administration Policies and Procedures for Area Agency on Aging operations. Contractor shall provide those services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth in the approved Special Terms and Conditions, Statement of Work and within the Budget which are attached to the Contract and incorporated by this reference. A description of the services to be performed by the Contractor is set forth in Attachment B: Statement of Work.

County shall provide for ongoing technical assistance to the Contractor providing services under this Contract. Such technical assistance shall be provided onsite, by telephone, through written communication, and/or via group training sessions.

County shall distribute, in a timely manner, to the Contractor relevant information, changes in policy, technical assistance, and information issues received from the Aging and Long-Term Support Administration.

### **PROGRAM INCOME**

Program income shall be used by the Contractor in accordance with the Department of Health and Human Services, Administration of Grants, Federal Regulations, Title 45, Part 92, Section 25. Costs borne by the program income may be used to satisfy cost sharing or matching requirements (45 C.F.R. § 25 (g) (3)).

### **CONTRIBUTIONS FOR SERVICES FUNDED UNDER THE OLDER AMERICANS ACT**

#### **1. THE CONTRACTOR MUST:**

- a) Provide each older person with a free and voluntary opportunity to contribute to the cost of the service;
- b) Protect the privacy of each older person with respect to his or her contribution;
- c) Establish appropriate procedures to safeguard and account for all contributions; and
- d) Use all contributions to expand the services of the project(s) under this Contract. Nutrition service providers must use all contributions to increase the number of meals served.



## 2. CONTRIBUTION SCHEDULES

Each Contractor may develop a suggested contribution schedule for services provided under this Contract. In developing a contribution schedule the provider must consider the income ranges of older persons in the community and the provider's other sources of income.

## 3. INABILITY TO CONTRIBUTE

The Contractor receiving Older Americans Act funds under this Contract may not deny any older person a service because the older person will not or cannot contribute to the cost of the service.

## 4. CONTRIBUTIONS AS PROGRAM INCOME

Contributions made by older persons are considered program income.

## REPORTING REQUIREMENTS

### 1. INSPECTION, MAINTENANCE OF RECORDS

- a) The Contractor shall provide County financial, program, and other reports at the intervals and in the formats required by County. The Contractor's failure to submit required reports in a timely manner may result in County's withholding payment of Reimbursement Requests submitted for reimbursement of funds related to the delinquent report(s).

County requires the Contractor to comply with the requirements of the computerized client tracking system used by County. As may be required by County, client demographic data, service history and/or reports shall be submitted to County in any or all of the following formats:

- i. Hard copy
- ii. Electronic media as may be specified by County
- iii. Encrypted Email

If a computerized report format is required, the Contractor will be provided the necessary software and training on its use. Units of service for each client must be reported monthly, with each client identified by name or County assigned client number, and birth date. County will provide technical assistance as necessitated by the reporting requirements. Data required or procedures for client tracking may change periodically.

- b) Subcontractors providing service on a firm fixed price basis shall provide semi-annual cost reports reflecting the total cost picture (including revenues) for the Project. These shall be in addition to the service reports required as a basis for reimbursement.

- c) Pursuant to 42 CFR 455.105(b), within 35 days of the date on a request by the Secretary of the U.S. Department of Health and Human Services, DSHS or County, Contractor must submit full and complete information related to Contractor's business transactions that include:
  - i. The ownership of any subcontractor with whom the Contractor has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and
  - ii. Any significant business transactions between the Contractor and any wholly owned supplier, or between the Contractor and any subcontractor, during the 5-year period ending on the date of the request.
- d) Failure to comply with requests made under this term may result in denial of payments until the requested information is disclosed. See 42. CFR 455.105(c).
- e) The Contractor is required to respond to State or Federal audit requests for records or documentation, within the timeframe provided by the requestor. The Contractor must provide all records requested to either State or Federal agency staff or their designees.

## **ATTACHMENT B: STATEMENT OF WORK**

### **WASHINGTON STATE KINSHIP CAREGIVER SUPPORT PROGRAM KITSAP COUNTY DIVISION OF AGING AND LONG-TERM CARE STATEMENT OF WORK JULY 1, 2020 THROUGH JUNE 30, 2021**

The Contractor shall provide Kinship Caregiver Support Services to eligible Kitsap County residents in accordance with all appropriate provisions of federal, state and local laws and regulations and all applicable state and federal statutes and rules, including but not limited to, the United States Code, the Code of Federal Regulations, HIPAA, the Revised Code of Washington, the Washington Administrative Code, and any and all Department of Social and Health Services(DSHS) /Aging and Long Term Support Administration (AL TSA), and Area Agency on Aging (AAA)/Division of Aging and Long Term Care (DALTC) standards, guidelines, policy manuals, management bulletins and the contents of this subcontract; and according to the terms and conditions as specified in the Statement of Work; amended, revised or otherwise updated.

1. Funds awarded to the Contractor under this agreement are contingent upon the ability of the Contractor to spend the funds according to the Budget Summary (quarterly spending projection). The Budget Summary (quarterly spending projection) shall be a rate of spending during the period of the term of the Contract, which shall be in a manner as defined in this agreement for both parties. PROVIDED, if the Contractor fails to meet the Budget Summary (quarterly spending projection), the total amount of the award may be reduced by an amount not to exceed the difference between the Budget Summary (quarterly spending projection) and the Actual spending for the period.

Unearned funds from one project period will not be carried over into any succeeding period.

If the cost of the project exceeds the Budget Summary (quarterly spending projection) the Contractor shall take action to reduce such excess cost in a manner mutually agreed upon by the County and Contractor.

2. The Contractor agrees to utilize all project income for the purposes of this grant.
3. Payment for services under this agreement will be by reimbursement of actual costs in accordance with the line item budget. The County must receive requests for reimbursement no later than the tenth (10<sup>th</sup>) day of the month following the month to be reimbursed.
4. For the purposes of audit, [Contractor] is a subrecipient of \$45,885 total funds, through combined State Kinship Caregiver Support Program and Federal Older Americans Act 3-E funds. The Contractor shall receive an independent audit of activities conducted under this Agreement, conducted in accordance with

generally accepted auditing standards, to verify compliance with the terms and requirements of this Agreement and the accuracy and completeness of claims for reimbursement. However, if the combined federal assistance received by [Contractor] exceeds \$750,000 for the year, the audit must be in accordance with OMB Circular A-133.

Copies of all audits, including all findings, recommendations, and action taken, shall be forwarded to the County not later than nine (9) months after the close of the fiscal year.

5. Reimbursement of audit expenses shall be in accordance with Part III, Subpart B of the Agreement, Allowable Costs.
6. The Contractor is required to comply with the requirements of the client tracking system used by Division of Aging and Long-Term Care (DALTC) for these services. Units of service for each client must be reported monthly, as described in the attached Statement of Work, Attachment B.

The DALTC utilizes a computerized client tracking system to monitor and report on client services. When required, the Contractor shall use compatible computer equipment and software to submit monthly reports on all clients served. As may be required, client demographic data, service history and/or reports shall be submitted to the DALTC in any or all the following formats: (1) hard copy; (2) via HIPAA compliant electronic formats; (3) email. Data required or procedures for client tracking may change periodically and must follow DATA SECURITY REQUIREMENTS of this Contract in Attachment E.

## **A. BACKGROUND**

The Washington State Legislature Appropriated State General Funds to implement the Kinship Caregivers Support Program (KCSP) to provide support services to kinship caregivers, particularly those who are at the greatest risk of being unable to maintain the caregiving role. KCSP services provide financial assistance to kinship caregivers (grandparents and relatives raising children under the age of 19) by assisting them with obtaining:

1. Supplement school supplies when other resources unavailable;
2. Emergency financial assistance for basic needs (housing, food, clothing, supplies, and other items for their relative's children); and
3. Other supportive services for target population as described in the Washington State KCSP policy and may be identified during the screening process and subject to availability of funds and approval by the Contractor.

KCSP funds used to meet basic needs must be of an emergent nature, one-time per year (the intervention cannot last more than three months-exception to policy for a fourth month is permitted) and be non-recurrent. KCSP funds cannot be applied towards the costs of children's medical or dental services or for on-going benefits such as rent or utility payments.

## **B. ELIGIBILITY AND SCREENING CRITERIA**

1. To establish financial eligibility for KCSP funds, the Contractor shall screen kinship caregiving families according to the current eligibility scale for reduced-price lunches under the National School Lunch Program (NSLP). NSLP eligibility guidelines, based on family income and family size, are revised annually, and published in September of each year.
2. Such assistance shall be evaluated on a case-by-case basis, ensuring KCSP funding is the resource of last resort, limited to the \$1,000 annual maximum. Exceptions to this policy must be approved by the County.
3. KCSP state funds may be used to serve those Caregivers under the age of 60, who are not eligible for service under the National Family Caregiver Support Program.
4. KCSP federal Older Americans Act 3-E funds must be used to serve eligible Caregivers 60 years of age and older per requirements.
5. The Contractor shall screen for and track other Caregiver unmet needs.

## **C. KCSP REPORTING REQUIREMENTS**

1. The Contractor shall complete a Kinship Caregiver Support Program "Screening/Contact Form" for each new Relative Caregiver accessing State KCSP funded services.
2. In addition to monthly submission of a Screening/Contact Form for NEW Relative Caregivers, the following Caregiver information, service data, and billing detail shall be reported and submitted monthly to County:
  - Relative Caregiver first and last name, and date of birth;
  - Care Recipient/Child(ren) first and last name, and date of birth;
  - Number and type of service units provided, per family, during the reporting month;
  - Amount/Cost per school supplies, as itemized;

- Amount/Cost per family for transportation;
  - Amount/Cost per family for Emergency Financial Assistance for Basic Needs (housing, food, clothing, supplies, and other items) provided for the Relative Caregiver's children;
  - Caregiver relationship to kinship child/children;
  - Unduplicated number of kinship children being raised in caregiver household;
  - If caregiver receives a TANF need or child-only grant;
  - If kinship family receives basic food assistance;
  - If kinship family is 100% or below the Federal Poverty level; and
  - Any additional required data elements on DALTC provided reporting forms based on ALTSA program requirements.
3. The Contractor shall complete and submit to DALTC the required ALTSA Kinship Caregiver Support Program State Fiscal Year Quarterly Data Report.

Any exceptions to these policies and procedures outlined in this contract, and as approved by the County, shall be documented.

## **ATTACHMENT C-1: BUDGET SUMMARY**

Payment for services under this Contract shall be through either a firm fixed price, fee for service, unit cost rate or reimbursement of actual costs

Funds awarded to the Contractor under this Contract are contingent upon the ability of the Contractor to spend the funds according to the Budget as attached as Attachment C shall be a rate of spending of the funds during the period of the terms of the Contract that shall be in a manner as defined in this Contract for both parties. PROVIDED, if Contractor fails to meet the quarterly spending projections as per Attachment C the total amount of the award may be reduced by an amount not to exceed the difference between the quarterly spending projections and the actual spending rate for the period.

Unearned funds from one project period will not be carried over into any succeeding period but will be redistributed to the program contractors according to a formula developed by County. If the cost of the project exceeds the projected quarterly expenditures as per Attachment C: Budget, the Contractor shall take action to reduce such excess cost in a manner mutually agreed upon by County and Contractor.

### **ALLOWABLE COSTS**

In order to be allowable, County must approve costs. The following procedures govern approval of these costs:

a) **INDIRECT COSTS**

When costs are treated as indirect costs, acceptance of the costs as part of the indirect cost rate or cost allocation plan shall constitute approval.

b) **DIRECT COSTS**

- 1) When costs are treated as direct costs, they shall be approved in advance.
- 2) If costs are specified in a budget, approval of the budget shall constitute approval of the costs.
- 3) If costs are not specified in a budget or there is no approved budget, the Contractor shall obtain specific prior approval in writing.

c) **WAIVER OF REQUIREMENT**

County may conditionally waive the requirement for its approval of direct costs. Such conditional waiver shall apply only to the requirement for approval. If, upon audit or otherwise, it is determined that the costs do not meet other requirements or tests for allow ability specified by the applicable cost principles, such as reasonableness and necessity, the costs may be disallowed and the Contractor shall be fully responsible for any such direct costs incurred..

## ATTACHMENT C-1: BUDGET SUMMARY

Program/Funding Source	Total	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
<b>Kinship Caregiver Program</b>	<b>45,885</b>	<b>11,473</b>	<b>11,471</b>	<b>11,471</b>	<b>11,470</b>
Admin - State	4,589	1,148	1,147	1,147	1,147
Admin - Federal (3-E)	0	0	0	0	0
Service Delivery	6,883	1,721	1,721	1,721	1,720
Service - State	34,413	8,604	8,603	8,603	8,603
Service - Federal (3-E)	0	0	0	0	0
<b>Match</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
25% on 3-E Funds	0	0	0	0	0
<b>Total Project</b>	<b>45,885</b>	<b>11,473</b>	<b>11,471</b>	<b>11,471</b>	<b>11,470</b>

Any cumulative amount of transfers among the Approved Summary Budget(s) direct cost subject categories, which exceeds five percent (5%) of the total object category budget for any funding source, will require a contract amendment.



**ATTACHMENT C-2: BUDGET (Reporting Forms)**

**SUMMARY BUDGET**

**PROGRAM TITLE: KINSHIP CAREGIVER SUPPORT PROGRAM - ADMIN**

**PROGRAM SPONSOR:**

**CONTRACT PERIOD: 07/01/2020 - 06/30/2021**

OBJECT	KINSHIP CAREGIVER	FAMILY CAREGIVER				TOTAL ALTC GRANT	OTHER GRANT	MATCH		TOTAL EFFORT
								IN-KIND	PROJECT INCOME	
10 - SALARIES/WAGES										
20 - PERSONNEL BENFT										
<b>TOTAL PERSONNEL SVC</b>										
31 - SUPPLIES										
32 - FUEL CONSUMED										
35 - SMALL TOOLS/EQUIP.										
<b>TOTAL SUPPLIES</b>										
41 - PROFESSIONAL SVC										
42 - COMMUNICATION										
43 - TRAVEL										
44 - ADVERTISING										
45 - RENTALS/LEASES										
46 - INSURANCE										
47 - PUBLIC UTILITY SVCS										
48 - REPAIRS/MAINTNC.										
49 - MISCELLANEOUS										
<b>TOTAL OTHER SERVICES</b>										
INDIRECT										
64 - TOTAL EQUIPMENT										
<b>TOTAL BUDGET</b>										

**ESTIMATED EXPENDITURE RATE BY FUNDING SOURCE**  
**PROGRAM TITLE: KINSHIP CAREGIVER SUPPORT PROGRAM - ADMIN**  
**PROGRAM SPONSOR:**  
**CONTRACT PERIOD: 07/01/2020 - 06/30/2021**

		ACTUALS	ACTUALS	ACTUALS	ACTUALS
Contract Amount by Source	Year-----> Quarter--> TOTAL	2020 3rd	2020 4th	2021 1st	2021 2nd
State Kinship Caregiver					
Federal Famly Caregiver (3-E)					
<b>TOTAL A&amp;LTC GRANT</b>					
Match (25% required on fed 3-E \$)					
Addition to Match					
Project Income					
<b>TOTAL PROJECT</b>					

**SUMMARY BUDGET**

**PROGRAM TITLE: KINSHIP CAREGIVER SUPPORT PROGRAM - SERVICE DELIVERY**

**PROGRAM SPONSOR:**

**CONTRACT PERIOD: 07/01/2020 - 06/30/2021**

OBJECT	KINSHIP CAREGIVER	FAMILY CAREGIVER				TOTAL ALTC GRANT	OTHER GRANT	MATCH		TOTAL EFFORT
								IN-KIND	PROJECT INCOME	
10 - SALARIES/WAGES										
20 - PERSONNEL BENFT										
<b>TOTAL PERSONNEL SVC</b>										
31 - SUPPLIES										
32 - FUEL CONSUMED										
35 - SMALL TOOLS/EQUIP.										
<b>TOTAL SUPPLIES</b>										
41 - PROFESSIONAL SVC										
42 - COMMUNICATION										
43 - TRAVEL										
44 - ADVERTISING										
45 - RENTALS/LEASES										
46 - INSURANCE										
47 - PUBLIC UTILITY SVCS										
48 - REPAIRS/MAINTNC.										
49 - MISCELLANEOUS										
<b>TOTAL OTHER SERVICES</b>										
64 - TOTAL EQUIPMENT										
<b>TOTAL BUDGET</b>										



**ESTIMATED EXPENDITURE RATE BY FUNDING SOURCE**

**PROGRAM TITLE: KINSHIP CAREGIVER SUPPORT PROGRAM - SERVICE DELIVERY**

**PROGRAM SPONSOR:**

**CONTRACT PERIOD: 07/01/2020 - 06/30/2021**

Contract Amount by Source	Year-----> Quarter--> TOTAL	2020 3rd	2020 4th	2021 1st	2021 2nd
State Kinship Caregiver					
Federal Family Caregiver (3-E)					
<b>TOTAL A&amp;LTC GRANT</b>					
Match (25% required on fed \$)					
Addition to Match					
Project Income					
<b>TOTAL PROJECT</b>					

**SUMMARY BUDGET**

**PROGRAM TITLE: KINSHIP CAREGIVER SUPPORT PROGRAM - SERVICES**

**PROGRAM SPONSOR:**

**CONTRACT PERIOD: 07/01/2020 - 06/30/2021**

OBJECT	KINSHIP CAREGIVER	FAMILY CAREGIVER				TOTAL ALTC GRANT	OTHER GRANT	MATCH		TOTAL EFFORT
								IN-KIND	PROJECT INCOME	
10 - SALARIES/WAGES										
20 - PERSONNEL BENFT										
<b>TOTAL PERSONNEL SVC</b>										
31 - SUPPLIES										
32 - FUEL CONSUMED										
35 - SMALL TOOLS/EQUIP.										
<b>TOTAL SUPPLIES</b>										
41 - PROFESSIONAL SVC										
42 - COMMUNICATION										
43 - TRAVEL										
44 - ADVERTISING										
45 - RENTALS/LEASES										
46 - INSURANCE										
47 - PUBLIC UTILITY SVCS										
48 - REPAIRS/MAINTNC.										
49 - MISCELLANEOUS										
<b>TOTAL OTHER SERVICES</b>										
64 - TOTAL EQUIPMENT										
<b>TOTAL BUDGET</b>										

**BUDGET SUMMARY (QUARTERLY SPENDING PROJECTION)**  
**PROGRAM TITLE: KINSHIP CAREGIVER SUPPORT PROGRAM - SERVICES**  
**PROGRAM SPONSOR:**  
**CONTRACT PERIOD: 07/01/2020 - 06/30/2021**

Contract Amount by Source	Year-----> Quarter--> TOTAL	2020 3rd	2020 4th	2021 1st	2021 2nd
State Kinship Caregiver					
Federal Family Caregiver (3-E)					
<b>TOTAL A&amp;LTC GRANT</b>					
Match (25% required on III E)					
Match (above required)					
Project Income					
<b>TOTAL PROJECT</b>					

**ATTACHMENT D-1: INTERLOCAL AGREEMENT AAA AGREEMENT STATE/FEDERAL** [DSHS Agreement #1769-93479] Effective July 1, 2019 – June 30, 2020. Any subcontract for the Kitsap County Area Agency on Aging is subject to the provisions of the applicable Interlocal Agreement between the Department of Social and Health Services and the Area Agency on Aging, unless otherwise provided for in the contract between the Kitsap County Area Agency on Aging and the Contractor. When referencing the applicable Interlocal Agreement in relation to the subcontract, the Kitsap County Area Agency on Aging replaces DSHS and subcontractor replaces AAA.

1. **Amendment.** This Agreement, or any term or condition, may be modified only by a written amendment signed by both parties. Only personnel authorized to bind each of the parties shall sign an amendment.
2. **Assignment.** Except as otherwise provided herein, the AAA shall not assign rights or obligations derived from this Agreement to a third party without the prior, written consent of the DSHS Contracts Administrator and the written assumption of the AAA's obligations by the third party.
3. **Client Abuse.** The AAA shall report all instances of suspected client abuse to DSHS, in accordance with RCW 74.34.
4. **Client Grievance.** The AAA shall establish a system through which applicants for and recipients of services under the approved area plans may present grievances about the activities of the AAA or any subcontractor(s) related to service delivery. Clients receiving Medicaid funded services must be informed of their right to a fair hearing regarding service eligibility specified in WAC 388-02 and under the provisions of the Administrative Procedures Act, Chapter 34.05 RCW.
5. **Compliance with Applicable Law.** At all times during the term of this Agreement, the AAA and DSHS shall comply with all applicable federal, state, and local laws, regulations, and rules, including but not limited to, nondiscrimination laws and regulations.
6. **Confidentiality.** The parties shall use Personal Information and other confidential information gained by reason of this Agreement only for the purpose of this Agreement. DSHS and the AAA shall not otherwise disclose, transfer, or sell any such information to any other party, except as provided by law or, in the case of Personal Information except as provided by law or with the prior written consent of the person to whom the Personal Information pertains. The parties shall maintain the confidentiality of all Personal Information and other confidential information gained by reason of this Agreement and shall return or certify the destruction of such information if requested in writing by the party to the Agreement that provided the information.
7. **AAA Certification Regarding Ethics.** By signing this Agreement, the AAA certifies that the AAA follows Chapter 42.23 RCW and shall comply with Chapter 42.23 RCW throughout the term of this Agreement.
8. **Debarment Certification.** The AAA, by signature to this Agreement, certifies that the AAA is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any Federal department or agency. The AAA also agrees to include the above requirement in all subcontracts into which it enters, resulting directly from the AAA's duty to provide services under this Agreement.
9. **Disputes.** In the event of a dispute between the AAA and DSHS, every effort shall be made to resolve



## AAA General Terms and Conditions

the dispute informally and at the lowest level. If a dispute cannot be resolved informally, the AAA shall present their grievance in writing to the Assistant Secretary for Aging and Long-Term Support Administration. The Assistant Secretary shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. If the dispute remains unresolved after the Assistant Secretary's determination, either party may request intervention by the Secretary of DSHS, in which event the Secretary's process shall control. The Secretary will make a determination within 45 days. Participation in this dispute process shall precede any judicial or quasi-judicial action and shall be the final administrative remedy available to the parties. However, if the Secretary's determination is not made within 45 days, either party may proceed with judicial or quasi-judicial action without awaiting the Secretary's determination.

10. **Drug-Free Workplace.** The AAA shall maintain a workplace free from alcohol and drug abuse.
11. **Entire Agreement.** This Agreement including all documents attached to or incorporated by reference, contain all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind the parties.
12. **Governing Law and Venue.** The laws of the State of Washington govern this Agreement. In the event of a lawsuit by the AAA against DSHS involving this Agreement, venue shall be proper only in Thurston County, Washington. In the event of a lawsuit by DSHS against a County AAA involving this Agreement, venue shall be proper only as provided in RCW 36.01.050.
13. **Independent Status.** Except as otherwise provided in Paragraph 26 herein below, for purposes of this Agreement, the AAA acknowledges that the AAA is not an officer, employee, or agent of DSHS or the State of Washington. The AAA shall not hold out itself or any of its employees as, nor claim status as, an officer, employee, or agent of DSHS or the State of Washington. The AAA shall not claim for itself or its employees any rights, privileges, or benefits, which would accrue to an employee of the State of Washington. The AAA shall indemnify and hold harmless DSHS from all obligations to pay or withhold federal or state taxes or contributions on behalf of the AAA or the AAA's employees.
14. **Inspection.** Either party may request reasonable access to the other party's records and place of business for the limited purpose of monitoring, auditing, and evaluating the other party's compliance with this Agreement, and applicable laws and regulations. During the term of this Agreement and for one (1) year following termination or expiration of this Agreement, the parties shall, upon receiving reasonable written notice, provide the other party with access to its place of business and to its records which are relevant to its compliance with this Agreement and applicable laws and regulations. This provision shall not be construed to give either party access to the other party's records and place of business for any other purpose. Nothing herein shall be construed to authorize either party to possess or copy records of the other party.
15. **Insurance.** DSHS certifies that it is self-insured under the State's self-insurance liability program, as provided by RCW 4.92.130, and shall pay for losses for which it is found liable. The AAA certifies that it is self-insured, is a member of a risk pool, or maintains the types and amounts of insurance identified below and shall, prior to the execution of this Agreement by DSHS, provide certificates of insurance to that effect to the DSHS contact on page one of this Agreement.

Commercial General Liability Insurance (CGL) – to include coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The policy shall include liability arising out of premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability

## AAA General Terms and Conditions

assumed under an insured contract. The State of Washington, DSHS, its elected and appointed officials, agents, and employees shall be named as additional insureds.

- 16. Maintenance of Records.** During the term of this Agreement and for six (6) years following termination or expiration of this Agreement, both parties shall maintain records sufficient to:
- a. Document performance of all acts required by law, regulation, or this Agreement;
  - b. Demonstrate accounting procedures, practices, and records that sufficiently and properly document the AAA's invoices to DSHS and all expenditures made by the AAA to perform as required by this Agreement.

For the same period, the AAA shall maintain records sufficient to substantiate the AAA's statement of its organization's structure, tax status, capabilities, and performance.

- 17. Medicaid Fraud Control Unit (MFCU).** As required by federal regulations, the Health Care Authority, the Department of Social and Health Services, and any contractors or subcontractors, shall promptly comply with all MFCU requests for records or information. Records and information include, but is not limited to, records on micro-fiche, film, scanned or imaged documents, narratives, computer data, hard copy files, verbal information, or any other information the MFCU determines may be useful in carrying out its responsibilities.
- 18. Order of Precedence.** In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence, in the following order, to:
- a. Applicable federal CFR, CMS Waivers and Medicaid State Plan;
  - b. State of Washington statutes and regulations;
  - c. AL TSA Management Bulletins and policy manuals;
  - d. This Agreement; and
  - e. The AAA's Area Plan.
- 19. Ownership of Client Assets.** The AAA shall ensure that any client for whom the AAA or Subcontractor is providing services under this Agreement shall have unrestricted access to the client's personal property. For purposes of this paragraph, client's personal property does not pertain to client records. The AAA or Subcontractor shall not interfere with the client's ownership, possession, or use of such property. Upon termination of this Agreement, the AAA or Subcontractor shall immediately release to the client and/or DSHS all of the client's personal property.
- 20. Ownership of Material.** Material created by the AAA and paid for by DSHS as a part of this Agreement shall be owned by DSHS and shall be "work made for hire" as defined by Title 17 USCA, Section 101. This material includes but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Material which the AAA uses to perform this Agreement but is not created for or paid for by DSHS is owned by the AAA and is not "work made for hire"; however, DSHS shall have a license of perpetual duration to use, modify, and distribute this material at no charge to DSHS, provided that such license shall be limited to the extent which the AAA has a right to grant such a license.

## AAA General Terms and Conditions

- 21. Ownership of Real Property, Equipment and Supplies Purchased by the AAA.** Title to all property, equipment and supplies purchased by the AAA with funds from this Agreement shall vest in the AAA. When real property, or equipment with a per unit fair market value over \$5000, is no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS. If the per unit fair market value of equipment is under \$5000, the AAA may retain, sell, or dispose of it with no further obligation. Proceeds from the sale or lease of property that was purchased with revenue accrued under the Case Management/Nursing Services unit rate must be expended in Medicaid TXIX or Aging Network programs.

When supplies with a total aggregate fair market value over \$5000 are no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS. If the total aggregate fair market value of equipment is under \$5000, the AAA may retain, sell, or dispose of it with no further obligation.

Disposition and maintenance of property shall be in accordance with 45 CFR Parts 92 and 74.

- 22. Ownership of Real Property, Equipment and Supplies Purchased by DSHS.** Title to property, equipment and supplies purchased by DSHS and provided to the AAA to carry out the activities of this Agreement shall remain with DSHS. When real property, equipment or supplies are no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS.

Disposition and maintenance of property shall be in accordance with 45 CFR Parts 92 and 74.

- 23. Responsibility.** Each party to this Agreement shall be responsible for the negligence of its officers, employees, and agents in the performance of this Agreement. No party to this Agreement shall be responsible for the acts and/or omissions of entities or individuals not party to this Agreement. DSHS and the AAA shall cooperate in the defense of tort lawsuits, when possible. Both parties agree and understand that this provision may not be feasible in all circumstances. DSHS and the AAA agree to notify the attorneys of record in any tort lawsuit where both are parties if either DSHS or the AAA enters into settlement negotiations. It is understood that the notice shall occur prior to any negotiations, or as soon as possible, and the notice may be either written or oral.

- 24. Restrictions Against Lobbying.** The AAA certifies to the best of its knowledge and belief that no federal appropriated funds have been paid or will be paid, by or on behalf of the AAA, to any person for influencing or attempting to influence an officer or employee of a federal agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

If any funds other than federal appropriated funds have or will be paid for the purposes stated above, the AAA must file a disclosure form in accordance with 45 CFR Section 93.110.

The AAA shall include a clause in all subcontracts restricting subcontractors from lobbying in accordance with this section and requiring subcontractors to certify and disclose accordingly.

- 25. Severability.** The provisions of this Agreement are severable. If any court holds any provision of this Agreement, including any provision of any document incorporated by reference, invalid, that invalidity shall not affect the other provisions this Agreement.

**26. Subcontracting.**

- a. The AAA may, without further notice to DSHS; subcontract for those services specifically defined in the Area Plan submitted to and approved by DSHS, except subcontracts with for-profit entities must have prior DSHS approval.
- b. The AAA must obtain prior written approval from DSHS to subcontract for services not specifically defined in the approved Area Plan.
- c. Any subcontracts shall be in writing and the AAA shall be responsible to ensure that all terms, conditions, assurances and certifications set forth in this Agreement are included in any and all client services Subcontracts unless an exception to including a particular term or terms has been approved in advance by DSHS.
- d. Subcontractors are prohibited from subcontracting for direct client services without the prior written approval from the AAA.
- e. When the nature of the service the subcontractor is to provide requires a certification, license or approval, the AAA may only subcontract with such contractors that have and agree to maintain the appropriate license, certification or accrediting requirements/standards.
- f. In any contract or subcontract awarded to or by the AAA in which the authority to determine service recipient eligibility is delegated to the AAA or to a subcontractor, such contract or subcontract shall include a provision acceptable to DSHS that specifies how client eligibility will be determined and how service applicants and recipients will be informed of their right to a fair hearing in case of denial or termination of a service, or failure to act upon a request for services with reasonable promptness.
- g. If DSHS, the AAA, and a subcontractor of the AAA are found by a jury or trier of fact to be jointly and severally liable for damages arising from any act or omission from the contract, then DSHS shall be responsible for its proportionate share, and the AAA shall be responsible for its proportionate share. Should the subcontractor be unable to satisfy its joint and several liability, DSHS and the AAA shall share in the subcontractor's unsatisfied proportionate share in direct proportion to the respective percentage of their fault as found by the jury or trier of fact. Nothing in this term shall be construed as creating a right or remedy of any kind or nature in any person or party other than DSHS and the AAA. This term shall not apply in the event of a settlement by either DSHS or the AAA.
- h. Any subcontract shall designate subcontractor as AAA's Business Associate, as defined by HIPAA, and shall include provisions as required by HIPAA for Business Associate contract. AAA shall ensure that all client records and other PHI in possession of subcontractor are returned to AAA at the termination or expiration of the subcontract.

**27. Subrecipients.**

- a. General. If the AAA is a subrecipient of federal awards as defined by 2 CFR Part 200 and this Agreement, the AAA shall:
  - (1) Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;

## AAA General Terms and Conditions

- (2) Maintain internal controls that provide reasonable assurance that the AAA is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;
- (3) Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
- (4) Incorporate 2 CFR Part 200, Subpart F audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;
- (5) Comply with the applicable requirements of 2 CFR Part 200, including any future amendments to 2 CFR Part 200, and any successor or replacement Office of Management and Budget (OMB) Circular or regulation; and
- (6) Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39. (Go to <https://ojp.gov/about/offices/ocr.htm> for additional information and access to the aforementioned Federal laws and regulations.)

- b. **Single Audit Act Compliance.** If the AAA is a subrecipient and expends \$750,000 or more in federal awards from all sources in any fiscal year, the AAA shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the AAA shall:
  - (1) Submit to the DSHS contact person the data collection form and reporting package specified in 2 CFR Part 200, Subpart F, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;
  - (2) Follow-up and develop corrective action for all audit findings; in accordance with 2 CFR Part 200, Subpart F; prepare a "Summary Schedule of Prior Audit Findings" reporting the status of all audit findings included in the prior audit's schedule of findings and questioned costs.
- c. **Overpayments.** If it is determined by DSHS, or during the course of the required audit, that the AAA has been paid unallowable costs under this Agreement, DSHS may require the AAA to reimburse DSHS in accordance with 2 CFR Part 200.
  - (1) For any identified overpayment involving a subcontract between the AAA and a tribe, DSHS agrees it will not seek reimbursement from the AAA, if the identified overpayment was not due to any failure by the AAA.

**28. Survivability.** The terms and conditions contained in this Agreement, which by their sense and context, are intended to survive the expiration of the particular agreement shall survive. Surviving terms include, but are not limited to: Confidentiality, Disputes, Inspection, Maintenance of Records, Ownership of Material, Responsibility, Termination for Default, Termination Procedure, and Title to Property.

**29. Contract Renegotiation, Suspension, or Termination Due to Change in Funding.** If the funds DSHS relied upon to establish this Contract or Program Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, after the effective date of this contract but prior to the normal completion of this Contract or Program Agreement:

## AAA General Terms and Conditions

- a. The Contract or Program Agreement may be renegotiated under the revised funding conditions.
- b. At DSHS's discretion, DSHS may give notice to the AAA to suspend performance when DSHS determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this contract.
  - (1) During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
  - (2) When DSHS determines that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to DSHS informing DSHS whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.
  - (3) If the AAA's proposed resumption date is not acceptable to DSHS and an acceptable date cannot be negotiated, DSHS may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.
- c. DSHS may immediately terminate this Contract by providing written notice to the AAA. The termination shall be effective on the date specified in the termination notice. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty shall accrue to DSHS in the event the termination option in this section is exercised.

**30. Termination for Convenience.** The Contracts Administrator may terminate this Agreement or any in whole or in part for convenience by giving the AAA at least thirty (30) calendar days' written notice. The AAA may terminate this Agreement for convenience by giving DSHS at least thirty (30) calendar days' written notice addressed to: Central Contract Services, PO Box 45811, Olympia, Washington 98504-5811.

**31. Termination for Default.**

- a. The Contracts Administrator may terminate this Agreement for default, in whole or in part, by written notice to the AAA, if DSHS has a reasonable basis to believe that the AAA has:
  - (1) Failed to meet or maintain any requirement for contracting with DSHS;
  - (2) Failed to perform under any provision of this Agreement;
  - (3) Violated any law, regulation, rule, or ordinance applicable to this Agreement; and/or
  - (4) Otherwise breached any provision or condition of this Agreement.
- b. Before the Contracts Administrator may terminate this Agreement for default, DSHS shall provide the AAA with written notice of the AAA's noncompliance with the agreement and provide the AAA a reasonable opportunity to correct the AAA's noncompliance. If the AAA does not correct the AAA's noncompliance within the period specified in the written notice of noncompliance, the Contracts Administrator may then terminate the agreement. The Contracts Administrator may terminate the

## AAA General Terms and Conditions

agreement for default without such written notice and without opportunity for correction if DSHS has a reasonable basis to believe that a client's health or safety is in jeopardy.

- c. The AAA may terminate this Agreement for default, in whole or in part, by written notice to DSHS, if the AAA has a reasonable basis to believe that DSHS has:
  - (1) Failed to meet or maintain any requirement for contracting with the AAA;
  - (2) Failed to perform under any provision of this Agreement;
  - (3) Violated any law, regulation, rule, or ordinance applicable to this Agreement; and/or
  - (4) Otherwise breached any provision or condition of this Agreement.
- d. Before the AAA may terminate this Agreement for default, the AAA shall provide DSHS with written notice of DSHS' noncompliance with the Agreement and provide DSHS a reasonable opportunity to correct DSHS' noncompliance. If DSHS does not correct DSHS' noncompliance within the period specified in the written notice of noncompliance, the AAA may then terminate the Agreement.

### **32. Termination Procedure.** The following provisions apply in the event this Agreement is terminated:

- a. The AAA shall cease to perform any services required by this Agreement as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination which are related to the transfer of clients, distribution of property, and termination of services.
- b. The AAA shall promptly deliver to the DSHS contact person (or to his or her successor) listed on the first page this Agreement, all DSHS assets (property) in the AAA's possession, including any material created under this Agreement. Upon failure to return DSHS property within ten (10) working days of the Agreement termination, the AAA shall be charged with all reasonable costs of recovery, including transportation. The AAA shall take reasonable steps to protect and preserve any property of DSHS that is in the possession of the AAA pending return to DSHS.
- c. DSHS shall be liable for and shall pay for only those services authorized and provided through the effective date of termination. DSHS may pay an amount mutually agreed by the parties for partially completed work and services, if work products are useful to or usable by DSHS.
- d. If the Contracts Administrator terminates this Agreement for default, DSHS may withhold a sum from the final payment to the AAA that DSHS determines is necessary to protect DSHS against loss or additional liability. DSHS shall be entitled to all remedies available at law, in equity, or under this Agreement. If it is later determined that the AAA was not in default, or if the AAA terminated this Agreement for default, the AAA shall be entitled to all remedies available at law, in equity, or under this Agreement.

### **33. Treatment of Client Property.** Unless otherwise provided in the applicable Agreement, the AAA shall ensure that any adult client receiving services from the AAA under this Agreement has unrestricted access to the client's personal property. The AAA shall not interfere with any adult client's ownership, possession, or use of the client's property. The AAA shall provide clients under age eighteen (18) with reasonable access to their personal property that is appropriate to the client's age, development, and needs. Upon termination or completion of this Agreement, the AAA shall promptly release to the client and/or the client's guardian or custodian all the client's personal property. This section does not prohibit the AAA from implementing such lawful and reasonable policies, procedures and practices as

## AAA General Terms and Conditions

the AAA deems necessary for safe, appropriate, and effective service delivery (for example, appropriately restricting clients' access to, or possession or use of, lawful or unlawful weapons and drugs).

- 34. Waiver.** Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Agreement unless amended as set forth in Section 1, Amendment. Only the Contracts Administrator or designee has the authority to waive any term or condition of this Agreement on behalf of DSHS.

### HIPAA Compliance

Preamble: This section of the Contract is the Business Associate Agreement as required by HIPAA.

**35. Definitions.**

- a. "Business Associate," as used in this Contract, means the "Contractor" and generally has the same meaning as the term "business associate" at 45 CFR 160.103. Any reference to Business Associate in this Contract includes Business Associate's employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.
- b. "Business Associate Agreement" means this HIPAA Compliance section of the Contract and includes the Business Associate provisions required by the U.S. Department of Health and Human Services, Office for Civil Rights.
- c. "Breach" means the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the Protected Health Information, with the exclusions and exceptions listed in 45 CFR 164.402.
- d. "Covered Entity" means DSHS, a Covered Entity as defined at 45 CFR 160.103, in its conduct of covered functions by its health care components.
- e. "Designated Record Set" means a group of records maintained by or for a Covered Entity, that is: the medical and billing records about Individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or Used in whole or part by or for the Covered Entity to make decisions about Individuals.
- f. "Electronic Protected Health Information (EPHI)" means Protected Health Information that is transmitted by electronic media or maintained in any medium described in the definition of electronic media at 45 CFR 160.103.
- g. "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) (HITECH Act).
- h. "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and Part 164.
- i. "Individual(s)" means the person(s) who is the subject of PHI and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).



## AAA General Terms and Conditions

- j. "Minimum Necessary" means the least amount of PHI necessary to accomplish the purpose for which the PHI is needed.
  - k. "Protected Health Information (PHI)" means individually identifiable health information created, received, maintained or transmitted by Business Associate on behalf of a health care component of the Covered Entity that relates to the provision of health care to an Individual; the past, present, or future physical or mental health or condition of an Individual; or the past, present, or future payment for provision of health care to an Individual. 45 CFR 160.103. PHI includes demographic information that identifies the Individual or about which there is reasonable basis to believe can be used to identify the Individual. 45 CFR 160.103. PHI is information transmitted or held in any form or medium and includes EPHI. 45 CFR 160.103. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USCA 1232g(a)(4)(B)(iv) or employment records held by a Covered Entity in its role as employer.
  - l. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
  - m. "Subcontractor" as used in this HIPAA Compliance section of the Contract (in addition to its definition in the General Terms and Conditions) means a Business Associate that creates, receives, maintains, or transmits Protected Health Information on behalf of another Business Associate.
  - n. "Use" includes the sharing, employment, application, utilization, examination, or analysis, of PHI within an entity that maintains such information.
- 36. Compliance.** Business Associate shall perform all Contract duties, activities and tasks in compliance with HIPAA, the HIPAA Rules, and all attendant regulations as promulgated by the U.S. Department of Health and Human Services, Office of Civil Rights.
- 37. Use and Disclosure of PHI.** Business Associate is limited to the following permitted and required uses or disclosures of PHI:
- a. **Duty to Protect PHI.** Business Associate shall protect PHI from, and shall use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 (Security Standards for the Protection of Electronic Protected Health Information) with respect to EPHI, to prevent the unauthorized Use or disclosure of PHI other than as provided for in this Contract or as required by law, for as long as the PHI is within its possession and control, even after the termination or expiration of this Contract.
  - b. **Minimum Necessary Standard.** Business Associate shall apply the HIPAA Minimum Necessary standard to any Use or disclosure of PHI necessary to achieve the purposes of this Contract. See 45 CFR 164.514 (d)(2) through (d)(5).
  - c. **Disclosure as Part of the Provision of Services.** Business Associate shall only Use or disclose PHI as necessary to perform the services specified in this Contract or as required by law, and 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, except for the specific uses and disclosures set forth below.
  - d. **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.

## AAA General Terms and Conditions

- e. Disclosure for Proper Management and Administration. 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 the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.
- f. Impermissible Use or Disclosure of PHI. Business Associate shall report to DSHS in writing all Uses or disclosures of PHI not provided for by this Contract within one (1) business day of becoming aware of the unauthorized Use or disclosure of PHI, including Breaches of unsecured PHI as required at 45 CFR 164.410 (Notification by a Business Associate), as well as any Security Incident of which it becomes aware. Upon request by DSHS, Business Associate shall mitigate, to the extent practicable, any harmful effect resulting from the impermissible Use or disclosure.
- g. Failure to Cure. If DSHS 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 Contract and reasonable steps by DSHS do not end the violation, DSHS shall terminate this 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 their contract and reasonable steps by the Business Associate do not end the violation, Business Associate shall terminate the Subcontract, if feasible.
- h. Termination for Cause. Business Associate authorizes immediate termination of this Contract by DSHS, if DSHS determines that Business Associate has violated a material term of this Business Associate Agreement. DSHS may, at its sole option, offer Business Associate an opportunity to cure a violation of this Business Associate Agreement before exercising a termination for cause.
- i. Consent to Audit. Business Associate shall give reasonable access to PHI, its internal practices, records, books, documents, electronic data and/or all other business information received from, or created or received by Business Associate on behalf of DSHS, to the Secretary of DHHS and/or to DSHS for use in determining compliance with HIPAA privacy requirements.
- j. Obligations of Business Associate Upon Expiration or Termination. Upon expiration or termination of this Contract for any reason, with respect to PHI received from DSHS, or created, maintained, or received by Business Associate, or any Subcontractors, on behalf of DSHS, Business Associate shall:
  - (1) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
  - (2) Return to DSHS or destroy the remaining PHI that the Business Associate or any Subcontractors still maintain in any form;
  - (3) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 (Security Standards for the Protection of Electronic Protected Health Information) with respect to Electronic Protected Health Information to prevent Use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate or any Subcontractors retain the PHI;

## AAA General Terms and Conditions

- (4) 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 same conditions set out in the "Use and Disclosure of PHI" section of this Contract which applied prior to termination; and
  - (5) Return to DSHS or destroy the PHI retained by Business Associate, or any Subcontractors, when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- k. Survival. The obligations of the Business Associate under this section shall survive the termination or expiration of this Contract.

### 38. Individual Rights.

#### a. Accounting of Disclosures.

- (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.
- (2) Within ten (10) business days of a request from DSHS, Business Associate shall make available to DSHS the information in Business Associate's possession that is necessary for DSHS 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).
- (3) At the request of DSHS 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.
- (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.

#### b. Access

- (1) Business Associate shall make available PHI that it holds that is part of a Designated Record Set when requested by DSHS or the Individual as necessary to satisfy DSHS's obligations under 45 CFR 164.524 (Access of Individuals to Protected Health Information).
- (2) When the request is made by the Individual to the Business Associate or if DSHS asks the Business Associate to respond to a request, the Business Associate shall comply with requirements in 45 CFR 164.524 (Access of Individuals to Protected Health Information) on form, time and manner of access. When the request is made by DSHS, the Business Associate shall provide the records to DSHS within ten (10) business days.

#### c. Amendment.

- (1) If DSHS amends, in whole or in part, a record or PHI contained in an Individual's Designated Record Set and DSHS has previously provided the PHI or record that is the subject of the amendment to Business Associate, then DSHS will inform Business Associate of the amendment pursuant to 45 CFR 164.526(c)(3) (Amendment of Protected Health Information).
- (2) Business Associate shall make any amendments to PHI in a Designated Record Set as directed

## AAA General Terms and Conditions

by DSHS or as necessary to satisfy DSHS's obligations under 45 CFR 164.526 (Amendment of Protected Health Information).

- 39. Subcontracts and other Third-Party Agreements.** In accordance with 45 CFR 164.502(e)(1)(ii), 164.504(e)(1)(i), and 164.308(b)(2), Business Associate shall ensure that any agents, Subcontractors, independent contractors or other third parties that create, receive, maintain, or transmit PHI on Business Associate's behalf, enter into a written contract that contains the same terms, restrictions, requirements, and conditions as the HIPAA compliance provisions in this Contract with respect to such PHI. The same provisions must also be included in any contracts by a Business Associate's Subcontractor with its own business associates as required by 45 CFR 164.314(a)(2)(b) and 164.504(e)(5).
- 40. Obligations.** To the extent the Business Associate is to carry out one or more of DSHS's obligation(s) 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 DSHS in the performance of such obligation(s).
- 41. Liability.** Within ten (10) business days, Business Associate must notify DSHS 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 DSHS 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.
- 42. Breach Notification.**
- a. In the event of a Breach of unsecured PHI or disclosure that compromises the privacy or security of PHI obtained from DSHS or involving DSHS clients, Business Associate will take all measures required by state or federal law.
  - b. Business Associate will notify DSHS within one (1) business day by telephone and in writing of any acquisition, access, Use or disclosure of PHI not allowed by the provisions of this Contract or not authorized by HIPAA Rules or required by law of which it becomes aware which potentially compromises the security or privacy of the Protected Health Information as defined in 45 CFR 164.402 (Definitions).
  - c. Business Associate will notify the DSHS Contact shown on the cover page of this Contract within one (1) business day by telephone or e-mail of any potential Breach of security or privacy of PHI by the Business Associate or its Subcontractors or agents. Business Associate will follow telephone or e-mail notification with a faxed or other written explanation of the Breach, to include the following: date and time of the Breach, date 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 will address communications to the DSHS Contact. Business Associate will coordinate and cooperate with DSHS to provide a copy of its investigation and other information requested by DSHS, including advance copies of any notifications required for DSHS review before disseminating and verification of the dates notifications were sent.
  - d. If DSHS determines that Business Associate or its Subcontractor(s) or agent(s) is responsible for a Breach of unsecured PHI:

### AAA General Terms and Conditions

- (1) requiring notification of Individuals under 45 CFR § 164.404 (Notification to Individuals), Business Associate bears the responsibility and costs for notifying the affected Individuals and receiving and responding to those Individuals' questions or requests for additional information;
- (2) requiring notification of the media under 45 CFR § 164.406 (Notification to the media), Business Associate bears the responsibility and costs for notifying the media and receiving and responding to media questions or requests for additional information;
- (3) requiring notification of the U.S. Department of Health and Human Services Secretary under 45 CFR § 164.408 (Notification to the Secretary), Business Associate bears the responsibility and costs for notifying the Secretary and receiving and responding to the Secretary's questions or requests for additional information; and
- (4) DSHS will take appropriate remedial measures up to termination of this Contract.

#### **43. Miscellaneous Provisions.**

- a. Regulatory References. A reference in this Contract to a section in the HIPAA Rules means the section as in effect or amended.
- b. Interpretation. Any ambiguity in this Contract shall be interpreted to permit compliance with the HIPAA Rules.

## Special Terms and Conditions

### 1. Definitions.

- a. "AAA" or "Contractor" shall mean the Area Agency on Aging that is a party to this agreement, and includes the AAA's officers, directors, trustees, employees and/or agents unless otherwise stated in this Agreement. For purposes of this Agreement, the AAA or agent shall not be considered an employee of DSHS
- b. "Agreement" means this Agreement, including all documents attached or incorporated by reference.
- c. "Allocable costs" are those costs which are chargeable or assignable to a particular cost objective in accordance with the relative benefits received by those costs.
- d. "Allowable costs" are those costs necessary and reasonable for proper and efficient performance of this Agreement and in conformance with this Agreement. Allowable costs under federal awards to local or tribal governments must be in conformance with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local and Indian Tribal Governments; allowable costs under federal awards to non-profit organizations must be in conformance with OMB Circular A-122, Cost Principles for Non-Profit Organizations.
- e. "Area Plan" means the document submitted by the AAA to DSHS for approval every four years, with updates every two years, which sets forth goals, measurable objectives, outcomes, units of service, and identifies the planning, coordination, administration, social services and evaluation of activities to be undertaken by the AAA to carry out the purposes of the Older Americans Act, the Social Security Act, the Senior Citizens Services Act, or any other statute for which the AAA receives funds.
- f. "Assignment" means the act of transferring to another the rights and obligations under this Agreement.
- g. "Business Associate" means a Business Associate as defined in 45 CFR 160.103, who performs or assists in the performance of an activity for or on behalf of the Covered Entity that involves the use or disclosure of protected health information (PHI). Any reference to Business Associate under this Agreement includes Business Associate's employees, agents, officers, subcontractors, third party contractor's, volunteers, or directors.
- h. "CFR" means Code of Federal Regulations. All references in this Agreement to the CFR shall include any successor, amended, or replacement regulation.
- i. "Client" means an individual that is eligible for or receiving services provided by the AAA in connection with this Agreement.
- j. "Covered Entity" means DSHS, a Covered Entity as defined in 45 CFR 160.103.
- k. "Contracts Administrator" means the manager, or successor, of Central Contract Services or successor section or office.
- l. "Debarment" means an action taken by a Federal official to exclude a person or business entity from participating in transactions involving certain federal funds.
- m. "Designated Record Set" means a group of records maintained by or for the Covered Entity that is the medical and billing records about the individuals or the enrollment, payment, claims

### Special Terms and Conditions

adjudication, and case or medical management records, used in whole or part by or for the Covered Entity to make decisions about individuals.

- n. "DSHS" or "the Department" means the state of Washington Department of Social and Health Services and its employees and authorized agents.
- o. "Data Universal Number System (DUNS) Number" means– a unique nine-digit identification number provided by Dun & Bradstreet (D&B). It is used by the Federal government to identify related organizations that are receiving funding under grants and cooperative agreements, and to provide consistent name and address data for electronic grant application systems.
- p. "Equipment" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5000 or more per unit.
- q. "HIPAA" means the Health Information Portability and Accountability Act of 1996, as codified at 42 USCA 1320d-d8.
- r. "Individual" means the person who is the subject of PHI and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- s. "Older Americans Act" refers to P.L. 106-501, 106th Congress, and any subsequent amendments or replacement statutes thereto.
- t. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- u. "PHI" means protected health information and is information created or received by Business Associate from or on behalf of Covered Entity that relates to the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or past, present or future payment for provision of health care to an individual. 45 CFR 160 and 14. PHI includes demographic information that identifies the individual or about which there is reasonable basis to believe, can be used to identify the individual. 45 CFR 160.103. PHI is information transmitted, maintained, or stored in any form or medium. 45 CFR 164.501. PHI does not include education records covered by the Family Educational Right and Privacy Act, as amended, 20 USCA 1232g(a)(4)(b)(iv).
- v. "RCW" means the Revised Code of Washington. All references in this Agreement to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at <http://slc.leg.wa.gov/>.
- w. "Real Property" means land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.
- x. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
- y. "Subcontract" means any separate agreement or contract between the AAA and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Agreement.
- z. "Subcontractor" means an individual or entity (including its officers, directors, trustees, employees, and/or agents) with whom the AAA contracts to provide services that are specifically defined in the

## Special Terms and Conditions

Area Plan or are otherwise approved by DSHS in accordance with this Agreement.

- aa. "Subrecipient" means a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.
- bb. "Supplies" means all tangible personal property other than equipment as defined herein.
- cc. "WAC" means the Washington Administrative Code. All references in this Agreement to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at <http://slc.leg.wa.gov/>

- 2. **Statement of Work.** The AAA shall provide the services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth in the attached Statement of Work (Exhibit A).
- 3. **Consideration.** Total consideration payable to the AAA for satisfactory performance of the work under this Agreement is a maximum of **\$ 2,795,711**, including any and all expenses and shall be based on the attached Exhibit B, Budget.
- 4. **Billing and Payment.**

- a. **Billing.** The AAA shall submit invoices using State Form A-19 Invoice Voucher, or such other form as designated by DSHS. Consideration for services rendered shall be payable upon receipt and acceptance of properly completed invoices which shall be submitted to DSHS by the AAA not more often than monthly.

Except for costs associated with Medicaid Case Management and Nursing Services, and Core Services Contract Management, DSHS will pay to the AAA all allowable and allocable costs incurred as evidenced by proper invoice in accordance with the DSHS/ALTSA approved AAA Cost Allocation Plan, Budget (Exhibit B), and Section 3, Consideration, of this Agreement. The invoice shall describe and document to DSHS' satisfaction, the work performed, activities accomplished, progress of the project, and fees.

- b. **Payment.** Payment for **Medicaid Case Management and Nursing Services**, including Medicaid State plan, Waiver, Roads to Community Living (RCL), and state-funded Chore clients will be based on a monthly rate of **\$155.47** from DSHS Allocated Title XIX/Chore funding per month for each in-home agency personal care or in-home individual provider authorized case authorized by the AAA each month. In addition, a percentage of in-home cases authorized with a service, but no personal care, will be paid at the full unit rate. (The percentage will be noted on the SFY20 TXIX Case Management billing form and may be adjusted at ALTSA's discretion.) The 'no personal care' cases will be included when computing the clinical ratio. The payment will be adjusted monthly if the contractually obligated caseload ratio of clients to clinical (Case Management/Nursing staff) exceeds **92.1:1**. AAA's who do not exceed the statewide average clinical ratio of **82.5:1** will not have their payments adjusted until they exceed the statewide average clinical ratio.

Payment for **Core Services Contract Management** for Medicaid State Plan, Waiver, Roads to Community Living (RCL)/WA Roads, and state-funded Chore clients will be based on a monthly rate of **\$16.26** from DSHS Allocated Title XIX/Chore funding per month for each in-home agency personal care or in-home individual provider case authorized to the AAA each month. In addition, a percentage of in-home cases authorized with a service, but no personal care, will be paid at the full unit rate. The percentage will be noted on the SFY20 TXIX Case Management billing form and



## Special Terms and Conditions

SFY20 TXIX-Matched Case Management billing form and may be adjusted at ALTSA's discretion.

The average monthly projection of such cases over the course of this Agreement is **997**. The AAA will be paid for the number of actual cases authorized each month according to the payment schedule above.

If the AAA is referred and serves a WA Roads case that is not otherwise counted in the caseload above, payment will be based on the same monthly rates as above from WA Roads funding. These cases will be considered in the clinical caseload ratio. This funding will not be reflected in the contract budget or maximum consideration.

If ADS or Pierce meet their quarterly targeted net growth of New Freedom cases as described in section 1.g of Exhibit A Statement of Work, they will receive a Unit Rate enhancement of 5% for all New Freedom client cases billed during that quarter. This funding will not be reflected in the contract budget or maximum consideration.

Payment shall be considered timely if made by DSHS within thirty (30) days after receipt and acceptance by DSHS of the properly completed invoices. Payment shall be sent to the address designated by the AAA on page one (1) of this Agreement. DSHS may, at its sole discretion, withhold payment claimed by the AAA for services rendered if AAA fails to satisfactorily comply with any term or condition of this Agreement.

DSHS shall not make any payments in advance or anticipation of the delivery of services to be provided pursuant to this Agreement. Unless otherwise specified in this Agreement, DSHS shall not pay any claims for payment for services submitted more than forty-five (45) days after completion of the contract period. The AAA shall not bill DSHS for services performed under this Agreement, and DSHS shall not pay the AAA, if the AAA has charged or will charge the State of Washington or any other party under any other contract or agreement for the same services.

The AAA shall complete and submit the attached Local Match Certification Form (Exhibit C) with their final billing. Final payment will not be made without the completed form.

5. **Grant Awards.** Grant Awards are attached hereto as Exhibit D.
6. **Confidentiality.** In addition to General Terms and Conditions Confidentiality language, the AAA or its Subcontractors may disclose information to each other, to DSHS, or to appropriate authorities, for purposes directly connected with the services provided to the client. This includes, but is not limited to, determining eligibility, providing services, and participation in disputes, fair hearings or audits. The AAA and its Subcontractors shall disclose information for research, statistical, monitoring and evaluation purposes conducted by appropriate federal agencies and DSHS.
7. **Amendment Clause Exception.** The only exception to the General Term and Condition Amendment clause (clause 1.) is when an amendment must be processed to distribute federal funds to the Contractor and the funds must be obligated in a Short Timeframe. Short Timeframe means the Contractor is unable to follow their standard contract execution procedures in order to timely obligate the federal funds. By execution of this Contract, the Contractor prospectively agrees to the terms of the federal fund distribution amendment, which shall be limited to only adding funds to the Contractor's Budget. The Contractor's designated point-of-contact shall also email DSHS its acceptance of the amendment no later than the amendment start date.

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### 8. Duty to Disclose Business Transactions.

- a. Pursuant to 42 CFR 455.105(b), within 35 days of the date on a request by the Secretary of the U.S. Department of Health and Human Services or DSHS, Contractor must submit full and complete information related to Contractor's business transactions that include:
  - (1) The ownership of any subcontractor with whom the Contractor has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and
  - (2) Any significant business transactions between the Contractor and any wholly owned supplier, or between the Contractor and any subcontractor, during the 5-year period ending on the date of the request.
- b. Failure to comply with requests made under this term may result in denial of payments until the requested information is disclosed. See 42 CFR 455.105(c).

9. **State or Federal Audit Requests.** The contractor is required to respond to State or Federal audit requests for records or documentation, within the timeframe provided by the requestor. The Contractor must provide all records requested to either State or Federal agency staff or their designees.

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#### Exhibit A

#### STATEMENT OF WORK

The AAA shall provide the following services, as specified in the AAA's current area plan, either directly or through administrative oversight or subcontractors. The AAA shall comply with all applicable state and federal statute and rules, including but not limited to the United States Code, the Code of Federal Regulations, the Revised Code of Washington, the Washington Administrative Code, and any and all DSHS/ALTSA standards, guidelines, policy manuals, and management bulletins.

If a proposed change or combination of changes in any DSHS/ALTSA standard, guideline, policy manual and/or management bulletin after the commencement of this agreement creates a new and material impact, to the extent possible and as quickly as possible DSHS will consult with the AAA or its professional association to identify potential impacts and when possible, identify how to mitigate impacts within available funding.

#### 1. Title XIX Medicaid, CFDA No. 93.778 and State-Funded Chore

Payment for Medicaid Case Management, Nursing Services, New Freedom Eligibility Determination/Consultation Services, and Core Services Contract Management is based on the number of cases authorized per month, multiplied by the AAAs approved rate per case month. Any core revenues accrued through the unit rates must be used in Aging and Long Term Support Administration funded programs or in support of the Department's integration of care efforts or implementation of Evidence Based Practices (EBP) in Home & Community Based Services (HCBS). AAAs must report their TXIX Medicaid cumulative ending balance and annual expenditures for Case Management/Nursing Services and Core Services Contract Management to ALTSA at their fiscal year-end close.

- a. Core Services Contract Management. The AAA will manage subcontracts with qualified providers of agency personal care and PERS services for Medicaid/Chore clients and Developmental Disabilities Administration (DDA) Medicaid clients. For ALTSA clients only, contracts managed by the AAA also include State Plan and Waiver contracts under 1915(c), 1915(k) Community First Choice, and RCL/WA Roads used to support individuals moving to or maintaining community settings. These service types are listed in the Long Term Care Manual by program. All contract management shall comply with the contract management requirements set forth in Chapter 6 of the Policies and Procedures for Area Agency on Aging Operations and Management Bulletins.
- b. Adult Day Services Program Compliance. The AAA shall contract with and conduct initial and ongoing program compliance reviews for Title XIX contracted Adult Day Care and Adult Day Health programs in accordance with all applicable regulations in chapter 388-71 WAC and chapter 388-106 WAC. The AAA shall conduct a complete review of each contracted center at least once every twelve months to ensure adequate performance and regulatory compliance with Adult Day Services WAC. These activities are included in the Core Service Contract Management unit rate.
- c. Nursing Services. The AAA will provide directly or through contracts, access to licensed medical expertise for AAA Medicaid clients in accordance with Chapter 24 of Long Term Care Manual, including the capacity to make home visits, conduct case manager, client and caregiver consultation, file reviews and to respond to emergency needs. Nursing Services will be in compliance with chapter 74.34 RCW, chapter 74.39 RCW, Chapter 74.39A RCW, and all applicable regulations in chapter 388-71 WAC and chapter 388-106 WAC.

The caseload ratio of clinical staff to clients required under this Contract is higher than the caseload

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ratio used in the workload metric that generates funding for the provision of case management and nursing services (CM/NS). The AAA and ALTSA have agreed to continue to collaborate on funding and to identify policies and practices in the Long Term Care Manual to recommend for elimination or suspension to better align the scope of work with available funding. Recommendations to better align the scope of work with available funding will be implemented as soon as feasible. Suspension or elimination of policies or practices may be contingent upon prior CMS approval.

The AAA may provide contracted nursing services for ALTSA clients and/or DDA clients in accordance with Chapter 24 of the Long Term Care Manual. (Olympic, Southwest, Southeast, Eastern, LMT and Central AAAs only)

The AAA will provide administrative oversight and program development for Nursing Services for Medicaid clients in its Planning and Service Area (PSA). Such activities include monitoring performance and activities to implement DSHS policies, and preparation of reports as required by DSHS/ALTSA or local requirements, subcontract development and monitoring, service planning and system development.

- d. Case Management. The AAA shall provide Case Management for Community First Choice, Medicaid Personal Care, COPES Waiver, RCL, and Chore clients receiving services in their own homes as described in the Long Term Care Manual, and in compliance with chapter 74.34 RCW, chapter 74.39 RCW, chapter 74.39A RCW, and all applicable regulations in chapter 388-71 WAC, chapter 388-106 WAC, and chapter 246-335 WAC.

The caseload ratio of clients to AAA staff required under this Contract is higher than the caseload ratio used in the workload metric that generates funding for CM/NS. The AAA and ALTSA agree to continue to collaborate on funding and to identify policies and practices in the Long Term Care Manual to recommend for elimination or suspension to better align the scope of work with available funding. Recommendations to better align the scope of work with available funding will be implemented as soon as feasible. Suspension or elimination of policies or practices may be contingent upon prior CMS approval.

The AAA will maintain a maximum average ratio of Medicaid/Chore/WA Roads clients to Clinical (Case Manager/Nursing) FTE, as defined by DSHS/ALTSA in the Special Terms & Conditions Billing and Payment Section (4.b), in its service area as a whole. The clinical caseload ratio may vary at sublevels within its service area based on the AAAs management decisions on caseload distribution or other factors. The AAA may negotiate for a different target ratio based on projection of cost increases above the normal rate of inflation that are beyond the AAA's control, when notice is provided in advance. The amount of Senior Citizen Services Act and other local funds used as match for federal Medicaid funding may also be negotiated.

The AAA will provide administrative oversight and program development for Case Management for Medicaid, WA Roads and Chore clients in its area. Such activities include monitoring performance, activities to implement DSHS policies, preparation of reports as required by DSHS/ALTSA or local requirements, subcontract development and monitoring, service planning and system development.

- e. Front Door. Asian Counseling and Referral Service (ACRS) and Chinese Information and Service Center (CISC) are authorized to complete initial in-home assessments for identified ethnic populations with reimbursements not to exceed \$557.59 each client. Per Budget (Exhibit B) line .49, funding is provided for these "front door" assessments completed by ACRS and CISC. The full appropriation for these front door activities must be passed on to ACRS and CISC via subcontracts between the AAA and those Agencies.

ADS/Seattle King County AAA is authorized to complete initial in-home assessments for individuals

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who identify as Muckleshoot tribal members. Funding is provided for up to twelve initial assessments with reimbursements not to exceed \$557.59 each client.

- f. Laptop Replacement Schedule. The AAA shall establish a laptop replacement schedule to assure each assessor has an operational laptop that meets minimum specifications needed for the Comprehensive Assessment Reporting Evaluation (CARE) tool. The laptop replacement schedule must ensure that equipment is sufficient to operate the state's mandated applications.
- g. Community Living Connections/Information and Assistance Medicaid Administrative Claiming. The AAA may choose to claim Federal Financial Participation (FFP) for information and assistance activities related to assisting individuals to access Medicaid, as described in the Senior Information and Assistance Program Standards or any successor program standards, including the required administrative oversight. Prior to claiming FFP, approval must be received from the Community Living Connections program manager per the requirements of MB H06-064.
- h. Medicaid New Freedom (NF) (Pierce and ADS of Seattle/King County AAAs only). The AAA will provide Eligibility Determination and Care Consultation Services (CCS) for AAA Medicaid participants who choose NF in accordance with Chapter 27 of the Long Term Care Manual and all applicable regulations in chapter 388-71 WAC and chapter 388-106 WAC.

New Freedom staff and participants will be part of the required case handling ratio calculation, as defined by DSHS/ALISA in the Special Terms & Considerations Billing and Payment Section (4.b). The case handling caseload size may vary at sublevels within the NF service area based on the AAAs management decisions on caseload distribution or other factors. New Freedom budget authorizations to the FMS will validate active client case management status for any month that client is active and personal care is not authorized.

The AAA must ensure Case Managers actively educate all clients or their representatives at Annual or Significant Change assessments about their choice of programs to achieve a net growth that includes conversions of existing clients, new clients from HCS, and clients exiting the program. ADS' target will be a net growth curve of 35 cases per quarter. Pierce's target will be a net growth curve of 15 cases per quarter. When these targets are achieved, the AAA will receive an additional Unit Rate enhancement of 5% for all NF clients billed during that quarter.

The AAA will provide administrative oversight and program development for CCS for NF in its service area. Such activities include monitoring performance, activities to implement DSHS policies, and preparation of reports as required by DSHS/ALISA or local requirements.

- i. 1519 Outcome and Performance Measures: The following outcomes and performance measures are incorporated into this Contract, as required by RCWs 70.320.040 and 74.39A.090:

(1) Outcome: Health/Wellness

Performance Measures

- Adults' Access to Preventative/Ambulatory Care
- Alcohol/Drug Treatment Penetration
- Mental Health Treatment Penetration

(2) Outcome: Stable housing in community/Quality of Life

Performance Measure

- Home and Community-Based Long Term Services and Supports Use

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(3) Outcome: Reductions in costs and utilization/ Quality of Life

Performance Measure

- Emergency Department Visits

(4) Outcome: Reduction in Avoidable Hospitalizations

Performance Measure

- Plan All-Cause Readmission Rate

When planning or delivering services under ALTSA contracts, the AAA will take these outcomes and performance measures into account. Outcome and performance measure data will be gathered by DSHS and publically reported at the Health Care Authority's Regional Service Area population level. DSHS will make AAA population level data for analysis available to the AAA quarterly.

#### 2. Washington Roads

The AAA shall provide Case Management for individuals living in subsidized housing that has been coordinated through ALTSA regardless of whether they are currently eligible for or receiving waiver/state plan home and community based services. Case management shall be provided in accordance with MB H13-072, which includes contact by AAA staff within 14 days of receiving the case and monthly thereafter. If there is an immediate need, the AAA staff assigned must respond to the need promptly. The AAA staff shall follow all assessment timelines, including doing an annual assessment. Washington Roads clients not already counted as State Plan or Waiver clients will be included in the AAA case handling ratios as described in Billing and Payment Section b. in the Special Terms and Conditions.

#### 3. Title V – Senior Community Service Employment Program, CFDA No. 17.235

The AAA may participate in the Senior Community Service Employment Program (SCSEP) in order to provide useful part-time paid community service opportunities for unemployed low-income persons who are 55 years of age or older per DSHS/ADS program instructions and in compliance with U.S. Department of Labor regulations and procedures. Using Workforce Innovation and Opportunity Act (WIOA) common measure definitions, the employment program shall assist and promote entrance into unsubsidized employment for a minimum 45.2% of the total number of enrollees allocated to the AAAs program and to perform all required follow-up, satisfaction survey, and employment case management activities in order to meet the employment retention performance goal of 71.6%.

Through the program, the AAA shall also enable communities to improve or establish human service activities that could not be developed with existing community resources but will not supplant other community employment. The AAA shall report any non-federal matching share for all federal funds provided by this fund source. Programs are expected to over-enroll above the federally allocated number of participant slots in order to exceed the baseline service level goal of 155.8%; ensure community service hours are at minimum 76.6% of potential hours available; and that those who enter employment earn a minimum average of \$7,431 per year. To further ensure performance goals are met, programs will prioritize enrollment to persons meeting the OAA 2006 Title V amended criteria for "most in need" at a minimum average rate of 2.53 factors per participant.

The AAA will comply with durational limits for participants, both (1) in the aggregate of no more than a twenty-seven month average for participants; and (2) individually over a lifetime of no more than forty-eight months per participant. Program data collection and reporting shall comply with all U.S Department of Labor protocols and regulations and shall be due the 10<sup>th</sup> business day of the month following each

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program quarter. Program quarters are as follows: (1) July 1-September 30, 2017; (2) October 1-December 31, 2017; (3) January 1-March 31, 2018; and (4) April 1-June 30, 2018. Furthermore, the employment program will participate and follow protocols for facilitating follow-up activities, including participant, host-agency, and employer satisfaction surveys.

Participants enrolled and engaged in job training activities will be compensated for the hours of "work" based on the Federal, State or local minimum wage standard per the Federal guidelines outlined in the Code of Federal Regulation Title 29 CFR 516.2 section 6 or Sections 6 and 7(a).

Participant slot allocations for the current program year are published in the most recent Home & Community Services Management Bulletin (MB) on the Aging and Long-Term Support Administration web site at <https://www.dshs.wa.gov/altsa/home-and-community-services/hcs-management-bulletins>.

#### 4. Senior Citizens Services Act (SCSA)

The AAA shall provide services in accordance with chapter 74.38 RCW and all applicable regulations in chapter 388-71 WAC and chapter 388-106 WAC. SCSA funds are designed to restore individuals to, or maintain them at, the level of independent living they are capable of attaining. These alternative services and forms of care should be designed to both complement the present forms of institutional care and create a system whereby appropriate services can be rendered according to the care needs of an individual.

#### 5. State Family Caregiver Support Program (SFCSP)

The AAAs shall provide SFCSP services in accordance with Chapter 17 of the Long Term Care Manual and in accordance with chapter 74.41 RCW and all applicable regulations in chapter 388-71 WAC, WAC 388-106-1200 to 1230, 388-78A-2202 -2208 and 388-97-1880. The AAA shall provide a multi-faceted system of support services including: Information and Assistance, Support Groups, Training/Consultation, Counseling, Respite Care and Supplemental Services to respond to the needs of family and other unpaid caregivers who provide care to adults (18 years and over) who have a functional disability. The exception to this rule would be Colville and Yakama Nation AAA who may be limited in funding to provide all of the core FCSP services. The evidence-based, Tailored Caregiver Assessment and Referral system, is utilized and required to screen, assess and consult with family caregivers to develop an individualized care plan to help provide the right services to meet the unmet needs at the right time.

For Respite Services, both in-home and out-of-home respite care provider agencies shall be available (except where certain types of providers are unavailable) and provided on an hourly and/or daily basis. Respite care workers shall be trained according to the DSHS/AL TSA training requirements for the level of care provided (e.g., home care; adult day services, etc.). Respite care staff can be authorized to provide the supervision, companionship, personal care, and/or nursing care services usually provided by the primary caregiver of the adult care recipient. Services appropriate to the needs of individuals with dementia illnesses shall also be provided.

The AAA is responsible for staff inputting FCSP units of services and caregiver demographic data into the GetCare reporting system until such time as TCARE® is embedded into GetCare.

- a. Memory Care & Wellness Services (MCWS) (Northwest Regional Council and ADS of Seattle/King County AAAs only): MCWS is a supervised daytime program for individuals with dementia and their family caregivers. MCWS offers a blend of health, social and family caregiver supports – it is defined and requirements are specified in the "Memory Care & Wellness Services (MCWS) Standards of Care, (updated 2015).

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AAAs that offer Memory Care & Wellness Services (MCWS) will work collaboratively with DSHS/ALTSA and providers in implementing strategies that ensure fidelity to MCWS requirements and that promote sustainability of the program. Participating AAAs will ensure that program requirements are incorporated into contracts with adult day services providers that choose to provide the MCWS.

Program requirements include (1) MCWS Standards of Care (2015) and (2) the integral EnhanceMobility exercise intervention [and any subsequent updates of both (1) and (2)]. Participating AAAs will also work with DSHS/ALTSA to develop and implement strategies that promote fidelity to the MCWS Standards of Care to measure compliance with standards, including incorporation of the MCWS Monitoring Tool (updated 2015) into adult day services monitoring visits with MCWS providers. The AAA will also use the MCWS Readiness Tool for with any sites that are new contractors for the MCWS program to assess capacity and needed improvements prior to contracting. The MCWS Standards of Care and MCWS Monitoring Tool and materials, and MCWS Readiness Tool are available on the DSHS/ALTSA Intranet site, on the TCARE Online Resources page. <http://intra.altsa.dshs.wa.gov/tcare/memory.htm>

Funds were targeted specifically for MCWS within the Family Caregiver Support Program to support an ongoing program for eligible family caregivers a minimum of two days per week. As this funding was intended to supplement existing FCSP allotments to MCWS; the target numbers to be served and the budget is built with the assumption that each month MCWS-specific funding will pay half and FCSP will pay half of the cost of MCWS each month.

**MCWS Proposed Targets and Funding:** Each AAA will submit to DSHS/ALTSA proposed target numbers (caregiver/care receiver dyads) for MCWS by August 15, 2017. This proposal will reflect the total number of dyads to be served with the combined MCWS-specific and FCSP funding, and take into account what has been learned over the last year about average days of utilization per month/year per caregiver, and anticipated program income/participation.

For SFY 2018, DSHS/ALTSA will allocate the same amount of MCWS funding that NWRC and King were allocated for SFY 2017 (\$71,539 for NW and \$78,461 for King).

Due to limited FCSP funding, NWRC has requested and is granted permission to utilize MCWS-specific funding without the equivalent amount billed to FCSP in support of the MCWS services. This will be in effect for a time limited period (July 1, 2017 – June 30, 2018).

**MCWS Tracking Expenditures and Reporting:** The SFCSP BARS includes a line for billing to the MCWS line; this line is used by NW and King only.

The AAA will maintain and submit to DSHS/ALTSA on a semi-annual basis (July-December 2017 due January 31, 2018; January – June 2018; due July 30, 2018) the following: Caregiver/care receiver names, start date (if new), attendance days per month and participation, along with the amount spent on MCWS from both MCWS and FCSP funding sources. To ensure optimal use of this funding, progress towards target numbers and expenditures will be assessed once the semi-annual period (with data as of December 31, 2017) has been received. DSHS/ALTSA retains the right to reallocate MCWS funding between AAAs based upon demonstrated need and utilization of the combined MCWS-specific and FCSP funding for MCWS.

#### 6. Kinship Caregivers Support Program (KCSP)

The AAA shall operate a Kinship Caregivers Support Program, as authorized by the 2004 State Legislature, to provide financial support to grandparents and relatives who are the primary caregivers to children ages 18 and under who do not have an open case through DSHS' Children's Administration. The



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KCSP funds are available one-time per year (the intervention cannot last more than three months, exception to policy for a fourth month is permitted). Funding is provided for items and services (see 2016 Management Bulletin, Revised Policies for the Kinship Caregivers Support Program) to benefit of the children living with eligible relatives. The AAA is responsible for handling and approving the KCSP Exception to Policy (ETP) situations.

AAAs are responsible to ensure that when purchasing goods/services or one-time set-up fees/deposits on behalf of an eligible kinship caregiver, documentation within the client file must include: client's name, confirmation that the purchase is consistent with needs identified by caregiver, item/service is consistent with program requirements, a description of the goods and services including purchase price, and proof that the goods were purchased, goods or services received and the costs verified. Caregivers must sign an agreement acknowledging that funding may only be used for authorized items/services and their related responsibilities. Those kinship caregivers experiencing the most urgent/emergency needs have the highest priority. Program administration is limited to ten percent (10%) of the KCSP allocation. Another ten percent (10%) of the AAA's KCSP allocation may be spent on service delivery costs associated with activities such as outreach, screening, authorizing services, etc. The AAA is responsible for having staff utilize the CLC/Get Care reporting system to input clients, their demographics and service utilization. Annually, the AAA will be responsible for submitting a minimum of two case examples along with a list of unmet needs to the DSHS/ALTSA KCSP Program Manager.

#### **7. Kinship Navigator Program (KNP) (ADS/Seattle King County, Southeast, Pierce, LMT, Eastern, Northwest Regional Council, Southwest, Central, Yakama Nation and Colville AAAs only)**

Kinship Navigator services were initially authorized by the 2005 State Legislature. These services include but are not limited to, assisting kinship caregivers (over the age of 18) with understanding and navigating the system of services for children living with relatives while reducing barriers faced by kinship caregivers when accessing services. A priority shall be given to help kinship caregivers maintain their caregiving role by helping them access existing services and supports, thus keeping children from entering foster care. Ten percent of the AAA KNP allocation is limited to general administration. Modest food costs are permitted only in conjunction with the provision of information and resource meetings, trainings or conferences. The AAA is responsible for having staff utilize the CLC/Get Care reporting system to input their client data, and service utilization.

#### **8. Senior Drug Education Program**

In accordance with RCW 74.09.660 and the AAAs approved Senior Drug Education Program plan, the AAA shall provide services to inform and train persons 65 years of age and older in the safe and appropriate use of prescription and nonprescription medications.

The AAA will be responsible for compiling and submitting data on a monthly basis, in a report format provided by DSHS/ALTSA, to the DSHS/ALTSA Senior Drug Education Program Project Manager. The data must be submitted in accordance with the AAAs Senior Drug Education proposal, which is incorporated herein by reference.

Funds appropriated for the Senior Drug Education Program must adhere to the amounts set forth in the Budget, Exhibit B, and in the AAA's approved Senior Drug Education Program.

#### **9. Senior Farmers Market Nutrition Program (SFMNP)**

The AAA shall operate a Senior Farmers Market Nutrition Program as authorized by the Legislature and USDA in accordance with 7 CFR 249, chapter 246-780 WAC Farmers Market Nutrition Program and DSHS/ALTSA program instructions.

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#### 10. Agency Worker Health Insurance (AWHI) for Non-Medicaid Services

For services provided by contracted home care agencies (HCAs) for FCSP Respite and Non-core personal care/chore programs, AAAs will pay HCAs for each service hour provided under these programs for AWHI at the calculated parity equivalent amount determined by final funding of the collective bargaining agreement for individual providers. AAAs will bill DSHS/ALTSA for the same per instructions received through Management Bulletin(s). This pass-through funding will not be reflected in the contract budget or impact the maximum consideration.

#### 11. Caregiver Training Tuition for Non-Medicaid Services

For services provided by contracted home care agencies (HCAs) for FCSP Respite and non-Core personal care/chore programs, AAAs will pay HCAs for each hour provided under these programs for training tuition at the calculated parity equivalent amount determined by final funding of the collective bargaining agreement for individual providers. AAAs will bill DSHS/ALTSA for the training tuition per instructions received through Management Bulletin(s). This pass-through funding will not be reflected in the contract budget or impact the maximum consideration.

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#### Funds Match Certification Exhibit C (This form must be submitted with final contract billing)

I, \_\_\_\_\_ certify that local funds and/or in-kind items  
PRINT NAME were provided in the amount of \$ \_\_\_\_\_  
TYPE AND SOURCE OF PRIVATE / LOCAL FUNDS / ITEMS

\_\_\_\_\_ were provided in the amount of \$ \_\_\_\_\_  
TYPE AND SOURCE OF NON-PROFIT FUNDS / ITEMS

\_\_\_\_\_ were provided in the amount of \$ \_\_\_\_\_  
TYPE AND SOURCE OF FEDERAL FUNDS / ITEMS

and were used to match funds paid during the time period of \_\_\_\_\_ through \_\_\_\_\_ for \_\_\_\_\_

<small>TYPE OF SERVICE/CONTRACT</small>	
NAME OF ENTITY	
NAME OF AUTHORIZED AGENT	CONTRACT / VENDOR NUMBER
AUTHORIZED REPRESENTATIVE'S SIGNATURE DATE	TITLE OR POSITION
PRINTED NAME OF AUTHORIZED REPRESENTATIVE	TELEPHONE NUMBER

#### Instructions

- Name:** Printed name of the entity's agent authorized to complete certification form.
- Type and source of funds:** The type and source of funds used. Please break out different types of funding sources. Not all funding sources will be necessary to complete each certification. In-kind sources need specific identification showing who donated the item(s) (e.g., volunteers, building use, etc.).
- Dollar amount:** Dollars that were used to match funds paid during the time period. Dollars reported must agree with amount on the final billing.
- Time frame:** Period of time the services were provided.
- Type of service/contract:** Services eligible for matching.
- Name of entity:** Name of entity that is providing the funding match.
- Name of authorized agent:** Name of agent, if different than "name of entity" above, that is authorized to act on behalf of entity.
- Contract/vendor number:** The contract or vendor number of the entity.
- Authorized representative's signature:** The signature of the entity authorized representative.
- Date:** Date when form was completed.

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### **ATTACHMENT D-2: INTERLOCAL AGREEMENT OLDER AMERICANS ACT**

[DSHS Agreement #1869-21629] Effective January 1, 2019 – December 31, 2020. Any subcontract for the Kitsap County Area Agency on Aging is subject to the provisions of the applicable Interlocal Agreement between the Department of Social and Health Services and the Area Agency on Aging, unless otherwise provided for in the contract between the Kitsap County Area Agency on Aging and the Contractor. When referencing the applicable Interlocal Agreement in relation to the subcontract, the Kitsap County Area Agency on Aging replaces DSHS and subcontractor replaces AAA.

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### AAA GENERAL TERMS & CONDITIONS

1. **Amendment.** This Agreement, or any term or condition, may be modified only by a written amendment signed by both parties. Only personnel authorized to bind each of the parties shall sign an amendment.
2. **Assignment.** Except as otherwise provided herein, the AAA shall not assign rights or obligations derived from this Agreement to a third party without the prior, written consent of the DSHS Contracts Administrator and the written assumption of the AAA's obligations by the third party.
3. **Client Abuse.** The AAA shall report all instances of suspected client abuse to DSHS, in accordance with RCW 74.34.
4. **Client Grievance.** The AAA shall establish a system through which applicants for and recipients of services under the approved area plans may present grievances about the activities of the AAA or any subcontractor(s) related to service delivery. Clients receiving Medicaid funded services must be informed of their right to a fair hearing regarding service eligibility specified in WAC 388-02 and under the provisions of the Administrative Procedures Act, Chapter 34.05 RCW.
5. **Compliance with Applicable Law.** At all times during the term of this Agreement, the AAA and DSHS shall comply with all applicable federal, state, and local laws, regulations, and rules, including but not limited to, nondiscrimination laws and regulations.
6. **Confidentiality.** The parties shall use Personal Information and other confidential information gained by reason of this Agreement only for the purpose of this Agreement. DSHS and the AAA shall not otherwise disclose, transfer, or sell any such information to any other party, except as provided by law or, in the case of Personal Information except as provided by law or with the prior written consent of the person to whom the Personal Information pertains. The parties shall maintain the confidentiality of all Personal Information and other confidential information gained by reason of this Agreement and shall return or certify the destruction of such information if requested in writing by the party to the Agreement that provided the information.
7. **AAA Certification Regarding Ethics.** By signing this Agreement, the AAA certifies that the AAA is in compliance with Chapter 42.23 RCW and shall comply with Chapter 42.23 RCW throughout the term of this Agreement.
8. **Debarment Certification.** The AAA, by signature to this Agreement, certifies that the AAA is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any Federal department or agency. The AAA also agrees to include the above requirement in all subcontracts into which it enters, resulting directly from the AAA's duty to provide services under this Agreement.
9. **Disputes.** In the event of a dispute between the AAA and DSHS, every effort shall be made to resolve the dispute informally and at the lowest level. If a dispute cannot be resolved informally, the AAA shall present their grievance in writing to the Assistant Secretary for Aging and Long-Term Support Administration. The Assistant Secretary shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. If the dispute remains unresolved after the Assistant Secretary's determination, either party may request intervention by the Secretary of DSHS, in which event the Secretary's process shall control. The Secretary will make a determination within 45 days. Participation in this dispute process shall precede any judicial or quasi-judicial action and shall be the final administrative remedy available to the parties. However, if the Secretary's determination is not made within 45 days, either party may proceed with judicial or quasi-judicial action without awaiting the Secretary's determination.
10. **Drug-Free Workplace.** The AAA shall maintain a work place free from alcohol and drug abuse.

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11. **Entire Agreement.** This Agreement including all documents attached to or incorporated by reference, contain all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind the parties.
12. **Governing Law and Venue.** The laws of the State of Washington govern this Agreement. In the event of a lawsuit by the AAA against DSHS involving this Agreement, venue shall be proper only in Thurston County, Washington. In the event of a lawsuit by DSHS against a County AAA involving this Agreement, venue shall be proper only as provided in RCW 36.01.050.
13. **Independent Status.** Except as otherwise provided in Paragraph 26 herein below, for purposes of this Agreement, the AAA acknowledges that the AAA is not an officer, employee, or agent of DSHS or the State of Washington. The AAA shall not hold out itself or any of its employees as, nor claim status as, an officer, employee, or agent of DSHS or the State of Washington. The AAA shall not claim for itself or its employees any rights, privileges, or benefits, which would accrue to an employee of the State of Washington. The AAA shall indemnify and hold harmless DSHS from all obligations to pay or withhold federal or state taxes or contributions on behalf of the AAA or the AAA's employees.
14. **Inspection.** Either party may request reasonable access to the other party's records and place of business for the limited purpose of monitoring, auditing, and evaluating the other party's compliance with this Agreement, and applicable laws and regulations. During the term of this Agreement and for one (1) year following termination or expiration of this Agreement, the parties shall, upon receiving reasonable written notice, provide the other party with access to its place of business and to its records which are relevant to its compliance with this Agreement and applicable laws and regulations. This provision shall not be construed to give either party access to the other party's records and place of business for any other purpose. Nothing herein shall be construed to authorize either party to possess or copy records of the other party.
15. **Insurance.** DSHS certifies that it is self-insured under the State's self-insurance liability program, as provided by RCW 4.92.130, and shall pay for losses for which it is found liable. The AAA certifies that it is self-insured, is a member of a risk pool, or maintains the types and amounts of insurance identified below and shall, prior to the execution of this Agreement by DSHS, provide certificates of insurance to that effect to the DSHS contact on page one of this Agreement.  
  
Commercial General Liability Insurance (CGL) -- to include coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The policy shall include liability arising out of premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The State of Washington, DSHS, its elected and appointed officials, agents, and employees shall be named as additional insureds.
16. **Maintenance of Records.** During the term of this Agreement and for six (6) years following termination or expiration of this Agreement, both parties shall maintain records sufficient to:
  - a. Document performance of all acts required by law, regulation, or this Agreement;
  - b. Demonstrate accounting procedures, practices, and records that sufficiently and properly document the AAA's invoices to DSHS and all expenditures made by the AAA to perform as required by this Agreement.

For the same period, the AAA shall maintain records sufficient to substantiate the AAA's statement of its organization's structure, tax status, capabilities, and performance.

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17. **Medicaid Fraud Control Unit (MFCU).** As required by federal regulations, the Health Care Authority, the Department of Social and Health Services, and any contractors or subcontractors, shall promptly comply with all MFCU requests for records or information. Records and information includes, but is not limited to, records on micro-fiche, film, scanned or imaged documents, narratives, computer data, hard copy files, verbal information, or any other information the MFCU determines may be useful in carrying out its responsibilities.
18. **Order of Precedence.** In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence, in the following order, to:
- Applicable federal CFR, CMS Waivers and Medicaid State Plan;
  - State of Washington statutes and regulations;
  - AL TSA Management Bulletins and policy manuals;
  - This Agreement; and
  - The AAA's Area Plan.
19. **Ownership of Client Assets.** The AAA shall ensure that any client for whom the AAA or Subcontractor is providing services under this Agreement shall have unrestricted access to the client's personal property. For purposes of this paragraph, client's personal property does not pertain to client records. The AAA or Subcontractor shall not interfere with the client's ownership, possession, or use of such property. Upon termination of this Agreement, the AAA or Subcontractor shall immediately release to the client and/or DSHS all of the client's personal property.
20. **Ownership of Material.** Material created by the AAA and paid for by DSHS as a part of this Agreement shall be owned by DSHS and shall be "work made for hire" as defined by Title 17 USCA, Section 101. This material includes, but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Material which the AAA uses to perform this Agreement but is not created for or paid for by DSHS is owned by the AAA and is not "work made for hire"; however, DSHS shall have a license of perpetual duration to use, modify, and distribute this material at no charge to DSHS, provided that such license shall be limited to the extent which the AAA has a right to grant such a license.
21. **Ownership of Real Property, Equipment and Supplies Purchased by the AAA.** Title to all property, equipment and supplies purchased by the AAA with funds from this Agreement shall vest in the AAA. When real property, or equipment with a per unit fair market value over \$5000, is no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS. If the per unit fair market value of equipment is under \$5000, the AAA may retain, sell, or dispose of it with no further obligation. Proceeds from the sale or lease of property that was purchased with revenue accrued under the Case Management/Nursing Services unit rate must be expended in Medicaid TXIX or Aging Network programs.
- When supplies with a total aggregate fair market value over \$5000 are no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS. If the total aggregate fair market value of equipment is under \$5000, the AAA may retain, sell, or dispose of it with no further obligation.
- Disposition and maintenance of property shall be in accordance with 45 CFR Parts 92 and 74.

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22. **Ownership of Real Property, Equipment and Supplies Purchased by DSHS.** Title to property, equipment and supplies purchased by DSHS and provided to the AAA to carry out the activities of this Agreement shall remain with DSHS. When real property, equipment or supplies are no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS.

Disposition and maintenance of property shall be in accordance with 45 CFR Parts 92 and 74.

23. **Responsibility.** Each party to this Agreement shall be responsible for the negligence of its officers, employees, and agents in the performance of this Agreement. No party to this Agreement shall be responsible for the acts and/or omissions of entities or individuals not party to this Agreement. DSHS and the AAA shall cooperate in the defense of tort lawsuits, when possible. Both parties agree and understand that this provision may not be feasible in all circumstances. DSHS and the AAA agree to notify the attorneys of record in any tort lawsuit where both are parties if either DSHS or the AAA enters into settlement negotiations. It is understood that the notice shall occur prior to any negotiations, or as soon as possible, and the notice may be either written or oral.

24. **Restrictions Against Lobbying.** The AAA certifies to the best of its knowledge and belief that no federal appropriated funds have been paid or will be paid, by or on behalf of the AAA, to any person for influencing or attempting to influence an officer or employee of a federal agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

If any funds other than federal appropriated funds have or will be paid for the purposes stated above, the AAA must file a disclosure form in accordance with 45 CFR Section 93.110.

The AAA shall include a clause in all subcontracts restricting subcontractors from lobbying in accordance with this section and requiring subcontractors to certify and disclose accordingly.

25. **Severability.** The provisions of this Agreement are severable. If any court holds any provision of this Agreement, including any provision of any document incorporated by reference, invalid, that invalidity shall not affect the other provisions this Agreement.

26. **Subcontracting.**

- a. The AAA may, without further notice to DSHS; subcontract for those services specifically defined in the Area Plan submitted to and approved by DSHS, except subcontracts with for-profit entities must have prior DSHS approval.
- b. The AAA must obtain prior written approval from DSHS to subcontract for services not specifically defined in the approved Area Plan.
- c. Any subcontracts shall be in writing and the AAA shall be responsible to ensure that all terms, conditions, assurances and certifications set forth in this Agreement are included in any and all client services Subcontracts unless an exception to including a particular term or terms has been approved in advance by DSHS.
- d. Subcontractors are prohibited from subcontracting for direct client services without the prior written approval from the AAA.
- e. When the nature of the service the subcontractor is to provide requires a certification, license or



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approval, the AAA may only subcontract with such contractors that have and agree to maintain the appropriate license, certification or accrediting requirements/standards.

- f. In any contract or subcontract awarded to or by the AAA in which the authority to determine service recipient eligibility is delegated to the AAA or to a subcontractor, such contract or subcontract shall include a provision acceptable to DSHS that specifies how client eligibility will be determined and how service applicants and recipients will be informed of their right to a fair hearing in case of denial or termination of a service, or failure to act upon a request for services with reasonable promptness.
- g. If DSHS, the AAA, and a subcontractor of the AAA are found by a jury or trier of fact to be jointly and severally liable for damages rising from any act or omission from the contract, then DSHS shall be responsible for its proportionate share, and the AAA shall be responsible for its proportionate share. Should the subcontractor be unable to satisfy its joint and several liability, DSHS and the AAA shall share in the subcontractor's unsatisfied proportionate share in direct proportion to the respective percentage of their fault as found by the jury or trier of fact. Nothing in this term shall be construed as creating a right or remedy of any kind or nature in any person or party other than DSHS and the AAA. This term shall not apply in the event of a settlement by either DSHS or the AAA.
- h. Any subcontract shall designate subcontractor as AAA's Business Associate, as defined by HIPAA, and shall include provisions as required by HIPAA for Business Associate contract. AAA shall ensure that all client records and other PHI in possession of subcontractor are returned to AAA at the termination or expiration of the subcontract.

#### 27. Subrecipients.

- a. General: If the AAA is a subrecipient of federal awards as defined by 2 CFR Part 200 and this Agreement, the AAA shall:
  - (1) Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;
  - (2) Maintain internal controls that provide reasonable assurance that the AAA is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;
  - (3) Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
  - (4) Incorporate 2 CFR Part 200, Subpart F audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;
  - (5) Comply with the applicable requirements of 2 CFR Part 200, including any future amendments to 2 CFR Part 200, and any successor or replacement Office of Management and Budget (OMB) Circular or regulation; and
  - (6) Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39. (Go to

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<https://oip.gov/about/offices/ocr.htm> for additional information and access to the aforementioned Federal laws and regulations.)

- b. **Single Audit Act Compliance.** If the AAA is a subrecipient and expends \$750,000 or more in federal awards from all sources in any fiscal year, the AAA shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the AAA shall:
  - (1) Submit to the DSHS contact person the data collection form and reporting package specified in 2 CFR Part 200, Subpart F, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;
  - (2) Follow-up and develop corrective action for all audit findings; in accordance with 2 CFR Part 200, Subpart F; prepare a "Summary Schedule of Prior Audit Findings" reporting the status of all audit findings included in the prior audit's schedule of findings and questioned costs.
- c. **Overpayments.** If it is determined by DSHS, or during the course of the required audit, that the AAA has been paid unallowable costs under this Agreement, DSHS may require the AAA to reimburse DSHS in accordance with 2 CFR Part 200.
  - (1) For any identified overpayment involving a subcontract between the AAA and a tribe, DSHS agrees it will not seek reimbursement from the AAA, if the identified overpayment was not due to any failure by the AAA.

**28. Survivability.** The terms and conditions contained in this Agreement, which by their sense and context, are intended to survive the expiration of the particular agreement shall survive. Surviving terms include, but are not limited to: Confidentiality, Disputes, Inspection, Maintenance of Records, Ownership of Material, Responsibility, Termination for Default, Termination Procedure, and Title to Property.

**29. Contract Renegotiation, Suspension, or Termination Due to Change in Funding.** If the funds DSHS relied upon to establish this Contract or Program Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, after the effective date of this contract but prior to the normal completion of this Contract or Program Agreement:

- a. The Contract or Program Agreement may be renegotiated under the revised funding conditions.
- b. At DSHS's discretion, DSHS may give notice to the AAA to suspend performance when DSHS determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this contract.
  - (1) During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
  - (2) When DSHS determines that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to DSHS informing DSHS whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.
  - (3) If the AAA's proposed resumption date is not acceptable to DSHS and an acceptable date cannot be negotiated, DSHS may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. DSHS shall be liable only for payment in accordance with the terms of this

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Contract for services rendered prior to the retroactive date of termination.

- c. DSHS may immediately terminate this Contract by providing written notice to the AAA. The termination shall be effective on the date specified in the termination notice. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty shall accrue to DSHS in the event the termination option in this section is exercised.

**30. Termination for Convenience.** The Contracts Administrator may terminate this Agreement or any in whole or in part for convenience by giving the AAA at least thirty (30) calendar days' written notice. The AAA may terminate this Agreement for convenience by giving DSHS at least thirty (30) calendar days' written notice addressed to: Central Contract Services, PO Box 45811, Olympia, Washington 98504-5811.

**31. Termination for Default.**

- a. The Contracts Administrator may terminate this Agreement for default, in whole or in part, by written notice to the AAA, if DSHS has a reasonable basis to believe that the AAA has:
  - (1) Failed to meet or maintain any requirement for contracting with DSHS;
  - (2) Failed to perform under any provision of this Agreement;
  - (3) Violated any law, regulation, rule, or ordinance applicable to this Agreement; and/or
  - (4) Otherwise breached any provision or condition of this Agreement.
- b. Before the Contracts Administrator may terminate this Agreement for default, DSHS shall provide the AAA with written notice of the AAA's noncompliance with the agreement and provide the AAA a reasonable opportunity to correct the AAA's noncompliance. If the AAA does not correct the AAA's noncompliance within the period of time specified in the written notice of noncompliance, the Contracts Administrator may then terminate the agreement. The Contracts Administrator may terminate the agreement for default without such written notice and without opportunity for correction if DSHS has a reasonable basis to believe that a client's health or safety is in jeopardy.
- c. The AAA may terminate this Agreement for default, in whole or in part, by written notice to DSHS, if the AAA has a reasonable basis to believe that DSHS has:
  - (1) Failed to meet or maintain any requirement for contracting with the AAA;
  - (2) Failed to perform under any provision of this Agreement;
  - (3) Violated any law, regulation, rule, or ordinance applicable to this Agreement; and/or
  - (4) Otherwise breached any provision or condition of this Agreement.
- d. Before the AAA may terminate this Agreement for default, the AAA shall provide DSHS with written notice of DSHS' noncompliance with the Agreement and provide DSHS a reasonable opportunity to correct DSHS' noncompliance. If DSHS does not correct DSHS' noncompliance within the period of time specified in the written notice of noncompliance, the AAA may then terminate the Agreement.

**32. Termination Procedure.** The following provisions apply in the event this Agreement is terminated:

DSHS Central Contract Services  
1015LS AAA Older Americans Act (09-11-2013)

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### AAA GENERAL TERMS & CONDITIONS

- a. The AAA shall cease to perform any services required by this Agreement as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination which are related to the transfer of clients, distribution of property, and termination of services.
  - b. The AAA shall promptly deliver to the DSHS contact person (or to his or her successor) listed on the first page this Agreement, all DSHS assets (property) in the AAA's possession, including any material created under this Agreement. Upon failure to return DSHS property within ten (10) working days of the Agreement termination, the AAA shall be charged with all reasonable costs of recovery, including transportation. The AAA shall take reasonable steps to protect and preserve any property of DSHS that is in the possession of the AAA pending return to DSHS.
  - c. DSHS shall be liable for and shall pay for only those services authorized and provided through the effective date of termination. DSHS may pay an amount mutually agreed by the parties for partially completed work and services, if work products are useful to or usable by DSHS.
  - d. If the Contracts Administrator terminates this Agreement for default, DSHS may withhold a sum from the final payment to the AAA that DSHS determines is necessary to protect DSHS against loss or additional liability. DSHS shall be entitled to all remedies available at law, in equity, or under this Agreement. If it is later determined that the AAA was not in default, or if the AAA terminated this Agreement for default, the AAA shall be entitled to all remedies available at law, in equity, or under this Agreement.
- 33. Treatment of Client Property.** Unless otherwise provided in the applicable Agreement, the AAA shall ensure that any adult client receiving services from the AAA under this Agreement has unrestricted access to the client's personal property. The AAA shall not interfere with any adult client's ownership, possession, or use of the client's property. The AAA shall provide clients under age eighteen (18) with reasonable access to their personal property that is appropriate to the client's age, development, and needs. Upon termination or completion of this Agreement, the AAA shall promptly release to the client and/or the client's guardian or custodian all of the client's personal property. This section does not prohibit the AAA from implementing such lawful and reasonable policies, procedures and practices as the AAA deems necessary for safe, appropriate, and effective service delivery (for example, appropriately restricting clients' access to, or possession or use of, lawful or unlawful weapons and drugs).
- 34. Waiver.** Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Agreement unless amended as set forth in Section 1, Amendment. Only the Contracts Administrator or designee has the authority to waive any term or condition of this Agreement on behalf of DSHS.

#### HIPAA Compliance

Preamble: This section of the Contract is the Business Associate Agreement as required by HIPAA.

- 35. Definitions.**
- a. "Business Associate," as used in this Contract, means the "Contractor" and generally has the same meaning as the term "business associate" at 45 CFR 160.103. Any reference to Business Associate in this Contract includes Business Associate's employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.
  - b. "Business Associate Agreement" means this HIPAA Compliance section of the Contract and

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includes the Business Associate provisions required by the U.S. Department of Health and Human Services, Office for Civil Rights.

- c. "Breach" means the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the Protected Health Information, with the exclusions and exceptions listed in 45 CFR 164.402.
- d. "Covered Entity" means DSHS, a Covered Entity as defined at 45 CFR 160.103, in its conduct of covered functions by its health care components.
- e. "Designated Record Set" means a group of records maintained by or for a Covered Entity, that is: the medical and billing records about Individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or Used in whole or part by or for the Covered Entity to make decisions about Individuals.
- f. "Electronic Protected Health Information (EPHI)" means Protected Health Information that is transmitted by electronic media or maintained in any medium described in the definition of electronic media at 45 CFR 160.103.
- g. "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) (HITECH Act).
- h. "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and Part 164.
- i. "Individual(s)" means the person(s) who is the subject of PHI and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- j. "Minimum Necessary" means the least amount of PHI necessary to accomplish the purpose for which the PHI is needed.
- k. "Protected Health Information (PHI)" means individually identifiable health information created, received, maintained or transmitted by Business Associate on behalf of a health care component of the Covered Entity that relates to the provision of health care to an Individual; the past, present, or future physical or mental health or condition of an Individual; or the past, present, or future payment for provision of health care to an Individual. 45 CFR 160.103. PHI includes demographic information that identifies the Individual or about which there is reasonable basis to believe can be used to identify the Individual. 45 CFR 160.103. PHI is information transmitted or held in any form or medium and includes EPHI. 45 CFR 160.103. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USCA 1232g(a)(4)(B)(iv) or employment records held by a Covered Entity in its role as employer.
- l. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
- m. "Subcontractor" as used in this HIPAA Compliance section of the Contract (in addition to its definition in the General Terms and Conditions) means a Business Associate that creates, receives, maintains, or transmits Protected Health Information on behalf of another Business Associate.
- n. "Use" includes the sharing, employment, application, utilization, examination, or analysis, of PHI

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within an entity that maintains such information.

- 36. Compliance.** Business Associate shall perform all Contract duties, activities and tasks in compliance with HIPAA, the HIPAA Rules, and all attendant regulations as promulgated by the U.S. Department of Health and Human Services, Office of Civil Rights.
- 37. Use and Disclosure of PHI.** Business Associate is limited to the following permitted and required uses or disclosures of PHI:
- a. **Duty to Protect PHI.** Business Associate shall protect PHI from, and shall use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 (Security Standards for the Protection of Electronic Protected Health Information) with respect to EPHI, to prevent the unauthorized Use or disclosure of PHI other than as provided for in this Contract or as required by law, for as long as the PHI is within its possession and control, even after the termination or expiration of this Contract.
  - b. **Minimum Necessary Standard.** Business Associate shall apply the HIPAA Minimum Necessary standard to any Use or disclosure of PHI necessary to achieve the purposes of this Contract. See 45 CFR 164.514 (d)(2) through (d)(5).
  - c. **Disclosure as Part of the Provision of Services.** Business Associate shall only Use or disclose PHI as necessary to perform the services specified in this Contract or as required by law, and 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, except for the specific uses and disclosures set forth below.
  - d. **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.
  - e. **Disclosure for Proper Management and Administration.** 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 the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.
  - f. **Impermissible Use or Disclosure of PHI.** Business Associate shall report to DSHS in writing all Uses or disclosures of PHI not provided for by this Contract within one (1) business day of becoming aware of the unauthorized Use or disclosure of PHI, including Breaches of unsecured PHI as required at 45 CFR 164.410 (Notification by a Business Associate), as well as any Security Incident of which it becomes aware. Upon request by DSHS, Business Associate shall mitigate, to the extent practicable, any harmful effect resulting from the impermissible Use or disclosure.
  - g. **Failure to Cure.** If DSHS 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 Contract and reasonable steps by DSHS do not end the violation, DSHS shall terminate this 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 their contract and reasonable steps by the Business Associate do not end the violation, Business Associate shall terminate the Subcontract, if feasible.



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- h. Termination for Cause. Business Associate authorizes immediate termination of this Contract by DSHS, if DSHS determines that Business Associate has violated a material term of this Business Associate Agreement. DSHS may, at its sole option, offer Business Associate an opportunity to cure a violation of this Business Associate Agreement before exercising a termination for cause.
- i. Consent to Audit. Business Associate shall give reasonable access to PHI, its internal practices, records, books, documents, electronic data and/or all other business information received from, or created or received by Business Associate on behalf of DSHS, to the Secretary of DHHS and/or to DSHS for use in determining compliance with HIPAA privacy requirements.
- j. Obligations of Business Associate Upon Expiration or Termination. Upon expiration or termination of this Contract for any reason, with respect to PHI received from DSHS, or created, maintained, or received by Business Associate, or any Subcontractors, on behalf of DSHS, Business Associate shall:
  - (1) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
  - (2) Return to DSHS or destroy the remaining PHI that the Business Associate or any Subcontractors still maintain in any form;
  - (3) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 (Security Standards for the Protection of Electronic Protected Health Information) with respect to Electronic Protected Health Information to prevent Use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate or any Subcontractors retain the PHI;
  - (4) 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 same conditions set out in the "Use and Disclosure of PHI" section of this Contract which applied prior to termination; and
  - (5) Return to DSHS or destroy the PHI retained by Business Associate, or any Subcontractors, when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- k. Survival. The obligations of the Business Associate under this section shall survive the termination or expiration of this Contract.

#### 38. Individual Rights.

- a. Accounting of Disclosures.
  - (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.
  - (2) Within ten (10) business days of a request from DSHS, Business Associate shall make available to DSHS the information in Business Associate's possession that is necessary for DSHS 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).
  - (3) At the request of DSHS 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.

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(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.

b. Access

(1) Business Associate shall make available PHI that it holds that is part of a Designated Record Set when requested by DSHS or the Individual as necessary to satisfy DSHS's obligations under 45 CFR 164.524 (Access of Individuals to Protected Health Information).

(2) When the request is made by the Individual to the Business Associate or if DSHS asks the Business Associate to respond to a request, the Business Associate shall comply with requirements in 45 CFR 164.524 (Access of Individuals to Protected Health Information) on form, time and manner of access. When the request is made by DSHS, the Business Associate shall provide the records to DSHS within ten (10) business days.

c. Amendment.

(1) If DSHS amends, in whole or in part, a record or PHI contained in an Individual's Designated Record Set and DSHS has previously provided the PHI or record that is the subject of the amendment to Business Associate, then DSHS will inform Business Associate of the amendment pursuant to 45 CFR 164.526(c)(3) (Amendment of Protected Health Information).

(2) Business Associate shall make any amendments to PHI in a Designated Record Set as directed by DSHS or as necessary to satisfy DSHS's obligations under 45 CFR 164.526 (Amendment of Protected Health Information).

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

**40. Obligations.** To the extent the Business Associate is to carry out one or more of DSHS's obligation(s) 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 DSHS in the performance of such obligation(s).

**41. Liability.** Within ten (10) business days, Business Associate must notify DSHS 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 DSHS 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.

**42. Breach Notification.**

a. In the event of a Breach of unsecured PHI or disclosure that compromises the privacy or security of PHI obtained from DSHS or involving DSHS clients, Business Associate will take all measures required by state or federal law.



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- b. Business Associate will notify DSHS within one (1) business day by telephone and in writing of any acquisition, access, Use or disclosure of PHI not allowed by the provisions of this Contract or not authorized by HIPAA Rules or required by law of which it becomes aware which potentially compromises the security or privacy of the Protected Health Information as defined in 45 CFR 164.402 (Definitions).
- c. Business Associate will notify the DSHS Contact shown on the cover page of this Contract within one (1) business day by telephone or e-mail of any potential Breach of security or privacy of PHI by the Business Associate or its Subcontractors or agents. Business Associate will follow telephone or e-mail notification with a faxed or other written explanation of the Breach, to include the following: date and time of the Breach, date 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 will address communications to the DSHS Contact. Business Associate will coordinate and cooperate with DSHS to provide a copy of its investigation and other information requested by DSHS, including advance copies of any notifications required for DSHS review before disseminating and verification of the dates notifications were sent.
- d. If DSHS determines that Business Associate or its Subcontractor(s) or agent(s) is responsible for a Breach of unsecured PHI:
  - (1) requiring notification of Individuals under 45 CFR § 164.404 (Notification to Individuals), Business Associate bears the responsibility and costs for notifying the affected Individuals and receiving and responding to those Individuals' questions or requests for additional information;
  - (2) requiring notification of the media under 45 CFR § 164.406 (Notification to the media); Business Associate bears the responsibility and costs for notifying the media and receiving and responding to media questions or requests for additional information;
  - (3) requiring notification of the U.S. Department of Health and Human Services Secretary under 45 CFR § 164.408 (Notification to the Secretary), Business Associate bears the responsibility and costs for notifying the Secretary and receiving and responding to the Secretary's questions or requests for additional information; and
  - (4) DSHS will take appropriate remedial measures up to termination of this Contract.

#### 43. Miscellaneous Provisions.

- a. Regulatory References. A reference in this Contract to a section in the HIPAA Rules means the section as in effect or amended.
- b. Interpretation. Any ambiguity in this Contract shall be interpreted to permit compliance with the HIPAA Rules.

## Special Terms and Conditions

### SPECIAL TERMS AND CONDITIONS

#### 1. Definitions.

- a. "AAA" or "Contractor" shall mean the Area Agency on Aging that is a party to this agreement, and includes the AAA's officers, directors, trustees, employees and/or agents unless otherwise stated in this Agreement. For purposes of this Agreement, the AAA or agent shall not be considered an employee of DSHS
- b. "Agreement" means this Agreement, including all documents attached or incorporated by reference.
- c. "Allocable costs" are those costs which are chargeable or assignable to a particular cost objective in accordance with the relative benefits received by those costs.
- d. "Allowable costs" are those costs necessary and reasonable for proper and efficient performance of this Agreement and in conformance with this Agreement. Allowable costs under federal awards to local or tribal governments must be in conformance with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local and Indian Tribal Governments; allowable costs under federal awards to non-profit organizations must be in conformance with OMB Circular A-122, Cost Principles for Non-Profit Organizations.
- e. "Area Plan" means the document submitted by the AAA to DSHS for approval every four years, with updates every two years, which sets forth goals, measurable objectives, outcomes, units of service, and identifies the planning, coordination, administration, social services and evaluation of activities to be undertaken by the AAA to carry out the purposes of the Older Americans Act, the Social Security Act, the Senior Citizens Services Act, or any other statute for which the AAA receives funds.
- f. "Assignment" means the act of transferring to another the rights and obligations under this Agreement.
- g. "Business Associate" means a Business Associate as defined in 45 CFR 160.103, who performs or assists in the performance of an activity for or on behalf of the Covered Entity that involves the use or disclosure of protected health information (PHI). Any reference to Business Associate under this Agreement includes Business Associate's employees, agents, officers, subcontractors, third party contractor's, volunteers, or directors.
- h. "CFR" means Code of Federal Regulations. All references in this Agreement to the CFR shall include any successor, amended, or replacement regulation.
- i. "Client" means an individual that is eligible for or receiving services provided by the AAA in connection with this Agreement.
- j. "Covered Entity" means DSHS, a Covered Entity as defined in 45 CFR 160.103.
- k. "Contracts Administrator" means the manager, or successor, of Central Contract Services or successor section or office.
- l. "Debarment" means an action taken by a Federal official to exclude a person or business entity from participating in transactions involving certain federal funds.
- m. "Designated Record Set" means a group of records maintained by or for the Covered Entity that is the medical and billing records about the individuals or the enrollment, payment, claims adjudication, and case or medical management records, used in whole or part by or for the Covered Entity to make decisions about individuals.

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- n. "DSHS" or "the Department" means the state of Washington Department of Social and Health Services and its employees and authorized agents.
- o. "Data Universal Number System (DUNS) Number" means— a unique nine-digit identification number provided by Dun & Bradstreet (D&B). It is used by the Federal government to identify related organizations that are receiving funding under grants and cooperative agreements, and to provide consistent name and address data for electronic grant application systems.
- p. "Equipment" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5000 or more per unit.
- q. "HIPAA" means the Health Information Portability and Accountability Act of 1996, as codified at 42 USCA 1320d-d8.
- r. "Individual" means the person who is the subject of PHI and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- s. "Older Americans Act" refers to P.L. 106-501, 106th Congress, and any subsequent amendments or replacement statutes thereto.
- t. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- u. "PHI" means protected health information and is information created or received by Business Associate from or on behalf of Covered Entity that relates to the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or past, present or future payment for provision of health care to an individual. 45 CFR 160 and 14. PHI includes demographic information that identifies the individual or about which there is reasonable basis to believe, can be used to identify the individual. 45 CFR 160.103. PHI is information transmitted, maintained, or stored in any form or medium. 45 CFR 164.501. PHI does not include education records covered by the Family Educational Right and Privacy Act, as amended, 20 USCA 1232g(a)(4)(b)(iv).
- v. "RCW" means the Revised Code of Washington. All references in this Agreement to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at <http://slc.leg.wa.gov/>.
- w. "Real Property" means land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.
- x. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
- y. "Subcontract" means any separate agreement or contract between the AAA and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Agreement.
- z. "Subcontractor" means an individual or entity (including its officers, directors, trustees, employees, and/or agents) with whom the AAA contracts to provide services that are specifically defined in the Area Plan or are otherwise approved by DSHS in accordance with this Agreement.
- aa. "Subrecipient" means a non-federal entity that expends federal awards received from a pass-

## Special Terms and Conditions

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through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.

- bb. "Supplies" means all tangible personal property other than equipment as defined herein.
- cc. "WAC" means the Washington Administrative Code. All references in this Agreement to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at <http://slc.leg.wa.gov/>

2. **Statement of Work.** The AAA shall perform the services as set forth in the attached Statement of Work (Exhibit A).
3. **Billing Procedure.** DSHS shall pay to the AAA all allowable and allocable costs incurred as evidenced by proper invoice by the AAA submitted to DSHS on a monthly basis in accordance with the Budget (Exhibit B), which is attached hereto and incorporated herein. The AAA shall request payment using forms as designated by DSHS.
4. **Payment.** DSHS shall pay the AAA upon acceptance by DSHS of properly-completed invoices and approval of required reports. DSHS shall pay the AAA an amount not to exceed the maximum consideration specified on Page 1 of this Agreement for the satisfactory performance of all work set forth in the Statement of Work. If this Agreement is terminated, DSHS shall only pay for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

If the AAA claims and is reimbursed for costs under this Agreement which DSHS later finds were claimed in error or not allowable costs under the terms of this Agreement, DSHS shall recover those costs and the AAA shall fully cooperate during the recovery.

DSHS shall not make any payments in advance or anticipation of the delivery of services to be provided pursuant to this Agreement. Unless otherwise specified in this Agreement, DSHS shall not pay any claims for payment for services submitted more than forty-five (45) days after completion of the contract period. The AAA shall not bill DSHS for services performed under this Agreement, and DSHS shall not pay the AAA, if the AAA has charged or will charge the State of Washington or any other party under any other contract or agreement for the same services.

**The AAA shall complete and submit the attached Local Match Certification Form (Exhibit C) with their final billing. Final payment will not be made without the completed form.**

5. **Confidentiality.** In addition to General Terms and Conditions Confidentiality language, the AAA or its Subcontractors may disclose information to each other, to DSHS, or to appropriate authorities, for purposes directly connected with the services provided to the client. This includes, but is not limited to, determining eligibility, providing services, and participation in disputes, fair hearings or audits. The AAA and its Subcontractors shall disclose information for research, statistical, monitoring and evaluation purposes conducted by appropriate federal agencies and DSHS.
6. **DUNS Number.** In accordance with the Federal Funding Accountability and Transparency Act (FFATA, Public Law 109-282) implemented on October 1, 2010, the Contractor must provide their DUNS Number for this Agreement. The Contractor's DUNS Number is listed on Page 1 of this Agreement. If the DUNS Number listed on Page 1 of this Agreement changes, the Contractor must immediately notify the DSHS Contact listed on Page 1 of this Agreement and provide the correct DUNS Number.

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7. **Amendment Clause Exception.** The only exception to the General Term and Condition Amendment clause (clause 1.) is when an amendment must be processed to distribute federal funds to the Contractor and the funds must be obligated in a Short Timeframe. Short Timeframe means the Contractor is unable to follow their standard contract execution procedures in order to timely obligate the federal funds. By execution of this Contract, the Contractor prospectively agrees to the terms of the federal fund distribution amendment, which shall be limited to only adding funds to the Contractor's Budget. The Contractor's designated point-of-contact shall also email DSHS its acceptance of the amendment prior to final signing of the amendment.
8. **Background Checks.** The AAA shall ensure that hiring practices for staff who will have unsupervised access to clients are in accordance with RCW 43.20A.710.
9. Per grant requirements, Contractor shall adhere to the following in carrying out requirements of this Contract:
  - a. **CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)**
    - (1) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.
    - (2) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.
    - (3) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold of \$150,000 as described in 48 CFR 2.101.
  - b. Recognize any same-sex marriage legally entered into in a U.S. jurisdiction that recognizes their marriage, including one of the 50 states, the District of Columbia or a U.S. territory, or in a foreign country so long as that marriage would also be recognized by a U.S. jurisdiction. This applies regardless of whether or not the couple resides in a jurisdiction that recognizes same-sex marriage. However, this does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under the law of the jurisdiction of celebration as something other than a marriage. Accordingly, recipients must review and revise, as needed, any policies and procedures which interpret or apply Federal statutory or regulatory references to such terms as "marriage," "spouse," family," "household member" or similar references to familial relationships to reflect inclusion of same-sex spouse and marriages. Any similar familial terminology references in HHS statutes, regulations, or policy transmittals will be interpreted to include same-sex spouses and marriages legally entered into as described herein. **United States v. Windsor, 133 S.Ct. 2675 (June 26, 2013); section 3 of the Defense of Marriage Act, codified at 1 USC §7.**
10. **Grant Award Documents.** Exhibit D, Grant Award Documents, is attached hereto and incorporated herein.
11. **Area Plan.** The Contractor will work with ALTSA to answer and resolve any CY19 Area Plan budget questions/revisions within one month of receipt of questions from ALTSA.

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### SPECIAL TERMS AND CONDITIONS

#### Exhibit A

##### Statement of Work

The AAA shall comply with the Older Americans Act, (Public Law 106-501), the Policies and Procedures for Area Agency on Aging Operations Manual, the Aging Network Program Guidelines and Standards, the DSHS Aging and Long-Term Support Administration (ALTSA) Long Term Care Manual, Management Bulletins and all other applicable state and federal laws and regulations, in carrying out the following obligations under this Agreement:

1. **Area Plan.** The AAA shall develop, submit to DSHS for approval, and implement an area plan in accordance with DSHS guidelines. The area plan shall provide for a comprehensive and coordinated community-based system of services for older individuals living in the AAA planning and service area, in accordance with the requirements and assurances in the Older Americans Act. A budget supporting the area plan services, goals and objectives shall be developed and submitted to DSHS/ALTSA annually for the period January 1 – December 31.
2. **Services provided by the AAA.** The AAA shall provide services according to its approved Area Plan and the Older Americans Act to target populations in its planning and service area.
3. **Sub-recipient Requirements.** As a sub-recipient of federal funds from the Department of Health and Human Services, the AAA shall comply with federal grant sub-recipient requirements contained in 45 CFR 92.

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**Funds Match Certification**                      **Exhibit C**  
 (This form must be submitted with final contract billing.)

I, \_\_\_\_\_ certify that local funds and/or in-kind items  
 PRINT NAME

\_\_\_\_\_ were provided in the amount of \$ \_\_\_\_\_  
 TYPE AND SOURCE OF PRIVATE / LOCAL FUNDS / ITEMS

\_\_\_\_\_ were provided in the amount of \$ \_\_\_\_\_  
 TYPE AND SOURCE OF NON-PROFIT FUNDS / ITEMS

\_\_\_\_\_ were provided in the amount of \$ \_\_\_\_\_  
 TYPE AND SOURCE OF FEDERAL FUNDS / ITEMS

and were used to match funds paid during the time period of \_\_\_\_\_ through \_\_\_\_\_ for

TYPE OF SERVICE/CONTRACT	
NAME OF ENTITY	
NAME OF AUTHORIZED AGENT	CONTRACT / VENDOR NUMBER
AUTHORIZED REPRESENTATIVE'S SIGNATURE DATE	TITLE OR POSITION
PRINTED NAME OF AUTHORIZED REPRESENTATIVE	TELEPHONE NUMBER

**Instructions**

- Name: Printed name of the entity's agent authorized to complete certification form.
- Type and source of funds: The type and source of funds used. Please break out different types of funding sources. Not all funding sources will be necessary to complete each certification. In-kind sources need specific identification showing who donated the item(s) (e.g., volunteers, building use, etc.).
- Dollar amount: Dollars that were used to match funds paid during the time period. Dollars reported must agree with amount on the final billing.
- Time frame: Period of time the services were provided.
- Type of service/contract: Services eligible for matching.
- Name of entity: Name of entity that is providing the funding match.
- Name of authorized agent: Name of agent, if different than "name of entity" above, that is authorized to act on behalf of entity.
- Contract/vendor number: The contract or vendor number of the entity.
- Authorized representative's signature: The signature of the entity authorized representative.
- Date: Date when form was completed.

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Title or position: Title or position of entity authorized representative

Printed name: Printed name of authorized representative.

Telephone number: Telephone number of authorized representative. Include the area code.



**Special Terms and Conditions**

**ATTACHMENT E: DATA SHARE AND SECURITY REQUIREMENTS**

[DSHS Agreement #2069-67350] Effective January 1, 2020 – December 31, 2021. Any subcontract for the Kitsap County Area Agency on Aging is subject to the provisions of the applicable Interlocal Data Share Agreement between the Department of Social and Health Services and the Area Agency on Aging, unless otherwise provided for in the contract between the Kitsap County Area Agency on Aging and the Contractor. When referencing the applicable Interlocal Data Share Agreement in relation to the subcontract, the Kitsap County Area Agency on Aging replaces DSHS and subcontractor replaces AAA.

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### AAA General Terms and Conditions

1. **Amendment.** This Agreement, or any term or condition, may be modified only by a written amendment signed by both parties. Only personnel authorized to bind each of the parties shall sign an amendment.
2. **Assignment.** Except as otherwise provided herein, the AAA shall not assign rights or obligations derived from this Agreement to a third party without the prior, written consent of the DSHS Contracts Administrator and the written assumption of the AAA's obligations by the third party.
3. **Compliance with Applicable Law.** At all times during the term of this Agreement, the AAA and DSHS shall comply with all applicable federal, state, and local laws, regulations, and rules, including but not limited to, nondiscrimination laws and regulations.
4. **Confidentiality.** The parties shall use Personal Information and other confidential information gained by reason of this Agreement only for the purpose of this Agreement. DSHS and the AAA shall not disclose, transfer, or sell any such information to any other party, except as provided by law or, in the case of Personal Information except as provided by law or with the prior written consent of the person to whom the Personal Information pertains. The parties shall maintain the confidentiality of all Personal Information and other confidential information gained by reason of this Agreement and shall return or certify the destruction of such information if requested in writing by the party to the Agreement that provided the information.
5. **AAA Certification Regarding Ethics.** By signing this Agreement, the AAA certifies that the AAA is in compliance with Chapter 42.23 RCW and shall comply with Chapter 42.23 RCW throughout the term of this Agreement.
6. **Debarment Certification.** The AAA, by signature to this Agreement, certifies that the AAA is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any Federal department or agency. The AAA also agrees to include the above requirement in all subcontracts into which it enters, resulting directly from the AAA's duty to provide services under this Agreement.
7. **Disputes.** In the event of a dispute between the AAA and DSHS, every effort shall be made to resolve the dispute informally and at the lowest level. If a dispute cannot be resolved informally, the AAA shall present their grievance in writing to the Assistant Secretary for Aging and Long-Term Support Administration. The Assistant Secretary shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. If the dispute remains unresolved after the Assistant Secretary's determination, either party may request intervention by the Secretary of DSHS, in which event the Secretary's process shall control. The Secretary will make a determination within 45 days. Participation in this dispute process shall precede any judicial or quasi-judicial action and shall be the final administrative remedy available to the parties. However, if the Secretary's determination is not made within 45 days, either party may proceed with judicial or quasi-judicial action without awaiting the Secretary's determination.
8. **Drug-Free Workplace.** The AAA shall maintain a work place free from alcohol and drug abuse.
9. **Entire Agreement.** This Agreement including all documents attached to or incorporated by reference, contain all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind the parties.
10. **Governing Law and Venue.** The laws of the State of Washington govern this Agreement. In the event of a lawsuit by the AAA against DSHS involving this Agreement, venue shall be proper only in

## Special Terms and Conditions

### AAA General Terms and Conditions

Thurston County, Washington. In the event of a lawsuit by DSHS against a County AAA involving this Agreement, venue shall be proper only as provided in RCW 36.01.050.

11. **Independent Status.** Except as otherwise provided in Paragraph 24 herein below, for purposes of this Agreement, the AAA acknowledges that the AAA is not an officer, employee, or agent of DSHS or the State of Washington. The AAA shall not hold out itself or any of its employees as, nor claim status as, an officer, employee, or agent of DSHS or the State of Washington. The AAA shall not claim for itself or its employees any rights, privileges, or benefits, which would accrue to an employee of the State of Washington. The AAA shall indemnify and hold harmless DSHS from all obligations to pay or withhold federal or state taxes or contributions on behalf of the AAA or the AAA's employees.
12. **Inspection.** Either party may request reasonable access to the other party's records and place of business for the limited purpose of monitoring, auditing, and evaluating the other party's compliance with this Agreement, and applicable laws and regulations. During the term of this Agreement and for one (1) year following termination or expiration of this Agreement, the parties shall, upon receiving reasonable written notice, provide the other party with access to its place of business and to its records which are relevant to its compliance with this Agreement and applicable laws and regulations. This provision shall not be construed to give either party access to the other party's records and place of business for any other purpose. Nothing herein shall be construed to authorize either party to possess or copy records of the other party.
13. **Insurance.** DSHS certifies that it is self-insured under the State's self-insurance liability program, as provided by RCW 4.92.130, and shall pay for losses for which it is found liable. The AAA certifies that it is self-insured, is a member of a risk pool, or maintains the types and amounts of insurance identified below and shall, prior to the execution of this Agreement by DSHS, provide certificates of insurance to that effect to the DSHS contact on page one of this Agreement.

Commercial General Liability Insurance (CGL) – to include coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The policy shall include liability arising out of premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The State of Washington, DSHS, its elected and appointed officials, agents, and employees shall be named as additional insureds.

14. **Maintenance of Records.** During the term of this Agreement and for six (6) years following termination or expiration of this Agreement, both parties shall maintain records sufficient to:
  - a. Document performance of all acts required by law, regulation, or this Agreement;
  - b. Demonstrate accounting procedures, practices, and records that sufficiently and properly document the AAA's invoices to DSHS and all expenditures made by the AAA to perform as required by this Agreement.

For the same period, the AAA shall maintain records sufficient to substantiate the AAA's statement of its organization's structure, tax status, capabilities, and performance.

15. **Medicaid Fraud Control Unit (MFCU).** As required by federal regulations, the Health Care Authority, the Department of Social and Health Services, and any contractors or subcontractors, shall promptly comply with all MFCU requests for records or information. Records and information includes, but is not limited to, records on micro-fiche, film, scanned or imaged documents, narratives, computer data, hard copy files, verbal information, or any other information the MFCU determines may be useful in carrying out its responsibilities.



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16. **Order of Precedence.** In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence, in the following order, to:
  - a. Applicable federal CFR, CMS Waivers and Medicaid State Plan;
  - b. State of Washington statutes and regulations;
  - c. AL TSA Management Bulletins and policy manuals;
  - d. This Agreement; and
  - e. The AAA's Area Plan.
17. **Ownership of Client Assets.** The AAA shall ensure that any client for whom the AAA or Subcontractor is providing services under this Agreement shall have unrestricted access to the client's personal property. The AAA or Subcontractor shall not interfere with the client's ownership, possession, or use of such property. Upon termination of this Agreement, the AAA or Subcontractor shall immediately release to the client and/or DSHS all of the client's personal property.
18. **Ownership of Material.** Material created by the AAA and paid for by DSHS as a part of this Agreement shall be owned by DSHS and shall be "work made for hire" as defined by Title 17 USCA, Section 101. This material includes, but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Material which the AAA uses to perform this Agreement but is not created for or paid for by DSHS is owned by the AAA and is not "work made for hire"; however, DSHS shall have a perpetual license to use this material for DSHS internal purposes at no charge to DSHS, provided that such license shall be limited to the extent which the AAA has a right to grant such a license.
19. **Ownership of Real Property, Equipment and Supplies Purchased by the AAA.** Title to all property, equipment and supplies purchased by the AAA with funds from this Agreement shall vest in the AAA. When real property, or equipment with a per unit fair market value over \$5000, is no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS. If the per unit fair market value of equipment is under \$5000, the AAA may retain, sell, or dispose of it with no further obligation.

When supplies with a total aggregate fair market value over \$5000 are no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS. If the total aggregate fair market value of equipment is under \$5000, the AAA may retain, sell, or dispose of it with no further obligation.

Disposition and maintenance of property shall be in accordance with 45 CFR Parts 92 and 74.
20. **Ownership of Real Property, Equipment and Supplies Purchased by DSHS.** Title to property, equipment and supplies purchased by DSHS and provided to the AAA to carry out the activities of this Agreement shall remain with DSHS. When real property, equipment or supplies are no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS.

Disposition and maintenance of property shall be in accordance with 45 CFR Parts 92 and 74.
21. **Responsibility.** Each party to this Agreement shall be responsible for the negligence of its officers, employees, and agents in the performance of this Agreement. No party to this Agreement shall be

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responsible for the acts and/or omissions of entities or individuals not party to this Agreement. DSHS and the AAA shall cooperate in the defense of tort lawsuits, when possible. Both parties agree and understand that this provision may not be feasible in all circumstances. DSHS and the AAA agree to notify the attorneys of record in any tort lawsuit where both are parties if either DSHS or the AAA enters into settlement negotiations. It is understood that the notice shall occur prior to any negotiations, or as soon as possible, and the notice may be either written or oral.

- 22. Restrictions Against Lobbying.** The AAA certifies to the best of its knowledge and belief that no federal appropriated funds have been paid or will be paid, by or on behalf of the AAA, to any person for influencing or attempting to influence an officer or employee of a federal agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

If any funds other than federal appropriated funds have or will be paid for the purposes stated above, the AAA must file a disclosure form in accordance with 45 CFR Section 93.110.

The AAA shall include a clause in all subcontracts restricting subcontractors from lobbying in accordance with this section and requiring subcontractors to certify and disclose accordingly.

- 23. Severability.** The provisions of this Agreement are severable. If any court holds any provision of this Agreement, including any provision of any document incorporated by reference, invalid, that invalidity shall not affect the other provisions this Agreement.

**24. Subcontracting.**

- a. The AAA may, without further notice to DSHS, subcontract for those services specifically defined in the Area Plan submitted to and approved by DSHS, except subcontracts with for-profit entities must have prior DSHS approval.
- b. The AAA must obtain prior written approval from DSHS to subcontract for services not specifically defined in the approved Area Plan.
- c. Any subcontracts shall be in writing and the AAA shall be responsible to ensure that all terms, conditions, assurances and certifications set forth in this Agreement are included in any and all client services Subcontracts unless an exception to including a particular term or terms has been approved in advance by DSHS.
- d. Subcontractors are prohibited from subcontracting for direct client services without the prior written approval from DSHS.
- e. When the nature of the service the subcontractor is to provide requires a certification, license or approval, the AAA may only subcontract with such contractors that have and agree to maintain the appropriate license, certification or accrediting requirements/standards.
- f. In any contract or subcontract awarded to or by the AAA in which the authority to determine service recipient eligibility is delegated to the AAA or to a subcontractor, such contract or subcontract shall include a provision acceptable to DSHS that specifies how client eligibility will be determined and how service applicants and recipients will be informed of their right to a fair hearing in case of denial or termination of a service, or failure to act upon a request for services with reasonable promptness.

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- g. If DSHS, the AAA, and a subcontractor of the AAA are found by a jury or trier of fact to be jointly and severally liable for damages arising from any act or omission from the contract, then DSHS shall be responsible for its proportionate share, and the AAA shall be responsible for its proportionate share. Should the subcontractor be unable to satisfy its joint and several liability, DSHS and the AAA shall share in the subcontractor's unsatisfied proportionate share in direct proportion to the respective percentage of their fault as found by the jury or trier of fact. Nothing in this term shall be construed as creating a right or remedy of any kind or nature in any person or party other than DSHS and the AAA. This term shall not apply in the event of a settlement by either DSHS or the AAA.
- h. Any subcontract shall designate subcontractor as AAA's Business Associate, as defined by HIPAA, and shall include provisions as required by HIPAA for Business Associate contract. AAA shall ensure that all client records and other PHI in possession of subcontractor are returned to AAA at the termination or expiration of the subcontract.

#### 25. Subrecipients.

- (1) General. If the AAA is a subrecipient of federal awards as defined by 2 CFR Part 200 and this Agreement, the AAA shall:
  - (2) Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;
  - (3) Maintain internal controls that provide reasonable assurance that the AAA is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;
  - (4) Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
  - (5) Incorporate 2 CFR Part 200, Subpart F audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;
  - (6) Comply with the applicable requirements of 2 CFR Part 200, including any future amendments to 2 CFR Part 200, and any successor or replacement Office of Management and Budget (OMB) Circular or regulation; and
  - (7) Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39. (Go to [www.ojp.usdoj.gov/ocr/](http://www.ojp.usdoj.gov/ocr/) for additional information and access to the aforementioned Federal laws and regulations.)
- b. Single Audit Act Compliance. If the AAA is a subrecipient and expends \$750,000 or more in federal awards from all sources in any fiscal year, the AAA shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the AAA shall:
  - (1) Submit to the DSHS contact person the data collection form and reporting package specified in 2 CFR Part 200, Subpart F, reports required by the program-specific audit guide (if applicable),



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and a copy of any management letters issued by the auditor;

- (2) Follow-up and develop corrective action for all audit findings; in accordance with 2 CFR Part 200, Subpart F; prepare a "Summary Schedule of Prior Audit Findings" reporting the status of all audit findings included in the prior audit's schedule of findings and questioned costs.
    - c. Overpayments. If it is determined by DSHS, or during the course of the required audit, that the AAA has been paid unallowable costs under this Agreement, DSHS may require the AAA to reimburse DSHS in accordance with 2 CFR Part 200.
      - (1) For any identified overpayment involving a subcontract between the AAA and a tribe, DSHS agrees it will not seek reimbursement from the AAA, if the identified overpayment was not due to any failure by the AAA.
26. **Survivability.** The terms and conditions contained in this Agreement, which by their sense and context, are intended to survive the expiration of the particular agreement shall survive. Surviving terms include, but are not limited to: Confidentiality, Disputes, Inspection, Maintenance of Records, Ownership of Material, Responsibility, Termination for Default, and Termination Procedure.
27. **Contract Renegotiation, Suspension, or Termination Due to Change in Funding.** If the funds DSHS relied upon to establish this Contract or Program Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, after the effective date of this contract but prior to the normal completion of this Contract or Program Agreement:
  - a. The Contract or Program Agreement may be renegotiated under the revised funding conditions.
  - b. At DSHS's discretion, DSHS may give notice to the AAA to suspend performance when DSHS determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this contract.
    - (1) During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
    - (2) When DSHS determines that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to DSHS informing DSHS whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.
    - (3) If the AAA's proposed resumption date is not acceptable to DSHS and an acceptable date cannot be negotiated, DSHS may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.
  - c. DSHS may immediately terminate this Contract by providing written notice to the AAA. The termination shall be effective on the date specified in the termination notice. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty shall accrue to DSHS in the event the termination option in this section is exercised.
28. **Termination for Convenience.** The Contracts Administrator may terminate this Agreement or any in

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whole or in part for convenience by giving the AAA at least thirty (30) calendar days' written notice. The AAA may terminate this Agreement for convenience by giving DSHS at least thirty (30) calendar days' written notice addressed to: Central Contract Services, PO Box 45811, Olympia, Washington 98504-5811.

#### 29. Termination for Default.

a. The Contracts Administrator may terminate this Agreement for default, in whole or in part, by written notice to the AAA, if DSHS has a reasonable basis to believe that the AAA has:

- (1) Failed to meet or maintain any requirement for contracting with DSHS;
- (2) Failed to perform under any provision of this Agreement;
- (3) Violated any law, regulation, rule, or ordinance applicable to this Agreement; and/or
- (4) Otherwise breached any provision or condition of this Agreement.

b. Before the Contracts Administrator may terminate this Agreement for default, DSHS shall provide the AAA with written notice of the AAA's noncompliance with the agreement and provide the AAA a reasonable opportunity to correct the AAA's noncompliance. If the AAA does not correct the AAA's noncompliance within the period of time specified in the written notice of noncompliance, the Contracts Administrator may then terminate the agreement. The Contracts Administrator may terminate the agreement for default without such written notice and without opportunity for correction if DSHS has a reasonable basis to believe that a client's health or safety is in jeopardy.

c. The AAA may terminate this Agreement for default, in whole or in part, by written notice to DSHS, if the AAA has a reasonable basis to believe that DSHS has:

- (1) Failed to meet or maintain any requirement for contracting with the AAA;
- (2) Failed to perform under any provision of this Agreement;
- (3) Violated any law, regulation, rule, or ordinance applicable to this Agreement; and/or
- (4) Otherwise breached any provision or condition of this Agreement.

d. Before the AAA may terminate this Agreement for default, the AAA shall provide DSHS with written notice of DSHS' noncompliance with the Agreement and provide DSHS a reasonable opportunity to correct DSHS' noncompliance. If DSHS does not correct DSHS' noncompliance within the period of time specified in the written notice of noncompliance, the AAA may then terminate the Agreement.

#### 30. Termination Procedure. The following provisions apply in the event this Agreement is terminated:

a. The AAA shall cease to perform any services required by this Agreement as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination which are related to the transfer of clients, distribution of property, and termination of services.

b. The AAA shall promptly deliver to the DSHS contact person (or to his or her successor) listed on the first page of this Agreement, all DSHS assets (property) in the AAA's possession, including any material created under this Agreement. Upon failure to return DSHS property within ten (10)



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working days of the Agreement termination, the AAA shall be charged with all reasonable costs of recovery, including transportation. The AAA shall take reasonable steps protect and preserve any property of DSHS that is in the possession of the AAA pending return to DSHS.

- c. DSHS shall be liable for and shall pay for only those services authorized and provided through the effective date of termination. DSHS may pay an amount mutually agreed by the parties for partially completed work and services, if work products are useful to or usable by DSHS.
  - d. If the Contracts Administrator terminates this Agreement for default, DSHS may withhold a sum from the final payment to the AAA that DSHS determines is necessary to protect DSHS against loss or additional liability. DSHS shall be entitled to all remedies available at law, in equity, or under this Agreement. If it is later determined that the AAA was not in default, or if the AAA terminated this Agreement for default, the AAA shall be entitled to all remedies available at law, in equity, or under this Agreement.
31. **Waiver.** Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Agreement unless amended as set forth in Section 1, Amendment. Only the Contracts Administrator or designee has the authority to waive any term or condition of this Agreement on behalf of DSHS.

### HIPAA Compliance

Preamble: This section of the Contract is the Business Associate Agreement as required by HIPAA.

#### 32. Definitions.

- a. "Business Associate," as used in this Contract, means the "Contractor" and generally has the same meaning as the term "business associate" at 45 CFR 160.103. Any reference to Business Associate in this Contract includes Business Associate's employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.
- b. "Business Associate Agreement" means this HIPAA Compliance section of the Contract and includes the Business Associate provisions required by the U.S. Department of Health and Human Services, Office for Civil Rights.
- c. "Breach" means the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the Protected Health Information, with the exclusions and exceptions listed in 45 CFR 164.402.
- d. "Covered Entity" means DSHS, a Covered Entity as defined at 45 CFR 160.103, in its conduct of covered functions by its health care components.
- e. "Designated Record Set" means a group of records maintained by or for a Covered Entity, that is: the medical and billing records about Individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or Used in whole or part by or for the Covered Entity to make decisions about Individuals.
- f. "Electronic Protected Health Information (EPHI)" means Protected Health Information that is transmitted by electronic media or maintained in any medium described in the definition of electronic media at 45 CFR 160.103.

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- g. "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) (HITECH Act).
  - h. "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and Part 164.
  - i. "Individual(s)" means the person(s) who is the subject of PHI and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
  - j. "Minimum Necessary" means the least amount of PHI necessary to accomplish the purpose for which the PHI is needed.
  - k. "Protected Health Information (PHI)" means individually identifiable health information created, received, maintained or transmitted by Business Associate on behalf of a health care component of the Covered Entity that relates to the provision of health care to an Individual; the past, present, or future physical or mental health or condition of an Individual; or the past, present, or future payment for provision of health care to an Individual. 45 CFR 160.103. PHI includes demographic information that identifies the Individual or about which there is reasonable basis to believe can be used to identify the Individual. 45 CFR 160.103. PHI is information transmitted or held in any form or medium and includes EPHI. 45 CFR 160.103. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USCA 1232g(a)(4)(B)(iv) or employment records held by a Covered Entity in its role as employer.
  - l. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
  - m. "Subcontractor" as used in this HIPAA Compliance section of the Contract (in addition to its definition in the General Terms and Conditions) means a Business Associate that creates, receives, maintains, or transmits Protected Health Information on behalf of another Business Associate.
  - n. "Use" includes the sharing, employment, application, utilization, examination, or analysis, of PHI within an entity that maintains such information.
33. **Compliance.** Business Associate shall perform all Contract duties, activities and tasks in compliance with HIPAA, the HIPAA Rules, and all attendant regulations as promulgated by the U.S. Department of Health and Human Services, Office of Civil Rights.
34. **Use and Disclosure of PHI.** Business Associate is limited to the following permitted and required uses or disclosures of PHI:
- a. **Duty to Protect PHI.** Business Associate shall protect PHI from, and shall use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 (Security Standards for the Protection of Electronic Protected Health Information) with respect to EPHI, to prevent the unauthorized Use or disclosure of PHI other than as provided for in this Contract or as required by law, for as long as the PHI is within its possession and control, even after the termination or expiration of this Contract.
  - b. **Minimum Necessary Standard.** Business Associate shall apply the HIPAA Minimum Necessary standard to any Use or disclosure of PHI necessary to achieve the purposes of this Contract. See 45 CFR 164.514 (d)(2) through (d)(5).

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- c. Disclosure as Part of the Provision of Services. Business Associate shall only Use or disclose PHI as necessary to perform the services specified in this Contract or as required by law, and 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, except for the specific uses and disclosures set forth below.
- d. 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.
- e. Disclosure for Proper Management and Administration. 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 the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.
- f. Impermissible Use or Disclosure of PHI. Business Associate shall report to DSHS in writing all Uses or disclosures of PHI not provided for by this Contract within one (1) business day of becoming aware of the unauthorized Use or disclosure of PHI, including Breaches of unsecured PHI as required at 45 CFR 164.410 (Notification by a Business Associate), as well as any Security Incident of which it becomes aware. Upon request by DSHS, Business Associate shall mitigate, to the extent practicable, any harmful effect resulting from the impermissible Use or disclosure.
- g. Failure to Cure. If DSHS 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 Contract and reasonable steps by DSHS do not end the violation, DSHS shall terminate this 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 their contract and reasonable steps by the Business Associate do not end the violation, Business Associate shall terminate the Subcontract, if feasible.
- h. Termination for Cause. Business Associate authorizes immediate termination of this Contract by DSHS, if DSHS determines that Business Associate has violated a material term of this Business Associate Agreement. DSHS may, at its sole option, offer Business Associate an opportunity to cure a violation of this Business Associate Agreement before exercising a termination for cause.
- i. Consent to Audit. Business Associate shall give reasonable access to PHI, its internal practices, records, books, documents, electronic data and/or all other business information received from, or created or received by Business Associate on behalf of DSHS, to the Secretary of DHHS and/or to DSHS for use in determining compliance with HIPAA privacy requirements.
- j. Obligations of Business Associate Upon Expiration or Termination. Upon expiration or termination of this Contract for any reason, with respect to PHI received from DSHS, or created, maintained, or received by Business Associate, or any Subcontractors, on behalf of DSHS, Business Associate shall:
  - (1) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;



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- (2) Return to DSHS or destroy the remaining PHI that the Business Associate or any Subcontractors still maintain in any form;
- (3) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 (Security Standards for the Protection of Electronic Protected Health Information) with respect to Electronic Protected Health Information to prevent Use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate or any Subcontractors retain the PHI;
- (4) 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 same conditions set out in the "Use and Disclosure of PHI" section of this Contract which applied prior to termination; and
- (5) Return to DSHS or destroy the PHI retained by Business Associate, or any Subcontractors, when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

k. Survival. The obligations of the Business Associate under this section shall survive the termination or expiration of this Contract.

#### 35. Individual Rights.

##### a. Accounting of Disclosures.

- (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.
- (2) Within ten (10) business days of a request from DSHS, Business Associate shall make available to DSHS the information in Business Associate's possession that is necessary for DSHS 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).
- (3) At the request of DSHS 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.
- (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.

##### b. Access

- (1) Business Associate shall make available PHI that it holds that is part of a Designated Record Set when requested by DSHS or the Individual as necessary to satisfy DSHS's obligations under 45 CFR 164.524 (Access of Individuals to Protected Health Information).
- (2) When the request is made by the Individual to the Business Associate or if DSHS asks the Business Associate to respond to a request, the Business Associate shall comply with requirements in 45 CFR 164.524 (Access of Individuals to Protected Health Information) on form, time and manner of access. When the request is made by DSHS, the Business Associate shall provide the records to DSHS within ten (10) business days.

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#### c. Amendment.

- (1) If DSHS amends, in whole or in part, a record or PHI contained in an Individual's Designated Record Set and DSHS has previously provided the PHI or record that is the subject of the amendment to Business Associate, then DSHS will inform Business Associate of the amendment pursuant to 45 CFR 164.526(c)(3) (Amendment of Protected Health Information).
- (2) Business Associate shall make any amendments to PHI in a Designated Record Set as directed by DSHS or as necessary to satisfy DSHS's obligations under 45 CFR 164.526 (Amendment of Protected Health Information).

36. **Subcontracts and other Third Party Agreements.** In accordance with 45 CFR 164.502(e)(1)(ii), 164.504(e)(1)(i), and 164.308(b)(2), Business Associate shall ensure that any agents, Subcontractors, independent contractors or other third parties that create, receive, maintain, or transmit PHI on Business Associate's behalf, enter into a written contract that contains the same terms, restrictions, requirements, and conditions as the HIPAA compliance provisions in this Contract with respect to such PHI. The same provisions must also be included in any contracts by a Business Associate's Subcontractor with its own business associates as required by 45 CFR 164.314(a)(2)(b) and 164.504(e)(5) .
37. **Obligations.** To the extent the Business Associate is to carry out one or more of DSHS's obligation(s) 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 DSHS in the performance of such obligation(s).
38. **Liability.** Within ten (10) business days, Business Associate must notify DSHS 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 DSHS 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.
39. **Breach Notification.**
  - a. In the event of a Breach of unsecured PHI or disclosure that compromises the privacy or security of PHI obtained from DSHS or involving DSHS clients, Business Associate will take all measures required by state or federal law.
  - b. Business Associate will notify DSHS within one (1) business day by telephone and in writing of any acquisition, access, Use or disclosure of PHI not allowed by the provisions of this Contract or not authorized by HIPAA Rules or required by law of which it becomes aware which potentially compromises the security or privacy of the Protected Health Information as defined in 45 CFR 164.402 (Definitions).
  - c. Business Associate will notify the DSHS Contact shown on the cover page of this Contract within one (1) business day by telephone or e-mail of any potential Breach of security or privacy of PHI by the Business Associate or its Subcontractors or agents. Business Associate will follow telephone or e-mail notification with a faxed or other written explanation of the Breach, to include the following: date and time of the Breach, date 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

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of contact. Business Associate will address communications to the DSHS Contact. Business Associate will coordinate and cooperate with DSHS to provide a copy of its investigation and other information requested by DSHS, including advance copies of any notifications required for DSHS review before disseminating and verification of the dates notifications were sent.

- d. If DSHS determines that Business Associate or its Subcontractor(s) or agent(s) is responsible for a Breach of unsecured PHI:
  - (1) requiring notification of Individuals under 45 CFR § 164.404 (Notification to Individuals), Business Associate bears the responsibility and costs for notifying the affected Individuals and receiving and responding to those Individuals' questions or requests for additional information;
  - (2) requiring notification of the media under 45 CFR § 164.406 (Notification to the media), Business Associate bears the responsibility and costs for notifying the media and receiving and responding to media questions or requests for additional information;
  - (3) requiring notification of the U.S. Department of Health and Human Services Secretary under 45 CFR § 164.408 (Notification to the Secretary), Business Associate bears the responsibility and costs for notifying the Secretary and receiving and responding to the Secretary's questions or requests for additional information; and
  - (4) DSHS will take appropriate remedial measures up to termination of this Contract.

#### 40. Miscellaneous Provisions.

- a. Regulatory References. A reference in this Contract to a section in the HIPAA Rules means the section as in effect or amended.
- b. Interpretation. Any ambiguity in this Contract shall be interpreted to permit compliance with the HIPAA Rules.



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#### 1. Definitions.

- a. "AAA" or "Contractor" shall mean the Area Agency on Aging that is a party to this Agreement, and includes the AAA's officers, directors, trustees, employees and/or agents unless otherwise stated in this Agreement. For purposes of this Agreement, the AAA or agent shall not be considered an employee of DSHS
- b. "ACD" means Agency Contracts Database. ACD is used to access, produce and manage contracts and contract information.
- c. "Automated Client Eligibility System (ACES)" is a tool for determining eligibility, issuing benefits, management support, and sharing of data between agencies.
- d. "Agreement" means this Agreement, including all documents attached or incorporated by reference.
- e. "Applicant" means individuals submitting an application, a renewal, or reporting a change for benefits or services through Washington Connection.
- f. "Area Plan" means the document submitted by the AAA to DSHS for approval every four years, with updates every two years, which sets forth goals, measurable objectives, outcomes, units of service, and identifies the planning, coordination, administration, social services and evaluation of activities to be undertaken by the AAA to carry out the purposes of the Older Americans Act, the Social Security Act, the Senior Citizens Services Act, or any other statute for which the AAA receives funds.
- g. "Authorized Representative" means someone designated by the Applicant or client to talk with DSHS about his/her benefits. This individual is authorized to act on the applicant or Client's behalf for eligibility purposes.
- h. "Comprehensive Assessment and Reporting Evaluation (CARE)" is the tool used by case managers to document a client's functional ability, determine eligibility for long-term care services, evaluate what and how much assistance a Client will receive, and develop a plan of care. CARE has a desktop version called Care Production and CARE Practice. CARE has a web version called CARE Web Production and CARE Web Practice. Practice versions are to be used for training and test case purposes.
- i. "CARE reporting SQL database" is a Transact Structure Query Language (T-SQL or SQL) database used by staff with active directory accounts to write SQL queries to obtain data used to support operations, management or ad-hoc data needs.
- j. "CFR" means Code of Federal Regulations. All references in this Agreement to the CFR shall include any successor, amended, or replacement regulation.
- k. "Client" means an individual who is eligible for or receiving services provided by the AAA in connection with this Agreement.
- l. "CLC" means Community Living Connections. Washington State's name for its No-Wrong Door access network of Area Agencies on Aging and their state, regional and local partners.
- m. "CLC-GetCare" means a version of RTZ's GetCare product modified to support Washington State's Community Living Connections. It is used for managing programs funded by the Older Americans Act, CMS, state general fund, local resources, and federal grants, including Medicaid Alternative

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Care (MAC) and Tailored Supports for Older Adults (TSOA). It supports reporting for the National Aging Program Information System and Medicare Improvements for Providers Act. It also supports the CLC public website with a consumer portal and a resource directory.

- n. "Contracts Administrator" means the manager, or successor, of Central Contract & Legal Services or successor section or office
- o. "DataMart" means a self-service cube that allows users with active directory accounts to access consolidated ALISA and DDA data to support operations, management or ad-hoc data needs.
- p. DDAVHCS Reporting or ADSA Reporting refers to a portal to access to "canned" or SQL Server Reporting Services (SSRS) reports containing data to support daily operational or management needs.
- q. "Disclosure" means the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information.
- r. "DMS" means Document Management System. It is an automated system that uses imaging technology and document assignments to manage client documents. DMS is composed of the "HIU" – Hub Imaging Unit, the assignment matrix, routing of assignments of the appropriate worker, the workers to-do list or individual workers list of assignments to be completed, the "ECR" Electronic Case Record or electronic replacement of paper case file and workspace for completing assignments, and reports and Manage Assignments where office administrative and supervisory workload management components are located.
- s. "DSHS" or "the Department" means the state of Washington Department of Social and Health Services and its employees and authorized agents.
- t. "Equipment" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5000 or more per unit.
- u. "GetCare" is a secure cloud-based platform for client and program management. It is a product of RTZ Systems.
- v. "HIPAA" means the Health Information Portability and Accountability Act of 1996, as codified at 42 USCA 1320d-d8.
- w. "Individual" means the person who is the subject of PHI and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- x. "Older Americans Act" refers to P.L. 106-501, 106th Congress, and any subsequent amendments or replacement statutes thereto.
- y. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- z. "PHI" means protected health information and is information created or received by Business Associate from or on behalf of Covered Entity that relates to the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or past, present or future payment for provision of health care to an individual. 45 CFR 160 and 14. PHI



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includes demographic information that identifies the individual or about which there is reasonable basis to believe, can be used to identify the individual. 45 CFR 160.103. PHI is information transmitted, maintained, or stored in any form or medium. 45 CFR 164.501. PHI does not include education records covered by the Family Educational Right and Privacy Act, as amended, 20 USCA 1232g(a)(4)(b)(iv).

- aa. ProviderOne – MMIS payment system. Authorizations are created in CARE, but authorization and payment look up can be found directly in ProviderOne.
- bb. "RCW" means the Revised Code of Washington. All references in this Agreement to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at <http://slc.leg.wa.gov/>.
- cc. "Real Property" means land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.
- dd. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
- ee. "SAW" means SecureAccess Washington. SAW is a single sign-on application gateway created by Washington State's Department of Information Services to access government services accessible via the Internet.
- ff. "SSPS" means Social Service Payment System. SSPS is used for payment data history.
- gg. "Subcontract" means any separate agreement or contract between the AAA and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Agreement.
- hh. "Subcontractor" means an individual or entity (including its officers, directors, trustees, employees, and/or agents) with whom the AAA contracts to provide services that are specifically defined in the Area Plan or are otherwise approved by DSHS in accordance with this Agreement.
- ii. "Subrecipient" means a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.
- jj. "Supplies" means all tangible personal property other than equipment as defined herein.
- kk. "TCARE" is a caregiver assessment and referral protocol designed to assist care managers who work with family caregivers who care for their older adult relatives. TCARE has a training version called TCARE Practice and a full version called TCARE Production.
- ll. "Use" means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.
- mm. "User" means the AAA employee who has registered or approved access to a system listed in this Agreement.
- nn. "WAC" means the Washington Administrative Code. All references in this Agreement to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent

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WAC chapters or sections can be accessed at <http://slc.leg.wa.gov/>.

oo. "Washington Connection" means the web-based benefit portal that provides access to a broad array of federal, state and local services and benefits to address basic needs.

2. **Statement of Work.** The AAA shall perform the services as set forth below and in accordance with Exhibit A, Data Security Requirements:
  - a. **Authority to Access Data.** RCW 74.39A.090 mandates that DSHS contract with Area Agencies on Aging (AAA's) to provide case management services to individuals receiving Title XIX personal care services and to reassess and reauthorize these individuals for Title XIX personal care services or other home and community services as defined by this statute. In order to effectively administer these DSHS services, the AAA's must have access to client data, and to certain DSHS information systems.
  - b. **Systems Access and Method of Access.** The AAA may access or may request permission to access the following:
    - (1) The Automated Client Eligibility System (ACES) for public assistance eligibility and client demographic.
    - (2) The Social Services Payment System (SSPS) for payment history data.
    - (3) The Economic Services Administration's (ESA) BarCode client/case folder tracking system and the ESA records retention and tracking system.
    - (4) The Comprehensive Assessment and Reporting Evaluation (CARE) system, and the Tailored Caregiver Assessment and Referral (TCARE) system and their reporting systems for demographic, assessment, and service plan information. CARE Practice and Care Production TCARE Practice and TCARE Production access is available practice is for training and production is for full functionality.
    - (5) Home and Community Services (HCS) case files through the ESA BarCode Electronic Case Records (ECR).
    - (6) Research and Data Analysis' (RDA) DSHS Client Registry to provide high-level demographic information and service history for AAA case management staff.
    - (7) The Agency Contracts Database (ACD) to access, produce and manage contracts and contract information, which pertain to the individual AAA.
    - (8) The Washington Connection benefit portal for the purpose of helping citizens complete an online application for federal, state and local benefits, services and assistance. See Washington Connection requirements, Exhibit B.
    - (9) Aging and Long-Term Support Administration and Developmental Disabilities Administration SharePoint sites.
    - (10) DSHS' Internal Forms Picker Site.
    - (11) The Learning Management System (LMS) for one designated AAA staff member to access required DSHS training. Trainings with monetary cost are prohibited.

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- (12) ProviderOne for authorization and payment information. Independent Provider One (IPOne) system for client information, Provider information, scheduling and payment.
- (13) CLC/GetCare System in order to manage, record, and report service provision and utilization, demographic, resource directory, and consumer website information.
- (14) Applicable SQL Server Reporting Services (SSRS) reports available via HCS/DDA reporting or ADSA reporting to support operations, management or ad-hoc data needs.
- (15) Applicable sections of the DataMart to support operations, management or ad-hoc data needs. Access to this tool will only be available to staff who have active directory accounts.
- (16) CARE reporting SQL database to support operations, management or ad-hoc data needs. Access to this tool will only be available to staff who have active directory accounts.

The AAA shall follow the access request procedures and follow the required security measures specific to each individual system (as provided by ALTSA/HCS). The AAA shall access these systems through the State Government Network (SGN), the Inter-Governmental Network (IGN), SecureAccess Washington (SAW), or through a DSHS approved method of secure access.

The AAA agrees to follow the DSHS IT Security Policy Manual (Section 4.2.3.1, S1) that covers unique user IDs and security elements of constructing safe passwords and protecting them from unauthorized disclosure.

3. **Access and Disclosure information.** The AAA shall not disclose the contents of any Client records, files, papers and communications except as necessary for the administration of programs to provide services to clients as required by law.
  - a. The AAA shall limit access to client data to the AAA and any subcontractor staff whose duties specifically require access to such data in the performance of their assigned duties. AAA or subcontractor staff shall not access any individual client data for personal purposes. Clients shall only be permitted to access their own data.
  - b. The AAA shall ensure each employee signs the Contractor Agreement on Nondisclosure of Confidential Information form, attached as Exhibit C, provided by the Department to acknowledge the data access requirements prior to DSHS granting access. Access will be given only to data necessary to the performance of this Agreement. The AAA shall retain the original Nondisclosure form on file. The AAA shall have the form available for DSHS review upon request.
  - c. The AAA must provide an annual written reminder of the Nondisclosure requirements to all employees with access to the data to remind them of the limitations, use or publishing of data. The AAA shall retain documentation of such reminder on file for monitoring purposes.
  - d. The AAA shall not use or disclose any information concerning any DSHS client for any purpose not directly connected with the administration of the AAA's responsibilities under this Agreement except by prior written consent of the DSHS client, his/her attorney, parent or guardian.
  - e. The AAA or its service provider may disclose information to each other or to DSHS for purposes directly connected with the administration of their programs. This includes, but is not limited to, determining eligibility, providing services, and participation in an audit. The AAA and its service providers shall disclose information for research, statistical, monitoring and evaluation purposes conducted by appropriate federal agencies and DSHS. DSHS must authorize in writing the



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disclosure of this information to any other party not identified in this section.

- f. The AAA staff shall not link the data with personal data or individually identifiable data from any other source nor re-disclose the data unless specifically authorized in this Agreement or by the prior written consent of DSHS.
  - g. The AAA shall notify each system Administrator within five business days when a User leaves employment or otherwise no longer requires system access. Upon notification, the system Administrator will deactivate the User ID and terminate access to the applicable application(s). The AAA shall confirm the need for continued access for each User of the ACD on a quarterly basis.
  - h. The AAA shall ensure that only registered system Users access and use the systems in this Agreement, use only their own User ID and password to access the systems and do not allow employees who are not registered to borrow a User ID or password to access any systems.
  - i. Access to systems may be continuously tracked and monitored. DSHS reserves the right at any time to conduct audits of systems access and use, and to investigate possible violations of this Agreement and/or violations of federal and state laws and regulations governing access to protected health information.
4. **Dissemination to Staff.** Prior to making information available to new staff and annually thereafter, the AAA shall ensure that staff accessing the Personal Information or PHI under this Agreement are trained in HIPAA use and disclosure of PHI requirements and understand:
- a. Confidentiality of Client Data
    - (1) Client data is confidential and is protected by various state and federal laws. The basis for this protection is the individual's right to privacy as outlined in the HIPPA Privacy Rule- 45 CFR 160 to 45 CFR 164.
    - (2) Personal Information means demographic and financial information about a particular individual that is obtained through one or more sources (such as name, address, SSN, and phone numbers). RCW 42.56.210 lists the information that is exempted from public inspection and copying.
  - b. Use of Client Data
    - (1) Client data may be used only for purposes of these contracted services, directly related to providing services to the client or for the operation of aging and long-term care programs.
    - (2) Any personal use of client information is strictly prohibited.
    - (3) Access to data must be limited to those staff whose duties specifically require access to such data in the performance of their assigned duties.
  - c. Disclosure of Information
    - (1) Client information may be provided to the client, client's authorized guardian, or a client-authorized 3rd party per WAC 388-01, and the Long Term Care Manual.
    - (2) Client information may be disclosed to other individuals or agencies only for purposes of administering DSHS programs within regulatory constraints for each data type.

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(3) Questions related to disclosure are to be directed to the Home and Community Programs Public Disclosure Coordinator.

(4) Any disclosure of information contrary to this section is unauthorized and is subject to penalties identified in law.

#### 5. Security of Data

- a. The AAA shall take reasonable precautions to secure against unauthorized physical and electronic access to data, which shall be protected in a manner that prevents unauthorized persons, including the general public, from retrieving data by means of computer, remote terminal, or other means. The AAA shall take due care to ensure AAA and its subcontractors protect said data from unauthorized physical and electronic access. The AAA is authorized to store data on portable devices and media. The data will be stored on computers with security systems that require individual user IDs and hardened passwords. Only persons who have signed the *Contractor Agreement on Nondisclosure of Confidential Information form* covering this data share agreement will be able to access the data that Washington State shares with the AAA under this Agreement.
- b. The AAA shall ensure disks and/or documents generated in printed form from the electronic file are properly returned, destroyed or shredded when no longer needed so unauthorized individuals cannot access client information. Data destroyed shall include all copies of any data sets in possession after the data has been used for the purpose specified herein or within 30 days of the date of termination, and certify such destruction to DSHS. DSHS shall be responsible for destroying the returned documents to ensure confidentiality is maintained. The Data provided by DSHS will remain the property of DSHS and will be promptly destroyed when the AAA and its subcontractors have completed the work for which the information was required, as fully described herein.
- c. The AAA shall protect information according to state and federal laws including the following incorporated by reference:
  - (1) Privacy Act 1974 5 USC subsection 552a;
  - (2) Chapter 40.14 RCW Preservation and Destruction of Public Records;
  - (3) Chapter 74.04 RCW General Provisions – Administration;
  - (4) Chapter 42.56.210 RCW Certain Personal & Other Records Exempt;
  - (5) 45 CFR 205.50 provides for Safeguarding information for the financial assistance Programs and identifies limitations to disclosure of said information; and,
  - (6) Public Law 99-508 (18 USC section 2510et. Seq. Electronic Communications Privacy Act of 1986) Part A of Title IV of the Social Security Act authorizes disclosure of client information and provides for safeguards, which restrict the use or disclosure of information concerning applicants or recipients to purposes directly connected with administration of the program.

6. **Breach Notification.** In addition to General Terms and Conditions, Section 39. Breach Notification, if a potential loss of confidential information or breach occurs from ESA Information Systems, the ALTSA Privacy Officer will notify the ESA Privacy Officer within one (1) business day of discovery.

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#### Exhibit A – Data Security Requirements

1. **Definitions.** The words and phrases listed below, as used in this Exhibit, shall each have the following definitions:
  - a. "AES" means the Advanced Encryption Standard, a specification of Federal Information Processing Standards Publications for the encryption of electronic data issued by the National Institute of Standards and Technology (<http://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.197.pdf>).
  - b. "Authorized Users(s)" means an individual or individuals with a business need to access DSHS Confidential Information, and who has or have been authorized to do so.
  - c. "Business Associate Agreement" means an agreement between DSHS and a contractor who is receiving Data covered under the Privacy and Security Rules of the Health Insurance Portability and Accountability Act of 1996. The agreement establishes permitted and required uses and disclosures of protected health information (PHI) in accordance with HIPAA requirements and provides obligations for business associates to safeguard the information.
  - d. "Category 4 Data" is data that is confidential and requires special handling due to statutes or regulations that require especially strict protection of the data and from which especially serious consequences may arise in the event of any compromise of such data. Data classified as Category 4 includes but is not limited to data protected by: the Health Insurance Portability and Accountability Act (HIPAA), Pub. L. 104-191 as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH), 45 CFR Parts 160 and 164; the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g; 34 CFR Part 99; Internal Revenue Service Publication 1075 (<https://www.irs.gov/pub/irs-pdf/p1075.pdf>); Substance Abuse and Mental Health Services Administration regulations on Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2; and/or Criminal Justice Information Services, 28 CFR Part 20.
  - e. "Cloud" means data storage on servers hosted by an entity other than the Contractor and on a network outside the control of the Contractor. Physical storage of data in the cloud typically spans multiple servers and often multiple locations. Cloud storage can be divided between consumer grade storage for personal files and enterprise grade for companies and governmental entities. Examples of consumer grade storage would include iTunes, Dropbox, Box.com, and many other entities. Enterprise cloud vendors include Microsoft Azure, Amazon Web Services, and Rackspace.
  - f. "Encrypt" means to encode Confidential Information into a format that can only be read by those possessing a "key"; a password, digital certificate or other mechanism available only to authorized users. Encryption must use a key length of at least 256 bits for symmetric keys, or 2048 bits for asymmetric keys. When a symmetric key is used, the Advanced Encryption Standard (AES) must be used if available.
  - g. "FedRAMP" means the Federal Risk and Authorization Management Program (see [www.fedramp.gov](http://www.fedramp.gov)), which is an assessment and authorization process that federal government agencies have been directed to use to ensure security is in place when accessing Cloud computing products and services.
  - h. "Hardened Password" means a string of at least eight characters containing at least three of the following four character classes: Uppercase alphabetic, lowercase alphabetic, numeral, and special characters such as an asterisk, ampersand, or exclamation point.



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- i. "Mobile Device" means a computing device, typically smaller than a notebook, which runs a mobile operating system, such as iOS, Android, or Windows Phone. Mobile Devices include smart phones, most tablets, and other form factors.
  - j. "Multi-factor Authentication" means controlling access to computers and other IT resources by requiring two or more pieces of evidence that the user is who they claim to be. These pieces of evidence consist of something the user knows, such as a password or PIN; something the user has such as a key card, smart card, or physical token; and something the user is, a biometric identifier such as a fingerprint, facial scan, or retinal scan. "PIN" means a personal identification number, a series of numbers which act as a password for a device. Since PINs are typically only four to six characters, PINs are usually used in conjunction with another factor of authentication, such as a fingerprint.
  - k. "Portable Device" means any computing device with a small form factor, designed to be transported from place to place. Portable devices are primarily battery powered devices with base computing resources in the form of a processor, memory, storage, and network access. Examples include, but are not limited to, mobile phones, tablets, and laptops. Mobile Device is a subset of Portable Device.
  - l. "Portable Media" means any machine readable media that may routinely be stored or moved independently of computing devices. Examples include magnetic tapes, optical discs (CDs or DVDs), flash memory (thumb drive) devices, external hard drives, and internal hard drives that have been removed from a computing device.
  - m. "Secure Area" means an area to which only authorized representatives of the entity possessing the Confidential Information have access, and access is controlled through use of a key, card key, combination lock, or comparable mechanism. Secure Areas may include buildings, rooms or locked storage containers (such as a filing cabinet or desk drawer) within a room, as long as access to the Confidential Information is not available to unauthorized personnel. In otherwise Secure Areas, such as an office with restricted access, the Data must be secured in such a way as to prevent access by non-authorized staff such as janitorial or facility security staff, when authorized Contractor staff are not present to ensure that non-authorized staff cannot access it.
  - n. "Trusted Network" means a network operated and maintained by the Contractor, which includes security controls sufficient to protect DSHS Data on that network. Controls would include a firewall between any other networks, access control lists on networking devices such as routers and switches, and other such mechanisms which protect the confidentiality, integrity, and availability of the Data.
  - o. "Unique User ID" means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase or other mechanism, authenticates a user to an information system.
2. **Authority.** The security requirements described in this document reflect the applicable requirements of Standard 141.10 (<https://ocio.wa.gov/policies>) of the Office of the Chief Information Officer for the state of Washington, and of the DSHS Information Security Policy and Standards Manual. Reference material related to these requirements can be found here: <https://www.dshs.wa.gov/ffa/keeping-dshs-client-information-private-and-secure>, which is a site developed by the DSHS Information Security Office and hosted by DSHS Central Contracts and Legal Services.
3. **Administrative Controls.** The Contractor must have the following controls in place:

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- a. A documented security policy governing the secure use of its computer network and systems, and which defines sanctions that may be applied to Contractor staff for violating that policy.
  - b. If the Data shared under this agreement is classified as Category 4, the Contractor must be aware of and compliant with the applicable legal or regulatory requirements for that Category 4 Data.
  - c. If Confidential Information shared under this agreement is classified as Category 4, the Contractor must have a documented risk assessment for the system(s) housing the Category 4 Data.
- 4. Authorization, Authentication, and Access.** In order to ensure that access to the Data is limited to authorized staff, the Contractor must:
- a. Have documented policies and procedures governing access to systems with the shared Data.
  - b. Restrict access through administrative, physical, and technical controls to authorized staff.
  - c. Ensure that user accounts are unique and that any given user account logon ID and password combination is known only to the one employee to whom that account is assigned. For purposes of non-repudiation, it must always be possible to determine which employee performed a given action on a system housing the Data based solely on the logon ID used to perform the action.
  - d. Ensure that only authorized users are capable of accessing the Data.
  - e. Ensure that an employee's access to the Data is removed immediately:
    - (1) Upon suspected compromise of the user credentials.
    - (2) When their employment, or the contract under which the Data is made available to them, is terminated.
    - (3) When they no longer need access to the Data to fulfill the requirements of the contract.
  - f. Have a process to periodically review and verify that only authorized users have access to systems containing DSHS Confidential Information.
  - g. When accessing the Data from within the Contractor's network (the Data stays within the Contractor's network at all times), enforce password and logon requirements for users within the Contractor's network, including:
    - (1) A minimum length of 8 characters, and containing at least three of the following character classes: uppercase letters, lowercase letters, numerals, and special characters such as an asterisk, ampersand, or exclamation point.
    - (2) That a password does not contain a user's name, logon ID, or any form of their full name.
    - (3) That a password does not consist of a single dictionary word. A password may be formed as a passphrase which consists of multiple dictionary words.
    - (4) That passwords are significantly different from the previous four passwords. Passwords that increment by simply adding a number are not considered significantly different.



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- h. When accessing Confidential Information from an external location (the Data will traverse the Internet or otherwise travel outside the Contractor's network), mitigate risk and enforce password and logon requirements for users by employing measures including:
    - (1) Ensuring mitigations applied to the system don't allow end-user modification.
    - (2) Not allowing the use of dial-up connections.
    - (3) Using industry standard protocols and solutions for remote access. Examples would include RADIUS and Citrix.
    - (4) Encrypting all remote access traffic from the external workstation to Trusted Network or to a component within the Trusted Network. The traffic must be encrypted at all times while traversing any network, including the Internet, which is not a Trusted Network.
    - (5) Ensuring that the remote access system prompts for re-authentication or performs automated session termination after no more than 30 minutes of inactivity.
    - (6) Ensuring use of Multi-factor Authentication to connect from the external end point to the internal end point.
  - i. Passwords or PIN codes may meet a lesser standard if used in conjunction with another authentication mechanism, such as a biometric (fingerprint, face recognition, iris scan) or token (software, hardware, smart card, etc.) in that case:
    - (1) The PIN or password must be at least 5 letters or numbers when used in conjunction with at least one other authentication factor
    - (2) Must not be comprised of all the same letter or number (11111, 22222, aaaaa, would not be acceptable)
    - (3) Must not contain a "run" of three or more consecutive numbers (12398, 98743 would not be acceptable)
  - j. If the contract specifically allows for the storage of Confidential Information on a Mobile Device, passcodes used on the device must:
    - (1) Be a minimum of six alphanumeric characters.
    - (2) Contain at least three unique character classes (upper case, lower case, letter, number).
    - (3) Not contain more than a three consecutive character run. Passcodes consisting of 12345, or abcd12 would not be acceptable.
  - k. Render the device unusable after a maximum of 10 failed logon attempts.
5. **Protection of Data.** The Contractor agrees to store Data on one or more of the following media and protect the Data as described:
- a. **Hard disk drives.** For Data stored on local workstation hard disks, access to the Data will be restricted to Authorized User(s) by requiring logon to the local workstation using a Unique User ID

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and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards.

- b. **Network server disks.** For Data stored on hard disks mounted on network servers and made available through shared folders, access to the Data will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on disks mounted to such servers must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

For DSHS Confidential Information stored on these disks, deleting unneeded Data is sufficient as long as the disks remain in a Secure Area and otherwise meet the requirements listed in the above paragraph. Destruction of the Data, as outlined below in Section 8 Data Disposition, may be deferred until the disks are retired, replaced, or otherwise taken out of the Secure Area.

- c. **Optical discs (CDs or DVDs) in local workstation optical disc drives.** Data provided by DSHS on optical discs which will be used in local workstation optical disc drives and which will not be transported out of a Secure Area. When not in use for the contracted purpose, such discs must be Stored in a Secure Area. Workstations which access DSHS Data on optical discs must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
- d. **Optical discs (CDs or DVDs) in drives or jukeboxes attached to servers.** Data provided by DSHS on optical discs which will be attached to network servers and which will not be transported out of a Secure Area. Access to Data on these discs will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on discs attached to such servers must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
- e. **Paper documents.** Any paper records must be protected by storing the records in a Secure Area which is only accessible to authorized personnel. When not in use, such records must be stored in a Secure Area.
- f. **Remote Access.** Access to and use of the Data over the State Governmental Network (SGN) or Secure Access Washington (SAW) will be controlled by DSHS staff who will issue authentication credentials (e.g. a Unique User ID and Hardened Password) to Authorized Users on Contractor's staff. Contractor will notify DSHS staff immediately whenever an Authorized User in possession of such credentials is terminated or otherwise leaves the employ of the Contractor, and whenever an Authorized User's duties change such that the Authorized User no longer requires access to perform work for this Contract.
- g. **Data storage on portable devices or media.**
  - (1) Except where otherwise specified herein, DSHS Data shall not be stored by the Contractor on portable devices or media unless specifically authorized within the terms and conditions of the Contract. If so authorized, the Data shall be given the following protections:

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- (a) Encrypt the Data.
  - (b) Control access to devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics.
  - (c) Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity, if this feature is available. Maximum period of inactivity is 20 minutes.
  - (d) Apply administrative and physical security controls to Portable Devices and Portable Media by:
    - i. Keeping them in a Secure Area when not in use,
    - ii. Using check-in/check-out procedures when they are shared, and
    - iii. Taking frequent inventories.
  - (2) When being transported outside of a Secure Area, Portable Devices and Portable Media with DSHS Confidential Information must be under the physical control of Contractor staff with authorization to access the Data, even if the Data is encrypted.
- h. Data stored for backup purposes.**
- (1) DSHS Confidential Information may be stored on Portable Media as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes. Such storage is authorized until such time as that media would be reused during the course of normal backup operations. If backup media is retired while DSHS Confidential Information still exists upon it, such media will be destroyed at that time in accordance with the disposition requirements below in Section 8 *Data Disposition*.
  - (2) Data may be stored on non-portable media (e.g. Storage Area Network drives, virtual media, etc.) as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes. If so, such media will be protected as otherwise described in this exhibit. If this media is retired while DSHS Confidential Information still exists upon it, the data will be destroyed at that time in accordance with the disposition requirements below in Section 8 *Data Disposition*.
- i. Cloud storage.** DSHS Confidential Information requires protections equal to or greater than those specified elsewhere within this exhibit. Cloud storage of Data is problematic as neither DSHS nor the Contractor has control of the environment in which the Data is stored. For this reason:
- (1) DSHS Data will not be stored in any consumer grade Cloud solution, unless all of the following conditions are met:
    - (a) Contractor has written procedures in place governing use of the Cloud storage and Contractor attests in writing that all such procedures will be uniformly followed.
    - (b) The Data will be Encrypted while within the Contractor network.
    - (c) The Data will remain Encrypted during transmission to the Cloud.



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- (d) The Data will remain Encrypted at all times while residing within the Cloud storage solution.
  - (e) The Contractor will possess a decryption key for the Data, and the decryption key will be possessed only by the Contractor and/or DSHS.
  - (f) The Data will not be downloaded to non-authorized systems, meaning systems that are not on either the DSHS or Contractor networks.
  - (g) The Data will not be decrypted until downloaded onto a computer within the control of an Authorized User and within either the DSHS or Contractor's network.
- (2) Data will not be stored on an Enterprise Cloud storage solution unless either:
- (a) The Cloud storage provider is treated as any other Sub-Contractor, and agrees in writing to all of the requirements within this exhibit; or,
  - (b) The Cloud storage solution used is FedRAMP certified.
- (3) If the Data includes protected health information covered by the Health Insurance Portability and Accountability Act (HIPAA), the Cloud provider must sign a Business Associate Agreement prior to Data being stored in their Cloud solution.
6. **System Protection.** To prevent compromise of systems which contain DSHS Data or through which that Data passes:
- a. Systems containing DSHS Data must have all security patches or hotfixes applied within 3 months of being made available.
  - b. The Contractor will have a method of ensuring that the requisite patches and hotfixes have been applied within the required timeframes.
  - c. Systems containing DSHS Data shall have an Anti-Malware application, if available, installed.
  - d. Anti-Malware software shall be kept up to date. The product, its anti-virus engine, and any malware database the system uses, will be no more than one update behind current.
7. **Data Segregation.**
- a. DSHS Data must be segregated or otherwise distinguishable from non-DSHS data. This is to ensure that when no longer needed by the Contractor, all DSHS Data can be identified for return or destruction. It also aids in determining whether DSHS Data has or may have been compromised in the event of a security breach. As such, one or more of the following methods will be used for data segregation.
    - (1) DSHS Data will be kept on media (e.g. hard disk, optical disc, tape, etc.) which will contain no non-DSHS Data. And/or,
    - (2) DSHS Data will be stored in a logical container on electronic media, such as a partition or folder dedicated to DSHS Data. And/or,
    - (3) DSHS Data will be stored in a database which will contain no non-DSHS data. And/or,

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- (4) DSHS Data will be stored within a database and will be distinguishable from non-DSHS data by the value of a specific field or fields within database records.
  - (5) When stored as physical paper documents, DSHS Data will be physically segregated from non-DSHS data in a drawer, folder, or other container.
  - b. When it is not feasible or practical to segregate DSHS Data from non-DSHS data, then both the DSHS Data and the non-DSHS data with which it is commingled must be protected as described in this exhibit.
8. **Data Disposition.** When the contracted work has been completed or when the Data is no longer needed, except as noted above in Section 5.b, Data shall be returned to DSHS or destroyed. Media on which Data may be stored and associated acceptable methods of destruction are as follows:

<b>Data stored on:</b>	<b>Will be destroyed by:</b>
Server or workstation hard disks, or  Removable media (e.g. floppies, USB flash drives, portable hard disks) excluding optical discs	Using a "wipe" utility which will overwrite the Data at least three (3) times using either random or single character data, or  Degaussing sufficiently to ensure that the Data cannot be reconstructed, or  Physically destroying the disk
Paper documents with sensitive or Confidential Information	Recycling through a contracted firm, provided the contract with the recycler assures that the confidentiality of Data will be protected.
Paper documents containing Confidential Information requiring special handling (e.g. protected health information)	On-site shredding, pulping, or incineration
Optical discs (e.g. CDs or DVDs)	Incineration, shredding, or completely defacing the readable surface with a coarse abrasive
Magnetic tape	Degaussing, incinerating or crosscut shredding

9. **Notification of Compromise or Potential Compromise.** The compromise or potential compromise of DSHS shared Data must be reported to the DSHS Contact designated in the Contract within one (1) business day of discovery. If no DSHS Contact is designated in the Contract, then the notification must be reported to the DSHS Privacy Officer at [dshsprivacyofficer@dshs.wa.gov](mailto:dshsprivacyofficer@dshs.wa.gov). Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.
10. **Data shared with Subcontractors.** If DSHS Data provided under this Contract is to be shared with a subcontractor, the Contract with the subcontractor must include all of the data security provisions within this Contract and within any amendments, attachments, or exhibits within this Contract. If the Contractor cannot protect the Data as articulated within this Contract, then the contract with the sub-Contractor must be submitted to the DSHS Contact specified for this contract for review and approval.

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### Exhibit B

#### Washington Connection Requirements

The Contractor will help Washington residents complete an online application to provide more effective access to available federal, state and local services through the Washington Connection benefit portal. This Agreement also includes paper applications.

The Contractor shall:

1. Work with applicants to establish access to the DSHS Washington Connection and online application.
2. Work with applicants to establish a Washington Connection SAW account with either an Employee or a Supervisor access level.
  - *Employee Access* allows the individual to view, edit and submit applications for Applicants he or she provided direct assistance through Washington Connection
  - *Supervisor Access* includes all functions of the Employee Access plus the ability to: view, edit and submit all applications associated with employees assigned to the supervisor in the Washington Connection profile; add, modify, and delete employees; reassign applications between employees under the same supervisor, and request a summary page of all application status (submitted or incomplete) associated with the Assisting Agency.
3. Obtain a consent form via Washington Connection with an e-signature from the applicant before accessing any applicant information. The Contractor must keep any written DSHS consent form obtained from the applicant onsite and provide them for inspection upon request.

DSHS and the Contractor may need to share additional information to provide services, but at no time should the consent be interpreted to:

- Designate the Contractor as an "Authorized Representative".
- Allow DSHS to share applicant information not needed for purposes of this Agreement.
- Allow DSHS to disclose documents or information from the applicant's files or records for purposes outside this Agreement.

Share application data if the applicant has indicated consent to share. Contractor may view and print applications, review and change of circumstances forms saved or submitted through Washington Connection for 90 calendar days from the last activity day. Application statuses, "submitted" or "not submitted", are also available for 90 calendar days from the last activity day. Contractors submitting paper applications have no ability to view them online.



## Special Terms and Conditions

### Exhibit C



## AAA DSHS / HCA Systems Access Request



An Area Agency on Aging (AAA) may request access to various systems, including PRISM and ProviderOne, for its employees or contractors (AAA Users) under its Data Share Agreements (DSA) with DSHS and HCA. This Access Request Form must be signed by the AAA Users manager (AAA Authorizer) and sent to the ALTSA SUA Coordinator at: [hcsaaarequest@dshs.wa.gov](mailto:hcsaaarequest@dshs.wa.gov).

The AAA must also notify the DSHS ALTSA SUA Coordinator using this Access Request Form within five (5) business days whenever an employee (AAA User) with access rights leaves employment or has a change of duties such that the employee no longer requires access. If the removal of access is emergent, please include that information with the request.

#### **AAA Subcontractors**

If access is being requested by an AAA subcontractor, the subcontractor must send its completed form to the AAA, who will then send it to the ALTSA SUA Coordinator at [hcsaaarequest@dshs.wa.gov](mailto:hcsaaarequest@dshs.wa.gov). The ALTSA SUA Coordinator will accept Access Request forms only from the AAA, not the subcontractor.

The AAA subcontractor must also use this Access Request Form to provide notice to the AAA within five (5) business days whenever a subcontractor employee (AAA User) with access rights leaves employment or has a change of duties such that the employee no longer requires access. If the removal of access is emergent, please include that information with the request.

DSHS and HCA will grant / remove the appropriate access permissions to the AAA User.

<b>REQUEST TYPE</b> <input type="checkbox"/> New user access <input type="checkbox"/> Update user access <input type="checkbox"/> Remove user access <input type="checkbox"/> Change user name	<b>REQUESTING ORGANIZATION AND MAILING ADDRESS</b>	<b>DATE RECEIVED</b>  <b>USER CARE ID</b>
<b>SYSTEMS ACCESS REQUESTED THROUGH ALTSA</b> <input type="checkbox"/> ACES Online <input type="checkbox"/> PRISM*** <input type="checkbox"/> Client Registry*** <input type="checkbox"/> VPN*** <input type="checkbox"/> ProviderOne View Only <input type="checkbox"/> IPOne		<b>SYSTEMS ACCESS REQUIRING DSHS ACTIVE DIRECTORY</b> <input type="checkbox"/> Outlook Web Access <input type="checkbox"/> WaCareRpt Database <input type="checkbox"/> Skype for Business <input type="checkbox"/> ALTSA Data Mart
<b>SYSTEMS ACCESS REQUEST SET UP AT AAA LEVEL</b> <input type="checkbox"/> CARE Production + Practice <input type="checkbox"/> ADOSA Reporting <input type="checkbox"/> Barcode (DMS) <input type="checkbox"/> QA Monitor <input type="checkbox"/> CARE Web Production + Practice <input type="checkbox"/> CLC / GetCare <input type="checkbox"/> BCS – Background Check <input type="checkbox"/> ACD – Contract Database		
<b>AAA User Information</b>		
<b>LAST NAME</b>	<b>FIRST NAME</b>	<b>MIDDLE INITIAL</b>
<b>DATE OF BIRTH</b>		
<b>ID NUMBER*</b>	<b>PHONE NUMBER (AREA CODE)</b>	<b>INDIVIDUAL EMAIL ADDRESS**</b>
<b>TITLE</b>		<b>PRIOR NAME (CHANGE NAME REQUEST)</b>
<b>AAA OFFICE</b>		<b>ACCESS JUSTIFICATION</b>
<p>* <b>Required:</b> The ID Number is assigned by the AAA Authorizer enter DSHS if the account was auto-enrolled into P1                  ** No generic email addresses (e.g. Hotmail, Gmail, Yahoo, etc.)                  *** Please include required spreadsheets/forms (see instructions) in addition to the 17-226.</p>		
<b>Protected Data Access Authorization</b> The HIPAA Security rule states that every employee that needs access to electronic Protected Health Information (ePHI) receives authorization from an appropriate authority and that the need for this access based on job function or responsibility is documented. I, the undersigned AAA Authorizer, verify that the individual for whom this access is being requested (AAA User) has a business need to access this data, has completed the required HIPAA training and the annual IT Security training and has signed the required AAA User Agreement on System Usage and Non-Disclosure of Confidential Information included with this Access Request. This AAA User's access to this information is appropriate under the HIPAA Information Access Management standard. In addition, this employee has been instructed on 42 Code of Federal Regulations (CFR) Part 2 that governs the use of alcohol and drug abuse information and is aware that this type of data must be used only in accordance with these regulations. I have also ensured that the necessary steps have been taken to validate the AAA User's identity before approving access to confidential and protected information.		
<b>Authorizing Signature</b>		
<b>AAA AUTHORIZER'S SIGNATURE</b>	<b>DATE</b>	<b>PRINTED NAME</b>
		<b>EMAIL ADDRESS</b>

## Special Terms and Conditions

### Exhibit C

#### AAA User Agreement on System Usage and Non-disclosure of Confidential Information

<p>Your AAA has entered into Data Share Agreement(s) with the state of Washington Department of Social and Health Services (DSHS) and Health Care Authority (HCA) that will allow you access to data and records that are deemed Confidential Information as defined below. Prior to accessing this Confidential Information you must sign this AAA User Agreement System Usage and Non-Disclosure of Confidential Information (Agreement).</p>		
<b>Confidential Information</b>		
<p>"Confidential Information" means information that is exempt from disclosure to the public or other unauthorized persons under Chapter 42.56 RCW or other federal or state laws. Confidential Information includes, but is not limited to, Protected Health Information and Personal Information.</p> <p>"Protected Health Information" means information that relates to: the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or the past, present or future payment for provision of health care to an individual and includes demographic information that identifies the individual or can be used to identify the individual.</p> <p>"Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, credit card numbers, any other identifying numbers, and any financial identifiers.</p>		
<b>Regulatory Requirements and Penalties</b>		
<p>State laws (including, but not limited to, RCW 74.04.060, RCW 74.34.095, and RCW 70.02.020) and federal regulations (including, but not limited to, HIPAA Privacy and Security Rules, 45 CFR Part 160 and Part 164; Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR, Part 2; and Safeguarding Information on Applicants and Beneficiaries, 42 CFR Part 431, Subpart F) prohibit unauthorized access, use, or disclosure of Confidential Information. Violation of these laws may result in criminal or civil penalties or fines.</p>		
<b>AAA User Assurance of Confidentiality</b>		
<p>In consideration for DSHS and HCA granting me access to the PRISM, ProviderOne, or other systems and the Confidential Information in those systems, I agree that I:</p> <ol style="list-style-type: none"> <li>1) Will access, use, and disclose Confidential Information only in accordance with the terms of this Agreement and consistent with applicable statutes, regulations, and policies.</li> <li>2) Have an authorized business requirement to access and use DSHS or HCA systems and view DSHS or HCA Confidential Information.</li> <li>3) Will not use or disclose any Confidential Information gained by reason of this Agreement for any commercial or personal purpose, research or any other purpose that is not directly connected with client care coordination and quality improvement.</li> <li>4) Will not use my access to look up or view information about family members, friends, the relatives or friends of other employees, or any persons who are not directly related to my assigned job duties.</li> <li>5) Will not discuss Confidential Information in public spaces in a manner in which unauthorized individuals could overhear and will not discuss Confidential Information with unauthorized individuals, including spouses, domestic partners, family members, or friends.</li> <li>6) Will protect all Confidential Information against unauthorized use, access, disclosure, or loss by employing reasonable security measures, including physically securing any computers, documents, or other media containing Confidential Information and viewing Confidential Information only on secure workstations in non-public areas.</li> <li>7) Will not make copies of Confidential Information, or print system screens unless necessary to perform my assigned job duties and will not transfer any Confidential Information to a portable electronic device or medium, or remove Confidential Information on a portable device or medium from facility premises, unless the information is encrypted and I have obtained prior permission from my supervisor.</li> <li>8) Will access, use or disclose only the "minimum necessary" Confidential Information required to perform my assigned job duties.</li> <li>9) Will protect my DSHS and HCA systems User ID and password and not share them with anyone or allow others to use any DSHS or HCA system logged in as me.</li> <li>10) Will not distribute, transfer, or otherwise share any DSHS software with anyone.</li> <li>11) Will forward any requests that I may receive to disclose Confidential Information to my supervisor for resolution and will immediately inform my supervisor of any actual or potential security breaches involving Confidential Information, or of any access to or use of Confidential Information by unauthorized users.</li> <li>12) Understand at any time, DSHS or HCA may audit, investigate, monitor, access, and disclose information about my use of the systems and that my intentional or unintentional violation of the terms of this Agreement may result in revocation of privileges to access the systems, disciplinary actions against me, or possible civil or criminal penalties or fines.</li> <li>13) Understand that my assurance of confidentiality and these requirements will continue and do not cease at the time I terminate my relationship with my employer.</li> </ol>		
<b>Signature</b>		
AAA USER'S SIGNATURE	DATE	AAA USER'S PRINTED NAME



# Special Terms and Conditions

## Exhibit C

### AAA Systems Access Request Instructions

**Please submit requests individually.**

The AAA DSHS / HCA Systems Access Request form is for use by AAA entities from outside and within the DSHS domain (DSHS firewall). AAA entities have different procedures to request the majority of their needed system access but will use the form for those systems requiring a set up or approval by HCS, DDA, or MSD. AAA entities will also use this form when staff transfer between agencies or to terminate access when employees leave employment.

#### Request Type

- Check one of the options (New, Update, Remove, or Name change) Removal must be submitted within five (5) days of exit.
  - New user – The user has been approved for access to one of the programs listed and has no previous requests submitted.
  - Update user – User has access to one or more of the systems listed but an additional access is needed. Only mark the box next to the additional item.
  - Remove user – Mark each of the boxes for which access is to be removed.
  - Change user name – Use to update the user name due to a change. For ProviderOne this will result in the termination of the prior account and a new account created.

#### Requesting Organization and Mailing Address

- Enter the user's office name and address (subcontractors enter their organization name and address).

#### System Access Requested Sections

- Check the box next to each system requested and attach any additional documentation required for the program. If you need copies of any forms (e.g. VPN), please contact AL TSA.
- Applications in the DSHS Active Directory section require a DSHS domain account (e.g. an email address that ends in @dshs.wa.gov). In order to use these applications, staff must log in to their computer with their DSHS AD account.
- Applications in the AAA section (Barcode, ADSA Reporting, CARE, QA Monitor) are created at the AAA office. A signed copy of the 17-226 form must be submitted to [hcsaaarequest@dshs.wa.gov](mailto:hcsaaarequest@dshs.wa.gov) before the account(s) can be created.
  - **Note:** The PRISM and Client Registry boxes should be checked if the new staff member will be eligible for access. An extra step of user and ethics training will be required for all PRISM and Client Registry users and must be completed prior to system access.
- IFOne Other field can be one or more of the following options: CM role, HQ role, HCRR role, Finance L1, Finance L2.
  - Finance L1 and Finance L2 roles require additional approval from the W2 Financial Reports team.

#### AAA User Information

- Enter the user information as indicated. Form will be rejected by HCA and PPL if the birthdate field is left blank.
- The AAA Authorizer will assign an ID number from the list provided by the AL TSA SUA Coordinator.
  - If the account was auto-enrolled prior to the use of this form, enter DSHS for the Employee ID Number.
  - Form will be rejected if this field is left blank.
- Under AAA Office enter the AAA Authorizer's regional office.

#### Access Justification

- Enter reason access is needed, e.g. Case Management and Coordination, Nursing Coordination, Oversight and Supervision, Determination of Eligibility, Billing.

#### Authorizing Signature

- AAA Authorizer – the authorizer will be verified by the AL TSA SUA Coordinator.  
**Note:** AAA Authorizer signature guarantees that the staff member who is asking for access is eligible for the systems access requested.

#### Non-Disclosure of Confidential Information

- Ensure that AAA staff member has read the AAA User Agreement on System Usage and Non-disclosure of Confidential Information on the second page of the AAA Systems access request form.
- Enter the requesting user's name and have them sign and date the agreement.

Once completed, scan both sides of the form and email to [hcsaaarequest@dshs.wa.gov](mailto:hcsaaarequest@dshs.wa.gov). Do not email forms directly to AL TSA Helpdesk or AL TSA Helpdesk staff.

Enter PRIMSM and Client Registry information for all user requests on the AAA Access Request Excel sheet provided by AL TSA SUA Coordinator and send to [hcsaaarequest@dshs.wa.gov](mailto:hcsaaarequest@dshs.wa.gov) along with the 17-226.

Signature		
AAA USER'S SIGNATURE	DATE	AAA USER'S PRINTED NAME

## Special Terms and Conditions

### Exhibit C AAA Systems Access Request Frequently Asked Questions (FAQ)

#### Why was my form rejected?

- Missing information:
  - The Employee ID field is left blank
  - HCA and PPL will reject forms missing a birthdate
- Incorrect information:
  - Email address is invalid (e.g. emailing credentials results in a bounce-back)
  - Employee ID is already in use – check your spreadsheet and ensure the EID hasn't been used before
- Form is not signed.
  - Ensure both the AAA Authorizer and Employee have signed in the appropriate fields
- Spreadsheet or VPN request form is missing from the request.
  - If you are requesting Client Registry or PRISM, please include the appropriate spreadsheet from the AL TSA SUA Coordinator to the request
  - If you are requesting VPN service, please include the VPN-Citrix request form to the request

**Special Terms and Conditions**

**ATTACHMENT F:  
CONTRACTOR AGREEMENT ON NONDISCLOSURE OF CONFIDENTIAL  
INFORMATION**

**This form shall be signed by each agency paid and un-paid staff that interact with  
this service contract.**



**Agreement on Nondisclosure of Confidential Information –  
Non Employee**

This form is for contractors and other non-DSHS employees.

<b>CONFIDENTIAL INFORMATION</b>		
<p>"Confidential Information" means information that is exempt from disclosure to the public or other unauthorized persons under Chapter 42.56 RCW or other federal or state laws. Confidential Information includes, but is not limited to, protected health information as defined by the federal rules adopted to implement the Health Insurance Portability and Accountability Act of 1996, 42 USC §1320d (HIPAA), and Personal Information.</p> <p>"Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers or as otherwise identified in RCW 42.56.230.</p>		
<b>REGULATORY REQUIREMENTS AND PENALTIES</b>		
<p>State laws (including RCW 74.04.060 and RCW 70.02.020) and federal regulations (including HIPAA Privacy and Security Rules; 42 CFR, Part 2; 42 CFR Part 431) prohibit unauthorized access, use, or disclosure of Confidential Information. Violation of these laws may result in criminal or civil penalties or fines. You may face civil penalties for violating HIPAA Privacy and Security Rules up to \$50,000 per violation and up to \$1,500,000 per calendar year as well as criminal penalties up to \$250,000 and ten years imprisonment.</p>		
<b>ASSURANCE OF CONFIDENTIALITY</b>		
<p>In consideration for the Department of Social and Health Services (DSHS) granting me access to DSHS property, systems, and Confidential Information, I agree that I:</p> <ol style="list-style-type: none"> <li>1. Will not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of this agreement for any purpose that is not directly connected with the performance of the contracted services except as allowed by law.</li> <li>2. Will protect and maintain all Confidential Information gained by reason this agreement against unauthorized use, access, disclosure, modification or loss.</li> <li>3. Will employ reasonable security measures, including restricting access to Confidential Information by physically securing any computers, documents, or other media containing Confidential Information.</li> <li>4. Have an authorized business requirement to access and use DSHS systems or property, and view its data and Confidential Information if necessary.</li> <li>5. Will access, use and/or disclose only the "minimum necessary" Confidential Information required to perform my assigned job duties.</li> <li>6. Will not share DSHS system passwords with anyone or allow others to use the DSHS systems logged in as me.</li> <li>7. Will not distribute, transfer, or otherwise share any DSHS software with anyone.</li> <li>8. Understand the penalties and sanctions associated with unauthorized access or disclosure of Confidential Information.</li> <li>9. Will forward all requests that I may receive to disclose Confidential Information to my supervisor for resolution.</li> <li>10. Understand that my assurance of confidentiality and these requirements do not cease at the time I terminate my relationship with my employer or DSHS.</li> </ol>		
<b>FREQUENCY OF EXECUTION AND DISPOSITION INSTRUCTIONS</b>		
<p>This form will be read and signed by each non-DSHS employee who has access to Confidential information, and updated at least annually. Provide the non-DSHS employee signor with a copy of this Agreement and retain the original of each signed form on file for a minimum of six years.</p>		
<b>SIGNATURE</b>		
PRINT/TYPER NAME	NON-DSHS EMPLOYEE'S SIGNATURE	DATE

**NONDISCLOSURE OF CONFIDENTIAL INFORMATION – NON EMPLOYEE**  
DSHS 03-374B (REV. 09/2014)

Special Terms and Conditions

**ATTACHMENT G: CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
AND OTHER RESPONSIBILITY MATTERS**

Primary Covered Transactions 45 CFR 76

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

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

**CONTRACTOR:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATE: \_\_\_\_\_

**23 ATTACHMENT H: CERTIFICATION REGARDING LOBBYING**

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

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

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

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

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

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Contractor Organization

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Signature of Certifying Official Date

Special Terms and Conditions

**ATTACHMENT I – ASSURANCE OF COMPLIANCE REHABILITATION ACT  
AGING AND LONG TERM SUPPORT ADMINISTRATION  
ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE  
REHABILITATION ACT OF 1973, AS AMENDED**

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with section 504 of the Rehabilitation Act of 1973, PL 93-112, as amended (29 U.S.C. 794), all requirements imposed by the applicable Department of Health and Human Services (HHS) regulation (45 CFR Part 84), including (PL 101-336) Americans With Disabilities Act, (28 CFR Part 35) Nondiscrimination on the Basis of Disability in State and Local Government Services, and all guidelines and interpretations issued pursuant thereto.

Pursuant to § 84.5(a) of the regulation 45 CFR 84.5(a), the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (except procurement contracts and contracts of insurance or guaranty), property, discounts, or other Federal financial assistance extended by the Department of Health, Education, and Welfare after the date of this Assurance, including payments or other assistance made after such date on applications for Federal financial assistance that were approved before such date. The recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which Federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in § 84.5(b) of the regulation 45 CFR 84.5(b).

The recipient: (Check "a" or "b")

- a. \_\_\_ employs fewer than fifteen persons;
- b. \_\_\_ employs fifteen or more persons and, pursuant to § 84.7(a) of the regulation 45 CFR 84.7(a), has designated the following person(s) to coordinate its efforts to comply with the HHS regulation:

\_\_\_\_\_  
Name of Designee(s) -- Type or Print

\_\_\_\_\_  
Name of Recipient - Type or Print

\_\_\_\_\_  
Street Address or P.O. Box, City, State, Zip

I certify that the above information is complete and correct to the best of my knowledge.

\_\_\_\_\_  
Signature and Title of Authorized Official

Special Terms and Conditions

**ATTACHMENT J- ASSURANCE OF COMPLIANCE CIVIL RIGHTS ACTS**

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE REGULATION UNDER  
TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

\_\_\_\_\_ hereinafter called the "Applicant"

(Name of Applicant)

HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (PL 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 CFR Part 80) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this CONTRACT.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Dated \_\_\_\_\_

By \_\_\_\_\_

(President, Chairman of Board, or comparable authorized official)

\_\_\_\_\_  
(Applicant's mailing address)



Special Terms and Conditions

**ATTACHMENT K – ASSURANCE OF COMPLIANCE OMNIBUS BUDGET RECONCILIATION**

AGING AND LONG TERM SUPPORT ADMINISTRATION  
ASSURANCE OF COMPLIANCE WITH OMNIBUS BUDGET RECONCILIATION  
(OBRA) ACT OF 1990 - ADVANCE DIRECTIVES, AS AMENDED

The undersigned (hereafter called the "Applicant") hereby agrees that it will comply with the OBRA of 1990 (Public Law 101-508) as amended and all requirements imposed by the applicable Department of Health and Human Services (HHS) regulation (42 USC Section 1396a), and all guidelines and interpretations issued pursuant thereto. This act requires all service providers, participating in Medicaid, maintain written policies and procedures concerning "Advance Directives." (WAC 388-501-0125 gives further details.)

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Dated \_\_\_\_\_

\_\_\_\_\_  
(Applicant)

By \_\_\_\_\_ (President, Chairman of Board, or comparable authorized official)

\_\_\_\_\_  
(Applicant's mailing address)

Special Terms and Conditions

ATTACHMENT L – AUTHORIZED SIGNATURE PAGE



Division of Aging & Long Term Care

SIGNATURE AUTHORIZATION FORM

This signature Authorization Form shall be retained on file by Kitsap County Division of Aging & Long Term Care and shall remain in effect until a new one is submitted by the Subcontractor.

SUBCONTRACTOR NAME AND ADDRESS CONTRACT NUMBER PROJECT NAME

I. CONTRACTS & AMENDMENTS

This is to certify that the following named persons are authorized to enter into contract and/or contract amendments on behalf of the Subcontractor and their specimen signatures are genuine.

TYPED NAME & TITLE

SIGNATURE

1. \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

3. \_\_\_\_\_

II. VOUCHERS

This is to certify that the following named persons are authorized to sign and submit reimbursement vouchers on behalf of the Subcontractor and their specimen signatures are genuine.

TYPED NAME & TITLE

SIGNATURE

1. \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

3. \_\_\_\_\_

EFFECTIVE DATE OF AUTHORIZATION

AUTHORIZED BY:

month / day / year

Signature

Typed name and title