

**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) Easterseals Washington having its principal office at 200 West Mercer St., Suite 210E, Seattle, WA 98119, hereinafter "Contractor".

**SECTION 1. EFFECTIVE DATE OF CONTRACT**

The Contract will become effective on July 1, 2022 and terminate on June 30, 2024. The Contract may be extended for additional consecutive terms at the mutual agreement of the parties, not to exceed a total of \$25,065. 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.

**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:

**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

Phone: (360) 337-5624  
Email: [sasmith@co.kitsap.wa.us](mailto:sasmith@co.kitsap.wa.us)

**Contractor's Contract Representative**

Cathy Bisailon, President & CEO  
Easterseals Washington  
200 West Mercer St., Suite 210E  
Seattle, WA 98119  
Phone: 206.281.5700 Ext. 101  
Email: [cathyb@wa.easterseals.com](mailto:cathyb@wa.easterseals.com)

**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 \$25,065. 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:  
  
Easterseals Washington  
200 West Mercer St., Suite 210E  
Seattle, WA 98119
- 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.

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

- 5.1 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.
- 5.2 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.
- 5.3 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.

## **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.

## **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.

## **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.

## **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.

## **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.

## **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 2020-2023 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.

**11.5 Religious Activities.**

If the Contractor is a faith-based or religious organization, it retains its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs. Such a Contractor, however, may not use any funding provided under this Agreement to support or engage in any explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization, nor may such a Contractor condition the provision of services provided pursuant to this Agreement upon a participant's engaging in any such explicitly religious activities.

**11.6** Subcontractors must follow all rules outlined in the Revised Code of Washington (RCWs), Washington Administrative Code (WACs), Department of Social and Health Services Program Management Bulletins, and the Division of Aging Policy and Procedures.

**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 others 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.

### **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.

### **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.

### **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.

### **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.

## **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-1: Special Terms and Conditions  
Attachment A-2: Medicaid Special Terms and Conditions  
Attachment B: Statement of Work  
Attachment C: Budget Summary/Estimated Expenditures  
Attachment D: Interlocal Agreement State Federal  
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.

17.17 **Prevailing Wage.** Contractor shall comply with the prevailing wage requirements of chapter 39.12 RCW and WAC 296-127, specifically including RCW 39.12.020 and WAC 296-127-023 (Building Service Maintenance), if applicable. Contractor shall pay not less than the prevailing rate of per diem wages to its employees and shall provide documentation to the County of its compliance with prevailing wage laws and regulations. A copy of such prevailing rates of wage statement shall be posted by the Contractor in a location readily visible to workers at the job site or as provided in RCW 39.12.020

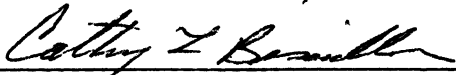
For contracts greater than \$2,500, a "Statement of Intent to Pay Prevailing Wages: (hereinafter "Statement of Intent") must be submitted to and approved by the State Department of Labor and Industries prior to beginning work by the Contractor. If the Contract is more than \$10,000, the Statement of Intent shall include the Contractor's registration number, the prevailing wage for each classification of workers, and an estimate of the number of workers in each classification. An "Affidavit of Wages Paid" must be submitted to and approved by the State Department of Labor and Industries by the Contractor prior to release of the retained percentage. Copies of these documents shall be provided to the County prior to any payment being made to the Contractor. The fee for each of these documents shall be paid by the Contractor.

For contracts \$2,500 or less, the Contractor may submit the Statement of Intent to the County directly without the approval by the Washington State Department of Labor & Industries. Upon final acceptance of the work, the Contractor will submit an "Affidavit of Wages Paid" to the County.

The Statement of Intent and Affidavit of Wages Paid must be submitted on forms approved by the Department of Labor and Industries. Contractors must file weekly certified payroll reports for all prevailing wage jobs (regardless of project amount) and submit them directly to L&I.

Dated this 27 day of April, 2022

**CONTRACTOR  
EASTERSEALS WASHINGTON**

  
\_\_\_\_\_  
Cathy Bisailon, President and CEO

Dated this 2<sup>nd</sup> day of May, 2022

**KITSAP COUNTY, WASHINGTON**

  
\_\_\_\_\_  
Karen Goon, County Administrator



## **ATTACHMENT A-1: 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.

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**

#### **I. THE CONTRACTOR MUST:**

1. Provide each older person with a free and voluntary opportunity to contribute to the cost of the service;
2. Protect the privacy of each older person with respect to his or her contribution;
3. Establish appropriate procedures to safeguard and account for all contributions; and
4. 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.

## II. 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.

## III. 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.

## IV. 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 A-2: MEDICAID SPECIAL TERMS AND CONDITIONS

### Medicaid Special Terms & Conditions

#### 1. **Additional Client Rights.**

- a. In compliance with Title VI of the Civil Rights Act of 1964, and under RCW 2.42.010, RCW 2.43.010, RCW 74.04.025, and RCW 49.60.010, the Contractor is responsible to provide or arrange for language services to clients with Limited English Proficient (LEP). The Contractor shall ensure their staff working with Clients with LEP can effectively communicate with them. When communicating in writing, the Contractor shall ensure that DSHS Clients have access to documents translated into the Client's primary language. The Contractor must not discriminate against individuals with LEP.
- b. In compliance with the Americans with Disabilities Act (ADA) of 1990, under RCW 2.42.010 and RCW 49.60.010, the Contractor is responsible to provide or arrange for language services when working with a DSHS Client who is deaf, deaf-blind, or hard of hearing. The Contractor must provide language assistance services at no cost to Clients who are deaf, deaf-blind, or hard of hearing. The Contractor must not discriminate against individuals with any disability.

#### 2. **Duty to Report Suspected Abuse, Abandonment, Neglect or Financial Exploitation.** The Contractor and its employees must immediately report all instances of suspected abandonment, abuse, financial exploitation or neglect of a vulnerable adult under RCW 74.34.035 or a child under RCW 26.44.030. The report shall be made to the Department's current state abuse hotline, 1-866-363-4276 (END-HARM). The Contractor must also report all suspected instances to the Client's case manager. If the notice to the Client's case manager was verbal then it must be followed by written notification within 48 hours. Further, when required by RCW 74.34.035, the Contractor and the Contractor's employees must immediately make a report to the appropriate law enforcement agency.

#### 3. **Significant Change in Client's Condition.** The Contractor agrees to report any significant change in the Client's condition within twenty-four (24) hours to the Case Manager identified in the Client's current service plan.

#### 4. **Death of Clients.** The Contractor shall report all deaths of DSHS Clients receiving services under this Contract to the Client's Case Manager within twenty-four (24) hours of finding out about the death. In addition, the Contractor shall provide written notification of the Client's death to the Client's Case Manager within seven (7) days.

#### 5. **Provider Screenings.**

- a. The State must ensure the Department does not pay federal funds to excluded persons or entities. States are also required to check for the death

of an individual provider, agency owner or authorized official prior to contracting. The required ownership and control information for individuals with ownership interest of five percent (5%) or more, officers and managing employees will be obtained from the Medicaid Provider Disclosure Statement and checked against all required federal exclusion lists, and the Social Security Death Master List, prior to finalizing a contract.

- b. The Contractor will report any change in ownership, managing employees, and/or those with a controlling interest to the Department within thirty-five (35) days of such a change so that these individuals can be screened against the required federal exclusion lists as well as the Social Security Death Master List. For detailed instructions, please refer to the Medicaid Provider Disclosure Statement.

## **6. Duty to Disclose Business Transactions.**

- a. Under 42 CFR §455.104, the Contractor is required to provide disclosures from individuals with ownership interest, managing employees, and those with a controlling interest. The State must obtain certain disclosures from providers and complete screenings to ensure the State does not pay federal funds to excluded person or entities. Contractor must complete and submit a Medicaid Provider Disclosure Statement, DSHS Form 27-094. According to 42 CFR 455.104(c) (1), disclosures must be provided:

- (1) When the prospective Contractor submits their initial application;
- (2) When the prospective Contractor signs the contract;
- (3) Upon request of the Department at contract revalidation/renewal;
- (4) Within thirty-five (35) days after any change in ownership of the Contractor entity.

- b. Failure to submit the requested information may cause the Department to refuse to enter into an agreement or contract with the Contractor or to terminate existing agreements. The State will recover any payments made to a disclosing entity that fails to disclose ownership or control information, as required by 42 CFR 455.104.

- c. Under 42 CFR §455.105(b), within thirty-five (35) days of the date of 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 twelve (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 five (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).

7. **Background Check.** The signatory for this Contract agrees to undergo and successfully complete a DSHS criminal history background check conducted by DSHS or the AAA every two years, and as required under RCW 43.20A.710, and RCW 43.43.830 through 43.43.842. If the Contractor has owners, employees or volunteers who may have unsupervised access to Clients in the course of performing the work under this Contract, the Contractor shall require those owners, employees or volunteers to successfully complete a criminal history background check prior to any unsupervised access and at least every two years thereafter. The Contractor must maintain documentation of successful completion of required background checks.

8. **False Claims Act Education Compliance.** Federal law requires any entity receiving annual Medicaid payments of five (5) million or more to provide education regarding federal and state false claims laws for all of its employees, contractors and/or agents. If Contractor receives at least five (5) million or more in annual Medicaid payments under one or more provider identification number(s), the Contractor is required to establish and adopt written policies for all employees, including management, and any contractor or agent of the entity, including detailed information about both the federal and state False Claims Acts and other applicable provisions of Section 1902(a)(68) of the Social Security Act. The law requires the following:

Contractor must establish written policies to include detailed information about the False Claims Act, including references to the Washington State False Claims Act;

- a. Policies regarding the handling and protection of whistleblowers;
- b. Policies and procedures for detecting and preventing fraud, waste, and abuse;
- c. Policies and procedures must be included in an existing employee handbook or policy manual, but there is no requirement to create an employee handbook if none already exists.

9. **Bribes and Kickbacks.** Federal law stipulates that Medicaid participants be offered free choice among qualified providers, therefore any exclusive relationship between the Contractor and any other Medicaid Service is prohibited.

10. **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.

11. **Drug-Free Workplace.** The Contractor agrees he or she and all employees or volunteers shall not use or be under the influence of alcohol, marijuana, illegal drugs, and/or any substances that impact the Contractor's ability to perform duties under this Contract.
12. **Execution and Waiver.** This Contract shall be binding on DSHS only upon signature by DSHS with an Authorized Countersignature. Only the Contracting Officer or the Contracting Officer's designee has authority to waive any provision of this Contract on behalf of DSHS.

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

### **EASTERSEALS WASHINGTON GATEWAY ADULT SERVICES ADULT DAY CARE AND ADULT DAY HEALTH STATEMENT OF WORK JULY 1, 2022 – JUNE 30, 2024**

#### **I. COPES/CFC MAC AND TSOA AND MEDICAID TITLE XIX ADULT DAY CARE/ADULT DAY HEALTH SERVICES GENERAL STATEMENT OF WORK:**

- The Contractor shall provide COPES/CFC/RCL/TSOA Adult Day Care and Medicaid Title XIX, and COPES/CFC/RCL and MAC Adult Day Health Services to eligible Kitsap County residents in accordance with 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)/ Aging and Long Term Care (ALTC) standards, guidelines, policy manuals, management bulletins and (ALTC) approved Requests for Qualifications or Requests for Proposals. Services shall be provided in accordance with Program Standards as defined by Washington Administrative Code (WAC) 388-71-0702 through 0776 Adult Day Health, WAC 388-106-0800 through 0815 Adult Day Care Services, WAC 388-106-0300 through 0335 COPES, WAC 388-106-0130(6)(c) Chapter 74.39A RCW: Long-Term Care Services Options Chapter 43.43.830 RCW through 43.43.845 RCW, Chapter 388-106 WAC: Long-Term Care Services, WAC 182-513-1600 Medicaid alternative care (MAC), WAC 182-513-1610 and 1615 Tailored Supports for Older Adults (TSOA), Chapter 388-71 WAC: Home and Community Services and Programs and Section 1915(i) of Washington State Department of Social and Health Services (DSHS) and the AL TSA Aging and Long-Term Care Manual Chapter 7 and Chapter 12 and related chapters and all documents and regulations included therein by reference or inclusion, or as amended, and as authorized by the staff of DSHS and/or Kitsap County Area Agency on Aging/ Aging and Long Term Care (AAA/ALTC).

Adult Day Care/Adult Day Health is a supervised community-based program providing daytime services that are intended to prevent or delay entrance into institutional care by addressing the physical, emotional, and cognitive needs of participants. Service includes continuous care and assistance with activities of daily living, meals, structured and/or targeted activities and socialization of participants. Transportation to and from the center for MAC, TSOA, COPES/CFC/RCL Medicaid Title XIX, Adult Day Health Services clients will be coordinated or provided by the Contractor.

Easterseals Washington Gateway Adult Services, a certified Adult Day Care/Health program located in Bremerton, Washington, is a subsidiary of Easterseals Washington located in Seattle, Washington. This Agreement is contingent upon the Contractor, a certified Adult Day Care/Health program located in Bremerton, Washington, maintaining a valid Washington State Adult Day Care/Health License. The Contract shall terminate no later than thirty (30) days from the date of notification of license denial or revocation. Contractor may not request reinstatement until a valid license is granted.



## DEFINITIONS

“Adult Day Care” means a supervised daytime program as defined under WAC 388-71-0704 where core services are provided to Clients who meet the eligibility requirement under WAC 388-71-0708 and do not have medical or disabling conditions that require the intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of the Client’s physician.

“Adult Day Health” means a supervised daytime program providing skilled nursing and Rehabilitative Therapy Services in addition to the core services of adult day care, which are described under WAC 388-71-0704. Adult Day Health services are appropriate for adults with medical or disabling conditions that require the intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of the client’s physician or Advanced Registered Nurse Practitioner (ARNP).

“Area Agency on Aging or AAA” means a local public or private agency with which DSHS Contracts to provide case management services to DSHS Clients and to manage Contracts with qualified providers of Medicaid Waiver Services.

“Authorization and Authorized” means the Contractor’s services are included in the Client’s DSHS approved Service Plan and the service invoice is submitted for payment as directed by the DSHS payment system.

“Case Manager” means the DSHS or AAA social worker, or other authorized or subcontracted individual assigned to a Client.

“Client Incidents” include but are not limited to: injuries; falls; allegations of abuse, neglect, abandonment or exploitation; clients missing from the Adult Day Service center, emergency medical treatment or hospitalization; medication errors or involvement of law enforcement.

“Client Participation” means the amount of money, if any, that the contractor collects directly from the client and applies to the cost of the client’s authorized care.

“Contracting Officer” means the Manager, or their replacement, of DSHS Central Contract Services.

“DSHS payment system” means the system in use by DSHS to make payment to vendors.

“Service Plan” means a written plan for long term care service delivery which identifies ways to meet the Client’s needs with the most appropriate services as described in chapter WAC 388-71 and/or RCW 74.39A.

“Skilled Nursing Services” are medically necessary services that a licensed nurse acting

within his or her scope of practice can provide or supervise. Physician or ARNP orders must be obtained when required by applicable state practice laws for licensed nurses.

“Skilled Rehabilitative Therapy Services” are medically necessary services provided by or under the direct or indirect supervision of licensed physical, occupational, speech-language pathology, or audiology therapists acting within his or her scope of practice. Physician or ARNP orders must be obtained when required by applicable state practice laws for licensed therapists.

### **CLIENT CHARACTERISTICS:**

All clients served shall be eligible for COPES/CFC/RCL/MAC/TSOA Adult Day Care and/or Medicaid Title XIX/RCL/MAC Adult Day Health Services as defined under WAC, current or as amended. DSHS Home and Community Services Staff or AAA (ALTC) Case Managers shall determine eligibility. The need for services must be documented in the client service plan and assessed and re-authorized at regular, specified intervals. Services shall be provided in accordance with requirements in the ALISA Long-Term Care Program Manual, Adult Day Services, and Chapter 12. Services shall also be provided for clients authorized for MAC, TSOA and Respite through Kitsap County ALTC.

### **ADULT DAY HEALTH SERVICES**

The Contractor Shall:

- 1) Comply with the Adult Day Health requirements under WAC 388-71-0702 through 388-71-0776. The AAA that processes the initial Adult Day Health Services provider application or that manages the Adult Day Health Services Contract will determine compliance with these requirements.
- 2) Provide Adult Day Health Services in accordance with WAC 388-71-0702 through 388-71-0776. The Contractor shall provide nursing and Skilled Rehabilitation Therapy Services that are appropriate for adults with unstable and/or unpredictable medical or disabling conditions and that require the direct intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of the client's physician. Skilled Nursing Services are specifically defined in WAC 388-71-0712 and Skilled Rehabilitative Services are specifically defined in WAC 388-71-0714.
- 3) Provide Adult Day Health Services to Department clients only when there is a reasonable expectation that these services will improve, restore or maintain the Client's health status, or in the case of a progressive disabling condition, will either restore or slow the decline of the Client's health and functional status or ease related pain.
- 4) Report the Client's progress toward reaching negotiated Service Plan goals to the Case Manager every 90 days for review and report to the Case Manager when a client has been absent from program for three (3) consecutive days as specifically defined by WAC 388-71-0722(8).

### **ADULT DAY CARE SERVICES**

The Contractor Shall:

- 1) Comply with the Adult Day Care requirements in WAC 388-71-0702 through 388-71-0776. The AAA that processes the initial Adult Day Care Services provider application or that manages the Adult Day Care Services Contract will determine compliance with these requirements.
- 2) Provide Adult Day Care Services in accordance with WAC 388-71-0702 through 388-71-0776. The Contractor shall provide core services that are appropriate for adults with medical or disabling conditions and do not require the direct intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of the Client's physician. Core services are:
  - a) Personal care;
  - b) Social services with consultation from a social worker;
  - c) Routine health monitoring with consultation from a registered nurse;
  - d) General therapeutic activities that an unlicensed person can provide or that a licensed person can provide with or without a physician's order;
  - e) General health education that an unlicensed person can provide or that a licensed person can provide with or without a physician's order;
  - f) A nutritional meal and snacks;
  - g) Supervision and/or protection;
  - h) Assistance with arranging transportation to and from the program; and
  - i) First aid and provisions for obtaining or providing care in an emergency.

**PROJECT PERFORMANCE GOAL:**

No specific amount of services will be authorized or reimbursed under this agreement. The Contractor shall provide all authorized services to all eligible clients referred by DSHS Home and Community Services and the Division of Aging and Long Term Care within Kitsap County.

## **Reporting and Additional Requirements:**

- The Contractor is required to comply with the requirements of the client tracking system used by AAA (ALTC). Units of service for each client must be reported monthly, with each client identified by name and birth date.
- The AAA (ALTC) 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 AAA (ALTC) in any or all of the following formats: (1) hard copy (2) via compact disk (3) email. Data required or procedures for client tracking may change periodically and must follow Data Security Requirements of this Contract in Attachment E.
- The Contractor agrees to comply with all provisions of the Americans with Disabilities Act and all regulations interpreting or enforcing such act.
- The Contractor agrees that all program staff will meet the minimum educational and/or experience requirements, as specified in the Department of Social and Health Services Standards for COPES/CFC/RCL/MAC/TSOA Adult Day Care, Medicaid Title XIX, RCL and MAC Adult Day Health, and Out-of-Home Respite Care Services.
- DSHS/AAA shall provide to Contractor (1) a copy of the relevant terms of the client's Service Plan that describe the services to be performed and (2) any supplements or amendments to those Service Plan terms. Contractor agrees to perform such Adult Day Services throughout the period of this Contract. Any and all terms provided to Contractor shall be incorporated into this Contract by reference.
- If the Contractor accepts employment with the State of Washington, Contractor agrees to immediately notify the Case Manager for each Client to whom the Contractor is provide services and notify the Director of the Division of Home and Community Services, at P.O. Box 45600, Olympia, WA 98504-5600.
- By entering into this Contract, the Contractor certifies and provides assurances that the Contractor meets the minimum qualifications described in the Statement of Work and that the Contractor has the ability and willingness to carry out the responsibilities outlined in the client's Service Plan. The Contractor shall contact the Client's DSHS or AAA Case Manager if at any time there are any incidents or any concerns about the Contractor's ability to perform those responsibilities.

- The Contractor agrees to report any significant change in the Client's condition within twenty-four (24) hours to the DSHS/AAA Case Manager.
- The Contractor shall provide two weeks advance written notice to the client, the client's legal representative, DSHS, the AAA and any other party who has requested notice, prior to terminating Adult Day Services.

The Contractor acknowledges that he/she is in compliance with Chapter 42.52 RCW, Ethics in Public Service and agrees to comply with Chapter 42.52 RCW throughout the term of this contract.

- Insurance required of the Contractor under the Contract shall include coverage for the acts and omissions of the Contractor's employees and volunteers. In addition, the Contractor shall ensure that all employees and volunteers who use vehicles to transport clients or deliver services have personal automobile insurance and current driver's licenses.
- The Contractor shall maintain copies of Certificates of Insurance, policies, and additional insured endorsements for each subcontractor as evidence that each subcontractor maintains insurance as required by the Contract.
- The Contractor waives all rights, claims and causes of action against the State of Washington and DSHS for the recovery of damages to the extent said damages are covered by insurance maintained by Contractor.
- In all instances where DSHS is required to be named as an additional insured or provided a waiver of subrogation, or provided notice of cancellation or renewal, the AAA responsible for the area in which services under this contract are to be provided shall also be named as an additional insured, or provided waiver of subrogation, or provided notice of cancellation or renewal, as the case may be.
  - a. The State must ensure the Department does not pay federal funds to excluded persons or entities. States are also required to check for the death of an individual provider, agency owner or authorized official prior to contracting. The required ownership and control information for individuals with ownership interest of 5% or more, officers and managing employees will be obtained from the Medicaid Provider Disclosure Statement and checked against all required federal exclusion lists, and the Social Security Death Master List, prior to finalizing a contract.
  - b. The Contractor will report any change in ownership, managing employees, and/or those with a controlling interest to the Department within thirty-five (35) days of such a change so that these individuals can be screened against the required federal exclusion lists as well as the Social Security Death Master List.

- The State of Washington and DSHS shall not be held responsible for claims filed for Worker's Compensation under RCW 51 by the Contractor or its employees under such laws and regulations.
- The Contractor and its employees must immediately report all instances of suspected abandonment, abuse, financial exploitation or neglect of a vulnerable adult (per RCW 74.34.035) or a child (per RCW 26.44.030). The report shall be made to the Department's current state abuse hotline, 1-866-363-4276 (END-HARM). The Contractor must also report all suspected instances to the Client's case manager. If the notice to the Client's case manager was verbal, then it must be followed by written notification within forty-eight (48) hours. Further, when required by RCW 74.34.035, the Contractor and the Contractor's employees must immediately make a report to the appropriate law enforcement agency.
- Federal law stipulates that Medicaid participants be offered free choice among qualified providers, therefore any exclusive relationship between the Contractor and any other Medicaid Service is prohibited.

## **II. RESPITE STATE AND FEDERAL CAREGIVER SUPPORT OUT-OF HOME RESPITE SERVICES - GENERAL STATEMENT OF WORK**

The Contractor shall provide Out-of-Home Respite Services to eligible Kitsap County residents in accordance with Respite Service Program Guidelines as promulgated by the Aging and Long Term Support Administration (AL TSA) of the Washington State Department of Social and Health Services, WAC 388-106-1200 through 388-106-1230, the Department of Health, and the State and Federal Family Caregiver Support Services under the legislative authority of Title III, Part E of the Older Americans Act, as amended in 2000 (Public Law 106-501), currently issued or as revised and the AL TSA Long Term Care Program Manual, Chapters 12 and 17.

The purpose of Respite care is to provide relief for unpaid caregivers of eligible participants with functional disabilities. Delivery of Adult Day Care and Adult Day Health services shall meet the same requirements listed in the general statement of work described above in Section I.

### **ELIGIBILITY FOR RESPITE SERVICES AND AUTHORIZATION TO CONTRACTOR TO PROVIDE SERVICES**

The Contractor is authorized to provide and receive payment for Out-of-Home Respite services as stipulated in the authorization/referral documents provided for each client by the authorizing AAA/ALTC Senior Information and Assistance (Sr. I&A)/Family Caregiver Support (FCSP) Case Manager.

### **DESCRIPTION OF LEVELS OF CARE**

Respite services include three levels of care. The levels of care refer to the activities that

will be performed for a participant during a given Respite care episode as authorized by the Case Manager.

Level 1: Help with activities which require no special training; e.g., companionship, supervision, meal preparation.

Level 2: Help with ADL's for which special training is required, but a licensed health practitioner is not required. Includes personal care, turning, and transferring.

Level 3: Tasks which must be performed by a licensed health practitioner (LPN or RN and not to be provided under a Home Care license).

### **FEE COLLECTION BY CONTRACTOR FOR CLIENT SHARE OF SERVICE COSTS**

Required client share of service costs (participant co-pay/participation) shall be authorized and stipulated in the authorization documents provided by the Case Manager for each client.

The Contractor is responsible for collecting the participant co-pay for the service rendered. Except for the provisions noted above, the Contractor shall impose no fees on individual clients for services performed pursuant to this contract.

If a Respite client requests additional private pay Respite service beyond those authorized by the Case Manager, the Contractor shall provide Respite service at the rate authorized by this contract.

### **BILLING ALTC FOR AUTHORIZED RESPITE SERVICES**

Invoice instructions and forms will be provided to the Contractor at the initiation of the contract, and as necessary thereafter. Instructions will detail the dates invoice material is due each month, and what documentation must be included.

For Respite services, documentation the Contractor will submit shall include:

1. Invoice
2. Monthly detail including caregiver name and specific program identifier
3. Level of Respite provided
4. Number of units of service authorized
5. Number of units of service provided
6. Unit rate
7. Total cost
8. Cost for which the participant is responsible
9. Cost to be covered by ALTC
10. Hours and cost of Private Pay Respite services provided

### **PLACEMENT OF WORKERS WITH PARTICIPANT/CAREGIVERS**

Upon receipt of referral for services, the Contractor will contact the family to confirm the Respite services.

## **DOCUMENTATION**

The Contractor must maintain the following documentation:

1. Copy of the Referral/Authorization document provided by the Senior Information & Assistance/Family Caregiver Support Case Manager, which authorizes service;
2. Information about dates and times Respite services were provided, worker(s) providing the services, payment of any participant/caregiver fees, specific program under which the service was authorized (e.g. State Family Caregiver Support), and other relevant information about service provision;
3. Information describing any complaints from the participant/caregiver;
4. Information describing any incidents to include, but not limited to injuries; falls; allegations of abuse, neglect, abandonment or exploitation; clients missing from the Adult Day Service center; emergency medical treatment or hospitalization; medication errors or involvement of law enforcement; or incidents in which a participant became ill, injured, or dies while in the care of the Contractor.

## **PROJECT PERFORMANCE STANDARDS**

UNDER THIS SECTION OF THIS AGREEMENT:

- 1 No specific Contractor outreach activities shall be required;
- 2 No specific amount of services will be authorized or reimbursed under this agreement.



## **ATTACHMENT C: 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.

Budget  
 Easterseals Washington  
 July 1, 2022- June 30, 2024

Program/Funding Source	Total	FY 2023 1st Quarter	FY 2023 2nd Quarter	FY 2023 3rd Quarter	FY 2023 4th Quarter	FY 2024 1st Quarter	FY 2024 2nd Quarter	FY 2024 3rd Quarter	FY 2024 4th Quarter
State Family Caregiver	25,065	3,133	3,133	3,133	3,133	3,133	3,133	3,133	3,133
<b>Total</b>	<b>25,065</b>	<b>3,133</b>	<b>3,133</b>	<b>3,133</b>	<b>3,133</b>	<b>3,133</b>	<b>3,133</b>	<b>3,133</b>	<b>3,133</b>

Funding Source	CFDA #	Amount
N/A		

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 D: INTERLOCAL AGREEMENT AAA AGREEMENT STATE/FEDERAL** [DSHS Agreement #2069-20170 Effective July 1, 2021- June 30, 2022]. 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.

#### 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. **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.

## AAA General Terms And Conditions

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.

## AAA General Terms And Conditions

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:
  - a. Applicable federal CFR, CMS Waivers and Medicaid State Plan;
  - b. State of Washington statutes and regulations;
  - c. ALTSA 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.
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.

## AAA General Terms And Conditions

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

## AAA General Terms And Conditions

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

## AAA General Terms And Conditions

<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



## AAA General Terms And Conditions

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:

## AAA General Terms And 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 includes the Business Associate provisions required by the U.S. Department of Health and Human

## AAA General Terms And Conditions

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 within an entity that maintains such information.

## AAA General Terms And Conditions

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.
  - 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

## AAA General Terms And Conditions

**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.
  - (4) Business Associate record keeping procedures shall be sufficient to respond to a request for an

## AAA General Terms And Conditions

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.

## AAA General Terms And Conditions

- 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.

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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. "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. "Case Handling FTE" means clinical and non-clinical FTE who perform functions that directly support the core TXIX in-home caseload. Individual provider contracting functions are included in case handling FTE. All case handling staff must meet the minimum staff qualifications defined in the AAA Policies and Procedures Manual Chapter 1 – Policies.

Staff that are not considered case handling FTE include Case Management Directors, lead workers, quality assurance staff, and fair hearing coordinators who do not supervise case handling staff or carry a caseload. Home Care Referral Registry staff, clerical staff, budget and financial managers, grants managers, planners, information technology staff, core services contract management staff, and AAA Director time spent on oversight of LTC core Case Management/Nursing Services operations are not counted as case handling FTE. Case handling FTE does not include basic supervisory functions even when direct client contact is involved, for example, case staffing, administrative hearings, and fielding calls from clients.

Case handling FTE is reported with AAA TXIX unit rate billings to understand staffing patterns, however, payment is only connected to case handling FTE when an Area Agency on Aging has



## Special Terms and Conditions

negotiated additional funds to support a case-handling ratio.

- i. "Caseload ratio adjustment factor" means the Consumer Price Index inflation factor used for the state budget revenue forecast combined with the percent change in funding allocated for clinical staffing by DSHS to the Area Agency on Aging TXIX case management program. This factor is used to determine the initial clinical ratio for each AAA.
- 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 that is eligible for or receiving services provided by the AAA in connection with this Agreement.
- l. "Clinical Ratio" means the ratio applied to TXIX case management services to define the number of required clinical FTE per client caseload. The clinical ratio is calculated by dividing the actual monthly core in-home caseload by the total number of case management, licensed health professional, and RN FTE's employed or subcontracted with the AAA. Clinical FTE perform clinical functions described in the Long Term Care Manual Chapters 3: Assessment and Care Planning, 5: Case Management, or 24: Nursing Services. Examples of clinical tasks include completing assessments, service planning, eligibility determination or medical/nursing services for core clients. Clinical staff included in the clinical ratio may also perform non-clinical activities. All reported clinical time must be supported by adequate payroll and allocation documentation.

Staff who do not meet the minimum staff qualifications for clinical staff and/or who predominantly perform non-clinical functions are not included in the clinical ratio calculation (e.g. case aides). Examples of non-clinical tasks include assisting clients in completing forms, individual provider contracting (including background check and training compliance activities), ProviderOne/IPOne authorization input, mailing planned action notices, and administrative activities related to individual provider overtime.

If case aide staff have some clinical job responsibilities, that portion of their FTE can only be included in the clinical ratio calculation if they meet staff qualifications for a case manager as defined in the AAA Policies and Procedures Manual Chapter 1 – Policies.

- m. "Core Services Contract Management" means contracts managed by Area Agencies on Aging to serve core TXIX in-home clients per Chapter 6 of the Area Agency on Aging Policies and Procedures Manual. Core Services Contracts include agency personal care services for AL TSA and DDA under CFC, Medicaid Personal Care, and Chore; and other state plan and waiver services. Contract Management includes staff and costs for procurement, negotiation and execution of core services contracts, monitoring (program and fiscal) as required by AL TSA, and training and technical assistance on contract requirements or monitoring findings. It does not include any of the functions associated with case management, such as individual provider contracting and individual provider contract compliance.
- n. "Covered Entity" means DSHS, a Covered Entity as defined in 45 CFR 160.103.
- o. "Contracts Administrator" means the manager, or successor, of Central Contract Services or successor section or office.
- p. "Debarment" means an action taken by a Federal official to exclude a person or business entity from participating in transactions involving certain federal funds.
- q. "Designated Record Set" means a group of records maintained by or for the Covered Entity that is

## Special Terms and Conditions

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.

- r. "DSHS" or "the Department" means the state of Washington Department of Social and Health Services and its employees and authorized agents.
- s. "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.
- t. "Disaster Relief" means activities, goods, or services expended in the support of the health or safety of older adults in response to a Major Disaster Declaration.
- u. "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.
- 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. "No Personal Care Caseload" means TXIX clients that are not authorized personal care in a given month. These clients have an open authorization for another service in ProviderOne, and receive active case management while they attempt to locate a personal care provider.
- y. "Older Americans Act" refers to P.L. 106-501, 106th Congress, and any subsequent amendments or replacement statutes thereto.
- z. "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.
- aa. "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).
- 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.

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- dd. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
  - ee. "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.
  - ff. "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.
  - gg. "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.
  - hh. "Supplies" means all tangible personal property other than equipment as defined herein.
  - ii. "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 \$3,210,878, 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/AL TSA 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 \$183.73 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 SFY22 TXIX Case Management billing form and SFY22 TXIX Matched Case Management billing form, and may be adjusted at AL TSA's discretion.)

Payment for Core Services Contract Management for Medicaid State Plan, Waiver, Roads to

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Community Living (RCL)WA Roads, and state-funded Chore clients will be based on a monthly rate of \$16.03 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 average monthly projection of such cases over the course of this Agreement is 1,017. The AAA will be paid for the number of actual cases authorized each month according to the payment schedule above. The target clinical ratio is 90.3:1.

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.

- c. **Local Matching Funds:** The AAA may spend qualifying local funds on TXIX in-home case management and use it to collect additional federal matching funds. The amount of Senior Citizens Services Act funding budgeted for TXIX in-home case management in the previous state fiscal year may be carried forward into this contract and inflated by the consumer price index (CPI) used in the caseload ratio adjustment factor as matching funds to draw down additional federal match. The CPI is 1.7% in SFY22. Any additional requests for SCSA or other local fund sources to be matched must be approved by ALTSA and may require additional FTE to be purchased with these funds. A new clinical ratio or case handling ratio will be negotiated with ALTSA to draw down additional matching funds per the local matching funds schedule. If additional SCSA is proposed as a local match source, the AAA will report any impacts of reallocating SCSA funding when making the request to ALTSA.
- d. **Local Matching Funds schedule:** The AAA may increase the TXIX Requested Match as an add-on for the unit rate for each authorized in-home agency personal care case, in-home individual provider, no personal care, and New Freedom case accepted by the AAA each month per the schedule below.

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<b>If Clinical Ratio is 1:</b>	<b>Then State/Local</b>	<b>Fed Match</b>

- e. 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. **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.
  
- 7. **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).
  
- 8. **State or Federal Audit Requests.** The contractor is required to respond to State or Federal audit

### **Special Terms and Conditions**

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.

9. **Grant Award Documents.** The attached Grant Award Documents are added to Exhibit D, attached hereto and incorporated herein. If not attached, Grant Award documents will be sent separately once received from the Administration of Community Living and incorporated herein with no contract amendment needed.

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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, Federal Program Waivers for COVID-19, and any and all DSHS/ALTSA standards, guidelines, policy manuals, and management bulletins, including management bulletins that grant or remove temporary COVID-19 flexibilities.

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.

Due to COVID-19 pandemic impacts, disaster relief, and recovery efforts, many of the programs and requirements in this statement of work have been granted flexibilities as a result of Federal program waivers approved by Centers for Medicare and Medicaid, in management bulletins and rapid emergency response communications between AAAs and ALTSA in early 2020. ALTSA and the AAAs have been operating in close partnership and frequent communication under extraordinary circumstances that require frequent adaptation to meet the needs of Washingtonians. Some requirements for the services in this contract may continue to be relaxed, suspended, or achieved by alternate methods during the COVID-19 emergency and recovery period. Communications issued via email may be used to document flexibilities and do not require a contract amendment.

#### 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

## Special Terms and Conditions

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 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.

Olympic, Southwest, Southeast, Eastern, LMT and Central AAAs only: 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. Contracted Nursing for DDA will also adhere to DDA Policy 9.13 Skin Observation Protocol.

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 attempt to 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,



## Special Terms and Conditions

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 \$712.95 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 who identify as Muckleshoot tribal members. Funding is provided for up to 60 initial assessments with reimbursements not to exceed \$712.95 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 clinical ratio calculation, as defined by DSHS/ALTSA in the Special Terms & Considerations Billing and Payment Section (4.b). 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/ALTSA 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

## Special Terms and Conditions

- 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
  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 at least annually.

### 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 clinical ratios as described in Special Terms and Conditions, Billing and Payment Section (4.b.).

### 3. 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.

### 4. 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, Case Coordination, 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 (TCARE®) is utilized and required to screen, assess and consult with family

## Special Terms and Conditions

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 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, caregiver demographic data and TCARE® screens, assessment and care plans into the GetCare reporting system.

- 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 2019).

AAAs that offer Memory Care & Wellness Services (MCWS) will work collaboratively with DSHS/AL TSA 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.

- b. **MCWS Program Requirements:** Program requirements include (1) MCWS Standards of Care (2019) and (2) the integral Exercise for Mobility, previously known as EnhanceMobility, exercise intervention [and any subsequent updates of both (1) and (2)]. Participating AAAs will also work with DSHS/AL TSA 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 2019) 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/AL TSA Intranet site, in the TCARE Online Resources page. <http://intra.altsa.dshs.wa.gov/tcare/memory.htm>
- c. **MCWS Program Funds:** 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.
- d. **MCWS Proposed Targets and Funding:** Each AAA will submit to DSHS/AL TSA proposed target numbers for the remainder of FY 2022 (caregiver/care receiver dyads) for MCWS by January 31, 2022, along with the semi-annual report detailed in the final paragraph of this MCWS section. 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.

## Special Terms and Conditions

For SFY 2022, DSHS/AL TSA will allocate the same amount of MCWS funding that NWRC and King were allocated for SFY 2021: \$75,173 for NW and \$82,447 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, 2021 – June 30, 2022).

1.

- e. 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.

To ensure optimal use of this funding, progress towards target numbers and expenditures will be assessed once the 1<sup>st</sup> quarter report with a due date of October 31, 2021 is received. In addition, the semi-annual reports covering the periods (July - December 2021 due January 31, 2022 (with data as of December 31, 2021) and January – June 2022, due July 30, 2022) are required and should include the same information detailed above for the 1<sup>st</sup> quarter report.

1.

DSHS/AL TSA 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.

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

The AAA shall operate a Kinship Caregivers Support Program (KCSP), 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 the Department of Children, Youth and Families. The 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 MB H19-023—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 fifteen percent (15%) 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 data reporting system to input clients, their demographics and service utilization. Annually, each October, the AAA is responsible for submitting a minimum of two case examples along with a list of unmet needs to the DSHS/AL TSA Kinship Program Manager.

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

Kinship Navigator services were initially authorized by the 2005 State Legislature. Kinship Navigators provide information and assistance functions, along with supportive listening to grandparents and other relatives of all ages who are raising relatives' children or planning to do so. They educate and connect

## Special Terms and Conditions

grandparents and relatives (kinship caregivers over the age of 18) to community resources, such as health, financial, legal assistance, support groups, training, and urgently needed goods and services and explain how to apply for federal and state benefits. The Navigators provide follow-up with kinship caregivers as needed and develop collaborative working relationships with agencies and groups that work with kinship caregivers. Navigators help educate the community, including services providers and organizations about the needs of kinship care families and available resources and services to them. Hard to reach kinship care families (geographically isolated and ethnic communities) should receive special outreach attention. Kinship navigators pro-actively mediate with state agency staff and/or service providers to make sure individual caregivers receive services for which they are eligible. Support will be given to kinship caregivers to establish or maintain greater resiliency and long-term stability needed to keep children out of the foster care system and to better care for themselves. 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.

### 7. Senior Drug Education Program

In accordance with RCW 74.09.660, the AAAs shall provide services to inform and train persons sixty five (65) years of age and older in the safe and appropriate use of prescription and non-prescription medications.

The AAA will be responsible for compiling and submitting data on a monthly or quarterly basis. Options for submitting program data include:

- E-mailing the AL TSA Senior Drug Education Program Template to the Community Living Connections Program Manager, or
- Direct entry of data (service recording) into the CLC Get-Care reporting systems. (Senior Drug Education events can be entered into the Event Manager Tool in CLC GetCare at the discretion of the AAA.)

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.

### 8. 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/AL TSA program instructions.

### 9. 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/AL TSA 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.

### 10. 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

## Special Terms and Conditions

at the calculated parity equivalent amount determined by final funding of the collective bargaining agreement for individual providers. AAAs will bill DSHS/AL TSA 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.

### 11. Volunteer Services (Northwest Regional Council AAA only)

Services shall be provided in accordance with all applicable regulations in WAC 388-106-0660 through 0675. Not more than eight percent (8%) of the Volunteer Services allocation may be spent on administration.

### 12. Home Delivered Meal Expansion

The AAA will continue to serve expanded HDM services to new or underserved populations or areas within their Planning Service Area. AAAs will not be required to meet Maintenance of Effort (MOE) in SFY21 and SFY22. AAAs will be expected to meet MOE in SFY 23. These funds must not supplant existing funds. All expenditures for HDMs in the SFY17 Annual Expenditure Report will be used as a Maintenance of Effort standard regardless of funding source. The legislative goal was to increase the number of participants statewide. The AAA will enter all HDM service data in CLC GetCare for reporting purposes. This funding should be considered pass through to providers.

**Funds Match Certification**

(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.

**FUND MATCH CERTIFICATION DSHS  
06-155 (REV. 02/2015)**



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

[DSHS Agreement #2269-34801] Effective January 1, 2022 – December 31, 2023. 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.

### **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 **allowed by law** and 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

## 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.

## AAA General Terms and Conditions

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:
- 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.
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

## AAA General Terms and Conditions

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.

## AAA General Terms and Conditions

- 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),

## AAA General Terms and Conditions

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

## AAA General Terms and Conditions

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)

## AAA General Terms and Conditions

- 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).



### AAA General Terms and Conditions

- 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;

### AAA General Terms and Conditions

- (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.

## AAA General Terms and Conditions

- 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

### AAA General Terms and Conditions

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.

## 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. "ACD" means Agency Contracts Database. ACD is used to access, produce and manage contracts and manage contractor information for DSHS and AAAs.
- c. "ACES" or "Automated Client Eligibility System" is a database managed by ESA ITS to support field operations.
- d. "Authorizer" A representative appointed by the AAA to assure users AAA level and ALTSA level access requests are processed using the Secure Access Request Form 17-226. Authorizers assure users meet attestation, training and other system access requirements. They assure paperwork is processed in accordance with MB's, instructions, and data share agreement requirements. Authorizers manage AAA level access requirement locally establishing profiles and user level permissions. Authorizers are the first point of contact when issues occur for users and route issues to local IT or escalate to ALTSA as needed. AAA Authorizers are responsible for keeping track of their pool of employee IDs, for applicable systems.
- e. "Automated Client Eligibility System (ACES)" Online is a tool for public assistance eligibility determination, issuing benefits, management support, and sharing of data between agencies to include client demographics.
- f. "ADSA Reporting" is now referred to as DDA/HCS Reporting and interfaces with reporting services to provide a subset of information to case management or supervisor level data for individual AAA offices.
- g. "Agreement" means this Agreement, including all documents attached or incorporated by reference.
- h. "DataMart" means a self-service cube that allows users with active directory accounts to access consolidated ALTSA and DDA data to support operations, management or ad-hoc data needs. It feeds excel spreadsheets or other tools connected to a cube that allow users to easily create their own ad hoc reports. This applies to the 17-226 ALTSA Data Mart – CARE and ALTSA Data Mart – P1/AFRS.
- i. "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.
- j. "Barcode" is a client server system that manages workflow and document images. Twenty major component subsystems include childcare eligibility and social service case management. Provides programmed and ad hoc access to ACES, eJAS, and native Barcode data.
- k. "BCS" Background Check System – Provides background check information on clients, vendors and staff to meet DSHS requirements where appropriate.

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- l. "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 interfaces to the Consumer Direct Caregiver Network of WA (CDWA), and the legacy Tailored Caregiver Assessment and Referral (TCARE) system and their reporting systems for demographic, assessment, and service plan information.
- m. "CFR" means Code of Federal Regulations. All references in this Agreement to the CFR shall include any successor, amended, or replacement regulation.
- n. "CITRIX" is a method to access DSHS resources for staff on the DSHS network working from a remote location. CITRIX is allowed on personal devices to remote into a DSHS computer in network and other virtual desktop environment applications.
- o. "Client" means an individual who is eligible for or receiving services provided by the AAA in connection with this Agreement.
- p. "Client Registry" (CReg) is a secure web-based application centralizing client information and providing a single location to support client service research. Client Registry is used to provide high-level demographic information and service history for AAA case management staff from multiple DSHS administrations. Client Registry (CReg) is managed by DSHS Technology Security Division (TSD)
- q. "CLC" means Community Living Connections. Washington State's name for the No-Wrong Door access network of Area Agencies on Aging and their state, regional and local partners.
- r. "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 Care (MAC) and Tailored Supports for Older Adults (TSOA). It is a cloud-based platform for client and program management that supports reporting for the National Aging Program Information System and Older Americans Act Performance System (OAAPS). It also supports the CLC public website with a consumer portal and a resource directory. CLC/GetCare System is used in order to manage, record, and report service provision and utilization, demographics, resource directory, consumer website information and to access TCARE screening, assessment, and care planning tools.
- s. "Contracts Administrator" means the manager, or successor, of Central Contract Services or successor section or office
- t. DDA/HCS Reporting interfaces with reporting services to provide a subset of information to case management or supervisor level data for individual AAA offices.
- u. "Disclosure" means the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information.
- v. "DMS" or "Document Management Service" is an automated subsystem of Barcode that uses imaging technology and document assignments to manage client documents and workflow.
- w. "DSHS" or "the Department" means the state of Washington Department of Social and Health Services and its employees and authorized agents.

## Special Terms and Conditions

- x. "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.
- y. "ESA" or "Economic Services Administration" is an administration under the Department of Social and Health Services.
- z. "HIPAA" means the Health Information Portability and Accountability Act of 1996, as codified at 42 USCA 1320d-d8.
- aa. "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).
- bb. "IPOne" means Individual Provider One. IPOne is an online electronic payment system that allows Individual Providers to submit timesheets, receive pay for in home clients, and allows providers to manage Medicaid claims.
- cc. "LC" is Washington State Learning Center (WSLC) an e-learning platform for accessing DSHS and ALTSA level trainings. LC is a Learning Management System (LMS) for limited designated AAA staff members to access DSHS training. AAAs may purchase additional licenses if desired.
- dd. "MMIS" means Medicaid Management Information System and it is associated with ProviderOne
- ee. "OAA" means Older Americans Act and refers to P.L. 106-501, 106th Congress, and any subsequent amendments or replacement statutes thereto.
- ff. "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.
- gg. "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).
- hh. "ProviderOne" is a Medicaid Management Information System (MMIS) for service providers and staff to view authorization, payment, scheduling and client service data. It interfaces between ACES and the HCA. Uses the info to authorize payment from medical providers, generate reports, and obtain federal funding.
- ii. "PRISM" stands for Predictive Risk Intelligence System. It is a secure web-based application accessed through Secure Access Washington for care coordination. A separate Data Share Agreement with the AAA governs use and requirements.
- jj. "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/>.

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- kk. "Real Property" means land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.
  - ll. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
  - mm. "QA Monitor" means Quality Assurance Monitor and it is used to assess the assessor or do supervisory reviews. Quality Assurance monitoring ensures that all services promote health, safety, and self-determination for all participants. Identifies efficient and effective practices in services delivery and ensures federal and state assurances are met.
  - nn. "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.
  - oo. "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.
  - pp. "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.
  - qq. "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.
  - rr. "Supplies" means all tangible personal property other than equipment as defined herein.
  - ss. "TCARE" Tailored Caregiver Assessment and Referral is a caregiver assessment and referral protocol designed to assist care managers who work with family caregivers who care for their adult relatives.
  - tt. "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.
  - uu. "User" means the AAA employee who has registered or approved access to a system listed in this Agreement.
  - vv. "VPN" Virtual Private Networking is a method of AAAs non on the DSHS network to access DSHS applications and internal resources
  - ww. "WaCareRpt Database" is an ALTA/DDA relational database containing a copy of all CARE-related data and is used by developers to create reports.
  - xx. "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 below and in accordance with Exhibit A, Data Security Requirements:



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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) System Access

(a) By submitting AAA DSHS / HCA System Access Request (SAR) Form 17-226

i. ALTSA Level

(A) ACES Online

(B) ProviderOne – View Only

(C) IPOne (AAA retain access until the IP contracts are fully transitioned to CDWA)

(D) CReg

(E) PRISM

(F) VPN

ii. ALTSA Level – Requiring DSHS Active Directory

(A) ALTSA Data Mart – CARE

(B) ALTSA Data Mart – P1/AFRS

(C) WaCareRpt Database

iii. AAA Level

(A) ACD – Agency Contracts Database

(B) DDA/HCS Reporting

(C) BarCode (DMS)

(D) BCS – Background Check

(E) CARE Production + Practice

(F) CARE Web Production + Practice

(G) CLC/GetCare

(H) QA Monitor

(b) Aging and Long-Term Support Administration (ALTSA) and Developmental Disabilities Administration (DDA) SharePoint sites.

(c) DSHS' Internal Forms Picker Site.

(d) "LC" Washington State Learning Center (WSLC) Trainings with monetary cost are prohibited unless AAA has created their own account. The number of AAA staff with access will be negotiated with DSHS and may require a separate account for billing individual licenses.

### (2) Method of Access

(a) 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.

(b) The AAA agrees to follow the DSHS IT Security Policy Manual (Section 4.2.3.1, S1) that

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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.

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.

- c. 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.
- d. 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 authorized research, statistical, monitoring and evaluation purposes conducted by appropriate federal agencies and DSHS. DSHS must authorize in writing the disclosure of this information to any other party not identified in this section.
- e. 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.
- f. 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.
- g. 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.
- h. 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

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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.
- (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 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

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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 as allowed by law and when the AAA and its subcontractors have completed the work for which the information was required, as fully described by incorporated Exhibit A Data Security Requirements.

- 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.
- d. AAA employees, contractors, and agents that have access to the ACES system will ensure that they comply with the security and safeguarding requirements as per the AL TSA/ESA Data Sharing MOU
- e. ADS/Seattle King County AAA - DSHS expressly acknowledges and agrees that Contractor may share PHI with Collective Medical and place PHI on the Collective Medical system, thereby permitting other medical providers to access and use the PHI for purposes of medical treatment. Contractor shall submit its contract with Collective Medical to DSHS for approval.

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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/ifa/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,

**Special Terms and Conditions**

- (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 subcontractor must be submitted to the DSHS Contact specified for this contract for review and approval.



## AAA DSHS / HCA Systems Access Request



### AAA Adding Users

An Area Agency on Aging (AAA) may request access to various systems for its employees or contractors (AAA Users) under its Data Share Agreements (DSA) with DSHS and HCA. This Systems Access Request (SAR) form must be signed by the AAA Authorizer and AAA User then sent to the ALTSA SUA Coordinator via secure email at: [hcsaaarequest@dshs.wa.gov](mailto:hcsaaarequest@dshs.wa.gov).

### AAA Removing Users

The AAA Authorizer must also notify the DSHS ALTSA SUA Coordinator using the SAR 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 Adding Users

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

### AAA Subcontractors Removing Users

The AAA subcontractor must also use the SAR 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'S CARE ID (IF APPLICABLE)</b>  
<b>SYSTEMS ACCESS REQUESTED THROUGH ALTSA</b> <input type="checkbox"/> VPN*** <input type="checkbox"/> ACES Online <input type="checkbox"/> PRISM *** <input type="checkbox"/> ProviderOne View Only <input type="checkbox"/> Client Registry *** <input type="checkbox"/> IPOne <input type="text" value="Select One"/>		<b>SYSTEMS ACCESS REQUIRING DSHS ACTIVE DIRECTORY</b> <input type="checkbox"/> ALTSA Data Mart - CARE <input type="checkbox"/> ALTSA Data Mart - P1 / AFRS <input type="checkbox"/> WaCareRpt Database
<b>SYSTEMS ACCESS REQUEST SET UP AT AAA LEVEL</b> <input type="checkbox"/> CARE Production + Practice <input type="checkbox"/> DDA/HCS Reporting <input type="checkbox"/> Barcode <input type="text" value="Select One"/> <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 <input type="text" value="Select One"/>		
<b>AAA / Subcontractor 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>USER'S EMAIL ADDRESS**</b>
<b>TITLE</b>		<b>PRIOR NAME (CHANGE NAME REQUEST)</b>
<b>AAA / SUBCONTRACTOR OFFICE</b>		<b>ACCESS JUSTIFICATION</b>
<p>* Required: The ID Number is assigned by the AAA Authorizer.          ** No generic email addresses (e.g. Hotmail, Gmail, Yahoo, etc.)          *** Please include required forms (see instructions) in addition to the 17-226.          **** DATE OF BIRTH is only required when selecting ProviderOne or IPOne - for all other applications it should be blank.</p> <p><b>Protected Data Access Authorization</b></p> <p>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.</p>		
<b>Authorizing Signature</b>		
	<b>DATE</b>	<b>PRINTED NAME</b>
		<b>EMAIL ADDRESS</b>

AAA DSHS / HCA SYSTEMS ACCESS REQUEST  
 DSHS 17-226 (REV. 01/2022)

**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>	
<p><b>Confidential Information</b></p> <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>	
<p><b>Regulatory Requirements and Penalties</b></p> <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>	
<p><b>AAA User Assurance of Confidentiality</b></p> <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>	
<p><b>Signature</b></p> <p>_____</p>	
DATE	AAA USER'S PRINTED NAME

AAA DSHS / HCA SYSTEMS ACCESS REQUEST  
DSHS 17-226 (REV. 01/2022)

### 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 a copy of the VPN form, please contact AL TSA. Check one of several options: HCRR; Case Manager; HQ; Finance L2; or Finance L1 next to IPOne.
- Applications in the DSHS Active Directory (AD) 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.
- AL TSA Data Mart. Access is specific to each data source. If both data sources are needed, both boxes must be selected.
- Applications in the AAA section (Barcode, DDA / HCS 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) via secured email 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.
  - Barcode field can be one of the following options: AAA-IT; RC-SPEC; CLER-SUP; CLERICAL; CM-JRP; CM-MTD; CM-SUP; or INTERN. These relate to the new access profiles in Barcode.
  - ACD – Contracts Database can be one of the following options: 4 – Sign Contracts; 5 – Create Contracts; or 9 – Approve Contracts.
- IPOne 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.
  - Form will be rejected if the box is checked but the field is blank.

#### AAA User Information

- Enter the user information as indicated. DATE OF BIRTH (DOB) is only required when selecting ProviderOne or IPOne – for all other applications it should be blank. Forms with DoB submitted by Colville, King, Kitsap, Pierce, Snohomish, and Yakama should be submitted using secure email or secure file transfer.
- The AAA Authorizer will assign an ID number from the list provided by the AL TSA SUA Coordinator.
  - 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 such as Case Management and Coordination, Nursing Coordination, Oversight and Supervision, Determination of Eligibility.

#### 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 the 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) using secure email. Do not email forms directly to AL TSA Helpdesk or AL TSA Helpdesk staff.

**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
  - IPOne is checked but role is missing
- **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 AAA User have signed in the appropriate fields
- **VPN request form is missing from the request.**



**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/TYPE NAME	NON-DSHS EMPLOYEE'S SIGNATURE	DATE

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

**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: Cathy L. Bissell

Title: President + CEO

DATE: 4/27/2022

**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.

Easterseals Washington

Contractor Organization

Cathy E. Brink

4/27/2022

Signature of Certifying Official

Date

**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:

Cathy Bisailon

Name of Designee(s) - Type or Print

Cathy Bisailon

Name of Recipient - Type or Print

200 W. Mercer St., Seattle, WA 98119

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.

Cathy L. Bisailon, President & CEO

Signature and Title of Authorized Official

**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

Easterseals Washington 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

4/27/2022

By

Cathy L. Benoit

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

200 W. Mercer St., Seattle, WA 98119

(Applicant's mailing address)

**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 4/27/2022

  
(Applicant)

By President + CEO (President, Chairman of Board, or comparable authorized official)

200 W. Mercer St., Seattle, WA 98119  
(Applicant's mailing address)

**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. Cathy Bisai Non, Pres. + CEO

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. Holly Morgan, COO

1.

2. ARELINDA ESPINOZA, VP

2.

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

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

EFFECTIVE DATE OF AUTHORIZATION

4 , 28 , 2022  
month day year

AUTHORIZED BY:

Signature

Cathy Bisai Non, Pres. + CEO  
Typed name and title



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/11/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b>		<b>CONTACT NAME:</b> Kim Andrews-McClellan	
The Partners Group Ltd		<b>PHONE (A/C, No, Ext):</b> (877) 455-5640	<b>FAX (A/C, No):</b> (425) 455-6727
11225 SE 6th St.		<b>E-MAIL ADDRESS:</b> kandrews@tpgrp.com	
Suite 110		<b>INSURER(S) AFFORDING COVERAGE</b>	
Bellevue WA 98004		<b>INSURER A:</b> Philadelphia Indemnity Ins Co	<b>NAIC #</b> 18058
<b>INSURED</b>		<b>INSURER B:</b>	
Easterseals Washington		<b>INSURER C:</b>	
200 W Mercer ST		<b>INSURER D:</b>	
STE 210E		<b>INSURER E:</b>	
Seattle WA 98119		<b>INSURER F:</b>	

**COVERAGES****CERTIFICATE NUMBER:** 22/23 GL AL XS ABUSE**REVISION NUMBER:**


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		PHPK2396610	04/01/2022	04/01/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Employee Benefits \$ 1,000,000
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRE AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY			PHPK2396610	04/01/2022	04/01/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			PHUB808824	04/01/2022	04/01/2023	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	PHPK2396610	04/01/2022	04/01/2023	<input type="checkbox"/> PER STATUTE <input checked="" type="checkbox"/> OTH-ER WA STOP GAP - EL E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Sexual/Physical Abuse & Molesation			PHPK2396610	04/01/2022	04/01/2023	Occurrence: \$1,000,000 Aggregate: \$1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

Washington State Dept. of Social Health Services, Kitsap County is included as Additional Insured on General Liability as their interest may appear as respects operations performed by or on behalf of the Named Insured, as required by written contract. With respects to liability arising out of the operations of the insured, this insurance is primary, the following are included as Additional Insureds: Kitsap County, its officers, officials, employees and agents per attached form.

**CERTIFICATE HOLDER****CANCELLATION**

Kitsap County Division of Aging & Long Term Care attn: Stacey Smith, Administrator 614 Division St.,MS-5 Port Orchard WA 98366	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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## COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

### SECTION I – COVERAGES

#### COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

## 2. Exclusions

This insurance does not apply to:

### a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - (b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

### c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph (1), (2) or (3) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

### d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

### e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

**f. Pollution**

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
    - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
    - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
  - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
    - (i) Any insured; or
    - (ii) Any person or organization for whom you may be legally responsible; or
  - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
    - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
    - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
    - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
  - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

**g. Aircraft, Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 26 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of:

- (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or
- (b) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

**h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

**i. War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**j. Damage To Property**

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;

- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

**k. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

**l. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**m. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**n. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**o. Personal And Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

**p. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

However, this exclusion does not apply to liability for damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**q. Recording And Distribution Of Material Or Information In Violation Of Law**

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or

- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

## **COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY**

### **1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:
- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
  - (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

### **2. Exclusions**

This insurance does not apply to:

#### **a. Knowing Violation Of Rights Of Another**

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

#### **b. Material Published With Knowledge Of Falsity**

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

#### **c. Material Published Prior To Policy Period**

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

#### **d. Criminal Acts**

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

#### **e. Contractual Liability**

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

#### **f. Breach Of Contract**

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

#### **g. Quality Or Performance Of Goods – Failure To Conform To Statements**

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

#### **h. Wrong Description Of Prices**

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

**i. Infringement Of Copyright, Patent, Trademark Or Trade Secret**

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

**j. Insureds In Media And Internet Type Businesses**

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

**k. Electronic Chatrooms Or Bulletin Boards**

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

**l. Unauthorized Use Of Another's Name Or Product**

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

**m. Pollution**

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

**n. Pollution-related**

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

**o. War**

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**p. Recording And Distribution Of Material Or Information In Violation Of Law**

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

**COVERAGE C – MEDICAL PAYMENTS**

**1. Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
  - (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations;provided that:
  - (a) The accident takes place in the "coverage territory" and during the policy period;
  - (b) The expenses are incurred and reported to us within one year of the date of the accident; and
  - (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
  - (1) First aid administered at the time of an accident;
  - (2) Necessary medical, surgical, X-ray and dental services, including prosthetic devices; and
  - (3) Necessary ambulance, hospital, professional nursing and funeral services.

**2. Exclusions**

We will not pay expenses for "bodily injury":

- a. **Any Insured**  
To any insured, except "volunteer workers".
- b. **Hired Person**  
To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. **Injury On Normally Occupied Premises**  
To a person injured on that part of premises you own or rent that the person normally occupies.

**d. Workers' Compensation And Similar Laws**

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

**e. Athletics Activities**

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

**f. Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

**g. Coverage A Exclusions**

Excluded under Coverage A.

**SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

- 1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
  - a. All expenses we incur.
  - b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
  - c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
  - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
  - e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
  - f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.



- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

- 2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
  - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
  - b. This insurance applies to such liability assumed by the insured;
  - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
  - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
  - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
  - f. The indemnitee:
    - (1) Agrees in writing to:
      - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
      - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
      - (c) Notify any other insurer whose coverage is available to the indemnitee; and
      - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
    - (2) Provides us with written authorization to:
      - (a) Obtain records and other information related to the "suit"; and
      - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

## SECTION II – WHO IS AN INSURED

- 1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;

- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or

- (d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by;

- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

- c. Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and

- (2) Until your legal representative has been appointed.

- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

- c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;

- b. Claims made or "suits" brought; or

- c. Persons or organizations making claims or bringing "suits".

2. The General Aggregate Limit is the most we will pay for the sum of:

- a. Medical expenses under Coverage C;

- b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

- c. Damages under Coverage B.

3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage A; and
  - b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

#### **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**

##### **1. Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

##### **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and

- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

##### **3. Legal Action Against Us**

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

#### 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

##### a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

##### b. Excess Insurance

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

(iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability.

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.

(2) When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

##### c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

#### 5. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

#### 6. Representations

By accepting this policy, you agree:

a. The statements in the Declarations are accurate and complete;

- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

**7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

**8. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

**9. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**SECTION V – DEFINITIONS**

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means:
  - a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
  - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
  - c. All other parts of the world if the injury or damage arises out of:
    - (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
    - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
    - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication; provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.
5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
  - a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;
  - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
  - f. The use of another's advertising idea in your "advertisement"; or
  - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**16. "Products-completed operations hazard":**

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
  - (1) Products that are still in your physical possession; or
  - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
    - (a) When all of the work called for in your contract has been completed.
    - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
    - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:
  - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - (3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

**17. "Property damage" means:**

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - (a) You;
  - (b) Others trading under your name; or
  - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2) The providing of or failure to provide warnings or instructions.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****GENERAL LIABILITY DELUXE ENDORSEMENT:  
HUMAN SERVICES**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE**

It is understood and agreed that the following extensions only apply in the event that no other specific coverage for the indicated loss exposure is provided under this policy. If such specific coverage applies, the terms, conditions and limits of that coverage are the sole and exclusive coverage applicable under this policy, unless otherwise noted on this endorsement. The following is a summary of the Limits of Insurance and additional coverages provided by this endorsement. For complete details on specific coverages, consult the policy contract wording.

<b>Coverage Applicable</b>	<b>Limit of Insurance</b>	<b>Page #</b>
Extended Property Damage	Included	2
Limited Rental Lease Agreement Contractual Liability	\$50,000 limit	2
Non-Owned Watercraft	Less than 58 feet	2
Damage to Property You Own, Rent, or Occupy	\$30,000 limit	2
Damage to Premises Rented to You	\$1,000,000	3
HIPAA	Clarification	4
Medical Payments	\$20,000	5
Medical Payments – Extended Reporting Period	3 years	5
Athletic Activities	Amended	5
Supplementary Payments – Bail Bonds	\$5,000	5
Supplementary Payment – Loss of Earnings	\$1,000 per day	5
Employee Indemnification Defense Coverage	\$25,000	5
Key and Lock Replacement – Janitorial Services Client Coverage	\$10,000 limit	6
Additional Insured – Newly Acquired Time Period	Amended	6
Additional Insured – Medical Directors and Administrators	Included	7
Additional Insured – Managers and Supervisors (with Fellow Employee Coverage)	Included	7
Additional Insured – Broadened Named Insured	Included	7
Additional Insured – Funding Source	Included	7
Additional Insured – Home Care Providers	Included	7
Additional Insured – Managers, Landlords, or Lessors of Premises	Included	7
Additional Insured – Lessor of Leased Equipment	Included	7
Additional Insured – Grantor of Permits	Included	8
Additional Insured – Vendor	Included	8
Additional Insured – Franchisor	Included	9
Additional Insured – When Required by Contract	Included	9
Additional Insured – Owners, Lessees, or Contractors	Included	9
Additional Insured – State or Political Subdivisions	Included	10

Duties in the Event of Occurrence, Claim or Suit	Included	10
Unintentional Failure to Disclose Hazards	Included	10
Transfer of Rights of Recovery Against Others To Us	Clarification	10
Liberalization	Included	11
Bodily Injury – includes Mental Anguish	Included	11
Personal and Advertising Injury – includes Abuse of Process, Discrimination	Included	11

**A. Extended Property Damage**

**SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Subsection 2. Exclusions, Paragraph a. is deleted in its entirety and replaced by the following:

**a. Expected or Intended Injury**

“Bodily injury” or property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury” or “property damage” resulting from the use of reasonable force to protect persons or property.

**B. Limited Rental Lease Agreement Contractual Liability**

**SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Subsection 2. Exclusions, Paragraph b. Contractual Liability is amended to include the following:

- (3) Based on the named insured's request at the time of claim, we agree to indemnify the named insured for their liability assumed in a contract or agreement regarding the rental or lease of a premises on behalf of their client, up to \$50,000. This coverage extension only applies to rental lease agreements. This coverage is excess over any renter's liability insurance of the client.

**C. Non-Owned Watercraft**

**SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Subsection 2. Exclusions, Paragraph g. (2) is deleted in its entirety and replaced by the following:

- (2) A watercraft you do not own that is:
  - (a) Less than 58 feet long; and
  - (b) Not being used to carry persons or property for a charge;

This provision applies to any person, who with your consent, either uses or is responsible for the use of a watercraft. This insurance is excess over any other valid and collectible insurance available to the insured whether primary, excess or contingent.

**D. Damage to Property You Own, Rent or Occupy**

**SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE**

**LIABILITY, Subsection 2. Exclusions, Paragraph j. Damage to Property, Item (1)** is deleted in its entirety and replaced with the following:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property, unless the damage to property is caused by your client, up to a \$30,000 limit. A client is defined as a person under your direct care and supervision.

**E. Damage to Premises Rented to You**

1. If damage by fire to premises rented to you is not otherwise excluded from this Coverage Part, the word "fire" is changed to "fire, lightning, explosion, smoke, or leakage from automatic fire protective systems" where it appears in:

- a. The last paragraph of **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Subsection 2. Exclusions**; is deleted in its entirety and replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **SECTION III – LIMITS OF INSURANCE**.

- b. **SECTION III – LIMITS OF INSURANCE, Paragraph 6.** is deleted in its entirety and replaced by the following:

Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems while rented to you or temporarily occupied by you with permission of the owner.

- c. **SECTION V – DEFINITIONS, Paragraph 9.a.,** is deleted in its entirety and replaced by the following:

A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

2. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Subsection 4. Other Insurance, Paragraph b. Excess Insurance, (1) (a) (II)** is deleted in its entirety and replaced by the following:

That is insurance for fire, lightning, explosion, smoke, or leakage from automatic fire protective systems for premises rented to you or temporarily occupied by you with permission of the owner;

3. The Damage To Premises Rented To You Limit section of the Declarations is amended to the greater of:

- a. \$1,000,000; or
- b. The amount shown in the Declarations as the Damage to Premises Rented to You Limit.

This is the most we will pay for all damage proximately caused by the same event, whether such damage results from fire, lightning, explosion, smoke, or leaks from automatic fire protective systems or any combination thereof.

**F. HIPAA**

**SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY,** is amended as follows:

1. Paragraph 1. **Insuring Agreement** is amended to include the following:

We will pay those sums that the insured becomes legally obligated to pay as damages because of a "violation(s)" of the Health Insurance Portability and Accountability Act (HIPAA). We have the right and the duty to defend the insured against any "suit," "investigation," or "civil proceeding" seeking these damages. However, we will have no duty to defend the insured against any "suit" seeking damages, "investigation," or "civil proceeding" to which this insurance does not apply.

2. Paragraph 2. **Exclusions** is amended to include the following additional exclusions:

This insurance does not apply to:

a. **Intentional, Willful, or Deliberate Violations**

Any willful, intentional, or deliberate "violation(s)" by any insured.

b. **Criminal Acts**

Any "violation" which results in any criminal penalties under the HIPAA.

c. **Other Remedies**

Any remedy other than monetary damages for penalties assessed.

d. **Compliance Reviews or Audits**

Any compliance reviews by the Department of Health and Human Services.

3. **SECTION V – DEFINITIONS** is amended to include the following additional definitions:

- a. "Civil proceeding" means an action by the Department of Health and Human Services (HHS) arising out of "violations."
- b. "Investigation" means an examination of an actual or alleged "violation(s)" by HHS. However, "investigation" does not include a Compliance Review.
- c. "Violation" means the actual or alleged failure to comply with the regulations included in the HIPAA.

**G. Medical Payments – Limit Increased to \$20,000, Extended Reporting Period**

If **COVERAGE C MEDICAL PAYMENTS** is not otherwise excluded from this Coverage Part:

1. The Medical Expense Limit is changed subject to all of the terms of **SECTION III - LIMITS OF INSURANCE** to the greater of:
  - a. \$20,000; or
  - b. The Medical Expense Limit shown in the Declarations of this Coverage Part.
2. **SECTION I – COVERAGE, COVERAGE C MEDICAL PAYMENTS, Subsection 1. Insuring Agreement, a. (3) (b)** is deleted in its entirety and replaced by the following:
  - (b) The expenses are incurred and reported to us within three years of the date of the accident.

**H. Athletic Activities**

**SECTION I – COVERAGES, COVERAGE C MEDICAL PAYMENTS, Subsection 2. Exclusions, Paragraph e. Athletic Activities** is deleted in its entirety and replaced with the following:

**e. Athletic Activities**

To a person injured while taking part in athletics.

**I. Supplementary Payments**

**SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS - COVERAGE A AND B** are amended as follows:

1. **b.** is deleted in its entirety and replaced by the following:
  1. **b.** Up to \$5000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these.
- 1.**d.** is deleted in its entirety and replaced by the following:
  1. **d.** All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$1,000 a day because of time off from work.

**J. Employee Indemnification Defense Coverage**

**SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** the following is added:

We will pay, on your behalf, defense costs incurred by an "employee" in a criminal proceeding occurring in the course of employment.

The most we will pay for any "employee" who is alleged to be directly involved in a criminal proceeding is \$25,000 regardless of the numbers of "employees," claims or "suits" brought or persons or organizations making claims or bringing "suits."

**K. Key and Lock Replacement – Janitorial Services Client Coverage**

**SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended to include the following:

We will pay for the cost to replace keys and locks at the "clients" premises due to theft or other loss to keys entrusted to you by your "client," up to a \$10,000 limit per occurrence and \$10,000 policy aggregate.

We will not pay for loss or damage resulting from theft or any other dishonest or criminal act that you or any of your partners, members, officers, "employees", "managers", directors, trustees, authorized representatives or any one to whom you entrust the keys of a "client" for any purpose commit, whether acting alone or in collusion with other persons.

The following, when used on this coverage, are defined as follows:

a. "Client" means an individual, company or organization with whom you have a written contract or work order for your services for a described premises and have billed for your services.

b. "Employee" means:

(1) Any natural person:

(a) While in your service or for 30 days after termination of service;

(b) Who you compensate directly by salary, wages or commissions; and

(c) Who you have the right to direct and control while performing services for you; or

(2) Any natural person who is furnished temporarily to you:

(a) To substitute for a permanent "employee" as defined in Paragraph (1) above, who is on leave; or

(b) To meet seasonal or short-term workload conditions;

while that person is subject to your direction and control and performing services for you.

(3) "Employee" does not mean:

(a) Any agent, broker, person leased to you by a labor leasing firm, factor, commission merchant, consignee, independent contractor or representative of the same general character; or

(b) Any "manager," director or trustee except while performing acts coming within the scope of the usual duties of an "employee."

c. "Manager" means a person serving in a directorial capacity for a limited liability company.

**L. Additional Insureds**

**SECTION II – WHO IS AN INSURED** is amended as follows:

1. If coverage for newly acquired or formed organizations is not otherwise excluded from this

Coverage Part, Paragraph 3.a. is deleted in its entirety and replaced by the following:

- a. Coverage under this provision is afforded until the end of the policy period.
2. Each of the following is also an insured:
- a. **Medical Directors and Administrators** – Your medical directors and administrators, but only while acting within the scope of and during the course of their duties as such. Such duties do not include the furnishing or failure to furnish professional services of any physician or psychiatrist in the treatment of a patient.
  - b. **Managers and Supervisors** – Your managers and supervisors are also insureds, but only with respect to their duties as your managers and supervisors. Managers and supervisors who are your “employees” are also insureds for “bodily injury” to a co-“employee” while in the course of his or her employment by you or performing duties related to the conduct of your business.

This provision does not change Item 2.a.(1)(a) as it applies to managers of a limited liability company.

- c. **Broadened Named Insured** – Any organization and subsidiary thereof which you control and actively manage on the effective date of this Coverage Part. However, coverage does not apply to any organization or subsidiary not named in the Declarations as Named Insured, if they are also insured under another similar policy, but for its termination or the exhaustion of its limits of insurance.
- d. **Funding Source** – Any person or organization with respect to their liability arising out of:
  - (1) Their financial control of you; or
  - (2) Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

- e. **Home Care Providers** – At the first Named Insured's option, any person or organization under your direct supervision and control while providing for you private home respite or foster home care for the developmentally disabled.
- f. **Managers, Landlords, or Lessors of Premises** – Any person or organization with respect to their liability arising out of the ownership, maintenance or use of that part of the premises leased or rented to you subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any “occurrence” which takes place after you cease to be a tenant in that premises; or
  - (2) Structural alterations, new construction or demolition operations performed by or on behalf of that person or organization.
- g. **Lessor of Leased Equipment – Automatic Status When Required in Lease Agreement With You** – Any person or organization from whom you lease equipment when you and such person or organization have agreed in writing in a contract or agreement that such person or organization is to be added as an additional insured on your policy. Such person or

organization is an insured only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

- h. Grantors of Permits** – Any state or political subdivision granting you a permit in connection with your premises subject to the following additional provision:
- (1) This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with the premises you own, rent or control and to which this insurance applies:
    - (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures;
    - (b) The construction, erection, or removal of elevators; or
    - (c) The ownership, maintenance, or use of any elevators covered by this insurance.
- i. Vendors** – Only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:
- (1) The insurance afforded the vendor does not apply to:
    - (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
    - (b) Any express warranty unauthorized by you;
    - (c) Any physical or chemical change in the product made intentionally by the vendor;
    - (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
    - (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
    - (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;



- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
  - (i) The exceptions contained in Sub-paragraphs (d) or (f); or
  - (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- (2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing.
- J. **Franchisor** – Any person or organization with respect to their liability as the grantor of a franchise to you.
- K. **As Required by Contract** – Any person or organization where required by a written contract executed prior to the occurrence of a loss. Such person or organization is an additional insured for "bodily injury," "property damage" or "personal and advertising injury" but only for liability arising out of the negligence of the named insured. The limits of insurance applicable to these additional insureds are the lesser of the policy limits or those limits specified in a contract or agreement. These limits are included within and not in addition to the limits of insurance shown in the Declarations
- I. **Owners, Lessees or Contractors** – Any person or organization, but only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by:
  - (1) Your acts or omissions; or
  - (2) The acts or omissions of those acting on your behalf;in the performance of your ongoing operations for the additional insured when required by a contract.

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

**m. State or Political Subdivisions** – Any state or political subdivision as required, subject to the following provisions:

- (1) This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit, and is required by contract.
- (2) This insurance does not apply to:
  - (a) "Bodily injury," "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
  - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard."

**M. Duties in the Event of Occurrence, Claim or Suit**

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph 2.** is amended as follows:

**a.** is amended to include:

This condition applies only when the "occurrence" or offense is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership; or
- (3) An executive officer or insurance manager, if you are a corporation.

**b.** is amended to include:

This condition will not be considered breached unless the breach occurs after such claim or "suit" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership; or
- (3) An executive officer or insurance manager, if you are a corporation.

**N. Unintentional Failure To Disclose Hazards**

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 6. Representations** is amended to include the following:

It is agreed that, based on our reliance on your representations as to existing hazards, if you should unintentionally fail to disclose all such hazards prior to the beginning of the policy period of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

**O. Transfer of Rights of Recovery Against Others To Us**

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 8. Transfer of Rights of**

**Recovery Against Others To Us** is deleted in its entirety and replaced by the following:

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

Therefore, the insured can waive the insurer's rights of recovery prior to the occurrence of a loss, provided the waiver is made in a written contract.

**P. Liberalization**

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, is amended to include the following:

If we revise this endorsement to provide more coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.

**Q. Bodily Injury – Mental Anguish**

**SECTION V – DEFINITIONS**, Paragraph 3. Is deleted in its entirety and replaced by the following:

"Bodily injury" means:

- a. Bodily injury, sickness or disease sustained by a person, and includes mental anguish resulting from any of these; and
- b. Except for mental anguish, includes death resulting from the foregoing (Item a. above) at any time.

**R. Personal and Advertising Injury – Abuse of Process, Discrimination**

If **COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY COVERAGE** is not otherwise excluded from this Coverage Part, the definition of "personal and advertising injury" is amended as follows:

1. **SECTION V – DEFINITIONS**, Paragraph 14.b. is deleted in its entirety and replaced by the following:

- b. Malicious prosecution or abuse of process;

2. **SECTION V – DEFINITIONS**, Paragraph 14. is amended by adding the following:

Discrimination based on race, color, religion, sex, age or national origin, except when:

- a. Done intentionally by or at the direction of, or with the knowledge or consent of:
  - (1) Any insured; or
  - (2) Any executive officer, director, stockholder, partner or member of the insured;
- b. Directly or indirectly related to the employment, former or prospective employment, termination of employment, or application for employment of any person or persons by an insured;

- c. Directly or indirectly related to the sale, rental, lease or sublease or prospective sales, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any insured; or
- d. Insurance for such discrimination is prohibited by or held in violation of law, public policy, legislation, court decision or administrative ruling.

The above does not apply to fines or penalties imposed because of discrimination.

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