

**Exhibit A – Joint Forensic Unit (JFU) Standard Fee Contract  
RFQ #0734-293 Psychological Evaluation Services  
Special Commitment Center (SCC)  
Sample Contract**

	<b>PERSONAL SERVICE CONTRACT Psychological Evaluation Services Joint Forensic Unit (JFU) Standard Fee Contract</b>		DSHS Contract Number:  Resulting From Procurement Number:
	This Contract is between the state of Washington Department of Social and Health Services (DSHS) and the Contractor identified below, and is governed by chapter 39.29 RCW.		Program Contract Number:  Contractor Contract Number:
CONTRACTOR NAME		CONTRACTOR doing business as (DBA)	
CONTRACTOR ADDRESS		WASHINGTON UNIFORM BUSINESS IDENTIFIER (UBI)	DSHS INDEX NUMBER
CONTRACTOR CONTACT	CONTRACTOR TELEPHONE	CONTRACTOR FAX	CONTRACTOR E-MAIL ADDRESS
DSHS ADMINISTRATION	DSHS DIVISION	DSHS CONTRACT CODE	
DSHS CONTACT NAME AND TITLE		DSHS CONTACT ADDRESS	
DSHS CONTACT TELEPHONE	DSHS CONTACT FAX	DSHS CONTACT E-MAIL ADDRESS	
IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT?		CFDA NUMBER(S)	
CONTRACT START DATE	CONTRACT END DATE	CONTRACT MAXIMUM AMOUNT	
<b>EXHIBITS. The following Exhibits are attached and are incorporated into this Contract by reference:</b> <input checked="" type="checkbox"/> Exhibits (specify): <b>Exhibit A – Data Security Requirements</b> <input type="checkbox"/> No Exhibits.			
The terms and conditions of this Contract are an integration and representation of the final, entire and exclusive understanding between the parties superseding and merging all previous agreements, writings, and communications, oral or otherwise, regarding the subject matter of this Contract. The parties signing below represent that they have read and understand this Contract, and have the authority to execute this Contract. This Contract shall be binding on DSHS only upon signature by DSHS.			
CONTRACTOR SIGNATURE		PRINTED NAME AND TITLE	DATE SIGNED
DSHS SIGNATURE		PRINTED NAME AND TITLE  Julia M. Weese, Contracts Consultant DSHS, Central Contract Services	DATE SIGNED

## DSHS General Terms and Conditions

1. **Definitions.** The words and phrases listed below, as used in this Contract, shall each have the following definitions:
- a. "Central Contract Services" means the DSHS central headquarters contracting office, or successor section or office.
  - b. "Confidential Information" means information that is exempt from disclosure to the public or other unauthorized persons under RCW 42.56 or other federal or state laws. Confidential Information includes, but is not limited to, Personal Information.
  - c. "Contract" or "Agreement" means the entire written agreement between DSHS and the Contractor, including any Exhibits, documents, or materials incorporated by reference. The parties may execute this contract in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
  - d. "Contracts Administrator" means the manager, or successor, of Central Contract Services or successor section or office.
  - e. "Contractor" means the individual or entity performing services pursuant to this Contract and includes the Contractor's owners, members, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Contract. For purposes of any permitted Subcontract, "Contractor" includes any Subcontractor and its owners, members, officers, directors, partners, employees, and/or agents.
  - f. "Debarment" means an action taken by a Federal agency or official to exclude a person or business entity from participating in transactions involving certain federal funds.
  - g. "DSHS" or the "Department" means the state of Washington Department of Social and Health Services and its employees and authorized agents.
  - h. "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 128 bits.
  - i. "Hardened Password" means a string of at least eight characters containing at least one alphabetic character, at least one number and at least one special character such as an asterisk, ampersand or exclamation point.
  - j. "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.
  - k. "Physically Secure" means that access is restricted through physical means to authorized individuals only.
  - l. "Program Agreement" means an agreement between the Contractor and DSHS containing special terms and conditions, including a statement of work to be performed by the Contractor and payment to be made by DSHS.

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- m. "RCW" means the Revised Code of Washington. All references in this Contract to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at <http://apps.leg.wa.gov/rcw/>.
  - n. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
  - o. "Secured Area" means an area to which only authorized representatives of the entity possessing the Confidential Information have access. Secured Areas may include buildings, rooms or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.
  - p. "Subcontract" means any separate agreement or contract between the Contractor 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 Contract.
  - q. "Tracking" means a record keeping system that identifies when the sender begins delivery of Confidential Information to the authorized and intended recipient, and when the sender receives confirmation of delivery from the authorized and intended recipient of Confidential Information.
  - r. "Trusted Systems" include only the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service ("USPS") first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.
  - s. "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.
  - t. "WAC" means the Washington Administrative Code. All references in this Contract to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at <http://apps.leg.wa.gov/wac/>.
2. **Amendment.** This Contract may only be modified by a written amendment signed by both parties. Only personnel authorized to bind each of the parties may sign an amendment.
3. **Assignment.** The Contractor shall not assign this Contract or any Program Agreement to a third party without the prior written consent of DSHS.
4. **Billing Limitations.**
- a. DSHS shall pay the Contractor only for authorized services provided in accordance with this Contract.
  - b. DSHS shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed.
  - c. The Contractor shall not bill and DSHS shall not pay for services performed under this Contract, if the Contractor has charged or will charge another agency of the state of Washington or any other party for the same services.

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5. **Compliance with Applicable Law.** At all times during the term of this Contract, the Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to, nondiscrimination laws and regulations.
6. **Confidentiality.**
- a. The Contractor shall not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of this Contract for any purpose that is not directly connected with Contractor's performance of the services contemplated hereunder, except:
- (1) as provided by law; or,
  - (2) in the case of Personal Information, with the prior written consent of the person or personal representative of the person who is the subject of the Personal Information.
- b. The Contractor shall protect and maintain all Confidential Information gained by reason of this Contract against unauthorized use, access, disclosure, modification or loss. This duty requires the Contractor to employ reasonable security measures, which include restricting access to the Confidential Information by:
- (1) Allowing access only to staff that have an authorized business requirement to view the Confidential Information.
  - (2) Physically Securing any computers, documents, or other media containing the Confidential Information.
  - (3) Ensure the security of Confidential Information transmitted via fax (facsimile) by:
    - (a) Verifying the recipient phone number to prevent accidental transmittal of Confidential Information to unauthorized persons.
    - (b) Communicating with the intended recipient before transmission to ensure that the fax will be received only by an authorized person.
    - (c) Verifying after transmittal that the fax was received by the intended recipient.
  - (4) When transporting six (6) or more records containing Confidential Information, outside a Secure Area, do one or more of the following as appropriate:
    - (a) Use a Trusted System.
    - (b) Encrypt the Confidential Information, including:
      - i. Encrypting email and/or email attachments which contain the Confidential Information.
      - ii. Encrypting Confidential Information when it is stored on portable devices or media, including but not limited to laptop computers and flash memory devices.
- Note: If the DSHS Data Security Requirements Exhibit is attached to this contract, this item, 6.b.(4), is superseded by the language contained in the Exhibit.**
- (5) Send paper documents containing Confidential Information via a Trusted System.

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- (6) Following the requirements of the DSHS Data Security Requirements Exhibit, if attached to this contract.
- c. Upon request by DSHS, at the end of the Contract term, or when no longer needed, data shall be returned to DSHS or Contractor shall certify in writing that they employed a DSHS approved method to destroy the information. Contractor may obtain information regarding approved destruction methods from the DSHS contact identified on the cover page of this Contract.
  - d. Paper documents with Confidential Information may be recycled through a contracted firm, provided the contract with the recycler specifies that the confidentiality of information will be protected, and the information destroyed through the recycling process. Paper documents containing Confidential Information requiring special handling (e.g. protected health information) must be destroyed on-site through shredding, pulping, or incineration.
  - e. Notification of Compromise or Potential Compromise. The compromise or potential compromise of Confidential Information must be reported to the DSHS Contact designated on the contract within one (1) business day of discovery. Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.
7. **Debarment Certification.** The Contractor, by signature to this Contract, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions (Debarred). The Contractor also agrees to include the above requirement in any and all Subcontracts into which it enters. The Contractor shall immediately notify DSHS if, during the term of this Contract, Contractor becomes Debarred. DSHS may immediately terminate this Contract by providing Contractor written notice if Contractor becomes Debarred during the term hereof.
8. **Governing Law and Venue.** This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.
9. **Independent Contractor.** The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and his or her employees or agents performing under this Contract are not employees or agents of the Department. The Contractor, his or her employees, or agents performing under this Contract will not hold himself/herself out as, nor claim to be, an officer or employee of the Department by reason hereof, nor will the Contractor, his or her employees, or agent make any claim of right, privilege or benefit that would accrue to such officer or employee.
10. **Inspection.** The Contractor shall, at no cost, provide DSHS and the Office of the State Auditor with reasonable access to Contractor's place of business, Contractor's records, and DSHS client records, wherever located. These inspection rights are intended to allow DSHS and the Office of the State Auditor to monitor, audit, and evaluate the Contractor's performance and compliance with applicable laws, regulations, and these Contract terms. These inspection rights shall survive for six (6) years following this Contract's termination or expiration.
11. **Maintenance of Records.** The Contractor shall maintain records relating to this Contract and the performance of the services described herein. The records include, but are not limited to, accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. All records and other material relevant to this Contract shall be retained for six (6) years after expiration or termination of this Contract.

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Without agreeing that litigation or claims are legally authorized, if any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

12. **Order of Precedence.** In the event of any inconsistency or conflict between the General Terms and Conditions and the Special Terms and Conditions of this Contract or any Program Agreement, the inconsistency or conflict shall be resolved by giving precedence to these General Terms and Conditions. Terms or conditions that are more restrictive, specific, or particular than those contained in the General Terms and Conditions shall not be construed as being inconsistent or in conflict.
13. **Severability.** If any term or condition of this Contract is held invalid by any court, the remainder of the Contract remains valid and in full force and effect.
14. **Survivability.** The terms and conditions contained in this Contract or any Program Agreement which, by their sense and context, are intended to survive the expiration or termination of the particular agreement shall survive. Surviving terms include, but are not limited to: Billing Limitations; Confidentiality, Disputes; Indemnification and Hold Harmless, Inspection, Maintenance of Records, Notice of Overpayment, Ownership of Material, Termination for Default, Termination Procedure, and Treatment of Property.
15. **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, DSHS may immediately terminate this Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the termination notice.
16. **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 Contract. Only the DSHS Contracts Administrator or designee has the authority to waive any term or condition of this Contract on behalf of DSHS.

### Additional General Terms and Conditions – Personal Service Contracts:

17. **Advance Payment.** DSHS shall not make any payments in advance or anticipation of the delivery of services to be provided pursuant to this Contract.
18. **Construction.** The language in this Contract shall be interpreted as to its fair meaning and not strictly for or against any party. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Contract.
19. **Indemnification and Hold Harmless.**
  - a. The Contractor shall be responsible for and shall indemnify, defend, and hold DSHS harmless from any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines, of whatsoever kind of nature, arising out of or relating to a) the Contractor's or any Subcontractor's performance or failure to perform this Contract, or b) the acts or omissions of the Contractor or any Subcontractor.
  - b. The Contractor's duty to indemnify, defend, and hold DSHS harmless from any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines shall include DSHS' personnel-related costs, reasonable attorney's fees, court costs, and all related expenses.

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- c. The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.
- d. Nothing in this term shall be construed as a modification or limitation on the Contractor's obligation to procure insurance in accordance with this Contract or the scope of said insurance.

**20. Industrial Insurance Coverage.** The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

**21. Notice of Overpayment.** If the Contractor receives a vendor overpayment notice or a letter communicating the existence of an overpayment from DSHS, the Contractor may protest the overpayment determination by requesting an adjudicative proceeding. The Contractor's request for an adjudicative proceeding must:

- a. Be *received* by the Office of Financial Recovery (OFR) at Post Office Box 9501, Olympia, Washington 98507-9501, within twenty-eight (28) calendar days of service of the notice;
- b. Be sent by certified mail (return receipt) or other manner that proves OFR received the request;
- c. Include a statement as to why the Contractor thinks the notice is incorrect; and
- d. Include a copy of the overpayment notice.

Timely and complete requests will be scheduled for a formal hearing by the Office of Administrative Hearings. The Contractor may be offered a pre-hearing or alternative dispute resolution conference in an attempt to resolve the overpayment dispute prior to the hearing.

Failure to provide OFR with a written request for a hearing within twenty-eight (28) days of service of a vendor overpayment notice or other overpayment letter will result in an overpayment debt against the Contractor. DSHS may charge the Contractor interest and any costs associated with the collection of this overpayment. DSHS may collect an overpayment debt through lien, foreclosure, seizure and sale of the Contractor's real or personal property; order to withhold and deliver; or any other collection action available to DSHS to satisfy the overpayment debt.

**22. OFM Filing Requirement.** Under Chapter 39.29 RCW and/or ESSB 5460, certain Personal Service Contracts and amendments must be filed with the state of Washington Office of Financial Management (OFM). If this Contract must be filed, then it shall not be effective nor shall work commence or payment be made until reviewed or approved by OFM. In the event OFM fails to approve the contract or amendment, the contract or amendment shall be null and void.

**23. Subcontracting.** Except as otherwise provided in this Contract, the Contractor shall not Subcontract any of the contracted services without the prior written approval of DSHS. Contractor is responsible to ensure that all terms, conditions, assurances and certifications set forth in this Contract are included in any and all Subcontracts. Any failure of Contractor or its Subcontractors to perform the obligations of this Contract shall not discharge the Contractor from its obligations hereunder or diminish DSHS' rights or remedies available under this Contract.

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- 24. Termination for Convenience.** DSHS may terminate this Contract in whole or in part when it is in the best interest of DSHS by giving the Contractor at least thirty (30) calendar days' written notice.
- 25. Termination for Default.** The Contracts Administrator may immediately terminate this Contract for default, in whole or in part, by written notice to the Contractor if DSHS has a reasonable basis to believe that the Contractor has:
- Failed to meet or maintain any requirement for contracting with DSHS;
  - Failed to protect the health or safety of any DSHS client;
  - Failed to perform under, or otherwise breached, any term or condition of this Contract; and/or
  - Violated any applicable law or regulation.
  - If it is later determined that the Contractor was not in default, the termination shall be considered a termination for convenience.
- 26. Termination or Expiration Procedure.** The following terms and conditions apply upon Contract termination or expiration:
- The Contractor shall cease to perform any services required by this Contract as of the effective date of termination or expiration.
  - If the Contract is terminated, the Contractor shall comply with all instructions contained in the termination notice.
  - The Contractor shall immediately deliver to the DSHS contact named on page one of this Contract, or to his or her successor, all DSHS property in the Contractor's possession. The Contractor grants DSHS the right to enter upon the Contractor's premises for the sole purpose of recovering any DSHS property that the Contractor fails to return within ten (10) calendar days of the effective date of termination or expiration of this Contract. Upon failure to return DSHS property within ten (10) calendar days, the Contractor shall be charged with all reasonable costs of recovery, including transportation.
  - DSHS shall be liable only for payment required under the terms of this Contract for service rendered up to the effective date of termination or expiration.
  - DSHS may withhold a sum from the final payment to the Contractor that DSHS determines necessary to protect DSHS against loss or additional liability.
  - The rights and remedies provided to DSHS in this Section are in addition to any other rights and remedies provided at law, in equity, and/or under this Contract, including consequential and incidental damages.
- 27. Treatment of Property.** All property purchased or furnished by DSHS for use by the Contractor during this Contract term shall remain with DSHS. Title to all property purchased or furnished by the Contractor for which the Contractor is entitled to reimbursement by DSHS under this Contract shall pass to and vest in DSHS. The Contractor shall protect, maintain, and insure all DSHS property in its possession against loss or damage and shall return DSHS property to DSHS upon Contract termination or expiration.

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### 28. HIPAA Compliance.

#### a. Definitions.

- (1) "Business Associate" means the "Contractor", as used in this Contract and 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 client protected health information (PHI). Any reference to Business Associate in this Contract includes Business Associate's employees, agents, officers, subcontractors, third party contractors, volunteers, or directors.
- (2) "Covered Entity" means DSHS, a Covered Entity as defined in 45 CFR 160.103.
- (3) "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.
- (4) "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 162.103.
- (5) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as codified at 42 USCA 1320d-d8.
- (6) "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).
- (7) "Minimum Necessary" means the least amount of PHI necessary to accomplish the purpose for which the PHI is needed.
- (8) "Protected Health Information (PHI)" means 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 160.103. 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. 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).
- (9) "Use" includes the sharing, employment, application, utilization, examination, analysis, canonization or commingling of PHI with other information.

b. Compliance. Business Associate shall perform all Contract duties, activities and tasks in compliance with HIPAA and its attendant regulations as promulgated by the U.S. Department of Health and Human Services, the Center for Medicare and Medicaid Services, the Office of the Inspector General, and the Office of Civil Rights.

c. Use and Disclosure of PHI. Business Associate is limited to the following permitted and required uses or disclosures of DSHS client PHI:

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- (1) Duty to Protect DSHS Client PHI. Business Associate shall protect PHI from, and shall establish appropriate safeguards to prevent, the unauthorized disclosure of PHI in accordance with the terms and conditions of this Contract and state and federal law, including any regulations governing the security of PHI and the transmission, storage or maintenance of electronic data that contains PHI, for as long as the PHI is within its possession and control, even after the termination or expiration of this Contract.
- (2) Return of DSHS Client PHI. Business Associate shall, within ten (10) working days of termination or expiration of this Contract, in accordance with Contract Termination and Expiration Procedures, and at the discretion of Covered Entity, either return or destroy all PHI, including PHI in possession of third parties under contract to Business Associate. If return or destruction is infeasible, Business Associate shall protect such PHI and limit its further use and disclosure to those purposes that make return or destruction infeasible for as long as the PHI is within the Business Associate's possession and control, even after the termination or expiration of this Contract.
- (3) Minimum Necessary Standard. Business Associate shall apply the HIPAA minimum necessary standard to any use or disclosure of DSHS client PHI necessary to achieve the purposes of this Contract. See, 45 CFR 164.514 (d)(2) through (d)(5).
- (4) Disclosure as Part of the Provision of Services. Business Associate shall only use or disclose DSHS client PHI as required to perform the services specified in this Contract or as required by law, and shall not use or disclose such PHI in any manner inconsistent with the use and disclosure restrictions placed on the Covered Entity by HIPAA.
- (5) Impermissible Use or Disclosure of DSHS client PHI. Business Associate shall report to DSHS in writing all uses or disclosures of PHI not provided for by this Contract within one (1) working day of becoming aware of the unauthorized use or disclosure of the PHI. Upon request by DSHS, Business Associate shall mitigate, to the extent practicable, any harmful effect resulting from the impermissible use or disclosure.
- (6) 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 termination is not feasible, DSHS will report the problem to the Secretary of the federal Department of Health and Human Services (Secretary).
- (7) DSHS Notice of Requests for Disclosure. DSHS will notify Business Associate when DSHS client PHI is requested from DSHS that has been previously provided to Business Associate by DSHS. The parties will jointly determine whether Business Associate has received a duplicate request or if Business Associate has the original or sole copy of the PHI.
- (8) Consent to Audit. Business Associate shall give reasonable access to DSHS client PHI, 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 and/or to DSHS for use in determining DSHS' compliance with HIPAA privacy requirements.

### d. Individual Rights

- (1) Accounting of Disclosures

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- (a) Business Associate shall document all disclosures of DSHS client PHI and information related to such disclosures.
  - (b) Within ten (10) working 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 DSHS client PHI. See, 45 C.F.R. 164.504 and 164.528.
  - (c) At the request of DSHS, Business Associate shall respond, in a timely manner and in accordance with HIPAA, to requests by Individuals for an accounting of disclosures of PHI.
  - (d) If any Individual asks Business Associate for an accounting of disclosures of DSHS client PHI, or for access to or amendment of PHI in a Designated Record Set, Business Associate shall within ten (10) working days forward the request to DSHS for response.
  - (e) Business Associate's 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 except for disclosures that occurred prior to the HIPAA compliance date for the Covered Entity.
- (2) Amendment. 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).
- e. Third Party Agreements. Business Associate shall enter into a written contract, that contains the same terms, restrictions, and conditions as the HIPAA Compliance provision in this Contract, with any agent, subcontractor, independent contractor, or other third party that has access to the DSHS client PHI accessible to Business Associate under the terms of this Contract.

## Special Terms and Conditions

1. **Definitions Specific to Special Terms.** The words and phrases listed below, as used in this Contract, shall each have the following definitions:
- a. "Department of Corrections" or "DOC" means the state of Washington Department of Corrections and its employees and authorized agents.
  - b. "End of Sentence Review Committee (ESRC)" means the committee comprised of representatives of Washington State agencies who have jurisdiction over the release of sex offenders or are significantly impacted by their release.
  - c. "ESR Sexually Violent Predator Subcommittee" or "ESR SVP Subcommittee" means the ESRC subcommittee which includes at least one attorney from the King County Prosecutor's Office and one attorney from the Office of the Attorney General. The Subcommittee is responsible for reviewing available documents and determining whether a case appears to meet criteria for civil commitment.
  - d. "Forensic Consultation" means services conducted with attorneys or department employees for the purpose of assisting with any legal process, to include filing decisions, preparation for testimony, or other activities related to the legal process not otherwise specified in this Contract, whether conducted in the expert's office or other locations.
  - e. "Joint Forensic Unit" or "JFU" means the unit established by the Department of Corrections and the Department of Social and Health Services to create a pre-selected group of nationwide expert Psychologists/Psychiatrists uniquely qualified to conduct sexually violent predator (SVP) evaluations. The primary purpose of the JFU is to facilitate the efficient production of evaluations that provide clear guidance to the trial courts that must decide whether a person meets criteria for indefinite civil commitment under Washington's Community Protection Act. The JFU also enables centralization of processing records and a fair method of assigning forensic psychological evaluations on behalf of various agencies that refer sex offenders for consideration of civil commitment.
  - f. "JFU Evaluator" or "Evaluator" means a Psychologist or Psychiatrist contracted by DSHS to conduct sexually violent predator evaluations to determine whether a person meets criteria for indefinite civil commitment at the State of Washington Special Commitment Center pursuant to Chapter 71.09 RCW, Sexually Violent Predators.
  - g. "JFU Program Coordinator" means the person designated by the JFU to be the primary contact for all pre-filing matters (respondent is usually in prison), manage the pre-filing evaluation process, serve as a member of the ESR SVP Subcommittee, initiate and assign cases to JFU Evaluators, oversee quality control of evaluation reports, and communicate with prosecutors regarding evaluation and trial deadlines. For the purposes of this Contract, the JFU Program Coordinator shall be a person employed by the State of Washington Department of Corrections.
  - h. "Psychiatrist," per WAC 388-880-010, means a person licensed as a physician under chapters 18.71 and 18.57 RCW. In addition the person shall: (a) have completed three years of graduate training in a psychiatry program approved by the American Medical Association or the American Osteopathic Association; and (b) be certified, or eligible to be certified, by the American Board of Psychiatry and Neurology.
  - i. "Psychologist", per WAC 388-880-010, means a person licensed as a doctoral-level psychologist in this state, or licensed or certified in another state, in accordance with chapter 18.83.020 RCW.

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- j. "Recent Overt Act," per RCW 71.09.020(10), means any act or threat that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act.
- k. "Sexually Violent Predator" or "SVP" means, per RCW 71.09.020, any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.
- l. "Special Commitment Center" or "SCC" means the secure commitment facility for the care, control and treatment of Sexually Violent Predators, located on McNeil Island in Washington State.
- m. "Special Commitment Center Forensic services manager" or "SCC forensic services manager" means the person employed by SCC who serves as the primary facility contact once an individual is detained at SCC, manages post-filing evaluation matters, oversees quality control of evaluation reports, and communicates with prosecutors regarding evaluations and trial deadlines.

**2. Purpose.** The purpose of this Contract is for the Contractor to evaluate sex offenders under consideration for involuntary civil commitment as Sexually Violent Predators (SVPs) pursuant to Chapter 71.09 RCW, Sexually Violent Predators; conduct relevant psychological tests; and provide expert testimony as requested, as further described below in Section 3, Statement of Work.

**3. Statement of Work.** The Contractor shall provide the services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

**a. Qualifications.**

- (1) The Contractor shall be a licensed Psychologist, with license issued by the State of Washington.
- (2) The Contractor shall comply with all other applicable local, state, and federal licensing and accreditation requirements necessary in the performance of this Contract. The Contractor shall submit copies of all relevant licenses/certifications to the SCC forensic services manager or authorized designee prior to providing services.

**b. Services to be Provided.** The Contractor shall provide the services and otherwise do all things necessary for or incidental to the performance of work, as set forth below.

**(1) Forensic Evaluations.**

- (a) The Contractor shall evaluate individuals against whom involuntary civil commitment proceedings or release decisions are being brought or contemplated to determine whether these individuals meet the definition of a sexually violent predator and the criteria for involuntary civil commitment under Chapter 71.09 RCW.
- (b) Evaluations shall consist of initial and pre-trial evaluations and be based on the requirements and procedures set forth in WAC 388-880, Special commitment – sexually violent predators, and in the Joint Forensic Unit Evaluator Handbook. The Contractor is expected to maintain a neutral position throughout the process and be open to reconsideration of a conclusion based on new information.
- (c) Assignment of evaluations is described below in Statement of Work, Section 3.c, Evaluation Assignment and Scheduling.

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### (2) Reports and Supporting Documentation.

(a) All completed evaluations conducted on sex offenders, as assigned to the Contractor, shall be submitted in the form of a declaration or certification pursuant to RCW 9A.72.085 and consistent with WAC 388-880-036, Pre-trial evaluation – reporting, which includes:

- A description of the nature of the evaluation.
- A list of all information reviewed.
- A diagnosis of the mental condition of the person.
- A determination of whether the person suffers from a mental abnormality or personality disorder.
- An opinion as to whether the person meets the definition of a sexually violent predator.

(b) The Contractor shall submit a copy of the completed evaluation report(s) and related documentation to the JFU Program Coordinator and the SCC forensic services manager. Each report shall be signed and accompanied by all Contractor notes, raw data collected and recorded, and worksheets for all actuarials included in the report. The report and related documentation must be submitted via CD-ROM and in hard copy, as described in the JFU Forensic Evaluator Handbook.

(3) **Testimony.** The Contractor shall provide court testimony or depositions in support of the reported findings as requested.

### c. Initial (Pre-Probable Cause) Evaluation Assignment and Scheduling.

(1) Contractor services shall be assigned and scheduled by the JFU Program Coordinator, an employee of the Department of Corrections (DOC). Assignments typically occur through the use of a rotating assignment list(s), with the Contractor being contacted by the JFU Program Coordinator. The JFU Program Coordinator may deviate from the rotation list when appropriate to meet the requirements of a given case. The Contractor shall have three (3) business days to contact the JFU Program Coordinator to either accept or reject the assignment.

(2) The Contractor's failure to do either will be considered a rejection of the assignment, and the Contractor may be moved to the bottom of the rotation list. Any Contractor who rejects three (3) consecutive assignments, for reasons other than an approved conflict of interest, may be removed from the rotation list. If the Contractor rejects the work assignment due to a conflict of interest and DSHS has approved allegation of such conflict in writing, the Contractor will not be moved to the bottom of the rotation list.

(3) Each SVP work assignment given to the Contractor by the JFU Program Coordinator shall contain the following information:

- (a) The date of assignment;
- (b) The assignment due date;
- (c) The name and history of the individual to be evaluated;
- (d) The location and facility at which the individual is confined;

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- (e) A designated contact person for making interview arrangements or verifying the individual's behavior while incarcerated or in the community;
  - (f) The agency with jurisdiction over the offender, such as the Department of Corrections or Juvenile Rehabilitation Administration; Recent Overt Act Referrals may be made after a person has completed supervision and/or is no longer under the jurisdiction of a Washington state agency; and
  - (g) The civil commitment prosecuting agency involved with the case.
- d. **Training.** The Contractor, at his or her own expense, shall attend up to two (2) days JFU evaluator training sponsored by SCC once every two (2) years, to include the following:
- (1) Updates on evaluation techniques for SVPs.
  - (2) Updates on related State of Washington RCWs and WACs.
  - (3) Updates regarding ethics or legal issues.
  - (4) Any and all billing issues.
  - (5) Other topics and issues determined appropriate by the JFU forensic services manager or authorized designee.

Training shall be at the SCC facility located in Steilacoom, WA; the SCC facility located on McNeil Island, or at a facility determined appropriate by the SCC forensic services manager.

4. **Consideration.** Consideration payable to the Contractor for satisfactory performance of services provided under this Contract including any and all expenses specified as allowable shall be based on the following rates:
- a. **Evaluation Activities.** Client interviews, document review, report preparation, pre-trial discovery activities (including additional document review, compelled interviews, and declarations), and Forensic Consultation, etc: \$200 per hour or a fraction thereof, as described in Section 5.d, Rates, for up to a maximum amount of \$10,000 for each initial, pre-probable cause evaluation. Travel time described below in Subsection 4.c. and allowable travel expenses listed in Subsection 4.d. incurred to conduct an evaluation shall be counted toward the \$10,000 maximum.
  - b. **Court Testimony or Depositions:** \$250 per hour or a fraction thereof, as described in Section 5.d., Rates.
  - c. **Travel Time.** \$150 per hour, or fraction thereof, as described in Section 5.d., Rates, for travel to and from Washington State and for travel to and from the location within Washington State at which evaluation, testimony, or deposition activities are to be conducted. As described above in Subsection 4.a., Evaluation Activities, time spent traveling to conduct initial, pre-probable cause evaluations shall be counted toward the maximum amount allowed of up to \$10,000 for each evaluation.
  - d. **Travel Expenses.** Travel related to evaluation, testimony, and deposition activities shall be reimbursed according to the State of Washington guidelines and allowable rates. This includes the following:

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- (1) Round-trip airfare at coach or economy rates.
- (2) Car rental at economy or mid-sized car rates and related expenses (such as gas, etc.)
- (3) Lodging and meals actually consumed at the state of Washington Per Diem Rates in effect at the time of service for the county in which services are provided.

As described above in Subsection 4.a., Evaluation Activities, travel expenses incurred while conducting initial, pre-probable cause evaluations shall be counted toward the maximum amount allowed of up to \$10,000 for each evaluation.

e. **Other:**

- (1) **Polygraph and Other Expert Examination or Consultation.** The Contractor may be reimbursed for the cost of polygraph and other expert examinations or consultation, but **only when written pre-authorization has been provided to the Contractor** by the SCC forensic services manager **prior to** the occurrence of these services. If pre-approved by the SCC forensic services manager, this shall be itemized on the Contractor's invoice with appropriate supporting documentation (i.e. a copy of the written pre-approval and proof the cost was incurred, such as invoice(s) and payment receipts received from the polygraph providers).
- (2) **Reserved Time.** When evaluations and other forensic services are to be performed away from the Contractor's office/regular place of business, services shall be scheduled in advance. DSHS or DOC shall initially reserve the Contractor's time in half-day increments (e.g. 8:00 am – Noon and/or 1:00 pm – 5:00 pm), at a minimum of four (4) hours. Additional time may be reserved in advance in either half-day or one-hour increments.
- (3) **Extended, Non-reserved Time.** If it becomes necessary to exceed the amount of time initially reserved without advance notice by DSHS or DOC, the Contractor shall be paid for no less than four (4) hours, regardless of the length of time needed to complete the services.

f. **Activities and Expenses Not Reimbursed.** The Contractor shall not be reimbursed for the following activities and expenses:

- (1) Time spent conducting research, e.g. review of literature on topics related to SVPs, etc. However, under certain circumstances, payment for literature review may be pre-approved in writing by the SCC forensic services manager.
- (2) Cost of office supplies, such as binders, paper, toner for printers or copiers, CD-ROMs, computer disks, etc.
- (3) Copying and printing costs.
- (4) Travel expenses, travel time, or time spent attending the SCC sponsored JFU training, described above in Statement of Work Section 3.d., Training. Travel expenses include, but are not limited to, air fare, lodging, meals, car rental, etc.

g. **Exceptions.** Requests for exceptions to the payable costs and reimbursable expenses described above in Subsections 4.d. – 4.f. (resulting from extraordinary or unanticipated circumstances) shall be considered on a case-by-case basis and must be approved by the SCC forensic services manager.

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- h. **Cancellations.** Because a scheduled assignment or request for testimony/deposition is reserved for one client or service, DSHS shall make a reasonable effort to provide the Contractor with advance notice of cancellation. Unless alternate work\* can be assigned to the Contractor or the Contractor has other work\*\* outside of this Contract that he/she can conduct, cancellations shall be reimbursed as follows:

Amount of Contractor Time Initially Reserved	Notice of Cancellation Provided to the Contractor (Number of full business days)	Amount Payable to Contractor for Cancellations
3 hours or less reserved	<ul style="list-style-type: none"> <li>• Less than 2 business days</li> </ul>	Payable at 100%
Greater than 3 but less than 6 hours reserved	<ul style="list-style-type: none"> <li>• 4 business days</li> <li>• 2 – 3 business days</li> <li>• Less than 2 business days</li> </ul>	No payment due  Payable at 50%  Payable at 100%
6 or more hours reserved	<ul style="list-style-type: none"> <li>• 5 business days</li> <li>• 2 – 4 business days</li> <li>• Less than 2 business days</li> </ul>	No payment due  Payable at 50%  Payable at 100%
<p><b>Note:</b> Reimbursement for cancellations shall not include travel time unless this was actually incurred.</p>		

\* Alternate Services Requested by DSHS:

If evaluation assignments or requests for testimony/depositions are cancelled, DSHS shall have the option to request that the Contractor use the time reserved to perform other services related to JFU evaluations. Alternative services requested by DSHS shall be payable at the same rate and allotted hours as the initial work assigned, even if services are performed in less time.

\*\* Other Alternate Work (as determined by the Contractor):

If DSHS does not request alternate services, the Contractor shall be expected whenever possible to perform services for other clients he/she may have outside of this Contract. In this case, any billing sent to DSHS shall reflect only the time during which the Contractor was unable to perform services for other clients.

### 5. Billing and Payment.

- a. **Invoice System.** The Contractor 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. All invoices shall describe and document to DSHS' satisfaction a description of the specific service(s) performed (with dates and number of hours spent on each service), hourly rates, fees, and allowable travel expenses.

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Receipts for travel expenses must also be attached to the invoice. Invoices shall be submitted as follows:

- (1) **Pre-filing stage.** Invoices for services provided up to the time an SVP petition is filed with the court shall be submitted directly to the SCC forensic services manager or authorized designee by the Contractor at least but not more often than monthly. Each case shall be billed on a separate invoice.
  - (2) **Post-filing stage.** Billing for services provided after an SVP petition is filed with the court up to the end of the SVP commitment trial shall be submitted directly to the SCC Forensic services manager or authorized designee at least but not more often than monthly.
  - (3) **Alternate Service Requests.** (For cancellation of time reserved for pre-scheduled assignments) Invoices that include charges for any alternative services performed (requested by DSHS) shall also specify the amount of time originally reserved for the pre-scheduled assignment and the amount of time in which the alternate work was performed.
  - (4) **Alternate Services provided to the Contractor's other clients.** (For cancellation of time reserved for pre-scheduled assignments). The Contractor shall bill DSHS only for the time in which the Contractor was unable to provide services to other clients. Invoices shall also specify the amount of time originally reserved for the pre-scheduled assignment, the number of hours in which services were provided to clients outside of this Contract, and the amount of reserved time not used, for which the Contractor is billing DSHS.
- b. **Payment.** Payment shall be considered timely if made by DSHS within 30 days after receipt and acceptance by the SCC forensic services manager of the properly completed invoices. Payment shall be sent to the address designated by Contractor on page 1 (1) of this Contract. DSHS may, at its sole discretion, withhold payment claimed by Contractor for services rendered if Contractor fails to satisfactorily comply with any term or condition of this contract.
  - c. **Confidentiality.** To protect confidentiality, the Contractor shall not be required to identify the outside client(s) for whom the services were performed. As indicated above in Section 4.h., Cancellations, billing sent to DSHS shall reflect only the time during which the Contractor was unable to perform services for other clients.
  - d. **Rates.** The rates shall be in accordance with those set forth in Section 4, Consideration, of this Contract, and the amounts charged rounded to the nearest quarter hour (e.g. a 10-minute phone call would be rounded up to 15 minutes or 0.25 hour; a 35-minute consultation rounded down to 30 minutes or 0.5 hour, etc.)
6. **Background Check/Criminal History.** In accordance with RCW 74.34.070, 74.34.020, 43.20A.710, 43.43.834, 43.43.835 and 43.43.838, the Contractor shall not provide services under this Contract until cleared through a DSHS-approved criminal history and background check.
7. **Data Access and Security.** The Contractor, also known as the Authorized User or Data Recipient, shall access and transfer data as described below:
- a. **Purpose of Sharing Data.**
    - (1) **Activity for which the Data is needed:**

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To evaluate individuals detained under RCW 71.09, Sexually violent predators, and being considered for civil commitment to SCC.

### (2) How Data Recipient will use Data:

- (a) Evaluate individuals detained under RCW 71.09.
- (b) Compile evaluation report(s).
- (c) Provide depositions and/or testimony in court.
- (d) Participate in pre-trial discovery activities.
- (e) Provide information to SCC, various county prosecutors, etc.

### b. Description of Data

#### (1) Data elements:

- (a) Records provided to the Contractor by the Department of Corrections or a county prosecutor, including but not limited to medical records, psychological information, etc.
- (b) Records generated or maintained by SCC and accessed or provided to the contractor, including but not limited to individual medical records, psychological information, etc.
- (c) Evaluation report(s) written by the Contractor and all Contractor notes, raw data collected and recorded, and worksheets for all actuarials included in the report.

(2) **Time frame(s) for Data disclosure or exchange:** Data disclosure or exchange shall occur over an indefinite period of time, from the date the Department of Corrections End of Sentence Review Committee assigns an evaluation to the Contractor up until the individual is released post probable cause hearing or after a period of civil commitment at SCC.

### c. Data Access or Transfer

(1) **Method.** Data shall be accessed or transferred via the following:

- (a) U.S. Mail – hard/paper documents and/or CD.
- (b) E-mail.

(2) **Frequency of Exchange.** Exchange of data varies, based on legal requirements, and may occur daily, weekly, monthly, etc.

### d. Data Storage on Portable Devices or Media.

(1) **Portable Devices.** The Contractor may store data on a laptop/notebook computer. Storage of data on other types of portable devices is subject to approval by the SCC Forensic Services manager or authorized designee. These include, but are not limited to, handhelds/PDAs, Ultramobile PCs, flash memory devices (e.g. USB flash drives, personal media players), and portable hard disks.

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(2) **Portable Media.** The Contractor may store data on portable media such as CDs. Storage of data on other types of portable media is subject to approval by the SCC Forensic Services manager or authorized designee. These include, but are not limited to, DVDs, magnetic media (e.g. floppy disks, tape, Zip or Jaz disks), or flash media (e.g. CompactFlash, SD, MMC).

e. **Requirements for Access.**

Access to Data shall be limited to the Authorized User/Data Recipient whose duties specifically require access to such Data in the performance of services under this Contract. The Authorized User/Data Recipient shall also sign a statement in which he/she agrees to adhere to DSHS/SCC use and disclosure requirements and shall submit this to SCC, also known as the Data Provider. This statement shall be updated as determined necessary and requested by the Data Provider.

f. **Limitations on Use of Data**

If the Data and analyses generated by Data Recipient contain personal information about DSHS clients (e.g. SCC residents), then any and all reports utilizing these Data shall be subject to review and approval by the Data Provider prior to publication in any medium or presentation in any forum.

g. **Security of Data.**

h. The Authorized User shall comply with all requirements listed within Exhibit A, Data Security Requirements, attached hereto and incorporated herein by this reference.

## 8. Insurance

The Contractor shall at all times comply with the following insurance requirements.

a. **General Liability Insurance**

The Contractor shall maintain Commercial General Liability Insurance, or Business Liability Insurance, including 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 the parties' performance under this Contract, including but not limited to premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The State of Washington, Department of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees of the state, shall be named as additional insureds.

In lieu of general liability insurance mentioned above, if the contractor is a sole proprietor with less than three contracts, the contractor may choose one of the following three general liability policies but only if attached to a professional liability policy, and if selected the policy shall be maintained for the life of the contract:

Supplemental Liability Insurance, including coverage for bodily injury and property damage that will cover the contractor wherever the service is performed with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The State of Washington, Department of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees shall be named as additional insured's.

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or

Workplace Liability Insurance, including coverage for bodily injury and property damage that provides coverage wherever the service is performed with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The State of Washington, Department of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees of the state, shall be named as additional insured's.

or

Premises Liability Insurance and provide services only at their recognized place of business, including coverage for bodily injury, property damage with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The State of Washington, Department of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees of the state, shall be named as additional insured.

b. Worker's Compensation

The Contractor shall comply with all applicable Worker's Compensation, occupational disease, and occupational health and safety laws and regulations. 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.

c. Employees and Volunteers

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.

d. Subcontractors

The Contractor shall ensure that all subcontractors have and maintain insurance with the same types and limits of coverage as required of the Contractor under the Contract.

e. Professional Liability Insurance (PL)

The Contractor shall maintain Professional Liability Insurance or Errors & Omissions insurance, including coverage for losses caused by errors and omissions, with the following minimum limits: Each Occurrence - \$1,000,000; Aggregate - \$2,000,000.

f. Separation of Insured's

All insurance policies shall include coverage for cross liability and contain a "Separation of Insured's" provision.

g. Insurers

The Contractor shall obtain insurance from insurance companies identified as an admitted insurer/carrier in the State of Washington, with a Best's Reports' rating of B++, Class VII, or better. Surplus Lines insurance companies will have a rating of A-, Class VII, or better.

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### h. Evidence of Coverage

The Contractor shall upon request by the DSHS point of contact submit a copy of the Certificate of Insurance, policy, and additional insured endorsement for each coverage required of the Contractor under this Contract. The Certificate of Insurance shall identify the Washington State Department of Social and Health Services as the Certificate Holder. A duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Contract, shall execute each Certificate of Insurance.

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.

### i. Material Changes

The insurer shall give the DSHS point of contact listed on page one of this Contract 45 days advance written notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the insurer shall give DSHS 10 days advance written notice of cancellation.

### j. General

By requiring insurance, the State of Washington and DSHS do not represent that the coverage and limits specified will be adequate to protect the Contractor. Such coverage and limits shall not be construed to relieve the Contractor from liability in excess of the required coverage and limits and shall not limit the Contractor's liability under the indemnities and reimbursements granted to the State and DSHS in this Contract. All insurance provided in compliance with this Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.

### k. Waiver

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.

## Exhibit A – Data Security Requirements

1. **Data Transport.** When transporting DSHS Confidential Information electronically, including via email, the data will be protected by:
  - a. Transporting the data within the (State Governmental Network) SGN or contractor's internal network, or;
  - b. Encrypting any data that will be in transit outside the SGN or contractor's internal network. This includes transit over the public Internet.
2. **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.** Data stored on local workstation hard disks. Access to the data will be restricted to authorized users by requiring logon to the local workstation using a unique user ID and complex password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards.
  - b. **Network server disks.** 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 complex 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 data stored on these disks, deleting unneeded data is sufficient as long as the disks remain in a secured area and otherwise meets the requirements listed in the above paragraph. Destruction of the data as outlined in Section 4. Data Disposition may be deferred until the disks are retired, replaced, or otherwise taken out of the secure environment.
  - 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 locked in a drawer, cabinet or other container to which only authorized users have the key, combination or mechanism required to access the contents of the container. 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 complex 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 locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.
- f. **Access via remote terminal/workstation over the State Governmental Network (SGN).** Data accessed and used interactively over the SGN. Access to the data will be controlled by DSHS staff who will issue authentication credentials (e.g. a unique user ID and complex password) to authorized contractor staff. Contractor will notify DSHS staff immediately whenever an authorized person in possession of such credentials is terminated or otherwise leaves the employ of the contractor, and whenever a user's duties change such that the user no longer requires access to perform work for this contract.
- g. **Access via remote terminal/workstation over the Internet through Secure Access Washington.** Data accessed and used interactively over the SGN. Access to the data will be controlled by DSHS staff who will issue authentication credentials (e.g. a unique user ID and complex password) to authorized contractor staff. Contractor will notify DSHS staff immediately whenever an authorized person in possession of such credentials is terminated or otherwise leaves the employ of the contractor and whenever a user's duties change such that the user no longer requires access to perform work for this contract.
- h. **Data storage on portable devices or media.**
  - (1) DSHS data shall not be stored by the Contractor on portable devices or media unless specifically authorized within the Special Terms and Conditions of the contract. If so authorized, the data shall be given the following protections:
    - (a) Encrypt the data with a key length of at least 128 bits
    - (b) Control access to devices with a unique user ID and 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.Physically protect the portable device(s) and/or media by
    - (d) Keeping them in locked storage when not in use
    - (e) Using check-in/check-out procedures when they are shared, and
    - (f) Taking frequent inventories
  - (2) When being transported outside of a secure area, portable devices and media with confidential DSHS data must be under the physical control of contractor staff with authorization to access the data.
  - (3) Portable devices include, but are not limited to; handhelds/PDAs, Ultramobile PCs, flash memory devices (e.g. USB flash drives, personal media players), portable hard disks, and laptop/notebook computers if those computers may be transported outside of a secure area.

(4) Portable media includes, but is not limited to; optical media (e.g. CDs, DVDs), magnetic media (e.g. floppy disks, tape, Zip or Jaz disks), or flash media (e.g. CompactFlash, SD, MMC).

**3. 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.
- b. DSHS data will be kept on media (e.g. hard disk, optical disc, tape, etc.) which will contain no non-DSHS data. Or,
- c. DSHS data will be stored in a logical container on electronic media, such as a partition or folder dedicated to DSHS data. Or,
- d. DSHS data will be stored in a database which will contain no non-DSHS data. Or,
- e. 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. Or,
- f. When stored as physical paper documents, DSHS data will be physically segregated from non-DSHS data in a drawer, folder, or other container.
- g. 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.

**4. Data Disposition.** When the contracted work has been completed or when no longer needed, except as noted in 2.b above, 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, Zip or similar disks)	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 data	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 course abrasive
Magnetic tape	Degaussing, incinerating or crosscut shredding

- 5. **Notification of Compromise or Potential Compromise.** The compromise or potential compromise of DSHS shared data must be reported to the DSHS Contact designated on the contract within one (1) business day of discovery.
- 6. **Data shared with Sub-contractors.** If DSHS data provided under this contract is to be shared with a sub-contractor, the contract with the sub-contractor must include all of the data security provisions within this contract and within any amendments, attachments, or exhibits within this contract. If the contractor cannot protect the data as articulated within this contract, then the contract with the sub-contractor must be submitted to the DSHS Contact specified for this contract for review and approval.

SAMPLE