Washington State DEPARTMENT OF SOCIAL & HEALTH SERVICES	**IT PURCHASED SERVICE CONTRACT**	DSHS Contract Number: Click here to enter text. ☐ Resulting From Competition Number: ☐ Sole Source
This Contract is between the State of Washington Department of Social and Health Services (DSHS) and the Contractor identified below, and is governed by chapter 43.19 and 43.105 RCW.		Contractor Contract Number:

CONTRACTOR NAME Click here to enter text.		CONTRACTOR doing business as (DBA) Click here to enter text.	
CONTRACTOR ADDRESS Click here to enter text. Click here to enter text., Click here to enter text. Click here to enter text.		WASHINGTON UNIFORM BUSINESS IDENTIFIER (UBI) Click here to enter text.	DSHS INDEX NUMBER Click here to enter text.
CONTRACTOR CONTACT Click here to enter text.	CONTRACTOR TELEPHONE Click here to enter text.	CONTRACTOR FAX Click here to enter text.	CONTRACTOR E-MAIL ADDRESS Click here to enter text.
DSHS ADMINISTRATION Click here to enter text.	DSHS DIVISION Click here to enter text.	DSHS CONTRACT CODE Click here to enter text.	
DSHS CONTACT NAME AND TITLE Click here to enter text. Click here to enter text.	DSHS CONTACT ADDRESS Click here to enter text. Click here to enter text., Click here to enter text. Click here to enter text.		
DSHS CONTACT TELEPHONE Click here to enter text.	DSHS CONTACT FAX Click here to enter text.	DSHS CONTACT E-MAIL ADDRESS Click here to enter text.	
IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT? Click here to enter text.		CFDA NUMBERS Click here to enter text.	
CONTRACT START DATE Click here to enter text.	**CONTRACT END DATE** Click here to enter text.	CONTRACT MAXIMUM AMOUNT Click here to enter text.	

EXHIBITS. The following Exhibits are attached and are incorporated into this Contract by reference:
☐ **Exhibits (specify):**
☐ **No Exhibits.**

The terms and conditions of this Contract are an integration of and constitute the final, entire and exclusive understanding of the agreement between the parties, superseding and merging all previous agreements, writings, and communications between the parties made prior to or at the signing of this Contract. The parties signing below warrant they have read and understand this Contract, and have authority to enter into this Contract.

CONTRACTOR SIGNATURE Click here to enter text.	PRINTED NAME AND TITLE	DATE SIGNED
DSHS SIGNATURE Click here to enter text.	PRINTED NAME AND TITLE	DATE SIGNED

General Terms and Conditions

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

a. "Central Contract Services" means the DSHS central headquarters contracting office, or successor section or office.

b. "Confidential Information" or "Data" means information that is exempt from disclosure to the public or other unauthorized persons under RCW 42.56 or other federal or state laws. Confidential Information includes, but is not limited to, Personal Information.

c. "Contract" or "Agreement" means the entire written agreement between DSHS and the Contractor, including any Exhibits, documents, or materials incorporated by reference. The parties may execute this contract in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.

d. "Contracts Administrator" means the manager, or successor, of Central Contract Services or successor section or office.

e. "Contractor" means the individual or entity performing services pursuant to this Contract and includes the Contractor's owners, members, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Contract. For purposes of any permitted Subcontract, "Contractor" includes any Subcontractor and its owners, members, officers, directors, partners, employees, and/or agents.

f. "Debarment" means an action taken by a Federal agency or official to exclude a person or business entity from participating in transactions involving certain federal funds.

g. "DSHS" or the "Department" means the state of Washington Department of Social and Health Services and its employees and authorized agents.

h. "Encrypt" means to encode Confidential Information into a format that can only be read by those possessing a "key"; a password, digital certificate or other mechanism available only to authorized users. Encryption must use a key length of at least 128 bits.

i. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, Social Security Numbers, driver license numbers, other identifying numbers, and any financial identifiers.

j. "Physically Secure" means that access is restricted through physical means to authorized individuals only.

k. "Program Agreement" means an agreement between the Contractor and DSHS containing special terms and conditions, including a statement of work to be performed by the Contractor and payment to be made by DSHS.

l. "RCW" means the Revised Code of Washington. All references in this Contract to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at http://apps.leg.wa.gov/rcw/.

m. "Regulation" means any federal, state, or local regulation, rule, or ordinance.

n. "Secured Area" means an area to which only authorized representatives of the entity possessing the Confidential Information have access. Secured Areas may include buildings, rooms or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.

o. "Subcontract" means any separate agreement or contract between the Contractor and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Contract.

p. "Tracking" means a record keeping system that identifies when the sender begins delivery of Confidential Information to the authorized and intended recipient, and when the sender receives confirmation of delivery from the authorized and intended recipient of Confidential Information.

q. "Trusted Systems" include only the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service ("USPS") first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.

r. "WAC" means the Washington Administrative Code. All references in this Contract to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at http://apps.leg.wa.gov/wac/.

2. Amendment. This Contract may only be modified by a written amendment signed by both parties. Only personnel authorized to bind each of the parties may sign an amendment.

3. Assignment. The Contractor shall not assign this Contract or any Program Agreement to a third party without the prior written consent of DSHS.

4. Billing Limitations.

a. DSHS shall pay the Contractor only for authorized services provided in accordance with this Contract.

b. DSHS shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed.

c. The Contractor shall not bill and DSHS shall not pay for services performed under this Contract, if the Contractor has charged or will charge another agency of the state of Washington or any other party for the same services.

5. Compliance with Applicable Law. At all times during the term of this Contract, the Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to, nondiscrimination laws and regulations.

6. Confidentiality.

a. The Contractor shall not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of this Contract for any purpose that is not directly connected with Contractor's performance of the services contemplated hereunder, except:

(1) as provided by law; or,

(2) in the case of Personal Information, with the prior written consent of the person or personal representative of the person who is the subject of the Personal Information.

b. The Contractor shall protect and maintain all Confidential Information gained by reason of this Contract against unauthorized use, access, disclosure, modification or loss. This duty requires the Contractor to employ reasonable security measures, which include restricting access to the Confidential Information by:

(1) Allowing access only to staff that have an authorized business requirement to view the Confidential Information.

(2) Physically Securing any computers, documents, or other media containing the Confidential Information.

(3) Ensure the security of Confidential Information transmitted via fax (facsimile) by:

(a) Verifying the recipient phone number to prevent accidental transmittal of Confidential Information to unauthorized persons.

(b) Communicating with the intended recipient before transmission to ensure that the fax will be received only by an authorized person.

(c) Verifying after transmittal that the fax was received by the intended recipient.

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

(a) Use a Trusted System.

(b) Encrypt the Confidential Information, including:

i. Encrypting email and/or email attachments which contain the Confidential Information.
ii. Encrypting Confidential Information when it is stored on portable devices or media, including but not limited to laptop computers and flash memory devices.

Note: If the DSHS Data Security Requirements Exhibit is attached to this contract, this item, 6.b.(4), is superseded by the language contained in the Exhibit.

(5) Send paper documents containing Confidential Information via a Trusted System.

(6) Following the requirements of the DSHS Data Security Requirements Exhibit, if attached to this contract.

c. Upon request by DSHS, at the end of the Contract term, or when no longer needed, Confidential Information shall be returned to DSHS or Contractor shall certify in writing that they employed a DSHS approved method to destroy the information. Contractor may obtain information regarding approved destruction methods from the DSHS contact identified on the cover page of this Contract.

d. Paper documents with Confidential Information may be recycled through a contracted firm, provided the contract with the recycler specifies that the confidentiality of information will be protected, and the information destroyed through the recycling process. Paper documents containing Confidential Information requiring special handling (e.g. protected health information) must be destroyed on-site

through shredding, pulping, or incineration.

e. Notification of Compromise or Potential Compromise. The compromise or potential compromise of Confidential Information must be reported to the DSHS Contact designated on the contract within one (1) business day of discovery. Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.

7. **Debarment Certification.** The Contractor, by signature to this Contract, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions (Debarred). The Contractor also agrees to include the above requirement in any and all Subcontracts into which it enters. The Contractor shall immediately notify DSHS if, during the term of this Contract, Contractor becomes Debarred. DSHS may immediately terminate this Contract by providing Contractor written notice if Contractor becomes Debarred during the term hereof.

8. **Governing Law and Venue.** This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.

9. **Independent Contractor.** The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and his or her employees or agents performing under this Contract are not employees or agents of the Department. The Contractor, his or her employees, or agents performing under this Contract will not hold himself/herself out as, nor claim to be, an officer or employee of the Department by reason hereof, nor will the Contractor, his or her employees, or agent make any claim of right, privilege or benefit that would accrue to such officer or employee.

10. **Inspection.** The Contractor shall, at no cost, provide DSHS and the Office of the State Auditor with reasonable access to Contractor's place of business, Contractor's records, and DSHS client records, wherever located. These inspection rights are intended to allow DSHS and the Office of the State Auditor to monitor, audit, and evaluate the Contractor's performance and compliance with applicable laws, regulations, and these Contract terms. These inspection rights shall survive for six (6) years following this Contract's termination or expiration.

11. **Maintenance of Records.** The Contractor shall maintain records relating to this Contract and the performance of the services described herein. The records include, but are not limited to, accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. All records and other material relevant to this Contract shall be retained for six (6) years after expiration or termination of this Contract.

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

12. **Order of Precedence.** In the event of any inconsistency or conflict between the General Terms and Conditions and the Special Terms and Conditions of this Contract or any Program Agreement, the inconsistency or conflict shall be resolved by giving precedence to these General Terms and Conditions. Terms or conditions that are more restrictive, specific, or particular than those contained in the General Terms and Conditions shall not be construed as being inconsistent or in conflict.

13. **Severability.** If any term or condition of this Contract is held invalid by any court, the remainder of the Contract remains valid and in full force and effect.

14. **Survivability.** The terms and conditions contained in this Contract or any Program Agreement which,

by their sense and context, are intended to survive the expiration or termination of the particular agreement shall survive. Surviving terms include, but are not limited to: Billing Limitations; Confidentiality, Disputes; Indemnification and Hold Harmless, Inspection, Maintenance of Records, Notice of Overpayment, Ownership of Material, Termination for Default, Termination Procedure, and Treatment of Property.

15. Contract Renegotiation, Suspension, or Termination Due to Change in Funding.

If the funds DSHS relied upon to establish this Contract or Program Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, after the effective date of this contract but prior to the normal completion of this Contract or Program Agreement:

a. At DSHS's discretion, the Contract or Program Agreement may be renegotiated under the revised funding conditions.

b. DSHS's discretion, DSHS may give notice to Contractor to suspend performance when DSHS determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this contract.

(1) During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.

(2) When DSHS determines that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to DSHS informing DSHS whether it can resume performance and, if so, the date of resumption. For purposes of this subsubsection, "written notice" may include email.

(3) If the Contractor's proposed resumption date is not acceptable to DSHS and an acceptable date cannot be negotiated, DSHS may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.

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

16. Waiver. Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Contract. Only the DSHS Contracts Administrator or designee has the authority to waive any term or condition of this Contract on behalf of DSHS.

Additional General Terms and Conditions – IT Purchased Service Contracts:

17. Advance Payment. DSHS shall not make any payments in advance or anticipation of the delivery of services to be provided pursuant to this Contract.

18. Commencement of Work. No work shall be performed by the Contractor until the Contract is

executed by the Contractor and DSHS and received by DSHS.

19. Construction. T**he 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.**

20. 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.

21. Contractor Commitments, Warranties and Representations. Any written commitment by the Contractor within the scope of this Contract shall be binding upon the Contractor. Failure of the Contractor to fulfill such a commitment may constitute breach and shall render the Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by the Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by the Contractor in its response to the solicitation resulting in this Contract ("Bid") or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Bid or used to effect the sale to DSHS.

22. Disputes.

a. In the event a bona fide dispute concerning a question of fact arises between DSHS and the Contractor that cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.

b. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days (which shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington). The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.

(1) If the dispute cannot be resolved after three (3) Business Days, a dispute resolution panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) Business Days.

(2) The dispute resolution panel will review the written descriptions of the dispute, gather additional information as needed, and render a written decision on the dispute in the shortest practical time.

(3) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

c. Unless irreparable harm will result, the parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

d. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a dispute resolution panel whenever possible.

e. Except to the extent that disclosure is required by applicable law or court order, all negotiations pursuant to this clause are confidential and shall be treated by the parties as statements made in compromise negotiations for purposes of the rules of evidence.

f. DSHS and the Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

g. If the subject of the dispute is the amount due and payable by DSHS for services being provided by the Contractor, the Contractor shall continue providing services pending resolution of the dispute provided DSHS pays the Contractor the amount DSHS, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount the Contractor, in good faith, believes is due and payable.

23. Health and Safety. The 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.

24. Indemnification and Hold Harmless.

a. The Contractor shall be responsible for and shall indemnify, defend, and hold DSHS harmless from any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines, of whatsoever kind of nature, arising out of or relating to a) the Contractor's or any Subcontractor's performance or failure to perform this Contract, or b) the acts or omissions of the Contractor or any Subcontractor.

b. The Contractor's duty to indemnify, defend, and hold DSHS harmless from any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines shall include DSHS' personnel-related costs, reasonable attorney's fees, court costs, and all related expenses.

c. The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.

d. Nothing in this term shall be construed as a modification or limitation on the Contractor's obligation to procure insurance in accordance with this Contract or the scope of said insurance.

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

26. Limitation of Liability.

a. The parties agree that neither the Contractor nor DSHS shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections or any other conditions as are elsewhere agreed to herein between the parties. Damages resulting from termination for default or breaches of the

Maintenance of Records clause are not consequential, incidental, indirect, or special damages as that term is used in this section.

b. Neither the Contractor nor DSHS shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either the Contractor or DSHS. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than DSHS acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Contractor, DSHS, or their respective Subcontractors.

c. If delays are caused by a Subcontractor without its fault or negligence, the Contractor shall not be liable for damages for such delays, unless the services to be performed were obtainable on comparable terms from other sources in sufficient time to permit the Contractor to meet its required performance schedule.

d. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

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

a. Be *received* by the Office of Financial Recovery (OFR) at Post Office Box 9501, Olympia, Washington 98507-9501, within twenty-eight (28) calendar days of service of the notice;

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

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

d. Include a copy of the overpayment notice.

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

Failure to provide OFR with a written request for a hearing within twenty-eight (28) days of service of a Contractor 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.

28. Ownership/Rights in Data

a. DSHS and the Contractor agree that all data and work products (collectively called "Work Product") produced pursuant to this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 et seq, and shall be owned by DSHS. The Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions,

recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product. For purposes of this contract, "Software" shall mean the object code version of computer programs licensed pursuant to this Contract. Software also means the source code version, where provided by the Contractor. Embedded code, firmware, internal code, microcode, and any other term referring to software residing in the equipment that is necessary for the proper operation of the equipment is not included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

b. If for any reason the Work Product would not be considered a work made for hire under applicable law, the Contractor assigns and transfers to DSHS the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

c. The Contractor shall execute all documents and perform such other proper acts as DSHS may deem necessary to secure for DSHS the rights pursuant to this section.

d. The Contractor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership in any Work Product, without the prior written permission of DSHS. The Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

e. Material that is delivered under this Contract, but that does not originate therefrom ("Preexisting Material"), shall be transferred to DSHS with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Contractor has a right to grant such a license. The Contractor shall exert all reasonable effort to advise DSHS at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. DSHS shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by the Contractor with respect to any Preexisting Material delivered under this Contract. DSHS shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by the Contractor.

29. Patent and Copyright Indemnification.

a. The Contractor, at its expense, shall defend, indemnify, and hold DSHS harmless from and against any claims against DSHS that any Product or Work Product supplied hereunder, or DSHS's use of the Product or Work Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. (Product shall mean shall mean any Contractor-supplied equipment, Software, and documentation. The Contractor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by DSHS provided that DSHS:

(1) Promptly notifies the Contractor in writing of the claim, but DSHS's failure to provide timely

notice shall only relieve the Contractor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to the Contractor; and

(2) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant the Contractor sole control of the defense and all related settlement negotiations.

b. If such claim has occurred, or in the Contractor's opinion is likely to occur, DSHS agrees to permit the Contractor, at its option and expense, either to procure for DSHS the right to continue using the Product or Work Product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Product or Work Product is enjoined by a court and the Contractor determines that none of these alternatives is reasonably available, the Contractor, at its risk and expense, will take back the Product or Work Product and provide DSHS a refund. In the case of Work Product, the Contractor shall refund to DSHS the entire amount DSHS paid to the Contractor for the Contractor's provision of the Work Product. In the case of Product, the Contractor shall refund to DSHS its depreciated value. No termination charges will be payable on such returned Product, and DSHS will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of four (4) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by DSHS shall be refunded by the Contractor.

c. The Contractor has no liability for any claim of infringement arising solely from:

(1) The Contractor's compliance with any designs, specifications or instructions of DSHS;

(2) Modification of the Product or Work Product by DSHS or a third party without the prior knowledge and approval of the Contractor; or

(3) Use of the Product or Work Product in a way not specified by the Contractor;

unless the claim arose against the Contractor's Product or Work Product independently of any of these specified actions.

d. This Section, *Patent and Copyright Indemnification*, is intended to survive the expiration or termination of the agreement.

30. Public Records Act. The Contractor acknowledges that DSHS is subject to the Public Records Act (Chapter 42.56 RCW) and that this Contract is a public record as defined in Chapter 42.56 RCW. Any specific information that is claimed by the Contractor to be Proprietary Information must be clearly identified as such by the Contractor. **"**Proprietary Information**"** means information owned by the Contractor to which the Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws. To the extent consistent with Chapter 42.56 RCW, DSHS will maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view the Contractor's Proprietary Information, DSHS will notify the Contractor of the request and of the date that such records will be released to the requester unless the Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If the Contractor fails to obtain the court order enjoining disclosure, DSHS will release the requested information on the date specified.

31. Publicity. The Contractor shall not name DSHS as a customer, nor use any information related to this

Contract, in any format or media, in any Contractor's advertising or publicity without prior written consent from DSHS.

32. **Site Security**. While providing services at a DSHS location, the Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations specific to the DSHS location.

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

34. **Termination for Convenience**. DSHS may terminate this Contract in whole or in part when it is in the best interest of DSHS by giving the Contractor at least thirty (30) calendar days' written notice.

35. **Termination for Default**. The Contracts Administrator may immediately terminate this Contract for default, in whole or in part, by written notice to the Contractor if DSHS has a reasonable basis to believe that the Contractor has:

a. Failed to meet or maintain any requirement for contracting with DSHS;

b. Failed to protect the health or safety of any DSHS client;

c. Failed to perform under, or otherwise breached, any term or condition of this Contract; and/or

d. Violated any applicable law or regulation.

e. If it is later determined that the Contractor was not in default, the termination shall be considered a termination for convenience.

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

a. The Contractor shall cease to perform any services required by this Contract as of the effective date of termination or expiration.

b. If the Contract is terminated, the Contractor shall comply with all instructions contained in the termination notice.

c. The Contractor shall immediately deliver to the DSHS contact named on page one of this Contract, or to his or her successor, all DSHS property in the Contractor's possession. The Contractor grants DSHS the right to enter upon the Contractor's premises for the sole purpose of recovering any DSHS property that the Contractor fails to return within ten (10) calendar days of the effective date of termination or expiration of this Contract. Upon failure to return DSHS property within ten (10) calendar days, the Contractor shall be charged with all reasonable costs of recovery, including transportation.

d. DSHS shall be liable only for payment required under the terms of this Contract for service rendered up to the effective date of termination or expiration.

e. DSHS may withhold a sum from the final payment to the Contractor that DSHS determines

necessary to protect DSHS against loss or additional liability.

f. The rights and remedies provided to DSHS in this Section are in addition to any other rights and remedies provided at law, in equity, and/or under this Contract, including consequential and incidental damages.

37. 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.

38. Taxes.

a. Where required by statute or regulation, Contractor shall pay for and maintain in current status all taxes that are necessary for Contract performance. DSHS will pay sales or use taxes, if any, imposed on the services and materials acquired hereunder. Contractor must pay all other taxes including without limitation Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. DSHS, as an agency of Washington State government, is exempt from property tax.

b. Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract in accordance with the requirements of Title 82 RCW and Title 458 WAC. Out-of-state Contractors must contact the Department of Revenue to determine whether they meet criteria to register and establish an account with the Department of Revenue. Refer to WAC 458-20-101 (Tax registration and tax reporting) and call the Department of Revenue at 800-647-7706 for additional information. When out-of-state Contractors are not required to collect and remit sales tax, DSHS shall be responsible for paying use tax, if applicable, directly to the Department of Revenue.

c. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor's staff shall be Contractor's sole responsibility.

Special Terms and Conditions

1. Purpose:

a. To provide Secure Text Messaging services to protect DSHS's communication, data and applications stored in or being transmitted through mobile devices. The proposed solution will be an integral part of the internal communication processes at DSHS. The system must be available to initiate and deliver messages 24 hours a day, seven days a week, and 365 days a year. The proposed solution must also provide the ability of retaining (storing), searching and producing (for public records requests, litigation discovery, employee investigations, audits, and/or other business purposes) data residing or transmitted through mobile devices.

b. DSHS enters into this Contract as the result of DSHS RFP 1556-535.

(1) DSHS incorporates by reference RFP 1556-535, including all Amendments and Exhibits.

(2) DSHS incorporates by reference, the Contractor's written response to DSHS RFP 1556-535.

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 Exhibit B.

3. Billing and Payment.

a. Invoice System. The Contractor shall submit invoices using State Form A-19 Invoice Voucher, or such other form as designated by DSHS. Consideration for services rendered shall be payable upon receipt of properly completed invoices which shall be submitted to the Contract Manager by the Contractor not more often than monthly. The invoices shall describe and document to DSHS' satisfaction a description of the work performed, activities accomplished, the progress of the project, and fees. The rates shall be in accordance with those set forth in Section 4, Consideration, of this Contract.

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

4. Insurance

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

a. General Liability Insurance

The Contractor shall maintain Commercial General Liability Insurance or Business Liability Insurance, including coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - $1,000,000; General Aggregate - $2,000,000. The policy shall include liability arising out of the parties' performance under this Contract, including but not limited to premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The State of Washington, Department of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees of the state, shall be named as additional insureds.

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

the life of the contract:

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

or

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

or

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

b. Business Automobile Liability Insurance

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

c. Professional Liability Insurance (PL)

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

d. Worker's Compensation

The Contractor shall comply with all applicable Worker's Compensation, occupational disease, and occupational health and safety laws and regulations. The State of Washington and DSHS shall not be held responsible for claims filed for Worker's Compensation under RCW 51 by the Contractor or its employees under such laws and regulations.

e. Employees and Volunteers

Insurance required of the Contractor under the Contract shall include coverage for the acts and omissions of the Contractor's employees and volunteers. In addition, the Contractor shall ensure that all employees and volunteers who use vehicles to transport clients or deliver services have personal automobile insurance and current driver's licenses.

f. Subcontractors

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

g. Separation of Insureds

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

h. Insurers

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

i. Evidence of Coverage

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

The Contractor shall maintain copies of Certificates of Insurance, policies, and additional insured endorsements for each subcontractor as evidence that each subcontractor maintains insurance as required by the Contract.

j. Material Changes

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

k. General

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

l. Waiver

The Contractor waives all rights, claims and causes of action against the State of Washington and DSHS for the recovery of damages to the extent said damages are covered by insurance maintained by Contractor.

Special Terms and Conditions

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. "Authorized User(s)" means an individual or individuals with an authorized business requirement to access DSHS Confidential Information.

b. "Hardened Password" means a string of at least eight characters containing at least one alphabetic character, at least one number and at least one special character such as an asterisk, ampersand or exclamation point.

c. "Unique User ID" means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase or other mechanism, authenticates a user to an information system.

2. **Data Transport**. When transporting DSHS Confidential Information electronically, including via email, the Data will be protected by:

a. Transporting the Data within the (State Governmental Network) SGN or Contractor's internal network, or;

b. Encrypting any Data that will be in transit outside the SGN or Contractor's internal network. This includes transit over the public Internet.

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

a. **Hard disk drives**. Data stored on local workstation hard disks. Access to the Data will be restricted to Authorized 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**. 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 Secured Area and otherwise meet the requirements listed in the above paragraph. Destruction of the Data as outlined in Section 5. Data Disposition may be deferred until the disks are retired, replaced, or otherwise taken out of the Secured 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 Secured Area. When not in use for the contracted purpose, such discs must be locked in a drawer, cabinet or other container to which only Authorized Users have the key, combination or mechanism required to access the contents of the container. Workstations which access DSHS Data on optical discs must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

d. **Optical discs (CDs or DVDs) in drives or jukeboxes attached to servers**. Data provided by DSHS on optical discs which will be attached to network servers and which will not be transported out of a Secured 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 Secured Area which is only accessible to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.

f. **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 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 with a key length of at least 128 bits

(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.

Physically Secure the portable device(s) and/or media by

(d) Keeping them in locked storage when not in use

(e) Using check-in/check-out procedures when they are shared, and

(f) Taking frequent inventories

(2) When being transported outside of a Secured Area, portable devices and media with DSHS Confidential Information must be under the physical control of Contractor staff with authorization to access the Data.

(3) Portable devices include, but are not limited to; smart phones, tablets, flash memory devices (e.g. USB flash drives, personal media players), portable hard disks, and laptop/notebook/netbook computers if those computers may be transported outside of a Secured Area.

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

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

(1) DSHS data 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 in Section 5. Data Disposition

(2) DSHS 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 in Section 5. Data Disposition.

4. 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.

b. DSHS Data will be kept on media (e.g. hard disk, optical disc, tape, etc.) which will contain no non-DSHS data. And/or,

c. DSHS Data will be stored in a logical container on electronic media, such as a partition or folder dedicated to DSHS Data. And/or,

d. DSHS Data will be stored in a database which will contain no non-DSHS data. And/or,

e. DSHS Data will be stored within a database and will be distinguishable from non-DSHS data by the value of a specific field or fields within database records.

f. When stored as physical paper documents, DSHS Data will be physically segregated from non-DSHS data in a drawer, folder, or other container.

g. When it is not feasible or practical to segregate DSHS Data from non-DSHS data, then both the DSHS Data and the non-DSHS data with which it is commingled must be protected as described in this exhibit.

5. **Data Disposition**. When the contracted work has been completed or when no longer needed, except as noted in Section 3. Protection of Data b. Network Server Disks above, Data shall be returned to DSHS or destroyed. Media on which Data may be stored and associated acceptable methods of destruction are as follows:

Data stored on:	Will be destroyed by:
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

6. **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. 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. **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.