

## 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 Contracts and Legal Services" means the DSHS central headquarters contracting office, or successor section or office.
  - b. "Confidential Information" or "Data" 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. "CCLS Chief" means the manager, or successor, of Central Contracts and Legal 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 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.
  - i. "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.
  - j. "Physically Secure" means that access is restricted through physical means to authorized individuals only.
  - k. "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.
  - l. "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/>.

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- m. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
  - n. "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.
  - o. "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.
  - p. "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.
  - q. "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.
  - r. "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.
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

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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 Secured 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.
  - (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, Confidential Information 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.

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- 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.
- 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.

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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. **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. At DSHS's discretion, the Contract or Program Agreement may be renegotiated under the revised funding conditions.
- b. At DSHS's discretion, DSHS may give notice to Contractor 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 Contractor'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 Contractor. 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.

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 CCLS Chief or designee has the authority to waive any term or condition of this Contract on behalf of DSHS.

### **Additional General Terms and Conditions – Client Service Contracts:**

17. **Advance Payment.** DSHS shall not make any payments in advance or anticipation of the delivery of

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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. **Contractor Certification Regarding Ethics.** The Contractor certifies that the Contractor is now, and shall remain, in compliance with Chapter 42.52 RCW, Ethics in Public Service, throughout the term of this Contract.
20. **Health and Safety.** Contractor shall perform any and all of its obligations under this Contract in a manner that does not compromise the health and safety of any DSHS client with whom the Contractor has contact.
21. **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.
  - 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.
22. **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, DSHS may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. DSHS may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by DSHS 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.
23. **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

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- 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.

- 24. Subcontracting.** Except as otherwise provided in this Contract, the Contractor shall not subcontract any of the contracted services without the prior 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, unless an exception to including a particular term or terms has been approved in advance by the CCLS Chief. 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.

**25. Subrecipients.**

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

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- b. **Single Audit Act Compliance.** If the Contractor is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Contractor 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 a required audit, that the Contractor has been paid unallowable costs under this or any Program Agreement, DSHS may require the Contractor to reimburse DSHS in accordance with 2 CFR Part 200.

**26. 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. The Contractor may terminate this Contract for convenience by giving DSHS at least thirty (30) calendar days' written notice addressed to DSHS at the address listed on page 1 of this Contract.

**27. Termination for Default.** The CCLS Chief 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:

- a. Failed to meet or maintain any requirement for contracting with DSHS;
- b. Failed to protect the health or safety of any DSHS client pursuant to the section entitled Health and Safety of this Contract;
- c. Failed to perform under, or otherwise breached, any term or condition of this Contract; and/or
- d. 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.

**28. Termination or Expiration Procedure.** The following terms and conditions apply upon Contract termination or expiration:

- a. The Contractor shall cease to perform any services required by this Contract as of the effective date of termination or expiration.
- b. If the Contract is terminated, the Contractor shall comply with all instructions contained in the termination notice.
- c. 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)

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calendar days, the Contractor shall be charged with all reasonable costs of recovery, including transportation.

- d. 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.
- e. DSHS may withhold a sum from the final payment to the Contractor that DSHS determines necessary to protect DSHS against loss or additional liability.
- f. 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.

- 29. Treatment of Client Property.** Unless otherwise provided, the Contractor shall ensure that any adult client receiving services from the Contractor has unrestricted access to the client's personal property. The Contractor shall not interfere with any adult client's ownership, possession, or use of the client's property. The Contractor 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 of services to a client, the Contractor shall immediately release to the client and/or the client's guardian or custodian all of the client's personal property.
- 30. 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.
- 31. Taxes.**
- a. Where required by statute or regulation, Contractor shall pay for and maintain in current status all taxes that are necessary for Contract performance. DSHS will pay sales or use taxes, if any, imposed on the services and materials acquired hereunder. Contractor must pay all other taxes including without limitation Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. DSHS, as an agency of Washington State government, is exempt from property tax.
  - b. Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract in accordance with the requirements of Title 82 RCW and Title 458 WAC. Out-of-state Contractors must contact the Department of Revenue to determine whether they meet criteria to register and establish an account with the Department of Revenue. Refer to WAC 458-20-101 (Tax registration and tax reporting) and call the Department of Revenue at 800-647-7706 for additional information. When out-of-state Contractors are not required to collect and remit sales tax, DSHS shall be responsible for paying use tax, if applicable, directly to the Department of Revenue.
  - c. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor's staff shall be Contractor's sole responsibility.

## Special Terms and Conditions

### 1. Definitions

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

- a. "Activities of Daily Living" or "ADL" means the following: bathing, bed mobility, body care, dressing, eating, locomotion, walking, toilet use, medication management, transfers, and personal hygiene as defined in WAC 388-106-0010.
- b. "Adult Family Home" or "AFH", for purposes of this Contract, refers to the AFH identified on Page 1 of this Contract. AFH, as defined in RCW 70.128.010(1), means a residential home in which a person or persons provide personal care, special care, room, and board for more than one but not more than six (6) adults who are unrelated by blood or marriage to the person or persons providing the services.
- c. "Adult Family Home License" means the license issued to an AFH in accordance with chapter 388-76 WAC.
- d. "Admission Agreement" means the written agreement signed by the resident and AFH prior to or at the time the resident is admitted to the AFH and every 24 months thereafter.
- e. "AFHC" means the Adult Family Home Council which is recognized in the state of Washington as the sole and exclusive representative for Contractors of AFH care services who receive payments from Medicaid and State-funded long-term care programs.
- f. "AL TSA" means Aging and Long-Term Support Administration of DSHS.
- g. "Arbitration Agreement" means a legally binding written agreement between parties to resolve disputes through arbitration rather than filing a suit in court.
- h. "Assessment" or "Reassessment" means an inventory and evaluation of abilities and needs based on an in-person interview completed by the department with the applicant in their own home or place of residence, using CARE.
- i. "Bed hold" means the Contractor must hold a Medicaid-eligible Client's bed when the Client needs short-term care in a nursing home or hospital and is likely to return to the facility.
- j. "Capacity" means the maximum number of persons in need of personal or special care who are permitted to reside in an adult family home at a given time. The capacity includes:
  - (1) The number of related children or adults in the home who receive personal or special care and services; plus
  - (2) The number of residents the adult family home may admit and retain - the resident capacity. The capacity number listed on the license is the "resident capacity."
- k. "CARE" means Comprehensive Assessment Reporting Evaluation tool. The CARE tool functions as an assessment, service planning, and care coordination tool and is used to determine program eligibility and establish a payment rate or weekly hours of care a client is eligible to receive.
- l. "CARE Assessment Details" means a summary of information that DSHS entered into the CARE assessment describing resident needs and is used to develop a plan of care. CARE is an abbreviation of the DSHS approved assessment known as Comprehensive Assessment and

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### Reporting Evaluation.

- m. "Case Manager" means the DSHS staff person or designee assigned to negotiate, monitor and facilitate a service plan for Clients receiving services fully or partially paid for by DSHS.
- n. "Client" means an individual whom DSHS determines to be financially and programmatically eligible to receive services from the AFH Contractor.
- o. "Client Participation" means the amount of the Client's non-exempt income as assigned by the DSHS financial services worker or Case Manager, if any that the Contractor shall collect directly from the Client and apply to the cost of the Client's authorized care. Client participation covers the first portion of the month in which services are provided. Clients cannot be charged any more than the cost of care for any partial month of services.
- p. "Comprehensive Assessment and Reporting Evaluation (CARE)" means the documentation of the Client's needs, abilities, resources, preferences, and level of care requirements obtained in accordance with chapter 388-106 WAC or its successor.
- q. "Contractor" means the adult family home licensee.
- r. "CRU" means the Complaint Resolution Unit of Residential Care Services.
- s. "DDA" means the Developmental Disabilities Administration within DSHS.
- t. "Facility" means an adult family home.
- u. "Home and Community Services" or "HCS" means the Division of Home and Community Services, an administration within Aging and Long-Term Support Administration of DSHS.
- v. "Instrumental Activities of Daily Living" or "IADL" means routine activities performed around the home or in the community including housework, laundry, meal preparation, essential shopping, traveling within and participating in the local community, telephone use and transportation to medical services.
- w. "Mandated reporter" is an employee of DSHS; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.
- x. "Mileage" means reimbursement for authorized mileage when the contractor transports the client, as outlined in the Department's service plan, to provide transportation to travel within and participate in the local community or transportation to medical providers.
- y. "MSA" means Metropolitan Service Area.
- z. "Negotiated Care Plan" or "NCP" means the most recent written plan of care describing services to be provided to the Client. The NCP is negotiated between the Contractor and Client (and/or the Client's representative) in accordance with WACs 388-76-10355 through 388-76-10385 and must include assessment topics described in WAC 388-76-10335 as described in the Statement of Work and Supplemental sections of this Contract.

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- aa. "Office of the State Long-Term Care Ombudsman" is a non-profit organization, authorized by chapter 43.190 RCW to advocate for residents and to protect and promote resident rights guaranteed under Federal and State law and regulations.
- bb. "Parent" or "Relative" means a person related by blood, marriage, adoption or registered domestic partnership.
- cc. "Personal Care Services" means physical or verbal assistance with ADLs and IADLs due to functional limitations. Assistance is evaluated with the use of assistive devices.
- dd. "Resident" means any adult unrelated to the provider who lives in the adult family home and who is in need of care. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.
- ee. "RCS" means Residential Care Services, a Division of DSHS' Aging and Long-Term Support Administration.
- ff. "Service Plan" means a written plan developed by a DSHS Case Manager or designee, in accordance with chapter 388-106 WAC. The Service Plan describes the Client's needs for Personal Care services and includes an initial plan for how those needs will be met.
- gg. "Services" means the personal care and special services that the Contractor shall provide to the Client as specified in the Client's NCP. Each ADL and IADL shall mean the same as the specific task definition in WAC 388-106-0010.
- hh. "Significant change" means:
  - (1) A lasting change, decline or improvement in the Client's baseline physical, mental or psychosocial status; and
  - (2) Is significant enough so the current assessment and/or negotiated care plan do not reflect the Client's current status; and
  - (3) May require a new assessment if the Client's condition does not return to baseline within a two (2) week period of time.
- ii. "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

## 2. Admission

- a. Immediately upon request of a DSHS Client for admission in the Contractor's AFH, DSHS shall forward to the Contractor the Client's Comprehensive Assessment and Reporting Evaluation and most recent Service Plan.
- b. Upon admission of a DSHS Client in the Contractor's AFH, the Contractor will receive notification when an authorization has been completed through the Provider One Payment System.
- c. Upon admission of a DSHS Client in the Contractor's AFH, the Contractor shall prepare a Client file and shall contain the documents provided by DSHS, and all other documents required to be maintained by RCS, this Contract, and/or a contract from any other division of DSHS.

## Special Terms and Conditions

- d. The Contractor shall notify the DSHS Case Manager in writing when a Client requires more care than the Contractor can provide. In addition, the Contractor shall notify the DSHS Case Manager when the Client's care needs do not return to the level of care of the current assessment within a two-week period of time.
- e. If a Client is missing, the Contractor will immediately notify law enforcement, any legal representative of the Client and the department using the RCS complaint toll-free hotline 1-800-562-6078.

### 3. Statement of Work

The Contractor shall ensure that services provided under this Contract at all times meet the specifications described in this Statement of Work.

- a. The Contractor shall provide services to each Client, including ADLs and IADLs, as specified in the Client's authorized Service Plan based on DSHS' CARE assessment details and the NCP. The AFH must involve specific individuals in the development of the NCP as defined in WAC 388-76-10370. The NCP must include all requirements defined in WAC 388-76-10335 with the NCP signed and dated by the Contractor and the Client. The AFH must ensure that each Client's NCP is reviewed and revised as defined in WAC 388-76-10380 or at least every twelve months. The most recent Service Plan and NCP for any Client placed by DSHS in the Contractor's AFH are incorporated in this Contract by reference.
- b. The Contractor shall provide the Case Manager with a copy of the initial NCP and any time it is changed due to a significant change as defined in WAC 388-76-10000 or every six (6) months at a minimum.
- c. All work performed under this Contract, the Service Plan and the NCP shall be performed in accordance with chapters 70.128 and 70.129 RCW and chapter 388-76 WAC, or successor or replacement statutes or regulations.
- d. The Contractor must ensure the Resident Manager meets the qualifications in WAC 388-76-10130. The Contractor will ensure that the Resident Manager and all caregivers have successfully completed all specialty training required in WAC 388-112-0110 prior to providing personal care to residents without direct supervision, and demonstrate competency as outlined in WAC 388-112-0165.
- e. The Contractor accepts the DSHS payment amount, with the Client participation and room and board amount required by federal and state regulations, as sole and complete payment for the services provided under this Contract. The Contractor shall be responsible for collection of the Client's participation and room and board amount from the Client in the month in which services are provided. If Client's participation amount exceeds the total cost of services for the month, collect only the amount equal to the number of days in the facility multiplied by the DSHS daily rate. Exclude the day the Client was discharged for any reason other than death, and all Bed Hold days.
- f. To ensure the client's rights are protected, the Contractor may not evict a client without (1) complying with the transfer and discharge requirements under RCW 70.129.110 and (2) using any appropriate legal process, including but not limited to unlawful detainer in chapter 59.12 RCW, which, at a minimum, shall give a resident contesting eviction a meaningful opportunity to be heard before a neutral decision-maker, prior to evicting a client.
- g. The Contract must be in compliance with all requirements in chapter 388-76 WAC upon executing a

## Special Terms and Conditions

new or renewal contract.

- h. The Contractor must ensure that all staff that may have direct contact with DSHS Clients have a background check and do not have a disqualifying crime or negative action in accordance with chapter 388-113 WAC

- i. **Adult Family Home.**

Contractor Shall:

- (1) Utilize the DSHS CARE assessment tool, which determines the level of care and corresponding daily rate to be paid to the AFH for each eligible DSHS Client to meet the Client's care plan needs as described in the CARE Assessment Details.
- (2) Accept the rates agreed upon in the current and future collective bargaining agreements between the Governor of the State of Washington and the Washington State Residential Care Council in accordance with RCW 41.56. DSHS shall notify the Contractor in advance and in writing of any decreases in the daily rate. The Contractor hereby waives written notice of subsequent rate increases and further agrees that if performance under this Contract continues, such performance shall be compensated at the subsequent rates(s). Notification of rate changes will be made public for the Contractor's geographic area at: <http://www.alsa.dshs.wa.gov/professional/rates/reports/> and are not disputable. For purposes of this Contract, rates are paid by geographic designation based on population. King County is one designated area. MSA is designated as the metropolitan counties of Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom and Yakima. Non-MSA is designated as the rural counties of Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, and Whitman. For purposes of this contract, Yakama Nation and Colville Reservation are also considered Non-MSA rural counties

- j. **Expanded Community Services**

(1) Definitions.

- (a) "Behavior Support Provider" means the mental health professionals, nurses, and/or psychiatrists or other prescribers who are contracted by DSHS to provide professional behavioral support services to each ECS client. These professional services may include training and direct behavioral support to ECS clients and families as well as training to facility staff on the specific needs of each ECS client.
- (b) "Expanded Community Services" (ECS) means enhanced care and support that is provided to DSHS clients who have been identified by DSHS as having exceptional care needs due to behavioral or mental health issues.
- (c) "ECS client" means an individual who has been, or is being, relocated from Eastern or Western State Hospital, or who has been identified by DSHS as requiring Expanded Community Services.
- (d) "Licensed Mental Health Provider" as defined in Chapter 71.24 RCW means a Licensed Mental Health Provider who is under Contract with a Regional Support Network.

## Special Terms and Conditions

- (2) **Statement of Work.** The Contractor shall ensure that services provided under this Contract at all times meet the specifications described in this Statement of Work.

Services provided under this Contract shall meet the following guidelines:

- (a) Comply with all applicable laws, including but not limited to chapter 71.05 RCW, relating to the confidentiality of mental health information.
- (b) Coordinate with ECS Behavior Support Provider.
- (c) Coordinate ECS services with an appropriate ECS Behavior Support Provider who has a contract with DSHS to provide Expanded Community Services.
- (d) ECS services include episodes of behavioral support provided in the AFH as well as training provided to or on behalf of specific ECS clients in order to support each ECS client's ability to remain in the community.
- (e) Identify an ECS team for each ECS client. The ECS team will include, but not be limited to the ECS Behavior Support Provider, facility staff and other professional staff involved with the ongoing care of the client.
- (f) Coordinate ECS Team meetings at least once a month for each ECS client. The Contractor shall ensure facility staff attend the meetings and participate in the development of individualized support and intervention programs for each ECS client. The ECS programs that are developed by the team shall be incorporated into the ECS client's Service Plan and Negotiated Care Plan.
- (g) Collaborate with the ECS Behavior Support Provider to develop a written Individual Crisis Plan to respond to identified ECS client indicators of potential crisis. The goal of the Individual Crisis Plan shall be to develop the ability to prevent and respond to crises. The program strategy shall include specific courses of action to respond to the needs of the ECS client. It will also describe the mechanisms that will be used to document facility staff training for each Individual Crisis Plan. The Individual Crisis Plan strategy shall be developed cooperatively with appropriate parties. If the client's physical or behavioral status changes significantly, the Contractor shall immediately notify the HCS Social Worker and the Behavior Support Provider. The Individual Crisis Plan will be incorporated into the client's Negotiated Care Plan.
- (h) Serve ECS clients in this facility only when authorized by the Field Services Administrator or designee. The parties may conduct future reviews which may result in a change to the number of ECS Clients.
- (i) DSHS or the Contractor may discontinue ECS and terminate this AFH/ECS Contract in accordance with the termination provisions contained herein. A new AFH Contract without ECS, when fully executed, will begin the day following termination of this Contract.
- (j) Coordinate opportunities for staff and ECS clients to receive training that supports each ECS client's community placement. Training provided shall range from broad behavioral care topics to specific consultation and training related to the needs of the ECS client. The training may be provided in cooperation with the ECS Behavior Support Provider.
- (k) Accept payment under this Contract for Medicaid clients who are determined by the

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Department as eligible to receive the ECS add-on rate. These clients have been determined to be in need of Nursing Facility Level of Care (NFLC) utilizing the DSHS CARE assessment tool, which determines the level of care and corresponding daily rate to be paid to the AFH for each eligible DSHS Client to meet the Client's care plan needs as described in the CARE Assessment Details. The exceptional care add-on rate will be approved in addition to the level of care and corresponding daily rate. The Contractor will expend the add-on funds solely on staff or programs that enhance the provision of care to the ECS clients.

(l) Meet the following qualifications:

- i. Be an official AFH licensee with the State of Washington for twelve (12) months or more preceding your application for this AFH-ECS Contract and authorized to do business in the state. The Contractor shall be the primary point of contact with DSHS throughout the execution of the Contract and shall comply with the requirements set forth therein, and with all supplemental, successor or replacement requirements.
- ii. Have had no significant enforcement actions during the twelve (12) months preceding your application for this AFH-ECS Contract as listed in Chapters 18.20 and 70.129 RCW and Chapters 388-76, 388-110 and 388-112 WAC. Enforcement history includes, but is not limited to, citations issued in areas that adversely affect resident care; civil fines based on DSHS' determination of moderate or serious severity; stop placement or condition(s) on license related to resident care, or any license revocation or summary suspension actions.

#### 4. Administrative Remedies and Dispute Resolution Options

a. Administrative Remedies.

Under WAC 388-110-270(3) and (4), if the Contractor contests any decision by DSHS to impose a remedy, the Contractor shall within twenty-eight days (28) of receipt of the decision: (1) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Administrative Hearings, PO Box 42465, Olympia, WA 98507; and (2) include in or with the application: (a) the grounds for contesting the department decision; and (b) a copy of the contested department decision. Administrative proceedings shall be governed by chapters 34.05 RCW and RCW 43.20A.215, where applicable, this section, and chapter 388-08 WAC. If any provision in this section conflicts with chapter 388-08 WAC, the provision in this section governs.

- b. Dispute Resolution. Under WAC 388-110-280, when the Contractor disagrees with a finding of a violation by DSHS under that WAC, the Contractor shall have the right to have the violation reviewed under the DSHS dispute resolution process. Requests for review shall be made to DSHS within ten (10) days of receipt of the written finding of a violation. When requested by the Contractor, DSHS shall expedite the dispute resolution process to review violations upon which DSHS issued an order concerning contract suspension, stop placement, or a contract condition is based. Orders of DSHS imposing contract suspension, stop placement, or conditions for continuation of a contract are effective immediately upon notice and shall continue pending dispute resolution. A request for dispute resolution shall be made by the Contractor to: Director, Division of Residential Care Services, PO Box 45600, Olympia, WA 98504-5600. The request shall include (1) the grounds for contesting DSHS' finding of a violation, and (2) a copy of the violation. Dispute resolution is not governed by chapter 34.05 RCW. Published rates are not subject to administrative review or dispute resolution.

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- c. Arbitration Agreement. The Contractor may offer an Arbitration Agreement to a client as a means of resolving future disputes *only* when the Arbitration Agreement:
- (1) Is not a part of any Admission Agreement document or packet;
  - (2) Is not given to the client, or the client's representative, within the first thirty (30) days of his or her residency;
  - (3) Is not a condition for admission to the facility or a condition for remaining in the facility;
  - (4) Allows a client to rescind the Arbitration Agreement in its entirety within thirty (30) days of signing it;
  - (5) Requires arbitration to be conducted by a neutral arbitrator in a place that is convenient to both parties;
  - (6) Does not prohibit or discourage the client, or anyone else, from communicating with federal, state or local health care officials, including but not limited to Federal or State surveyors, other federal or state department employees, and representatives of the Office of the State Long-Term Care Ombudsman; and
  - (7) Requires the facility to pay all of the facility client's arbitration costs, including reasonable attorney fees, if the client is receiving services under this Contract when a dispute arises that is governed by the Arbitration Agreement.
  - (8) Before a client signs an Arbitration Agreement, the facility must explain the agreement in a form, language, and manner that the client understands, and have the client, or the client's legal representative, acknowledge that the client or legal representative understands the Agreement. At a minimum, the explanation must state:
    - (a) Signing the arbitration agreement is voluntary, and is not a condition for admission to, or remaining at the facility;
    - (b) By signing the arbitration agreement, the client is waiving the right to seek relief in court for any dispute between the client and the facility that is covered by the arbitration agreement.

### 5. Billing and Payment

- a. DSHS shall only reimburse the Contractor for authorized services provided to Clients in accordance with the conditions of this Contract. If DSHS pays the Contractor for services authorized but not provided by the Contractor in accordance with this Contract's Statement of Work, the amount paid shall be considered to be an overpayment.
- b. The Contractor shall not solicit or accept funds for any Client's care except as provided in this Contract, per WAC 388-76-10205. The Contractor may not request supplemental payment of a Medicaid recipient's daily rate for services, or items that are covered by the Medicaid daily rate. This includes the request on the part of the Contractor for move-in fees, and/or refundable or non-refundable deposits, in accordance with Chapter 388-76 WAC, RCW 74.39A.901 and RCW 70.129.030(4), and any items or services specified in this Contract, and the Client's NCP.
- c. The Contractor shall not charge the Client, or anyone else on behalf of the Client, for medical assistance covered services as defined in RCW 74.09.520.

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- d. By submitting a request for payment, the Contractor certifies that the services billed in accordance with the Client's Service Plan and NCP have been performed.
- e. Payment for services rendered for part of a month shall be prorated. No payment shall be made for partial days.
- f. DSHS shall not pay the Contractor when:
  - (1) The Client on whose behalf payment is made is no longer eligible for the Contractor's services;
  - (2) The Client is absent (not due to admission to a hospital or nursing facility) from the Contractor's AFH in excess of seventy-two (72) hours, unless the absence is documented and payment or non-payment for social leave is approved;
  - (3) The Contractor ceases to meet service provider minimum qualifications as defined in chapter 70.128 RCW and chapter 388-76 WAC, or successor or replacement statute or regulations;
  - (4) The Contractor fails to provide services as authorized in the Client's Service Plan or NCP; or
  - (5) This Contract is terminated for any reason. DSHS shall pay for only those services authorized and provided through the date of Contract termination.
- g. DSHS shall not pay the Contractor, or shall reduce the amount of the payment to the Contractor, when the Client is temporarily admitted to a hospital or nursing facility.
  - (1) The Contractor must hold the Client's bed for the Client's return in accordance with WAC 388-105-0045:
    - (a) When the Client needs short-term care in a nursing home or hospital; and
    - (b) Is likely to return to the AFH.
  - (2) The Contractor must notify DSHS of the Client's discharge within twenty-four (24) hours after the initial twenty-four (24) hours of a medical discharge has passed. When the end of the initial twenty-four (24) hours falls on a weekend or state holiday, then the facility must notify the department of the discharge within twenty-four (24) hours after the weekend or holiday.
  - (3) A Medicaid Client's discharge for a short term stay in a nursing home or hospital must be longer than twenty-four (24) hours before subsection (3) of WAC 388-105-0045 applies.
  - (4) If during the twenty day bed hold period, a DSHS Case Manager determines that the Medicaid Client's hospital or nursing home stay is not short term and the Medicaid Client is unlikely to return to the AFH, DSHS will cease paying for the Bed Hold the day the Case Manager notifies the Contractor of his/her/its decision in accordance with WAC 388-105-0045 or its successor.
  - (5) The first through seventh day of a short term stay at a nursing home or hospital will be paid at seventy percent of the Medicaid daily rate paid for care of the Client before the hospital or nursing home stay; and a reduced daily rate will be paid for the eighth through the twentieth day.
  - (6) The Contractor may seek third-party payment to hold a bed or unit for twenty-one (21) days or longer. The third-party payment shall not exceed the Medicaid daily rate paid to the facility for

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the Client. If third-party payment is not available, and the returning Medicaid Client continues to meet the admission criteria under chapter 388-71 and/or 388-106 WAC, then the Medicaid Client may return to the first available and appropriate bed.

- (7) The Contractor shall receive payment for authorized services using the ProviderOne Payment system which is the State of Washington's Medicaid management information system.

### 6. Contractor Qualifications

The Contractor shall meet the following minimum qualifications:

- a. Must be licensed by DSHS and shall meet or exceed all minimum licensing requirements or other requirements necessary for services provided under this contract as outlined in chapter 388-76 WAC;
- b. The Contractor is required to have and maintain an AFH license with the State of Washington as outlined in WAC 388-76-10005 and 388-73-10010;
- c. Must ensure that all staff who may have direct contact with DSHS Clients have met the training and certification as required in chapter 388-112 WAC;
- d. Does not have a disqualifying crime or negative action as described in chapter 388-113 WAC; and
- e. A Contractor who chooses to transport clients must have a current valid/-driver's license for the classification of motor vehicle operated, have proof of liability insurance as required under state law and successfully pass a DSHS background check.

### 7. Contractor Certifications

The Contractor acknowledges and certifies the following:

- a. The Contractor has obtained and reviewed the DSHS AFH licensing laws and regulations and shall comply with the requirements set forth therein, and with all supplemental, successor or replacement requirements.
- b. The Contractor shall not accept any DSHS Client, or other individual, in excess of the Contractor's licensed capacity, as stated on the Contractor's DSHS AFH license.
- c. The Contractor shall maintain an AFH contract with the State of Washington at the address on the AFH license for the duration of this Contract.
- d. Does not have a disqualifying crime or negative action as described in chapter 388-113 WAC.
- e. The Contractor shall immediately notify, in writing, the Director of the Division of Residential Care Services, at 4500 10<sup>th</sup> Avenue SE, Lacey, Washington 98503/PO Box 45600, Olympia WA 98504-5600, in the event that the Contractor accepts employment with the state of Washington, or if the Contractor hires an employee who is a current or former state of Washington employee.

### 8. Disputes

- a. The rates paid by DSHS in satisfaction of the provisions of this Contract are not subject to administrative review under chapter 34.05 RCW or any dispute resolution provision of this Contract.

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- b. Under RCW 70.128.167 and WAC 388-76-10990, when the Contractor disagrees with a finding of a violation or an enforcement remedy imposed by DSHS, the Contractor shall have the right to have the violation or enforcement remedy reviewed under the Department's informal dispute resolution process. The purpose of the informal dispute resolution process is to provide an opportunity for an exchange of information that may lead to the modification or deletion of a violation or enforcement remedy imposed by DSHS. The dispute resolution process will include, but is not necessarily limited to, an opportunity for review by a DSHS employee who did not participate in, or oversee, the determination of the disputed violation or enforcement remedy. The Contractor may submit a written request for review which must include (1) a copy of the disputed violation or enforcement action, and (2) the reasons for disputing the finding or enforcement action. Requests for review shall be made to the individual identified in the enforcement letter, within ten (10) working days of receipt of the written finding of a violation or enforcement remedy. In addition to a written request, the Contractor may request to present the information in person to a DSHS designee. When requested by the Contractor, DSHS will convene a meeting, when possible, within ten (10) working days of receipt of the request for informal resolution. When requested by the Contractor, DSHS will expedite the dispute resolution process to review violations upon which DSHS issued an order concerning license suspension, stop placement, or a condition on a license. Orders of the Department imposing license suspension, stop placement, or conditions on a license are effective immediately upon notice and shall continue pending dispute resolution. This informal dispute resolution process is not governed by chapter 34.05 RCW.

### 9. 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 insureds.

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

## Special Terms and Conditions

of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees of the state, shall be named as additional insureds.

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. Business Automobile Liability Insurance

The Contractor shall maintain a Business Automobile Policy on all vehicles used to transport clients, including vehicles hired by the Contractor or owned by the Contractor's employees, volunteers or others, with the following minimum limits: \$1,000,000 per accident combined single limit. The Contractor's carrier shall provide DSHS with a waiver of subrogation or name DSHS as an additional insured.

c. 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.

d. 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.

e. 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.

f. 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.

g. Separation of Insureds

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

h. Insurers

The Contractor shall obtain insurance from insurance companies identified as an admitted

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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.

### i. Evidence of Coverage

The Contractor shall, upon request by DSHS, 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.

### j. 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.

### k. 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.

### l. 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.

### m. Liability Cap

Any limitation of liability or liability cap set forth in this Contract shall not preclude DSHS from claiming under any insurance maintained by the Contractor pursuant to this Contract, up to the policy limits.

**10. Licensed Capacity.** The Contractor's licensed facility capacity shall be maintained in accordance with the Contractor's current AFH License. Capacity may increase or decrease, in accordance with the Contractor's AFH license, during the term of this Contract without the necessity of amending this Contract. This Contract shall be null and void immediately upon the effective date of revocation or suspension of the Contractor's AFH license, or when the Contractor's AFH License is no longer valid.

**11. Nursing Services.** The Contractor shall comply with any applicable Nursing Services provisions of WAC 388-71-0194 or its successor.

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- 12. Social Leave.** The Contractor may be paid for social leave days but this is limited to no more than 18 days per calendar year. Social leave is defined as leave that is for recreational or socialization purposes, not for medical, therapeutic, or recuperative purposes. Whenever possible, the Contractor shall notify the Case Manager in advance when a Medicaid Client takes social leave. The Contractor is required to notify the Case Manager within one working day when a Medicaid Client takes social leave. The Contractor shall enter written justification of such absence in the Client's record when a Client is absent for more than seventy-two (72) consecutive hours or more.
- 13. Supplementation.**
- a. Before a Contractor may request supplemental payments for items not covered in the Medicaid rate, the Contractor must have a supplemental payment policy that has been given to all applicants for admittance and current residents. The policy must be in accordance with WAC 388-105-0050 and 388-105-0055 and must follow the Contract per WAC 388-76-10205. The Contractor may not request supplemental payment of a Medicaid recipient's daily rate for services, items not covered by the Medicaid daily rate, move-in fees, and/or refundable or non-refundable deposits, in accordance with chapter 388-76 WAC, RCW 70.129.030(4), RCW 74.39A.901, this Contract, and the Client's NCP.
  - b. The Contractor must disclose in the Admission Agreement per WAC 388-76-10540 and the Policy on accepting Medicaid as a payment source WAC 388-76-10522, any changes that could occur if a resident becomes eligible for Medicaid funding. The Contractor shall refund to the Client, on a prorated basis, the amount prepaid for care of that Client in the event that the Client becomes eligible for Medicaid funding or moves out of the home before the end of the month.
  - c. If a family member or friend purchases additional items or services through the Contractor that are not provided for under the Medicaid contract, he or she must pay the Contractor directly to avoid jeopardizing the Client's financial eligibility. In all cases of supplementation, the Contractor is required to notify the DSHS Case Manager of the additional charges, what they are for, and who is paying them. Violations of the supplementation WACs will be reported to the RCS Complaint Resolution Unit. CRU will investigate and refer to the Medicaid Fraud Unit if appropriate.
- 14. Termination Due to Change in Licensee.** The Contractor shall give written notice to all DSHS Clients in the Contractor's facility, and the DSHS Director of the Division of Residential Care Services, at PO Box 45600, Olympia, WA 98504-5600, sixty (60) days' prior notice of any proposed change of licensee for the Contractor's AFH facility. This Contract shall automatically terminate on the effective date of a change in licensee.
- 15. Termination Due to Update in Contract.** This Contract is automatically terminated when DSHS and the Contractor identified on Page 1 execute a new Contract for the AFH at this facility address.
- 16. Training.** The Contractor shall participate in training as required by DSHS at the Contractor's expense. At the sole discretion of DSHS, DSHS may reimburse the Contractor for all or any portion of the Contractor's expenses associated with training.
- 17. Travel.**
- a. The Contractor shall be compensated for transporting the Client to medical providers as identified in the Department's service plan. Such compensation shall be paid on a per-mile-driven basis at the standard mileage rate published by the Internal Revenue Service, up to a maximum of fifty (50) miles per month per client.

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- b. Contractors who transport clients to travel within and participate in the local community as identified in the Department's service plan, will be reimbursed per-mile-driven for up to one hundred (100) miles per month per client based on the standard mileage rate published by the Internal Revenue Service.

### 18. 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, and RCW 49.60.010, the Contractor shall ensure that Limited English Proficient (LEP) Clients have access to a certified, or, if non-certifiable language, to an otherwise qualified language interpreter, who has successfully passed the DSHS language test. The Contractor shall also ensure that DSHS Clients have access to documents translated into the Client's primary language. To request a qualified interpreter, sign up at [CTS LanguageLink](#) or email [hcaproviders@ctslanguageink.com](mailto:hcaproviders@ctslanguageink.com). For additional information, visit their [Provider FAQs](#) page.
- b. In compliance with the Americans with Disabilities Act (ADA) of 1990, under RCW 2.42.010 and RCW 49.60.010, the Contractor shall ensure that deaf, deaf-blind, or hard of hearing Clients have access to the services of an interpreter certified by the National Association of the Deaf (NAD) as a Sign Language Interpreter, or qualified interpreter having a Registry of Interpreters for the Deaf (RID).

- 19. 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.

- 20. 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.

- 21. 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.

### 22. 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

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Disclosure Statement.

### 23. 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).

**24. 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.

**25. 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

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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.
26. **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.
27. **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.
28. **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.
29. **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.