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## 1. Definitions.

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

- 1.1. "Care Management" means a set of services designed to improve the health of Enrollees. Care management includes a health assessment, development of a care plan and monitoring of Enrollee status, care coordination, ongoing reassessment and consultation and crisis intervention and case conferencing as needed to facilitate improved outcomes and appropriate use of health services. Effective care management includes the following:
  - Actively assisting Enrollees to navigate the health delivery system, acquire self-care skills to improve functioning and health outcomes, and slow the progression of disease or disability;
  - Utilization of evidence-based clinical practices in screening and intervention;
  - Coordination of care across the continuum of medical, behavioral health, oral health, and long-term services and supports, including tracking referrals and outcomes of referrals;
  - Ready access to behavioral health and physical health services; and
  - Use of appropriate community resources to support individual Enrollees, families and caregivers in managing care
- 1.2. "Central Contract and Legal Services" means the DSHS central headquarters contracting office, or successor section or office.
- 1.3. "Confidential Information" or "Data" means information that is exempt from disclosure to the public or other unauthorized persons under chapter 42.56 RCW or other federal or state laws. Confidential Information includes, but is not limited to, Personal Information.
- 1.4. "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.
- 1.5. "CCLS Chief" means the manager, or successor, of Central Contracts and Legal Services or successor section or office.
- 1.6. "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.
- 1.7. "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.
- 1.8. "DSHS" or the "Department" means the state of Washington Department of Social and Health Services and its employees and authorized agents.
- 1.9. "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.

- 1.10. "Health Care Authority" means the State of Washington Health Care Authority and its employees and authorized agents.
- 1.11. "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.
- 1.12. "Physically Secure" means that access is restricted through physical means to authorized individuals only.
- 1.13. "Program Integrity" means a system of reasonable and consistent oversight of the Medicaid program. Program Integrity effectively encourages compliance; maintains accountability; protects public funds; supports awareness and responsibility; ensures providers, contractors and subcontractors meet participation requirements; ensures services are medically necessary; and ensures payments are for the correct amount and for covered services. The goal of Program Integrity is to reduce and eliminate Fraud, Waste and Abuse (FWA) in the Medicaid program. Program Integrity activities include prevention, algorithms, investigations, audits, reviews, recovery of improper payments, education, and cooperation with Medicaid Fraud Control Unit, and other state and federal agencies. See chapter 182-502A WAC.
- 1.14. "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/>.
- 1.15. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
- 1.16. "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.
- 1.17. "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.
- 1.18. "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.
- 1.19. "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.
- 1.20. "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 to a third party without the prior written consent of DSHS.

**4. Billing Limitations.**

- 4.1. DSHS shall pay the Contractor only for authorized services provided in accordance with this Contract.
- 4.2. 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.
- 4.3. 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.**

- 6.1. 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:
  - 6.1.1. as provided by law; or,
  - 6.1.2. 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.
- 6.2. 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:
  - 6.2.1. Allowing access only to staff that have an authorized business requirement to view the Confidential Information.
  - 6.2.2. Physically Securing any computers, documents, or other media containing the Confidential Information.
  - 6.2.3. Ensure the security of Confidential Information transmitted via fax (facsimile) by:
    - 6.2.3.1. Verifying the recipient phone number to prevent accidental transmittal of Confidential Information to unauthorized persons.
    - 6.2.3.2. Communicating with the intended recipient before transmission to ensure that the

fax will be received only by an authorized person.

6.2.3.3. Verifying after transmittal that the fax was received by the intended recipient.

6.2.4. When transporting six (6) or more records containing Confidential Information, outside a Secured Area, do one or more of the following as appropriate:

6.2.4.1. Use a Trusted System.

6.2.4.2. Encrypt the Confidential Information, including:

6.2.4.2.1. Encrypting email and/or email attachments that contain the Confidential Information.

6.2.4.2.2. 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.**

6.2.5. Send paper documents containing Confidential Information via a Trusted System.

6.2.6. Following the requirements of the DSHS Data Security Requirements Exhibit, if attached to this Contract.

6.3. 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.

6.4. 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.

6.5. 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, 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 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 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:

15.1. At DSHS' discretion, the Contract may be renegotiated under the revised funding conditions.

15.2. DSHS' 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.

15.2.1. 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.

15.2.2. 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.

15.2.3. 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 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.

15.3. 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 service 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. 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.

**18. 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.

**19. 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.

**20. Indemnification and Hold Harmless.**

20.1. 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.

20.2. 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.

20.3. 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.

20.4. 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.

**21. 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.

**22. 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:

22.1. 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;

22.2. Be sent by certified mail (return receipt) or other manner that proves OFR received the request;

22.3. Include a statement as to why the Contractor thinks the notice is incorrect; and

22.4. 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.

## **23. Subcontracting.**

Upon execution of this Contract, the Contractor shall submit a list of current subcontractors for DSHS approval. Any changes to the list must be submitted for DSHS approval within fourteen (14) days. The 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.

## **24. Subrecipients.**

**24.1. General.** If the Contractor is a subrecipient of federal awards as defined by 2 CFR Part 200 and this Contract, the Contractor shall:

- 24.1.1. 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;
- 24.1.2. 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;
- 24.1.3. Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
- 24.1.4. Incorporate 2 CFR Part 200, Subpart F audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;
- 24.1.5. 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
- 24.1.6. 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.)

### **24.2. Single Audit Act Compliance.**

If the Contractor is a subrecipient and expends \$750,000 or more in federal awards from 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:

- 24.2.1. 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;
- 24.2.2. 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

### 24.3. **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 Contract, DSHS may require the Contractor to reimburse DSHS in accordance with 2 CFR Part 200.

## 25. **Terminations.**

### 25.1. **Termination for Default.**

25.1.1. **Termination by Contractor.** The Contractor may terminate this Contract whenever DSHS defaults in performance of the Contract and fails to cure the default within a period of one hundred twenty (120) calendar days (or such longer period as the Contractor may allow) after receipt from the Contractor of a written notice, as described in the Notices section of the General Terms and Conditions, specifying the default. For purposes of this Section, "default" means failure of DSHS to meet one or more material obligations of this Contract. In the event it is determined that DSHS was not in default, DSHS may claim damages for wrongful termination through the dispute resolution provisions of this Contract or by a court of competent jurisdiction.

25.1.2. **Termination by DSHS.** DSHS may terminate this Contract whenever the Contractor defaults in performance of this Contract and fails to cure the default within a period of one hundred twenty (120) calendar days (or such longer period as DSHS may allow) after receipt from DSHS of a written notice, as described in the Notices section of the General Terms and Conditions, specifying the default. For purposes of this Section, "default" means failure of the Contractor to meet one or more material obligations of this Contract. In the event it is determined that the Contractor was not in default, the Contractor may claim damages for wrongful termination through the dispute resolution provisions of this Contract or by a court of competent jurisdiction.

### 25.2. **Termination for Convenience.**

25.2.1. **Termination by DSHS.** Notwithstanding any other provision of this Contract, the DSHS may, by giving thirty (30) calendar days written notice, beginning on the second day after the mailing, terminate this Contract in whole or in part when it is in the best interest of DSHS, as determined by DSHS in its sole discretion. If this Contract is so terminated, 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.

25.2.2. **Termination by Contractor.** The effective date of any termination shall be ninety (90) days from the date of the Contractor's written notice unless the Department determines that an orderly disenrollment to Medicaid fee-for-service or transfer to another managed

long-term care plan can be accomplished in fewer days.

**26. 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.

**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.

**28. Taxes.**

28.1. 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.

28.2. 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.

28.3. 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.

**29. HIPAA Compliance.**

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

**29.1. Definitions.**

29.1.1. "Business Associate," as used in this Contract, means the "Contractor" and generally has the same meaning as the term "business associate" at 45 CFR 160.103. Any reference to Business Associate in this Contract includes Business Associate's employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.

- 29.1.2. "Business Associate Agreement" means this HIPAA Compliance section of the Contract and includes the Business Associate provisions required by the U.S. Department of Health and Human Services, Office for Civil Rights.
- 29.1.3. "Breach" means the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the Protected Health Information, with the exclusions and exceptions listed in 45 CFR 164.402.
- 29.1.4. "Covered Entity" means DSHS, a Covered Entity as defined at 45 CFR 160.103, in its conduct of covered functions by its health care components.
- 29.1.5. "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.
- 29.1.6. "Electronic Protected Health Information (E PHI)" means Protected Health Information that is transmitted by electronic media or maintained in any medium described in the definition of electronic media at 45 CFR 160.103.
- 29.1.7. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as modified by the American Recovery and Reinvestment Act of 2009 ("ARRA"), Sec. 13400 – 13424, H.R. 1 (2009) (HITECH Act).
- 29.1.8. "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and Part 164.
- 29.1.9. "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).
- 29.1.10. "Minimum Necessary" means the least amount of PHI necessary to accomplish the purpose for which the PHI is needed.
- 29.1.11. "Protected Health Information (PHI)" means individually identifiable health information created, received, maintained, or transmitted by Business Associate on behalf of a health care component of the Covered Entity that relates to the provision of health care to an Individual; the past, present, or future physical or mental health or condition of an Individual; or the past, present, or future payment for provision of health care to an Individual. 45 CFR 160.103. PHI includes demographic information that identifies the Individual or about which there is reasonable basis to believe can be used to identify the Individual. 45 CFR 160.103. PHI is information transmitted or held in any form or medium and includes E PHI. 45 CFR 160.103. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USCA 1232g(a)(4)(B)(iv) or employment records held by a Covered Entity in its role as employer.
- 29.1.12. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
- 29.1.13. "Subcontractor" as used in this HIPAA Compliance section of the Contract (in addition to its definition in the General Terms and

Conditions) means a Business Associate that creates, receives, maintains, or transmits Protected Health Information on behalf of another Business Associate.

29.1.14. "Use" includes the sharing, employment, application, utilization, examination, or analysis, of PHI within an entity that maintains such information.

29.2. **Compliance.** Business Associate shall perform all Contract duties, activities, and tasks in compliance with HIPAA, the HIPAA Rules, and all attendant regulations as promulgated by the U.S. Department of Health and Human Services, Office of Civil Rights.

29.3. **Use and Disclosure of PHI.** Business Associate is limited to the following permitted and required uses or disclosures of PHI:

29.3.1. **Duty to Protect PHI.** Business Associate shall protect PHI from, and shall use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 (Security Standards for the Protection of Electronic Protected Health Information) with respect to EPHI, to prevent the unauthorized Use or disclosure of PHI other than as provided for in this Contract or as required by law, for as long as the PHI is within its possession and control, even after the termination or expiration of this Contract.

29.3.2. **Minimum Necessary Standard.** Business Associate shall apply the HIPAA Minimum Necessary standard to any Use or disclosure of PHI necessary to achieve the purposes of this Contract. See 45 CFR 164.514 (d)(2) through (d)(5).

29.3.3. **Disclosure as Part of the Provision of Services.** Business Associate shall only Use or disclose PHI as necessary to perform the services specified in this Contract or as required by law and shall not Use or disclose such PHI in any manner that would violate Subpart E of 45 CFR Part 164 (Privacy of Individually Identifiable Health Information) if done by Covered Entity, except for the specific uses and disclosures set forth below.

29.3.4. **Use for Proper Management and Administration.** Business Associate may Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

29.3.5. **Disclosure for Proper Management and Administration.** Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

29.3.6. **Impermissible Use or Disclosure of PHI.** Business Associate shall report to DSHS in writing all Uses or disclosures of PHI not provided for by this Contract within one (1) business day of becoming aware of the unauthorized Use or disclosure of PHI, including Breaches of unsecured PHI as required at 45 CFR 164.410 (Notification by a Business Associate), as well as any Security Incident of which it becomes aware. Upon request by DSHS, Business Associate shall mitigate, to the extent practicable, any harmful effect resulting from the impermissible Use or disclosure.

29.3.7. **Failure to Cure.** If DSHS learns of a pattern or practice of the Business Associate that constitutes a violation of the Business Associate's obligations under the terms of this

Contract and reasonable steps by DSHS do not end the violation, DSHS shall terminate this Contract, if feasible. In addition, If Business Associate learns of a pattern or practice of its Subcontractors that constitutes a violation of the Business Associate's obligations under the terms of their contract and reasonable steps by the Business Associate do not end the violation, Business Associate shall terminate the Subcontract, if feasible.

29.3.8. Termination for Cause. Business Associate authorizes immediate termination of this Contract by DSHS, if DSHS determines that Business Associate has violated a material term of this Business Associate Agreement. DSHS may, at its sole option, offer Business Associate an opportunity to cure a violation of this Business Associate Agreement before exercising a termination for cause.

29.3.9. Consent to Audit. Business Associate shall give reasonable access to PHI, its internal practices, records, books, documents, electronic data and/or all other business information received from or created or received by Business Associate on behalf of DSHS, to the Secretary of DHHS and/or to DSHS for use in determining compliance with HIPAA privacy requirements.

29.3.10. **Obligations of Business Associate Upon Expiration or Termination.** Upon expiration or termination of this Contract for any reason, with respect to PHI received from DSHS, or created, maintained, or received by Business Associate, or any Subcontractors, on behalf of DSHS, Business Associate shall:

29.3.10.1. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

29.3.10.2. Return to DSHS or destroy the remaining PHI that the Business Associate or any Subcontractors still maintain in any form;

29.3.10.3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 (Security Standards for the Protection of Electronic Protected Health Information) with respect to Electronic Protected Health Information to prevent Use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate or any Subcontractors retain the PHI;

29.3.10.4. Not Use or disclose the PHI retained by Business Associate or any Subcontractors other than for the purposes for which such PHI was retained and subject to the same conditions set out in the "Use and Disclosure of PHI" section of this Contract which applied prior to termination; and

29.3.10.5. Return to DSHS or destroy the PHI retained by Business Associate, or any Subcontractors, when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

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

#### **29.4. Individual Rights.**

29.4.1. Accounting of Disclosures

29.4.1.1. Business Associate shall document all disclosures, except those disclosures that are exempt under 45 CFR 164.528, of PHI and information related to such disclosures.



29.4.1.2. Within ten (10) business days of a request from DSHS, Business Associate shall make available to DSHS the information in Business Associate's possession that is necessary for DSHS to respond in a timely manner to a request for an accounting of disclosures of PHI by the Business Associate. See 45 CFR 164.504(e)(2)(ii)(G) and 164.528(b)(1).

29.4.1.3. At the request of DSHS or in response to a request made directly to the Business Associate by an Individual, Business Associate shall respond, in a timely manner and in accordance with HIPAA and the HIPAA Rules, to requests by Individuals for an accounting of disclosures of PHI.

29.4.1.4. Business Associate record keeping procedures shall be sufficient to respond to a request for an accounting under this section for the six (6) years prior to the date on which the accounting was requested.

#### 29.4.2. **Access.**

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

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

#### 29.4.3. **Amendment.**

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

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

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

29.6. **Obligations.** To the extent the Business Associate is to carry out one or more of DSHS's obligation(s) under Subpart E of 45 CFR Part 164 (Privacy of Individually Identifiable Health Information), Business Associate shall comply with all requirements that would apply to DSHS in the performance of such obligation(s).

29.7. **Liability.** Within ten (10) business days, Business Associate must notify DSHS of any complaint, enforcement or compliance action initiated by the Office for Civil Rights based on an allegation of violation of the HIPAA Rules and must inform DSHS of the outcome of that action. Business Associate bears all responsibility for any penalties, fines or sanctions imposed against the Business Associate for violations of the HIPAA Rules and for any imposed against its Subcontractors or agents for which it is found liable.

## 29.8. Breach Notification.

- 29.8.1. In the event of a Breach of unsecured PHI or disclosure that compromises the privacy or security of PHI obtained from DSHS or involving DSHS clients, Business Associate will take all measures required by state or federal law.
- 29.8.2. Business Associate will notify DSHS within one (1) business day by telephone and in writing of any acquisition, access, Use or disclosure of PHI not allowed by the provisions of this Contract or not authorized by HIPAA Rules or required by law of which it becomes aware which potentially compromises the security or privacy of the Protected Health Information as defined in 45 CFR 164.402 (Definitions).
- 29.8.3. Business Associate will notify the DSHS Contact shown on the cover page of this Contract within one (1) business day by telephone or e-mail of any potential Breach of security or privacy of PHI by the Business Associate or its Subcontractors or agents. Business Associate will follow telephone or e-mail notification with a faxed or other written explanation of the Breach, to include the following: date and time of the Breach, date Breach was discovered, location and nature of the PHI, type of Breach, origination and destination of PHI, Business Associate unit and personnel associated with the Breach, detailed description of the Breach, anticipated mitigation steps, and the name, address, telephone number, fax number, and e-mail of the individual who is responsible as the primary point of contact. Business Associate will address communications to the DSHS Contact. Business Associate will coordinate and cooperate with DSHS to provide a copy of its investigation and other information requested by DSHS, including advance copies of any notifications required for DSHS review before disseminating and verification of the date's notifications were sent.
- 29.8.4. If DSHS determines that Business Associate or its Subcontractor(s) or agent(s) is responsible for a Breach of unsecured PHI:
- 29.8.4.1. requiring notification of Individuals under 45 CFR § 164.404 (Notification to Individuals), Business Associate bears the responsibility and costs for notifying the affected Individuals and receiving and responding to those Individuals' questions or requests for additional information;
  - 29.8.4.2. requiring notification of the media under 45 CFR § 164.406 (Notification to the media), Business Associate bears the responsibility and costs for notifying the media and receiving and responding to media questions or requests for additional information;
  - 29.8.4.3. requiring notification of the U.S. Department of Health and Human Services Secretary under 45 CFR § 164.408 (Notification to the Secretary), Business Associate bears the responsibility and costs for notifying the Secretary and receiving and responding to the Secretary's questions or requests for additional information; and
  - 29.8.4.4. DSHS will take appropriate remedial measures up to termination

of this Contract.

**29.9. Miscellaneous Provisions.**

29.9.1. Regulatory References. A reference in this Contract to a section in the HIPAA Rules means the section as in effect or amended.

29.9.2. Interpretation. Any ambiguity in this Contract shall be interpreted to permit compliance with the HIPAA Rules.

**30. Mandatory Individual Arbitration and Class or Collective Action Waiver as a Condition of Employment.**

30.1. "Mandatory Individual Arbitration Clause" or "Class or Collective Action Waiver" means an arbitration clause or waiver in an employment contract which precludes Contractor's employees from resolving employment disputes with their employer through class or collective proceedings in federal court. Instead, employees must bring individualized arbitration proceedings against their employer to resolve any employment disputes.

30.2. The Contractor, by signature to this Contract, certifies that the Contractor does not require Contractor's employees to agree to, as a condition of employment, a Mandatory Individual Arbitration Clause or Class or Collective Action Waiver.

30.3. Contractor must notify DSHS within ten (10) business days if, during the term of this Contract, Contractor requires Contractor's employees to agree to, as a condition of employment, a Mandatory Individual Arbitration Clause or Class or Collective Action Waiver.

30.4. If Contractor, during the term of this contract, requires Contractor's employees to agree to, as a condition of employment, a Mandatory Individual Arbitration Clause or Class or Collective Action Waiver, DSHS reserves the right to terminate this contract, per the General Terms and Conditions Section regarding Termination for Convenience.

**1. Purpose.**

The purpose of this Contract is to provide all Medicaid-covered Services, unless specifically excluded from this Contract, as specified in Washington's approved Medicaid State Plan, to individuals enrolled in the Program of All-Inclusive Care for the Elderly (PACE).

**2. 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 in this Contract and in accordance with 42 CFR 460 and the attached Exhibit A, Data Security Requirements; Exhibit B, PACE Program Agreement; Exhibit C, County Per Member Per Month PACE Rates; Exhibit D, Data Collection Template ; Exhibit E, Forecast Report Template; Exhibit F, Notification of Disenrollment; Exhibit G, AFH Monthly Report Template; Exhibit H, Service Area Zip Codes per County and Exhibit I, PACE Disenrollment Checklist Form; Exhibit J, Extended Covid-19 Related Increased PACE Rates.

**3. Comprehensive Assessment Reporting Evaluation (CARE).**

DSHS will share limited information regarding PACE Enrollees from the Comprehensive Assessment Reporting Evaluation (CARE) software.

**3.1. Purpose.**

- 3.1.1. Activity for which the Data is needed: Case Management activities
- 3.1.2. How Data Recipient will use Data: Staff will view the Data for eligibility and care planning activities.

**3.2. Description of Data.**

- 3.2.1. Data Elements: CARE Assessments for Contractor **PACE clients only**.
- 3.2.2. Time frame(s) for Data disclosure or exchange: ongoing.
- 3.2.3. Conditions under which, if any, that Data disclosed or exchanged can be linked to other Data: None

**3.3. Data Access or Transfer.**

- 3.3.1. Method. DSHS shall provide the CARE application to the Contractor via VPN or Secure Access Washington (SAW). To access CARE through VPN, the Contractor is required to:
  - 3.3.1.1. Have the current version of Java and current RSA software.
  - 3.3.1.2. Setup, Install and test the VPN connection to access CARE.
- 3.3.2. Requirements for Access. Access to Data shall be limited to staff whose duties specifically require access to such Data in the performance of their assigned duties. Prior to making Data available to its staff, Data Recipient

shall notify all such staff of the Use and Disclosure requirements. All staff accessing the data shall then sign a statement in which they agree to adhere to the Use and Disclosure requirements and a list of such staff and their statements, with their signatures, shall be updated as necessary and submitted to the Data Provider upon request.

When a new user needs access, Contractor will notify the PACE Program Manager, Kathryn Pittelkau at 360-725-2366 or [kathryn.pittelkau@dshs.wa.gov](mailto:kathryn.pittelkau@dshs.wa.gov).

When a user no longer needs access, Contractor will notify the PACE Program Manager, Kathryn Pittelkau at 360-725-2366 or [kathryn.pittelkau@dshs.wa.gov](mailto:kathryn.pittelkau@dshs.wa.gov), within one (1) business day.

3.3.3. Frequency of Exchange. Ongoing.

3.4. **Limitations on Use of Data.** If the Data and analyses generated by Data Recipient contain personal information about DSHS clients, 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.

#### 4. **Insurance.**

The Contractor may waive the requirements as described in the Commercial General Liability Insurance, Professional Liability Insurance, Insurers and Evidence of Coverage provisions of this Section if self-insured. In the event the Contractor is self-insured, the Contractor must send to DSHS by the third Wednesday of January in each Contract year, a signed written document, which certifies that the Contractor is self-insured, carries coverage adequate to meet the requirements of this Section, will treat the State of Washington, DSHS its agents and employees as an additional insured, expressly for, and limited to, the Contractor's services provided under this Contract, and provides a point of contact for DSHS.

##### 4.1. **General Liability Insurance**

The Contractor shall maintain Commercial General Liability Insurance, or Business Liability Insurance, no less comprehensive than covered under Insurance Services Office (ISO) form CG 00-01, including coverage for bodily injury, property damage, and contractual liability. The amount of coverage shall be no less than \$1,000,000 per occurrence and \$2,000,000 General Aggregate. The policy shall include liability arising out of premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The State of Washington, Department of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees of the state, shall be named as additional insured's.

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. 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 minimum limits of \$1,000,000 per occurrence; and 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.

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 of \$1,000,000 per occurrence; and 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.

#### **4.2. 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.

#### **4.3. Professional Liability Insurance (PL)**

The Contractor shall maintain at least \$1,000,000 per occurrence, \$2,000,000 general annual aggregate for malpractice or and omissions coverage against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use, and damages because of negligent acts, errors, and omissions in any way related to this Contract,

#### **4.4. 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 Title 51 by the Contractor or its employees under such laws and regulations.

#### **4.5. 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.

#### **4.6. 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. Failure of Subcontractors to comply with the insurance requirements of this Contract does not limit the Contractor's liability or responsibility.

#### **4.7. Separation of Insured's**

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

#### **4.8. 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.

#### **4.9. Evidence of Coverage**

Upon request, the Contractor shall submit certificates of Insurance to DSHS for each coverage required of the Contractor under the Contract. Each Certificate of Insurance shall be executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Contract. The Certificate of Insurance for each required policy shall reference the DSHS Contract Number for the Contract. The Contractor is not required to submit to DSHS copies of Certificates of Insurance for personal automobile insurance required of the Contractor's employees and volunteers under the Contract. 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.

#### **4.10. Material Changes**

The insurer shall give DSHS point of contact listed on page one of this Contract 45 days advance written notice of cancellation or non-renewal of any insurance policy required under this Contract. If cancellation is due to non-payment of premium, the insurer shall give DSHS 10 days advance written notice of cancellation. Failure to provide notice as required may result in termination of Contract.

#### **4.11. 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.

**4.12. 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.

**4.13. Waiver of Subrogation**

Contractor waives all rights of subrogation against DSHS for the recovery of damages to the extent such damages are or would be covered by insurance required under the Contract. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies whether or not DSHS receives the waiver of subrogation endorsement from the insurer.

**4.14. Coverage Limits**

By requiring insurance, the State of Washington and DSHS do not represent that the coverage and limits required in this Contract will be adequate to protect the Contractor. Such coverage and limits shall not limit the Contractor's 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.

**4.15. Primary Coverage**

All Contractor's insurance provided in compliance with this Contract shall be primary and shall not seek contribution from insurance or self-insurance programs afforded to or maintained by the State. Insurance or self-insurance programs afforded to or maintained by the State shall be in excess of, and shall not contribute with, insurance required of the Contractor and Subcontractors under this Contract.

**4.16. 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.



## **5. Disputes.**

When a dispute arises over an issue that pertains in any way to this Contract, the parties agree to the following process to address the dispute:

- 5.1. Except as otherwise provided in this Contract, when a dispute arises between DSHS and the Contractor and it cannot be resolved, the Contractor may request a dispute resolution conference with the Director. The request for a dispute resolution conference must be in writing and shall clearly state all of the following:
  - 5.1.1. the disputed issue(s)
  - 5.1.2. an explanation of the positions of the parties
  - 5.1.3. any additional facts necessary to explain completely and accurately the nature of the dispute
- 5.2. Requests shall be mailed to the Director within 15 days of the Contractor receiving notice of the disputed issue(s)
- 5.3. The Director, in his or her sole discretion, will determine a time for the parties to present their views on the disputed issue(s). The conference is informal in nature and not governed by the Administrative Procedure Act, Chapter 34.05 RCW.
- 5.4. The Director will consider all of the information provided at the conference and will issue a written decision on the disputed issue(s) within thirty (30) calendar days after the conclusion of the conference. However, the Director retains the option of taking up to an additional sixty (60) calendar days to consider the disputed issue(s) or taking additional steps to attempt to resolve them. If the Director determines, in his or her sole discretion, that an additional period of up to sixty (60) calendar days is needed for review, he or she will notify the Contractor, in writing, of the delay and the anticipated completion date before the initial thirty-day period expires.
- 5.5. The Director, at his or her sole discretion, may appoint a designee to represent him or her at the dispute conference. If the Director does not appoint a designee to represent him or her at the dispute conference, the Director shall retain all final decision-making authority regarding the disputed issue(s). Under no circumstances shall the Director's designee have any authority to issue a final decision on the disputed issue(s).
- 5.6. The parties hereby agree that this dispute process shall precede any judicial or quasi-judicial proceeding and is the sole administrative remedy under this Contract.

## **6. Force Majeure.**

If the Contractor is prevented from performing any of its obligations hereunder in whole or in part as a result of a major epidemic, act of God, war, civil disturbance, court order

or any other cause beyond its control, such nonperformance shall not be a ground for termination for default. Immediately upon the occurrence of any such event, the Contractor shall commence to use its best efforts to provide, directly or indirectly, alternative and, to the extent practicable, comparable performance. Nothing in this Section shall be construed to prevent DSHS from terminating this Contract for reasons other than for default during the period of events set forth above, or for default, if such default occurred prior to such event.

**7. Mergers and Acquisitions.**

If the Contractor is involved in an acquisition of assets or merger with another DSHS Contractor after the effective date of this Contract, DSHS reserves the right, to the extent permitted by law, to require that each Contractor maintain its separate business lines for the remainder of the Contract period.

**8. Notification of Organizational Changes.**

The Contractor shall provide DSHS with ninety (90) calendar days' prior written notice of any change in the Contractor's ownership or legal status. The Contractor shall provide DSHS notice of any changes to the Contractor's key personnel including, but not limited to, the Contractor's Chief Executive Officer, the Contractor's Chief Financial Officer, DSHS government relations contact, DSHS Account Executive, and Medical Director as soon as reasonably possible.

**9. Washington Public Disclosure Act.**

The Contractor acknowledges that DSHS is subject to the Public Records Act (the Act, which is codified at RCW 42.17.250, et seq.). This Contract will be a 'public record' as defined in RCW 42.17.020. Any documents submitted to DSHS by the Contractor may also be construed as 'public records' and therefore subject to public disclosure under the Act. The Contractor may label documents submitted to DSHS as 'confidential' or 'proprietary' if it so chooses; however, the Contractor acknowledges that such labels are not determinative of whether the documents are subject to disclosure under the Act. If DSHS receives a public disclosure request that would encompass any Contractor document that has been labeled by the Contractor as 'confidential' or 'proprietary,' then DSHS will notify the Contractor pursuant to RCW 42.17.330. The Contractor then will have the option, under RCW 42.17.330, of seeking judicial intervention to prevent the public disclosure of the affected document(s).

**10. Notices.**

Whenever one party is required to give notice to the other under this Contract, it shall be deemed given if mailed by United States Postal Services, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

10.1. In the case of notice to the Contractor, notice will be sent to:

PACE Organization Selected Personnel  
Title  
Street address of PO  
City, State, Zip code

- 10.2. In the case of notice to DSHS a formal letterhead signed document can be emailed to the PACE Program Manager or send notice to:

PACE Program Manager  
DSHS/Aging and Long-Term Support Administration  
P.O. Box 45600  
Olympia, WA 98504-5600

- 10.3. Notices shall be effective on the date delivered as evidenced by the return receipt or the date returned to the sender for non-delivery other than for insufficient postage.
- 10.4. Either party may at any time change its address for notification purposes by mailing a notice in accord with this Section, stating the change and setting for the new address, which shall be effective on the tenth (10th) day following the effective date of such notice unless a later date is specified.

## **11. Enrollment.**

### **11.1. Service Area.**

The Contractor shall provide the services described in this Contract to clients who are determined by DSHS to reside in the PACE service area as noted by eligible zip codes per county in Exhibit H, Service Area Zip Codes per County and meet all requirements for enrollment in PACE.

### **11.2. Eligible Client Group.** DSHS shall determine eligibility for enrollment under this Contract.

11.2.1. The Contractor may only request enrollment of Medicaid clients who have been found functionally and financially eligible to receive Medicaid services for the month in which the Contractor is requesting enrollment and according to CFR 460.150(2) and CFR 460.152(3).

11.2.2. To be eligible for enrollment, clients must meet the functionally and financially eligible requirements for the PACE program.

11.2.3. The Contractor may only enroll private pay individuals who have been determined by the state to be functionally eligible prior to enrollment.

### **11.3. Enrollment Period.** Subject to the enrollment provisions of this Contract, enrollment is continuously open.

### **11.4. Effective Date of Enrollment.**

11.4.1. Enrollment with the Contractor shall be effective on the later of the following dates:

11.4.1.1. If the client is eligible and the enrollment is processed on or before the first of the next month, enrollment shall be effective

the first day of the month following the month in which the enrollment is processed; or

11.4.1.2. If the enrollment is processed after the first of the month or the client is not eligible for enrollment, enrollment shall be effective the first day of the second month following the month in which the enrollment is processed.

11.4.2. Enrollments will be done prospectively except in the following cases:

11.4.2.1. Client currently resides in a facility that does not have a DSHS contract, not enrolling would result in the client losing housing.

11.4.2.2. Client will meet eligibility criteria the month of enrollment but are not eligible on the first of the month.

11.5. **Enrollment Data and Requirements for Contractor's Response.** HCA will provide the Contractor with data files with the information needed to perform the services described in this Contract.

11.5.1. Data files will be sent to the Contractor at intervals specified within the HCA 834 Benefit Enrollment and Maintenance Companion Guide, published by HCA and incorporated by reference.

11.5.2. The data file will be in the Health Insurance Portability and Accountability Act (HIPAA) compliant 834, Benefit Enrollment and Maintenance format (45 C.F.R. § 162.1503).

11.5.3. The data file will be transferred per specifications defined within HCA Companion Guides.

11.6. **Enrollment Process.**

11.6.1. The Contractor shall submit a list on the 23<sup>rd</sup> of the month prior to the start of the month enrollment is requested.

11.6.1.1. The Contractor shall provide

11.6.1.1.1. Name

11.6.1.1.2. ProviderOne Id

11.6.1.1.3. Date of enrollment

11.6.1.1.4. Living Situation (in home vs residential)

11.6.1.1.5. The signed disenrollment form for other insurance, attached hereto as Exhibit F.

11.6.2. Enrollment will only be processed for clients who meet the following criteria:

11.6.2.1. PACE eligible recipient aid category (RAC)

11.6.2.2. Resides in the PACE service area

11.6.2.3. Does not have comparable insurance

**11.7. Enrollment reconnect process.**

11.7.1. The Contractor must have written processes in place to assist clients in maintaining financial eligibility for Medicaid.

11.7.2. If a client loses eligibility, when Medicaid eligibility is reinstated and covers the month in question, the Contractor may request a reconnect to plan.

11.7.3. Such requests shall be submitted to DSHS monthly as part of the reconciliation process between DSHS and the Contractor.

**11.8. Denial of Enrollment.**

11.8.1. The Contractor must have written processes in place to determine if a client is safe to live in the community per approved safety criteria found in contract between the state, CMS, and the Contractor.

11.8.2. If the Contractor denies enrollment due to safety concerns the Contractor must provide the following documentation within 14 days for state review.

11.8.2.1. A copy of the PO's denial of enrollment letter sent to the applicant, which includes appeal rights;

11.8.2.2. Assessment/evaluation used to determine the denial;

11.8.2.3. Narrative explanation of the basis for the finding, including attempts to arrive at a safe plan for enrollment; and

11.8.2.4. The professional disciplines involved in the PO's determination.

**11.9. Disenrollment of Medicaid clients.**

11.9.1. Disenrollment requests will be submitted to DSHS HCS Program Manager and HCS/AAA PACE unit by the 15<sup>th</sup> of the month prior to the month the disenrollment is requested. HCS Program Manager can make exceptions.

11.9.1.1. The contractor should provide:

11.9.1.1.1. Name;

11.9.1.1.2. ProviderOne id;

11.9.1.1.3. Date of disenrollment;

11.9.1.1.4. Living situation (in home vs residential) and

11.9.1.1.5. Specific reason for disenrollment as defined by the state.

11.9.2. The Contractor must notify the HCS/AAA PACE unit of any pending disenrollments as soon as they are known. The Contractor and HCS/AAA PACE unit must have a written process for disenrollment and communication that includes the attached Exhibit I, PACE Disenrollment Checklist Form, being completed and provided to HCS/AAA PACE unit for each disenrollment to assist in ensuring a safe disenrollment and transition of care.

11.9.3. Voluntary disenrollment requests will be effective the first of the month following the date the PACE organizations receive the participant's notice of voluntary disenrollment.

11.9.4. Involuntary disenrollments must comply with CFR 460.164

11.9.4.1. The Contractor must submit adequate documentation of efforts made with the Enrollee to assist them in staying enrolled in the program.

11.9.4.2. If DSHS agrees with disenrollment, the involuntary disenrollment is effective on the first day of the next month that begins 30 days after the day the PACE organization sends notice of the disenrollment to the participant, if a safe disenrollment plan is in place. The Contractor will notify the beneficiary of appeal rights through DSHS.

## **12. Program Integrity.**

### **12.1. General Requirements.**

12.1.1. The Contractor shall have and comply with policies and procedures that guide and require the Contractor and the Contractor's officers, employees, agents and subcontractors to comply with the requirements of this Section.

12.1.2. The Contractor shall include Program Integrity requirements in its subcontracts and provider application, credentialing and re-credentialing processes, if applicable.

12.1.3. The following are relevant citations for Program Integrity compliance. The Contractor is expected to be familiar with, comply with, and require compliance with all regulations related to Program Integrity whether or not those regulations are listed below:

12.1.3.1. Section 1902(a)(68) of the Social Security Act;

12.1.3.2. 42 C.F.R. § 460;

12.1.3.3. 42 C.F.R. § 455;

12.1.3.4. 42 C.F.R. § 1000 through 1008; and

12.1.3.5. Chapters 74.66 RCW.

12.1.4. The Contractor shall ensure compliance with the Program Integrity provisions of this Contract, including proper payments to providers or subcontractors and methods for detection and prevention of Fraud, Waste, and Abuse.

## **12.2. Referrals of Credible Allegations of Fraud and Provider Payment Suspensions.**

12.2.1. Provider Payment Suspensions and Referrals of Potential Credible Allegations of Fraud.

The Contractor shall establish policies and procedures for suspending a provider's payments when HCA/DSHS determines a credible allegation of fraud exists and directs that payment suspension shall occur while the matter is being investigated.

12.2.1.1. When the Contractor suspects that an incident of fraud has occurred, the Contractor shall make a fraud referral to the HCA or ALTSA within five (5) business days of the determination. The referral must be in writing and sent to [MFCUreferrals@atg.wa.gov](mailto:MFCUreferrals@atg.wa.gov) for medical provider fraud and [ADSAfraud@dshs.wa.gov](mailto:ADSAfraud@dshs.wa.gov) for social service provider fraud. Include a copy to the PACE Program Manager.

## **12.3. Disclosure by Contractor: Information on Ownership and Control.**

The Contractor must provide to HCA the following disclosures (42 C.F.R. § 455.103, 42 C.F.R § 455.104(b), SSA §§ 1903(m)(2)(A)(viii), 1124(a)(2)(A)):

12.3.1. The identification of any person or corporation with a direct, indirect or combined direct/indirect ownership interest of five percent (5%) or more of the Contractor's equity (or, in the case of a subcontractor's disclosure, five percent (5%) or more of the subcontractor's equity).

12.3.2. The identification of any person or corporation with an ownership interest of five percent (5%) or more of any mortgage, deed of trust, note or other obligation secured by the Contractor if that interest equals at least five percent (5%) of the value of the Contractor's assets (or, in the case of a subcontractor's disclosure, a corresponding obligation secured by the subcontractor equal to five percent (5%) of the subcontractor's assets).

12.3.3. The name, address, date of birth, and Social Security Number of any managing employee of the Contractor. For the purposes of this Subsection "managing employee" means a general manager, business manager, administrator, corporate officer, director (i.e., member of the

board of directors), or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of an institution, organization, or agency.

12.3.4. The disclosures must include the following:

12.3.4.1. The name, address, and financial statement(s) of any person (individual or corporation) that has five percent (5%) or more ownership or control interest in the Contractor.

12.3.4.2. The name and address of any person (individual or corporation) that has five percent (5%) or more ownership or control interest in any of the Contractor's subcontractors.

12.3.4.3. Indicate whether the individual/entity with an ownership or control interest is related to any other Contractor employee such as a spouse, parent, child, or siblings; or is related to one of the Contractor's officers, directors, or other owners.

12.3.4.4. Indicate whether the individual/entity with an ownership or control interest owns five percent (5%) or greater in any other organizations.

12.3.4.5. The address for corporate entities must include as applicable, primary business address, every business location, and P.O. Box addresses.

12.3.4.6. Date of Birth and Social Security Number (in the case of an individual).

12.3.4.7. Other tax identification number (in the case of a corporation) with an ownership or control interest in the Contractor or its subcontractor.

12.3.5. The Contractor must terminate or deny network participation if a provider, or any person with five percent (5%) or greater direct or indirect ownership interest fails to submit sets of fingerprints in a form and manner to be determined by HCA, within thirty (30) calendar days when requested by HCA or any authorized federal agency.

12.3.6. Disclosures from the Contractor are due to HCA at any of the following times:

12.3.6.1. When the Contractor submits a proposal in accordance with a DSHS procurement process.

12.3.6.2. When the Contractor executes the Contract with DSHS.

12.3.6.3. Upon renewal or extension of the Contract.

12.3.6.4. Within thirty-five (35) calendar days after any change in



ownership of the Contractor. The Contractor shall report the change on HCA PIR005 – WA MCO Ownership Change Reporting Template.

12.3.6.5. Upon request by DSHS/HCA.

**12.4. Disclosure by Contractor: Information on Ownership and Control, Subcontractors and Providers.**

12.4.1. The Contractor shall include the following provisions in its written agreements with all subcontractors and providers who are not individual practitioners or a group of practitioners.

12.4.1.1. Requiring the subcontractor or provider to disclose to the MCO upon contract execution [42 C.F.R. § 455.104(c)(1)(ii)], upon request during the re-validation of enrollment process under 42 C.F.R. § 455.414 [42 C.F.R. § 455.104(c)(1)(iii)], and within thirty-five (35) business days after any change in ownership of the subcontractor or provider 42 C.F.R. § 455.104(c)(1)(iv).

12.4.1.2. The name and address of any person (individual or corporation) with an ownership or control interest in the subcontractor or provider. 42 C.F.R. § 455.104(b)(1)(i).

12.4.2. If the subcontractor or provider is a corporate entity, the disclosure must include primary business address, every business location, and PO Box address. 42 C.F.R. § 455.104(b)(1)(i).

12.4.2.1. If the subcontractor or provider has corporate ownership, the tax identification number of the corporate owner(s). 42 C.F.R. § 455.104(b)(1)(iii).

12.4.2.2. If the subcontractor or provider has a five percent (5%) ownership interest in any of its subcontractors, the tax identification number of the subcontractor(s). 42 C.F.R. § 455.104(b)(1)(iii).

12.4.2.3. Whether any person with an ownership or control interest in the subcontractor or provider is related by marriage or blood as a spouse, parent, child, or sibling to any other person with an ownership or control interest in the subcontractor/provider. 42 C.F.R. § 455.104(b)(2).

12.4.2.4. If the subcontractor or provider has a five percent (5%) ownership interest in any of its subcontractors, whether any person with an ownership or control interest in such subcontractor is related by marriage or blood as a spouse, parent, child, or sibling to any other person with an ownership or control interest in the subcontractor or provider. 42 C.F.R. § 455.104(b)(2).

12.4.2.5. Whether any person with an ownership or control interest in the subcontractor/provider also has an ownership or control interest in any other Medicaid provider, in the state's fiscal provider or in any managed care entity. 42 C.F.R. § 455.104(b)(3).

12.4.3. Upon request, the Contractor and the Contractor's subcontractors shall furnish to HCA, within thirty-five (35) calendar days of the request, full and complete business transaction information as follows:

12.4.3.1. The ownership of any subcontractor with whom the Contractor or subcontractor has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request. (42 C.F.R § 455.105(b)(1)).

12.4.3.2. Any significant business transactions between the Contractor or subcontractor and any wholly owned supplier, or between the provider and any subcontractor, during the 5-year period ending on the date of the request. (42 C.F.R § 455.105(b)(2)).

12.4.4. Upon request, the Contractor and the Contractor's subcontractors shall furnish to the Washington Secretary of State, the Secretary of the US Department of Health and Human Services, the Inspector General of the US Department of Health and Human Services, the Washington State Auditor, the Comptroller of the Currency, and HCA a description of the transaction identified under 42 C.F.R § 455.105 between the Contractor and the other party of interest within thirty-five (35) calendar days of the request, including the following transactions 42 C.F.R. § 438.50(c)(1):

12.4.4.1. A description of transactions between the Contractor and a party in interest (as defined in section 1318(b) of the Public Health Service Act), including the following:

12.4.4.1.1. Any sale or exchange or leasing of any property between the Contractor and such a party.

12.4.4.1.2. Any furnishing for consideration of goods, services (including management services), or facilities between the Contractor and such a party but not including salaries paid to employees for services provided in the normal course of their employment.

12.4.4.1.3. Any lending of money or other extension of credit between the Contractor and such a party. (1903(m)(4)(B); 42 C.F.R. § 438.50(c)(1)).

12.4.4.1.4.

Employment.

12.4.4.1.5. Any lending of money or other extension of credit between the Contractor and such a party.

(1903(m)(4)(B); 42 C.F.R. § 438.50(c)(1)).

**12.5. Excluded Individuals and Entities.**

The Contractor is prohibited from paying with funds received under this Contract for goods and services furnished by an excluded person, at the medical direction or on the prescription of an excluded person. The Contractor shall notify the suppliers of excluded individual and allow the suppliers a fifteen (15) day grace period from the notification to stop all prescription fills. (Social Security Act (SSA) section 1903(i)(2) of the Act; 42 C.F.R. § 455.104, 42 C.F.R. § 455.106, and 42 C.F.R. § 1001.1901(b)).

12.5.1. The Contractor shall monitor for excluded individuals and entities by:

12.5.1.1. Screening Contractor and subcontractor individuals and entities with an ownership or control interest during the initial provider application, credentialing, and re-credentialing processes and prior to entering a contractual or other relationship where the individual or entity would benefit directly or indirectly from funds received under this Contract and payable by a federal health care program.

12.5.1.2. Screening individuals during the initial provider application, credentialing, and re-credentialing process and prior to entering a contractual or other relationship where the individual would benefit directly or indirectly from funds received under this Contract or payable by a federal health care program.

12.5.1.3. Screening LEIE and SAM lists monthly for all Contractor and subcontractor individuals and entities with an ownership or control interest, and individuals defined as affiliates, in the Federal Acquisition Regulation, of an individual that is debarred, suspended, or otherwise excluded from participating in procurement activities, and individuals that would benefit from funds received under this Contract for newly added excluded individuals and entities.

12.5.2. The Contractor will not make any payments for goods or services that directly or indirectly benefit any excluded individual or entity effective with the date of exclusion. The Contractor will immediately recover any payments for goods and services that benefit excluded individuals and entities that it discovers.

12.5.3. The Contractor shall immediately terminate any employment, contractual and control relationships with any excluded individual or entity discovered during its provider screening processes, including the provider application, credentialing, and re-credentialing, and shall report these individuals and entities within ten (10) business days of discovery.

12.5.4. Civil monetary penalties may be imposed against the Contractor if it

employs or enters into a contract with an excluded individual or entity to provide goods or services to Enrollees. (SSA section 1128A (a)(6) and 42 C.F.R. § 1003.102(a)(2)).

- 12.5.5. An individual or entity is considered to have an ownership or control interest if they have direct or indirect ownership of 5 percent or more, or are a managing employee (e.g., a general manager, business manager, administrator, or director) who exercises operational or managerial control, or who directly or indirectly conducts day-to-day operations (SSA section 1126(b), and 42 C.F.R. § 455.104(a).
- 12.5.6. In addition, if DSHS/HCA notifies the Contractor that an individual or entity is excluded from participation by DSHS/HCA, the Contractor shall terminate all beneficial, employment, and contractual and control relationships with the excluded individual or entity immediately (WAC 182-502-0030).
- 12.5.7. DSHS will validate that the Contractor is conducting all screenings required by this Section during its annual monitoring review.
- 12.5.8. The Contractor shall monitor for excluded individuals and entities and certify to the DSHS/HCS on an annual basis that the organization does not knowingly employ any excluded individuals. Contractor will certify to the Department initially and immediately upon changed circumstances from the last such certification that it does not knowingly have an individual who has been debarred or suspended by the federal or state government.

## **12.6. Fraud, Waste and Abuse (FWA).**

- 12.6.1. The Contractor shall implement and maintain administrative and management arrangements or procedures designed to detect and prevent fraud, waste and abuse. The arrangements or procedures must include the following:
  - 12.6.1.1. A compliance program that includes, at a minimum, all of the following elements:
    - 12.6.1.1.1. Written policies, procedures, and standards of conduct that articulate the organization's commitment to comply with all applicable requirements and standards under the contract, and all applicable federal and state requirements.
    - 12.6.1.1.2. Designation of a Compliance Officer who is accountable for developing and implementing policies and procedures, and practices designed to ensure compliance with the requirements of the contract and who directly reports to the Chief Executive Officer (CEO) and the Board of Directors.

- 12.6.1.1.3. Establishment of a Regulatory Compliance Committee on the Board of Directors and at the senior management level charged with overseeing the organization's compliance program and its compliance with the requirements under Section 12 of this Contract.
- 12.6.1.1.4. System for training and education for the Compliance Officer, the organization's senior management, and the organization's employees for the federal and state standards and requirements under this Contract.
- 12.6.1.1.5. Effective lines of communication between the Compliance Officer and the Contractor's staff and subcontractors.
- 12.6.1.1.6. Enforcement of standards through well-publicized disciplinary guidelines.
- 12.6.1.1.7. Establishment and implementation of procedures and a system with dedicated staff of routine internal monitoring and auditing of compliance risks, prompt response to compliance issues as they are raised, investigation of potential problems as identified in the course of self-evaluation and audits, correction of such problems promptly and thoroughly (or coordination of suspected criminal acts with law enforcement agencies) to reduce the potential for recurrence, and ongoing compliance with the requirements under this Contract.
- 12.6.1.2. Provision for prompt reporting of all overpayments identified and recovered, specifying the overpayments due to potential fraud, to HCA.
- 12.6.1.3. Provision for notification to DSHS when the Contractor receives information about a change in a network provider's circumstances that may affect the network provider's eligibility to participate in the managed care program, including the termination of the provider agreement with the Contractor.
- 12.6.1.4. The requirement for written policies for all employees of the Contractor, and of any subcontractor, agent, or provider, that provide detailed information about the False Claims Act and other federal and state laws described in Section 1902(a)(68) of the Social Security Act, the Washington false claims statutes, chapters 74.66 RCW and RCW 74.09.210, including information about rights of employees to be protected as whistleblowers, and the criminal statutes found in chapter

74.09 sections .230 through .280 RCW.

- 12.6.1.5. Provision for prompt referral of any potential fraud, waste or abuse that the Contractor identifies to HCA Program Integrity and any potential fraud directly to the MFCU.
- 12.6.1.6. Provision for the Contractor's suspension of payments to a network provider for which HCA determines there is a credible allegation of fraud in accordance with 42 C.F.R. § 455.23.
- 12.6.1.7. Provision for prompt response to detected offenses, and for development of corrective action initiatives.

## 12.7. **Education.**

12.7.1. The Contractor must educate staff and subcontractors of the Program Integrity requirements in the contract annually.

12.7.2. False Claims Act Education Compliance.

12.7.2.1. Federal law requires any entity receiving annual Medicaid payments of \$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 \$5 million or more in annual Medicaid payments under one or more provider identification number(s), the Contractor is required to establish and adopt written policies for all employees, including management, and any contractor or agent of the entity, including detailed information about both the federal and state False Claims Acts and other applicable provisions of Section 1902(a)(68) of the Social Security Act. The law requires the following:

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

12.7.2.1.2. Policies regarding the handling and protection of whistleblowers;

12.7.2.1.3. Policies and procedures for detecting and preventing fraud, waste, and abuse;

12.8.1.1.1. 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.

## 12.8. **Reporting.**

12.8.1. If the Contractor suspects client/member/enrollee fraud:

12.8.1.1. The Contractor shall notify the HCA Office of Medicaid Eligibility and Policy (OMEP) of any cases in which the Contractor believes there is a serious likelihood of Enrollee fraud by:

12.8.1.1.1. Sending an email to [WAHeligibilityfraud@hca.wa.gov](mailto:WAHeligibilityfraud@hca.wa.gov);  
or

12.8.1.1.2. Calling the Office of Medicaid Eligibility and Policy at 360-725-0934 and leave a detailed voice mail message; or

12.8.1.1.3. Mailing a written referral to:

Health Care Authority  
Attention: OMEP  
PO Box 45534  
Olympia, WA 98504-5534

Or

12.8.1.1.4. Faxing the written complaint to Attention Washington Apple Health Eligibility Fraud at 360-725-1158.

12.8.2. Any excluded individuals and entities discovered in the screening described in the Fraud, Waste and Abuse Subsection of this Contract, including the provider application, credentialing, and re-credentialing processes, must be reported to HCA within five (5) business days of discovery. The identified excluded individual/entities shall be reported using HCA PIR006- WA Excluded Individual Template.

12.8.3. The Contractor is responsible for investigating Enrollee fraud, waste and abuse and referring Enrollee fraud to HCA OMEP. The Contractor shall provide initial allegations, investigations, and resolutions of Enrollee fraud to HCA OMEP.

12.8.4. The Contractor shall investigate and disclose to HCA, within ten (10) calendar days of Contractor's discovery or upon request of HCA, the identity of any person who has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid services program since the inception of those programs and who is an agent or person who has been delegated the authority to obligate or act on behalf of the Contractor.

12.8.5. The Contractor shall, on a regular basis, check the LEIE and SAM database to identify any excluded individuals/entities. Documentation shall be kept validating the review of the databases and provided to HCA upon request.

### **13. Payment and Rate Setting.**

#### **13.1. Rate setting under this Contract will comply with 460.182 and will:**

- 13.1.1. Be set on a 2-year cycle
- 13.1.2. Will align with the state budget cycle

#### **13.2. Information for Rate Setting.**

- 13.2.1. For rate setting only, the Contractor shall annually provide information regarding its cost experience related to the provision of the services required under this Contract. The experience information shall be provided directly to an actuary designated by DSHS. The designated actuary will determine the timing, content, format and medium for such information. DSHS sets actuarially sound managed care rates.
- 13.2.2. The Contractor shall send a quarterly expenditure report to the DSHS Contract Manager. The quarterly expenditure report format is identified in the Data Collection Template, attached as Exhibit D. The quarterly expenditure report is due to DSHS no later than fourteen (14) calendar days after the last day of the quarter (April, July, October, January). The expenditures reported shall represent the payments made for services under this Contract during the calendar quarter being reported.
  - 13.2.2.1. If expenditures are recorded in “other” categories, the submission must include detailed description of the line item and quarterly expenditure for review and potential inclusion in rates.
  - 13.2.2.2. If the other expense is listed under patient care, it must include both client id and date of service.

#### **13.3. Rates/Premiums – capitation payments.**

- 13.3.1.1. DSHS shall pay a monthly premium for each Enrollee in full consideration of the work to be performed by the Contractor under this Contract. DSHS shall pay the Contractor, on or before the fifteenth (15th) calendar day of the month based on DSHS/HCA list of Enrollees whose enrollment is ongoing or effective on the first day of said calendar month. Rates are as set forth in the attached Exhibit C. The attached Exhibit J, Extended COVID-19 Related Increased PACE Rates are applicable for July - Dec, 2023 and Jan – June, 2024.
- 13.3.1.2. Hepatitis C add-on rate will be paid to the contractor by gross adjustment payments through ProviderOne. The Contractor shall provide the state with the required information monthly to very service deliver in a an agreed upon format. Payment will be generated within 30 days of approved submission. The Hepatitis C Monthly Add-On Rate is as set forth in the



attached Exhibit C.

13.3.2. The Contractor shall reconcile the electronic benefit enrollment file with the premium payment information and submit differences it finds to DSHS within 30 days. Contractor shall ensure compliance with CFR 460.68.

**13.4. Modification of Rates during Contract Period.**

13.4.1. Renegotiation of or Changes in Rates:

13.4.1.1. The rates set forth in the attached Exhibit C shall be subject to renegotiation during the contract period only if the DSHS, in its sole judgment, determines that:

13.4.1.1.1. it is necessary due to a change in federal or state law or other material changes, beyond the contractor's control, which would justify such a renegotiation.

13.4.1.1.2. there is a change in benefits or provider rates during the term of the Contract that will have a material impact on Contractor costs, DSHS may change Contractor rates to allow for the change.

13.4.1.2. Any modification to Capitation Rates during the term of the Contract, as agreed to by the Contractor, including but not limited to changes in premium groups, shall be deemed modifications by the Department. Any other modification to Capitation Rates, as agreed to by the Department and the Contractor, during the term of the Agreement, shall be deemed incorporated into this Contract by amendment, upon approval of such modifications by the Department.

13.4.1.3. Any other modification to Capitation Rates, as agreed to by the department and the Contractor, during the term of the Agreement, shall be deemed incorporated into this Contract by amendment, upon approval of such modifications by the department.

13.4.1.4. In the event that the department and the Contractor fail to reach agreement on modifications to the monthly Capitation Rates, the department will provide formal written notice to the Contractor of the amount and effective date of the modified Capitation Rates approved by the State. The Contractor shall have the option of terminating this Contract in accordance with the termination language in this Contract if such approved modified Capitation Rates are not acceptable.

13.4.1.4.1. The Contractor shall give written notice to the DSHS per the notices provision in this Contract within thirty (30) days of the date of the formal

written notice of the modified Capitation Rates from the department specifying the reasons for and effective date of termination.

13.4.1.4.2. The effective date of termination shall be in accordance with the termination section of this Contract unless the department determines that an orderly disenrollment to Medicaid fee-for-service or transfer to another managed long-term care plan can be accomplished in fewer days.

13.4.1.4.3. During the period commencing with the effective date of the department's modified Capitation Rates through the effective date of termination of the Contract, the Contractor shall receive capitation payments at the Capitation Rates approved by the department for the rate period.

13.4.1.5. If the Contractor fails to exercise its right to terminate in accordance with this Section, then the modified Capitation Rates, approved by the department and its actuary, shall be deemed incorporated into this Contract.

### **13.5. Denial of Capitation Payments.**

In the event that CMS denies payment for new or existing Enrollees under 42 CFR 460.42 or 460.48 or under other applicable federal statutes and regulations, the Department will deny capitation payments to the Contractor for the same Enrollees for the period of time for which CMS denies payment. If the Contractor prevails during an appeal and CMS restores payment for new or existing Enrollees, then the Department will also restore capitation payments to the Contractor.

### **13.6. Contractor Financial Liability.**

The Contractor shall not be financially liable for any services rendered to an Enrollee prior to his or her Effective Date of Enrollment or subsequent to disenrollment unless the Enrollee is admitted to a hospital prior to the Effective Date of Disenrollment and is not discharged from the hospital until after the Effective Date of Disenrollment, in which case the Contractor is responsible for the entire hospital claim.

### **13.7. No Recourse Against Enrollees.**

13.7.1. Except for the rates and payments provided for in this Contract, the Contractor hereby agrees that in no event, including but not limited to nonpayment by the Medicaid agency, insolvency of the Contractor, loss of funding for this program, or breach of this Contract, shall the Contractor or a Subcontractor bill, charge, collect a deposit from, seek compensation, remuneration, or reimbursement from, or have any

recourse against any Enrollee or person acting on his behalf for Covered Services furnished in accordance with this Contract. The Contractor shall act in accordance with WAC 182-502-0160.

13.7.2. This Section shall not prohibit the Contractor, or the Subcontractors as specified in their agreements from billing for and collecting any applicable surplus amounts, Net Available Monthly Income (NAMI), commercial insurance, worker's compensation benefits, no-fault insurance, and coordination of benefit amounts.

### **13.8. Data Certification Requirements.**

Any financial information and/or data required by this Contract and submitted to DSHS shall be certified by the Contractor as follows:

13.8.1. Source of certification: The information and/or data shall be certified by one of the following:

13.8.1.1. The Contractor's Chief Executive Officer.

13.8.1.2. The Contractor's Chief Financial Officer.

13.8.1.3. An individual who has delegated authority to sign for, and who reports directly to, the Contractor's Chief Executive Officer or Chief Financial Officer.

13.8.2. Content of certification: The Contractor's certification shall attest, based on best knowledge, information, and belief, to the accuracy, completeness, and truthfulness of the information and/or data.

13.8.3. Timing of certification: The Contractor shall submit the certification concurrently with the certified information and/or data.

13.8.4. DSHS will identify the specific data that requires certification.

### **14. Provider Complaints.**

The Contractor shall have a system in place to process, track, and record provider complaints. The Contractor shall accept, record, and process provider complaints forward to DSHS. The Contractor's provider complaint process should include a quality improvement process. The Contractor shall provide provider complaint data to DSHS upon request.

### **15. Policies and Procedures.**

15.1. The Contractor shall develop, implement, maintain, comply with and monitor compliance with written policies and procedures related to the requirements of this Contract. The Contractor shall submit the list to DSHS in response to corrective action and any time there is a new policy and procedure or a change to an existing policy and procedure that directly impacts the PACE program operations. The Contractor shall also submit copies of policies and procedures

upon request by DSHS.

**16. State Administering Agency Monitoring.**

- 16.1. The Contractor shall submit to DSHS monitoring reviews as requested. The monitoring review process uses standards developed by DSHS and assesses the Contractor's compliance with regulatory requirements and standards of the quality outcomes and timeliness of, and access to, services provided by the Contractor.
- 16.2. The Contractor shall, during a DSHS annual monitoring review of the Contractor's compliance with Contract standards or upon request by DSHS, provide evidence of how CMS quality review findings, Contract monitoring activities, and Enrollee grievances are used to identify and correct problems and to improve care and services to Enrollees.

**17. Subcontracts.**

**17.1. Subcontractor/Provider Relations.**

The Contractor is responsible to provide the following provider services:

- 17.1.1. Assisting providers with prior authorization and referral protocols;
- 17.1.2. Assisting providers with claims payment procedures;
- 17.1.3. Fielding and responding to provider questions and complaints;
- 17.1.4. Orientation of providers and subcontractors to program goals, and
- 17.1.5. Provider training to improve integrations and coordination of care.

**17.2. Full responsibility retained.**

- 17.2.1. Notwithstanding any relationship(s) that the Contractor may have with Subcontractors, the Contractor maintains full responsibility for adhering to and otherwise fully complying with all applicable laws, regulations and implementing guidelines, this Contract, the PACE Program Agreement, 42 CFR 460.
- 17.2.2. The Contractor oversees and is accountable to the department for all functions and responsibilities that are described in this Contract and the PACE Program Agreement.
- 17.2.3. The Contractor may only delegate activities or functions to a Subcontractor in a manner consistent with requirements set forth in this Contract, the PACE Program Agreement and 42 CFR 460.

**17.3. Required Provisions.**

- 17.3.1. Must be in writing and identify both parties and their legal basis to work in Washington.

- 17.3.2. Identify the services to be performed and what can be subcontracted.
- 17.3.3. Requirement to comply with all program Integrity requirements
- 17.3.4. Require compliance with state and federal statutes.
- 17.3.5. Satisfactory remedies, including termination of a Subcontract when the Contractor determines that such parties have not performed adequately which includes but is not limited to egregious patient harm, significant substantiated complaints, submitting claims to the plan for services not delivered, and refusal to participate in the plan's quality improvement program.
- 17.3.6. Provision for ongoing monitoring of the Subcontractor's compliance with the Subcontract by the Contractor. Such monitoring shall specify requirements for corrective action, revocation of the Subcontract or imposing sanctions if the Subcontractor's performance is inadequate.
- 17.3.7. A provision specifying how the Subcontractor shall participate in and comply with the Contractor's quality assurance and utilization review programs, the Contractor's Enrollee grievance and appeals procedures, and the monitoring and evaluation of the Contractor's PACE Program.
- 17.3.8. A provision specifying how the Subcontractor will ensure that pertinent contracts, books, documents, papers and records of their operations are available, to the Department, HHS, Comptroller General of the United States and/or their respective designated representatives, for inspection, evaluation and audit, through six years from the final date of the Subcontract, or from the date of completion of any audit, or pursuant to the timeframes established in 42 CFR 460, whichever is later.

**17.4. List of Covered Services and Subcontractors.**

The department may request additional information about providers, related entities, or Subcontractors in the network, as required. Any addition to or deletion from the network of providers, related entities, or Subcontractors shall be promptly communicated in writing to the department by the Contractor, on a quarterly basis.

**18. Licensure.**

The Contractor must hold and maintain a Home Health license.

**19. Grievance and Appeals System.**

19.1. The Contractor must have a grievance and appeals system that is compliant with 42 CFR 460.120, 460.122, 460.124.

**19.2. Grievance System.**

19.2.1. The Contractor must have written policies and procedures for the receipt,

disposition and documentation of all grievances from PACE participants and their representatives.

19.2.2. The Contractor must assure that a participant's or his or her representative's expression of dissatisfaction, or grievance is recognized and resolved by the PACE program's staff

19.2.3. All complaints concerning denial of service, reduction of service or service coverage will be handled as appeals.

### **19.3. Appeal Process.**

19.3.1. All denials, reductions, or terminations of services or service coverage by the Contractor must be in writing. The Contractor must make available to all PACE staff and contracted providers, information concerning client notices, appeals and hearings processes.

19.3.2. When the Contractor authorizes a course of treatment or covered service, but subsequently acts to terminate, discontinue, or reduce the course of treatment or a covered service, the Contractor must mail a written notice to the participant at least ten (10) working days before the date of the termination or reduction of the or reduction of the covered service unless there is documentation that the participant had previously agreed to the change as part of the course of treatment.

19.3.3. The written client notice must be a Department approved format and is to be used for all denials, reductions, or terminations of services and denials of claims payment.

19.3.3.1. The notice must include the PACE participant's right to file an appeal with the Contractor and request an administrative hearing with CMS or the Department, including a statement that the PACE participant may request continuation of benefits until a decision is rendered.

19.3.4. The Contractor shall provide the state with a quarterly report of all grievances and appeals in an agreed upon format.

## **20. Administrative Hearings.**

20.1. Only the Enrollee or the Enrollee's authorized representative may request a hearing. A provider may not request a hearing on behalf of an Enrollee.

20.2. If an Enrollee does not agree with the Contractor's resolution of the appeal, the Enrollee may file a request for a hearing within the following timeframes. (See WAC 182-526-0200):

20.2.1. For hearings regarding a standard service, within one hundred twenty (120) calendar days of the date of the notice of the resolution of the appeal.

- 20.2.2. For hearings regarding termination, suspension, or reduction of a previously authorized service, if the Enrollee requests continuation of services, within ten (10) calendar days of the date on the Contractor's mailing of the notice of the resolution of the appeal. If the Enrollee is notified in a timely manner and the Enrollee's request for continuation of services is not timely, the Contractor is not obligated to continue services and the timeframes for a hearing regarding a standard service apply.
- 20.2.3. If the Enrollee requests a hearing, the Contractor shall provide to DSHS/HCA and the Enrollee, upon request, and within three (3) business days, and for expedited appeals, within one (1) business day, all Contractor-held documentation related to the appeal, including but not limited to, any transcript(s), records, or written decision(s) from participating providers or delegated entities.
- 20.2.4. When medical necessity is an issue, the Contractor's medical director or designee shall review all cases where a hearing is requested and any related appeals and the outcome of any independent review.
- 20.2.5. The Enrollee must exhaust appeal rights prior to filing a request for a hearing with DSHS/HCA. If the Contractor fails to adhere to the appeal notice and timing requirements, the Enrollee is deemed to have exhausted the appeal process and may initiate a hearing.
- 20.2.6. DSHS/HCA will notify the Contractor of hearing determinations. The Contractor will be bound by the final order, whether or not the final order upholds the Contractor's decision. Implementation of the final order shall not be the basis for termination of enrollment by the Contractor.
- 20.2.7. If the final order is not within the purview of this Contract, then DSHS/HCA will be responsible for the implementation of the final order.
- 20.2.8. The hearings process shall include as parties to the hearing, the Contractor, the Enrollee and the Enrollee's representative, or the legal representative of the deceased Enrollee's estate and DSHS/HCA.

**20.3. Independent Review.**

After exhausting both the Contractor's Appeal process and the Administration Hearing, the Enrollee has the right to request an independent review in accordance with RCW 48.43.535 and chapter 182-538 WAC.

The Contractor will advise the HCA Appeals Administrator at P.O. Box 45504, Olympia, WA 98504-5504 when an Enrollee requests an independent review as soon as the MCO becomes aware of the request. The Contractor will forward a copy of the decision made by the Independent Review Organization to the Appeals Administrator as soon as the MCO receives the decision.

**20.4. Petition for Review.**

Any party may appeal the initial order from the administrative hearing to HCA

Board of Appeals in accord with chapter 182-526 WAC. Notice of this right shall be included in the Initial Order from the administrative hearing.

**20.5. Continuation of Services.**

20.5.1. The Contractor shall continue the Enrollee's services if all of the following apply:

20.5.1.1. An appeal, hearing, or independent review, is requested on or before the later of the following:

20.5.1.1.1. Within ten (10) calendar days of the Contractor mailing the notice of Denial or reduction of Service, for which the Denial or reduction of Service involves services previously authorized. The Notice shall be delivered by a method that certifies receipt and assures delivery within three (3) calendar days.

20.5.1.1.2. The intended effective date of the Contractor's proposed Denial or reduction of Service.

20.5.1.2. The appeal involves the termination, suspension, or reduction of a previously authorized course of treatment.

20.5.1.3. The original period covered by the original authorization has not expired.

20.5.1.4. The Enrollee requests an extension of services.

20.5.2. If, at the Enrollee's request, the Contractor continues or reinstates the Enrollee's services while the appeal, hearing, or independent review, is pending, the services shall be continued until one of the following occurs:

20.5.2.1. The Enrollee withdraws the appeal, hearing, or independent review request.

20.5.2.2. The Enrollee has not requested a hearing (with continuation of services until the hearing decision is reached) within the ten (10) calendar days after the Contractor mailed the notice of resolution of the appeal.

20.5.2.3. When the Office of Administrative Hearings issues a decision adverse to the Enrollee.

20.5.3. If the final resolution of the appeal upholds the Contractor's Denial or reduction of Service, the Contractor may recover from the Enrollee the amount paid for the services provided to the Enrollee for the first sixty (60) calendar days during which the appeal was pending, to the extent that they were provided solely because of the requirement for continuation of services.



**20.6. Effect of Reversed Resolutions of Appeals and Hearings.**

- 20.6.1. If the Contractor, or an independent review (IR) decision by an independent review organization (IRO), or a final order from the Office of Administrative Hearings (OAH) or Board of Appeals (BOA), reverses a decision to deny, limit, or delay services that were not provided while the appeal was pending, the Contractor shall authorize or provide the disputed services promptly and as expeditiously as the Enrollee's health condition requires, but no later than 72 hours from the date the Contractor receives notice reversing the determination.
- 20.6.2. If the Contractor reverses a decision to deny authorization of services, or the denial is reversed through an IR decision or a final order of OAH or the BOA, and the Enrollee received the disputed services while the appeal was pending, the Contractor shall pay for those services.

**21. Marketing.**

Marketing materials must:

- 21.1. comply with CFR 460.82
- 21.2. comply with the CMS marketing guide
- 21.3. be submitted and approved by DSHS prior to distribution

**22. Benefits.**

22.1. Covered Services.

22.1.1. General.

- 22.1.1.1. The Contractor must authorize, arrange, integrate, and coordinate the provision of all Covered Services for its Enrollees. Covered Services must be available to all Enrollees, as authorized by the Contractor and as determined Medically Necessary. Covered Services will be managed and coordinated by the Contractor through the Interdisciplinary Care Team (IDT).
- 22.1.1.2. The Contractor will have discretion to use the Capitated Payment to offer Benefits, as specified in the Enrollee's Individualized Care Plan (ICP), as appropriate to address the Enrollee's needs.
- 22.1.1.3. The Contractor must provide the full range of Covered Services. If either Medicare or Washington Medicaid provides more expansive services than the other program does for a particular condition, type of illness, or diagnosis, the Contractor must provide the most

expansive set of services required by either program. The Contractor may not limit or deny services to Enrollees based on Medicare or Washington Medicaid providing a more limited range of services than the other program.

#### 22.1.2 Non-Covered Services.

22.1.2.1 The Contractor is responsible for providing all Medicaid benefits set forth in the WA Medicaid state plan, unless explicitly in this Contract or 42 CFR 460.96.

<https://www.hca.wa.gov/about-hca/apple-health-medicaid/medicaid-title-xix-state-plan>

<https://www.hca.wa.gov/billers-providers-partners/programs-and-services/apple-health-preferred-drug-list-pdl>

### 23. Care Management.

23.1. Contractor must have in place a robust care management system to identify the service needs of all Enrollees, including Enrollees with chronic illness and Enrollees with disabilities, and ensure that medically necessary covered benefits are delivered on a timely basis.

23.2. These systems must include procedures for:

23.2.1. Coordination with HCS on assessments,

23.2.2. standing referrals,

23.2.3. referrals to specialty centers for Enrollees who require specialized medical care over a prolonged period of time (as determined by a treatment plan approved by the Contractor in consultation with the primary care provider, the designated specialist and the Enrollee or his/her designee),

23.2.4. out-of-network referrals and continuation of existing treatment relationships with out-of-network providers during transitional period only, and

23.2.5. assisting in maintaining client eligibility.

### 24. Enrollee Rights & Access.

#### 24.1. General Requirements.

The Contractor shall comply with applicable Federal and State laws that pertain to Enrollee rights and ensure that its staff and affiliated providers take those rights into account when furnishing services to Enrollees.

#### 24.2. Cultural Considerations.

The Contractor shall participate in and cooperate with DSHS efforts to promote the delivery of services in a culturally competent manner to all Enrollees, including those with limited English proficiency and diverse cultural and ethnic backgrounds (42 C.F.R. § 460.112).

Enrollees will be given information sufficient to ensure that they understand how to access medical care through the plan, how to file a grievance or appeal, their rights etc.

24.3. This information will be made accessible to and usable by people with disabilities. (according to 42 CFR.112) **Prohibition on Enrollee Charges for Contracted Services.**

24.3.1. Under no circumstances shall the Contractor, or any providers used to deliver services under the terms of this Contract, including non-participating providers, charge Enrollees for covered services as described in the (SSA 1932(b)(6), SSA 1128B(d)(1)), 42 C.F.R. § 460.182(c) and WAC 182-502-0160).

24.3.2. Prior to authorizing services with non-participating providers, the Contractor shall assure that non-participating providers fully understand and accept the prohibition against balance billing Enrollees.

24.4. **Enrollee Self-Determination.**

The Contractor shall ensure that all providers: obtain informed consent prior to treatment from Enrollees, or persons authorized to consent on behalf of an Enrollee as described in RCW 7.70.065; comply with the provisions of the Natural Death Act (chapter 70.122 RCW) and state and federal Medicaid rules concerning advance directives (WAC 182-501-0125 and 42 C.F.R. § 460.112(e); and, when appropriate, inform Enrollees of their right to make anatomical gifts (chapter 68.64 RCW).

**25. Self-Directed Care.**

25.1. The Contractor will support Enrollees in directing their own care and participation in individual care plan development.

25.2. The Contractor's IDT will work with the Enrollees in developing an individualized care plan. Specifically, Enrollees or their designated representatives will:

25.2.1. Decide how and what LTSS to receive to maintain independence and quality of life, subject to Contractor rules for Covered Services;

25.2.2. Select their health care providers in the Contractor's network and control care planning and coordination with their health care providers and IDT;

25.2.3. Have access to services that are culturally, linguistically, and operationally sensitive to meet their needs, and that improve their health outcomes, enhance independence, and promote living in home and community settings of their choice; and

25.2.4. Be able to hire, fire, and supervise their personal care providers.

**26. Access-Network.**

**26.1. Service Delivery Network.**

In the maintenance, monitoring and reporting of its network, the Contractor must consider the following:

26.1.1. Expected enrollment for each service area in which the Contractor offers services under this Contract.

26.1.2. Adequate access to all services covered under this Contract.

26.1.3. The expected utilization of services, taking into consideration the characteristics and health care needs of the population represented by the Contractor's Enrollees and potential Enrollees.

26.1.4. The number and types (in terms of training, experience, and specialization) of providers required to furnish the contracted services, including mental health providers by provider type.

26.1.5. The number of network providers who are not accepting new Enrollees or who have placed a limit or given the Contractor notice of the intent to limit their acceptance of Enrollees.

26.1.6. The geographic location of providers and Enrollees, considering distance, travel time, the means of transportation ordinarily used by Enrollees or potential Enrollees, and whether the location provides physical access for the Contractor's Enrollees with disabilities.

26.1.7. The cultural, racial/ethnic composition and language needs of Enrollees and the ability of network providers to communicate with limited English proficient Enrollees in their preferred language.

26.1.8. The ability of network providers to ensure physical access, reasonable accommodations, culturally competent communications, and accessible equipment for Medicaid Enrollees with physical or mental disabilities.

26.1.9. The availability of triage lines or screening systems, as well as the use of telemedicine, e-visit, and other evolving and innovative technological solutions.

**26.2. Network Capacity.**

26.2.1. The Contractor shall maintain and monitor an appropriate provider network, supported by written agreements, sufficient to serve Enrollees enrolled under this Contract.

26.2.2. The network must include all provider types necessary to furnish the Benefit Package to all Enrollees.

**26.3. Timely Access to Care.**

The Contractor shall have contracts in place with all subcontractors that meet standards for access, taking into account the urgency of the need for services

**26.4. Provider Network Changes.**

The Contractor shall give DSHS a minimum of ninety (90) calendar days' prior written notice, in accord with the Notices provisions of the General Terms and Conditions Section of this Contract, of the loss of a material provider. A material provider is one whose loss would impair the Contractor's ability to provide continuity of and access to care for the Contractor's current Enrollees and potential Enrollees.

**27. Individual Providers (IP).**

Consumer Direct Care Network of Washington (CDWA) is the contracted vendor who is the Consumer Directed Employer (CDE) and legal employer of Individual Providers (IPs) as of 2022.

CDWA provides IPs one place for all administrative needs (payroll, taxes, tracks training & certification, track background checks). ALTSA is contracted with CDWA, a CDE, to provide these services. ALTSA and the PACE organizations will pay CDWA a set hourly rate for all in-home services, instead of contracting directly with individual providers.

27.1. The contractor shall manage the following functions for participants receiving IP services:

27.1.1. Complete Authorizations in the ProviderOne system for IP services and ensure compliance with all DSHS Management Bulletins.

27.1.2. Communication with the participant about the IP and the IP services they are receiving

27.1.3. Perform home visits that includes the IP and participant and observe their living situations

27.1.4. Send copy of the care plan summary to CDWA

27.1.5. Assignment of IP hours and ongoing communication with CDWA about the IP hours

27.2. IP Payment Reconciliation Process:

27.2.1. CDWA system limitations per CDE implementation require that IP payments for PACE IPs be rendered by DSHS on behalf of the PACE Organizations..

27.2.2. Per these CDWA system limitations, DSHS pays all IPs who provide care

to the Contractor's Enrollees and bills it back to the Contractor.

- 27.2.3. For services provided by CDWA employees (IPs), to the contractor's Enrollees, DSHS bills the Contractor for Personal Care Hours based on all-inclusive CDWA rate.
- 27.2.4. DSHS reconciles payments and bills back to the Contractor retrospectively.
- 27.2.5. DSHS will send an invoice the Contractor for IP billing payments rendered.
- 27.2.6. The Contractor will issue a check no later than 30 days after receipt of the invoice made payable to: "State of WA-DSHS" and send it to DSHS accounting; Attn: Fiscal, State of WA/DSHS/ALTSA, PO Box 45600, Olympia WA 98504.
- 27.2.7. DSHS provides the Contractor with a copy of the supporting billing documents for its records.

## **28. Collective Bargaining Agreements.**

The state shall coordinate with the Contractor to ensure compliance with all current and future collective bargaining agreements (CBAs) by and between the Governor of the State of Washington and the Service Employees International Union, (SEIU 775), in accordance with RCW 74.39A.270 and the Adult Family Home Council (AFHC), in accordance with RCW 41.56. DSHS shall provide the Contractor with copies of any future CBAs or amendments to existing agreements no less than 60 days prior to the effective date of the future agreement or amendment. Additionally, Contractor shall specifically comply as outlined below for the following requirements.

- 28.1. The Contractor shall establish a mechanism to directly communicate and/or respond to employment-related inquiries made by Union representatives when acting on the worker/provider's behalf. Such information shall exclude specific and/or confidential personal information of Enrollees unless the Contractor has the written permission of the Enrollee in question.
- 28.2. The Contractor agrees to pay rate(s) negotiated between the state and the Union(s) as stipulated in the respective CBAs or as specified in item 28.4 below for AFH contracted providers.
- 28.3. The Contractor will have in place provider contracts, policies, and procedures to ensure compliance with Section 28 of this Contract.
- 28.4. **AFHC CBA specific:** Provided the state provides the AFHC with lists of providers on a monthly basis, the Contractor shall provide DSHS with lists(s) of all AFH providers serving Medicaid Enrollees. The AFH Monthly Report format is identified in the AFH Monthly Report Template, attached as Exhibit G. This report shall be uploaded on SFTP site to Contractor's specified subfolder every 3rd business day of each month.

28.4.1. PACE Base Daily Rates: the Contractor shall pay a base daily rate in accordance with the CBA, based on the DSHS CARE assessment, or a base daily rate that is higher than the rates in the CBA based on the Contractor's own assessment of the Enrollee.

28.4.2. Exceptions to PACE Base Daily Rates: The Contractor may pay a daily rate higher than the base daily rates in CARE, if the Contractor believes an additional rate is warranted based upon the Contractor's assessment of the Enrollee and is in accordance with federal regulations and the Contractor's obligation to provide all contracted Medicaid benefits in the state plan.

28.4.3 With the exclusion of the Exception to the Rule, all other provisions of AFHC Rights are applicable to the Contractor per the CBA, the CBA link can be found at [2023–25 collective bargaining agreements \(tentative\) | Office of Financial Management \(wa.gov\)](#)

28.5. The CBA provision, AFHC Voluntary Contribution MOU is not applicable to the Contractor.

28.6. A PACE organization may contract with an adult family home to provide Expanded Community Services (ECS), Specialized Behavioral Support (SBS) services and Meaningful Day. The Department will provide PACE organizations with program specific contract terms here <https://www.dshs.wa.gov/altsa/residential-care-services/afh-sample-contracts>. If the PACE organization utilizes the program specific contract terms, the PACE organization shall pay the adult family home at least the state specified rate for those services.

## **29. Coordination with State Agency or Delegate.**

29.1. The state agency or delegate will determine functional and financial eligibility for all long-term services and supports programs based on WAC 388-106-0705.

29.2. The state agency or delegate will coordinate with the Contractor to provide the assessment for prospective enrollees according to agreed-upon processes.

29.3. State or delegate staff will complete an assessment at least annually or when there has been a reported significant change (for better or worse) in the client's cognition, activities of daily living, mood and behaviors or medical condition that affects the care plan.

29.3.1. at the time of assessment, and based on current policy, state or delegate staff may allow PACE Enrollees to elect to continue enrollment in PACE regardless of improved status related to functional criteria for Nursing Facility Level of Care (NFLOC). This process is called Deeming.

29.4. The Contractor is responsible for coordinating with the state or delegate staff to provide pertinent information regarding PACE Enrollee status.

29.4.1. It is the Contractor's role to provide information. CARE assessments are

completed at the sole discretion of the state agency or delegate staff unless there is a significant change in condition.

- 29.5. The Contractor shall work with the local state or delegate staff to define procedure for coordination on assessments.
- 29.6. The Contractor shall provide training to local state and delegate staff regarding the PACE program. The State will help coordinate training of all state caseworkers to ensure state staff have the necessary knowledge to offer enrollment in PACE as an option at the time of the assessment.
- 29.7. The Contractor shall establish written policy and procedure for disenrollment and transitions of care.
- 29.8. The parties will establish a joint quarterly meeting to include the PACE program manager, HCS/AAA PACE unit manager, and any other staff deemed appropriate by the PACE program manager and HCS/AAA PACE unit manager to review enrollment, eligibility, disenrollment, etc. Contractor will schedule the meetings
- 29.9. In accordance with SHB 1499 state staff will offer enrollment in PACE as an option at the time of assessment.
  - 29.9.1. This process will be in accordance with Federal Title XIX requirements.
  - 29.9.2. All positive responses will be distributed to contractors in the service area per current policy.

### **30. Reporting.**

- 30.1. **Reporting of Enrollee Abuse.** The Contractor shall report all instances of suspected abuse, abandonment, neglect and/or exploitation to an Enrollee or other alleged victim to 1-800-END HARM.
- 30.2. The Contractor shall have in place a standard process and effective staff training on reporting to Adult Protective Services when fraud adversely affects the health and safety of a vulnerable adult as defined by RCW 74.34.095.
- 30.3. Assisted Living Facilities (ALF) Report
  - 29.3.1. The Contractor shall track and report all service days paid to licensed Assisted Living facilities, contracted with the Department, for all Enrollees.
    - 30.3.1.1. The Contractor shall provide the report by April 1 of each year, on a format provided by DSHS.
- 30.4. Caseload forecasting reports

Caseload data: to be reported by the first day of the month of May, September and January. A current count of all enrollees and living arrangement. The contractor shall provide the caseload data according to the Forecast Report



Template, attached as Exhibit E.

## Exhibit A – Data Security Requirements

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

- g. "FedRAMP" means the Federal Risk and Authorization Management Program (see [www.fedramp.gov](http://www.fedramp.gov)), which is an assessment and authorization process that federal government agencies have been directed to use to ensure security is in place when accessing Cloud computing products and services.
- h. "Hardened Password" means a string of at least eight characters containing at least three of the following four character classes: Uppercase alphabetic, lowercase alphabetic, numeral, and special characters such as an asterisk, ampersand, or exclamation point.
- i. "Mobile Device" means a computing device, typically smaller than a notebook, which runs a mobile operating system, such as iOS, Android, or Windows Phone. Mobile Devices include smart phones, most tablets, and other form factors.
- j. "Multi-factor Authentication" means controlling access to computers and other IT resources by requiring two or more pieces of evidence that the user is who they claim to be. These pieces of evidence consist of something the user knows, such as a password or PIN; something the user has such as a key card, smart card, or physical token; and something the user is, a biometric identifier such as a fingerprint, facial scan, or retinal scan. "PIN" means a personal identification number, a series of numbers which act as a password for a device. Since PINs are typically only four to six characters, PINs are usually used in conjunction with another factor of authentication, such as a fingerprint.
- k. "Portable Device" means any computing device with a small form factor, designed to be transported from place to place. Portable devices are primarily battery powered devices with base computing resources in the form of a processor, memory, storage, and network access. Examples include, but are not limited to, mobile phones, tablets, and laptops. Mobile Device is a subset of Portable Device.
- l. "Portable Media" means any machine readable media that may routinely be stored or moved independently of computing devices. Examples include magnetic tapes, optical discs (CDs or DVDs), flash memory (thumb drive) devices, external hard drives, and internal hard drives that have been removed from a computing device.
- m. "Secure Area" means an area to which only authorized representatives of the entity possessing the Confidential Information have access, and access is controlled through use of a key, card key, combination lock, or comparable mechanism. Secure Areas may include buildings, rooms or locked storage containers (such as a filing cabinet or desk drawer) within a room, as long as access to the Confidential Information is not available to unauthorized personnel. In otherwise Secure Areas, such as an office with restricted access, the Data must be secured in such a way as to prevent access by non-authorized staff such as janitorial or facility security staff, when authorized Contractor staff are not present to ensure that non-authorized staff cannot access it.
- n. "Trusted Network" means a network operated and maintained by the Contractor, which includes security controls sufficient to protect DSHS Data on that network. Controls would include a firewall between any other networks, access control lists on networking devices such as routers and switches, and other such mechanisms which protect the confidentiality, integrity, and availability of the Data.



- f. Have a process to periodically review and verify that only authorized users have access to systems containing DSHS Confidential Information.
- g. When accessing the Data from within the Contractor's network (the Data stays within the Contractor's network at all times), enforce password and logon requirements for users within the Contractor's network, including:
  - (1) A minimum length of 8 characters, and containing at least three of the following character classes: uppercase letters, lowercase letters, numerals, and special characters such as an asterisk, ampersand, or exclamation point.
  - (2) That a password does not contain a user's name, logon ID, or any form of their full name.
  - (3) That a password does not consist of a single dictionary word. A password may be formed as a passphrase which consists of multiple dictionary words.
  - (4) That passwords are significantly different from the previous four passwords. Passwords that increment by simply adding a number are not considered significantly different.
- h. When accessing Confidential Information from an external location (the Data will traverse the Internet or otherwise travel outside the Contractor's network), mitigate risk and enforce password and logon requirements for users by employing measures including:
  - (1) Ensuring mitigations applied to the system don't allow end-user modification.
  - (2) Not allowing the use of dial-up connections.
  - (3) Using industry standard protocols and solutions for remote access. Examples would include RADIUS and Citrix.
  - (4) Encrypting all remote access traffic from the external workstation to Trusted Network or to a component within the Trusted Network. The traffic must be encrypted at all times while traversing any network, including the Internet, which is not a Trusted Network.
  - (5) Ensuring that the remote access system prompts for re-authentication or performs automated session termination after no more than 30 minutes of inactivity.
  - (6) Ensuring use of Multi-factor Authentication to connect from the external end point to the internal end point.
- i. Passwords or PIN codes may meet a lesser standard if used in conjunction with another authentication mechanism, such as a biometric (fingerprint, face recognition, iris scan) or token (software, hardware, smart card, etc.) in that case:
  - (1) The PIN or password must be at least 5 letters or numbers when used in conjunction with at least one other authentication factor

- (2) Must not be comprised of all the same letter or number (11111, 22222, aaaaa, would not be acceptable)
- (3) Must not contain a “run” of three or more consecutive numbers (12398, 98743 would not be acceptable)
- j. If the contract specifically allows for the storage of Confidential Information on a Mobile Device, passcodes used on the device must:
  - (1) Be a minimum of six alphanumeric characters.
  - (2) Contain at least three unique character classes (upper case, lower case, letter, number).
  - (3) Not contain more than a three consecutive character run. Passcodes consisting of *12345*, or *abcd12* would not be acceptable.
- k. Render the device unusable after a maximum of 10 failed logon attempts.

**5. Protection of Data.** The Contractor agrees to store Data on one or more of the following media and protect the Data as described:

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

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

- c. **Optical discs (CDs or DVDs) in local workstation optical disc drives.** Data provided by DSHS on optical discs which will be used in local workstation optical disc drives and which will not be transported out of a Secure Area. When not in use for the contracted purpose, such discs must be Stored in a Secure Area. Workstations which access DSHS Data on optical discs must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

- d. **Optical discs (CDs or DVDs) in drives or jukeboxes attached to servers.** Data provided by DSHS on optical discs which will be attached to network servers and which will not be transported out of a Secure Area. Access to Data on these discs will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on discs attached to such servers must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
- e. **Paper documents.** Any paper records must be protected by storing the records in a Secure Area which is only accessible to authorized personnel. When not in use, such records must be stored in a Secure Area.
- f. **Remote Access.** Access to and use of the Data over the State Governmental Network (SGN) or Secure Access Washington (SAW) will be controlled by DSHS staff who will issue authentication credentials (e.g. a Unique User ID and Hardened Password) to Authorized Users on Contractor's staff. Contractor will notify DSHS staff immediately whenever an Authorized User in possession of such credentials is terminated or otherwise leaves the employ of the Contractor, and whenever an Authorized User's duties change such that the Authorized User no longer requires access to perform work for this Contract.
- g. **Data storage on portable devices or media.**
  - (1) Except where otherwise specified herein, DSHS Data shall not be stored by the Contractor on portable devices or media unless specifically authorized within the terms and conditions of the Contract. If so authorized, the Data shall be given the following protections:
    - (a) Encrypt the Data.
    - (b) Control access to devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics.
    - (c) Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity, if this feature is available. Maximum period of inactivity is 20 minutes.
    - (d) Apply administrative and physical security controls to Portable Devices and Portable Media by:
      - i. Keeping them in a Secure Area when not in use,
      - ii. Using check-in/check-out procedures when they are shared, and
      - iii. Taking frequent inventories.
  - (2) When being transported outside of a Secure Area, Portable Devices and Portable Media with DSHS Confidential Information must be under the physical

control of Contractor staff with authorization to access the Data, even if the Data is encrypted.

**h. Data stored for backup purposes.**

- (1) DSHS Confidential Information may be stored on Portable Media as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes. Such storage is authorized until such time as that media would be reused during the course of normal backup operations. If backup media is retired while DSHS Confidential Information still exists upon it, such media will be destroyed at that time in accordance with the disposition requirements below in Section 8 *Data Disposition*.
- (2) Data may be stored on non-portable media (e.g. Storage Area Network drives, virtual media, etc.) as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes. If so, such media will be protected as otherwise described in this exhibit. If this media is retired while DSHS Confidential Information still exists upon it, the data will be destroyed at that time in accordance with the disposition requirements below in Section 8 *Data Disposition*.

**i. Cloud storage.** DSHS Confidential Information requires protections equal to or greater than those specified elsewhere within this exhibit. Cloud storage of Data is problematic as neither DSHS nor the Contractor has control of the environment in which the Data is stored. For this reason:

- (1) DSHS Data will not be stored in any consumer grade Cloud solution, unless all of the following conditions are met:
  - (a) Contractor has written procedures in place governing use of the Cloud storage and Contractor attests in writing that all such procedures will be uniformly followed.
  - (b) The Data will be Encrypted while within the Contractor network.
  - (c) The Data will remain Encrypted during transmission to the Cloud.
  - (d) The Data will remain Encrypted at all times while residing within the Cloud storage solution.
  - (e) The Contractor will possess a decryption key for the Data, and the decryption key will be possessed only by the Contractor and/or DSHS.
  - (f) The Data will not be downloaded to non-authorized systems, meaning systems that are not on either the DSHS or Contractor networks.
  - (g) The Data will not be decrypted until downloaded onto a computer within the control of an Authorized User and within either the DSHS or Contractor's network.
- (2) Data will not be stored on an Enterprise Cloud storage solution unless either:



(a) The Cloud storage provider is treated as any other Sub-Contractor, and agrees in writing to all of the requirements within this exhibit; or,

(b) The Cloud storage solution used is FedRAMP certified.

(3) If the Data includes protected health information covered by the Health Insurance Portability and Accountability Act (HIPAA), the Cloud provider must sign a Business Associate Agreement prior to Data being stored in their Cloud solution.

**6. System Protection.** To prevent compromise of systems which contain DSHS Data or through which that Data passes:

- a. Systems containing DSHS Data must have all security patches or hotfixes applied within 3 months of being made available.
- b. The Contractor will have a method of ensuring that the requisite patches and hotfixes have been applied within the required timeframes.
- c. Systems containing DSHS Data shall have an Anti-Malware application, if available, installed.
- d. Anti-Malware software shall be kept up to date. The product, its anti-virus engine, and any malware database the system uses, will be no more than one update behind current.

**7. Data Segregation.**

- a. DSHS Data must be segregated or otherwise distinguishable from non-DSHS data. This is to ensure that when no longer needed by the Contractor, all DSHS Data can be identified for return or destruction. It also aids in determining whether DSHS Data has or may have been compromised in the event of a security breach. As such, one or more of the following methods will be used for data segregation.
  - (1) DSHS Data will be kept on media (e.g., hard disk, optical disc, tape, etc.) which will contain no non-DSHS Data. And/or,
  - (2) DSHS Data will be stored in a logical container on electronic media, such as a partition or folder dedicated to DSHS Data. And/or,
  - (3) DSHS Data will be stored in a database which will contain no non-DSHS data. And/or,
  - (4) DSHS Data will be stored within a database and will be distinguishable from non-DSHS data by the value of a specific field or fields within database records.
  - (5) When stored as physical paper documents, DSHS Data will be physically segregated from non-DSHS data in a drawer, folder, or other container.
- b. When it is not feasible or practical to segregate DSHS Data from non-DSHS data, then both the DSHS Data and the non-DSHS data with which it is commingled must be protected as described in this exhibit.

8. **Data Disposition.** When the contracted work has been completed or when the Data is no longer needed, except as noted above in Section 5.b, Data shall be returned to DSHS or destroyed. Media on which Data may be stored and associated acceptable methods of destruction are as follows:

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

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

**Exhibit B –PACE Program Agreement attached separately**

County Per Member Per Month

<b>PACE Rate for County Base Rates (Not Including Behavioral Health)</b>	
<b>Rate Cell</b>	<b>County</b>
Medicaid Only 55-64	
Medicaid Only 65+	
Dually Eligible 55-64	
Dually Eligible 65+	
<b>PACE Rate for King County Behavioral Health Rates</b>	
<b>BH Category</b>	<b>County</b>
Non-Disabled	
Disabled	
Newly Eligible	

Exhibit D, Data Collection Template-attached as Excel Spreadsheet

## Forecast Report Template

Medicare Status	Age Band	Client Count
Medicaid Only	55-64	
Medicaid Only	65+	
Dually Eligible	55-64	
Dually Eligible	65+	
<b>Total</b>		<b>0</b>

Living situation mix	Client count
Home -Agency Provider	
Home - Individual Provider	
Adult Family Home	
Assisted Living Facility	
Nursing Home	
<b>Total</b>	<b>0</b>

**Notification of Disenrollment****Attn:** Healthcare Plan Member Services**Date:** *Enter date***To Whom It May Concern:**

I am choosing to disenroll from my Medicare or Medicaid plan Health plan name effective Date. I will be enrolling in PACE Organization name and receiving all my health care services through them.

<b>Last Name</b>	<b>First Name</b>	<b>Middle Initial</b>
<b>Social Security #</b>	<b>DOB</b>	
<b>ProviderOne ID</b>		

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Participant Signature or Signature of Participant Authorized Signatory

Exhibit G, AFH Monthly Report Template – attached separately



**Exhibit H**

**Service Area Zip Codes by County**

**PACE Disenrollments**

**PACE organization will determine and communicate safe, ongoing plan of care to HCS/AAA for implementation. This includes:**

- Assist client establishing new PCP
- Assist client setting up new pharmacy
- Assist client signing up for new Medicare Part D plan (if applicable)

**The following is to be communicated to HCS/AAA as soon as possible to set up new plan of care.**

New PCP/clinic:

\_\_\_\_\_

New pharmacy: \_\_\_\_\_

Does client want WA Medicaid personal care services upon disenrollment?

Yes (in-home):

Name of homecare agency/individual provider\*: \_\_\_\_\_

Provider for other Medicaid-covered service (meals on wheels, PERS, MH, etc):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Yes (residential):

Residential facility: \_\_\_\_\_

No (in-home or residential) - please note plan or circumstances in comments below

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*If client has an individual provider (IP) in place through CDWA, PACE organization will end current Provider One payment authorization to align with end of the PACE enrolled month. HCS will open Provider One auth for ongoing IP care under new program the following month.



