

**Exhibit D – Sample Contract
RFQ 1436-522**

 <p>Washington State Department of Social & Health Services</p> <p><i>Transforming lives</i></p>	<p>PERSONAL SERVICE CONTRACT</p> <p>Disability Eligibility Review</p>	<p>DSHS Contract Number: Click here to enter text. Resulting From Procurement Number:</p>	
<p>This Contract is between the state of Washington Department of Social and Health Services (DSHS) and the Contractor identified below, and is governed by chapter 39.29 RCW.</p>		<p>Program Contract Number: Click here to enter text. Contractor Contract Number:</p>	
<p>CONTRACTOR NAME Click here to enter text.</p>		<p>CONTRACTOR doing business as (DBA) Click here to enter text.</p>	
<p>CONTRACTOR ADDRESS Click here to enter text. Click here to enter text., Click here to enter text. Click here to enter text.</p>		<p>WASHINGTON UNIFORM BUSINESS IDENTIFIER (UBI) Click here to enter text.</p>	<p>DSHS INDEX NUMBER Click here to enter text.</p>
<p>CONTRACTOR CONTACT Click here to enter text.</p>	<p>CONTRACTOR TELEPHONE Click here to enter text.</p>	<p>CONTRACTOR FAX Click here to enter text.</p>	<p>CONTRACTOR E-MAIL ADDRESS Click here to enter text.</p>
<p>DSHS ADMINISTRATION Click here to enter text.</p>	<p>DSHS DIVISION Click here to enter text.</p>	<p>DSHS CONTRACT CODE Click here to enter text.</p>	
<p>DSHS CONTACT NAME AND TITLE Click here to enter text. Click here to enter text.</p>		<p>DSHS CONTACT ADDRESS Click here to enter text. Click here to enter text., Click here to enter text. Click here to enter text.</p>	
<p>DSHS CONTACT TELEPHONE Click here to enter text.</p>	<p>DSHS CONTACT FAX Click here to enter text.</p>	<p>DSHS CONTACT E-MAIL ADDRESS Click here to enter text.</p>	
<p>IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT? Click here to enter text.</p>		<p>CFDA NUMBER(S) Click here to enter text.</p>	
<p>CONTRACT START DATE Click here to enter text.</p>	<p>CONTRACT END DATE Click here to enter text.</p>	<p>CONTRACT MAXIMUM AMOUNT Click here to enter text.</p>	
<p>EXHIBITS. The following Exhibits are attached and are incorporated into this Contract by reference: <input checked="" type="checkbox"/> Data Security: Exhibit A – Data Security Requirements <input type="checkbox"/> Other Exhibits (specify):</p>			
<p>The terms and conditions of this Contract are an integration and representation of the final, entire and exclusive understanding between the parties superseding and merging all previous agreements, writings, and communications, oral or otherwise, regarding the subject matter of this Contract. The parties signing below represent that they have read and understand this Contract, and have the authority to execute this Contract. This Contract shall be binding on DSHS only upon signature by DSHS.</p>			
<p>CONTRACTOR SIGNATURE SAMPLE-DO NOT SIGN Click here to enter text.</p>		<p>PRINTED NAME AND TITLE SAMPLE-DO NOT SIGN</p>	<p>DATE SIGNED</p>
<p>DSHS SIGNATURE SAMPLE-DO NOT SIGN Click here to enter text.</p>		<p>PRINTED NAME AND TITLE Jackie Sledge, Contracts Officer DSHS/ESA-Community Services Division</p>	<p>DATE SIGNED</p>

DSHS General Terms and Conditions

1. **Definitions.** The words and phrases listed below, as used in this Contract, shall each have the following definitions:
- a. "Central Contract Services" means the DSHS central headquarters contracting office, or successor section or office.
 - b. "Confidential Information" 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/>.

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

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- 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.
 - (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

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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.

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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 subsection, "written notice" may include email.
 - (3) If the Contractor's proposed resumption date is not acceptable to DSHS and an acceptable date cannot be negotiated, DSHS may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.
- c. DSHS may immediately terminate this Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the termination notice. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty shall accrue to DSHS in the event the termination option in this section is exercised.

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

Additional General Terms and Conditions – Personal Service Contracts:

17. **Advance Payment.** DSHS shall not make any payments in advance or anticipation of the delivery of services to be provided pursuant to this Contract.
18. **Construction.** The language in this Contract shall be interpreted as to its fair meaning and not strictly for or against any party. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Contract.
19. **Indemnification and Hold Harmless.**
- a. The Contractor shall be responsible for and shall indemnify, defend, and hold DSHS harmless from any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines, of whatsoever kind of nature, arising out of or relating to a) the Contractor's or any Subcontractor's performance or failure to perform this Contract, or b) the acts or omissions of the Contractor or any Subcontractor.
 - b. The Contractor's duty to indemnify, defend, and hold DSHS harmless from any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines shall include DSHS' personnel-related costs, reasonable attorney's fees, court costs, and all related expenses.
 - c. The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.
 - d. Nothing in this term shall be construed as a modification or limitation on the Contractor's obligation to procure insurance in accordance with this Contract or the scope of said insurance.
20. **Industrial Insurance Coverage.** The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.
21. **Notice of Overpayment.** If the Contractor receives a vendor overpayment notice or a letter communicating the existence of an overpayment from DSHS, the Contractor may protest the overpayment determination by requesting an adjudicative proceeding. The Contractor's request for an adjudicative proceeding must:
- a. Be *received* by the Office of Financial Recovery (OFR) at Post Office Box 9501, Olympia, Washington 98507-9501, within twenty-eight (28) calendar days of service of the notice;

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- b. Be sent by certified mail (return receipt) or other manner that proves OFR received the request;
- c. Include a statement as to why the Contractor thinks the notice is incorrect; and
- d. Include a copy of the overpayment notice.

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

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

- 22. DES Filing Requirement.** Under RCW 39.26, sole source contracts and amendments must be filed with the State of Washington Department of Enterprise Services (DES). If this Contract is one that must be filed, it shall not be effective nor shall work commence or payment be made until it has been approved by DES. In the event DES fails to approve the Contract or any amendment hereto, the Contract or amendment shall be null and void.
- 23. Subcontracting.** Except as otherwise provided in this Contract, the Contractor shall not Subcontract any of the contracted services without the prior written approval of DSHS. Contractor is responsible to ensure that all terms, conditions, assurances and certifications set forth in this Contract are included in any and all Subcontracts. Any failure of Contractor or its Subcontractors to perform the obligations of this Contract shall not discharge the Contractor from its obligations hereunder or diminish DSHS' rights or remedies available under this Contract.
- 24. Termination for Convenience.** DSHS may terminate this Contract in whole or in part when it is in the best interest of DSHS by giving the Contractor at least thirty (30) calendar days' written notice.
- 25. Termination for Default.** The Contracts Administrator may immediately terminate this Contract for default, in whole or in part, by written notice to the Contractor if DSHS has a reasonable basis to believe that the Contractor has:
 - 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.
- 26. Termination or Expiration Procedure.** The following terms and conditions apply upon Contract termination or expiration:

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- 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.

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.

- 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 458-20-93](#) 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.

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- 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.

HIPAA Compliance

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

29. Definitions.

- a. "Business Associate," as used in this Contract, means the "Contractor" and generally has the same meaning as the term "business associate" at 45 CFR 160.103. Any reference to Business Associate in this Contract includes Business Associate's employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.
- b. "Business Associate Agreement" means this HIPAA Compliance section of the Contract and includes the Business Associate provisions required by the U.S. Department of Health and Human Services, Office for Civil Rights.
- c. "Breach" means the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the Protected Health Information, with the exclusions and exceptions listed in 45 CFR 164.402.
- d. "Covered Entity" means DSHS, a Covered Entity as defined at 45 CFR 160.103, in its conduct of covered functions by its health care components.
- e. "Designated Record Set" means a group of records maintained by or for a Covered Entity, that is: the medical and billing records about Individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or Used in whole or part by or for the Covered Entity to make decisions about Individuals.
- f. "Electronic Protected Health Information (EPHI)" means Protected Health Information that is transmitted by electronic media or maintained in any medium described in the definition of electronic media at 45 CFR 160.103.
- g. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as modified by the American Recovery and Reinvestment Act of 2009 ("ARRA"), Sec. 13400 – 13424, H.R. 1 (2009) (HITECH Act).
- h. "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and Part 164.
- i. "Individual(s)" means the person(s) who is the subject of PHI and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- j. "Minimum Necessary" means the least amount of PHI necessary to accomplish the purpose for which the PHI is needed.

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- k. "Protected Health Information (PHI)" means individually identifiable health information created, received, maintained or transmitted by Business Associate on behalf of a health care component of the Covered Entity that relates to the provision of health care to an Individual; the past, present, or future physical or mental health or condition of an Individual; or the past, present, or future payment for provision of health care to an Individual. 45 CFR 160.103. PHI includes demographic information that identifies the Individual or about which there is reasonable basis to believe can be used to identify the Individual. 45 CFR 160.103. PHI is information transmitted or held in any form or medium and includes EPHI. 45 CFR 160.103. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USCA 1232g(a)(4)(B)(iv) or employment records held by a Covered Entity in its role as employer.
- l. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
- m. "Subcontractor" as used in this HIPAA Compliance section of the Contract (in addition to its definition in the General Terms and Conditions) means a Business Associate that creates, receives, maintains, or transmits Protected Health Information on behalf of another Business Associate.
- n. "Use" includes the sharing, employment, application, utilization, examination, or analysis, of PHI within an entity that maintains such information.

- 30. 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.
- 31. Use and Disclosure of PHI.** Business Associate is limited to the following permitted and required uses or disclosures of PHI:
- a. **Duty to Protect PHI.** Business Associate shall protect PHI from, and shall use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 (Security Standards for the Protection of Electronic Protected Health Information) with respect to EPHI, to prevent the unauthorized Use or disclosure of PHI other than as provided for in this Contract or as required by law, for as long as the PHI is within its possession and control, even after the termination or expiration of this Contract.
 - b. **Minimum Necessary Standard.** Business Associate shall apply the HIPAA Minimum Necessary standard to any Use or disclosure of PHI necessary to achieve the purposes of this Contract. See 45 CFR 164.514 (d)(2) through (d)(5).
 - c. **Disclosure as Part of the Provision of Services.** Business Associate shall only Use or disclose PHI as necessary to perform the services specified in this Contract or as required by law, and shall not Use or disclose such PHI in any manner that would violate Subpart E of 45 CFR Part 164 (Privacy of Individually Identifiable Health Information) if done by Covered Entity, except for the specific uses and disclosures set forth below.
 - d. **Use for Proper Management and Administration.** Business Associate may Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - e. **Disclosure for Proper Management and Administration.** Business Associate may disclose PHI for

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

- f. Impermissible Use or Disclosure of PHI. Business Associate shall report to DSHS in writing all Uses or disclosures of PHI not provided for by this Contract within one (1) business day of becoming aware of the unauthorized Use or disclosure of PHI, including Breaches of unsecured PHI as required at 45 CFR 164.410 (Notification by a Business Associate), as well as any Security Incident of which it becomes aware. Upon request by DSHS, Business Associate shall mitigate, to the extent practicable, any harmful effect resulting from the impermissible Use or disclosure.
- g. Failure to Cure. If DSHS learns of a pattern or practice of the Business Associate that constitutes a violation of the Business Associate's obligations under the terms of this Contract and reasonable steps by DSHS do not end the violation, DSHS shall terminate this Contract, if feasible. In addition, If Business Associate learns of a pattern or practice of its Subcontractors that constitutes a violation of the Business Associate's obligations under the terms of their contract and reasonable steps by the Business Associate do not end the violation, Business Associate shall terminate the Subcontract, if feasible.
- h. Termination for Cause. Business Associate authorizes immediate termination of this Contract by DSHS, if DSHS determines that Business Associate has violated a material term of this Business Associate Agreement. DSHS may, at its sole option, offer Business Associate an opportunity to cure a violation of this Business Associate Agreement before exercising a termination for cause.
- i. Consent to Audit. Business Associate shall give reasonable access to PHI, its internal practices, records, books, documents, electronic data and/or all other business information received from, or created or received by Business Associate on behalf of DSHS, to the Secretary of DHHS and/or to DSHS for use in determining compliance with HIPAA privacy requirements.
- j. Obligations of Business Associate Upon Expiration or Termination. Upon expiration or termination of this Contract for any reason, with respect to PHI received from DSHS, or created, maintained, or received by Business Associate, or any Subcontractors, on behalf of DSHS, Business Associate shall:
 - (1) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - (2) Return to DSHS or destroy the remaining PHI that the Business Associate or any Subcontractors still maintain in any form;
 - (3) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 (Security Standards for the Protection of Electronic Protected Health Information) with respect to Electronic Protected Health Information to prevent Use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate or any Subcontractors retain the PHI;

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- (4) Not Use or disclose the PHI retained by Business Associate or any Subcontractors other than for the purposes for which such PHI was retained and subject to the same conditions set out in the "Use and Disclosure of PHI" section of this Contract which applied prior to termination; and
 - (5) Return to DSHS or destroy the PHI retained by Business Associate, or any Subcontractors, when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- k. Survival. The obligations of the Business Associate under this section shall survive the termination or expiration of this Contract.

32. Individual Rights.

a. Accounting of Disclosures.

- (1) Business Associate shall document all disclosures, except those disclosures that are exempt under 45 CFR 164.528, of PHI and information related to such disclosures.
- (2) Within ten (10) business days of a request from DSHS, Business Associate shall make available to DSHS the information in Business Associate's possession that is necessary for DSHS to respond in a timely manner to a request for an accounting of disclosures of PHI by the Business Associate. See 45 CFR 164.504(e)(2)(ii)(G) and 164.528(b)(1).
- (3) At the request of DSHS or in response to a request made directly to the Business Associate by an Individual, Business Associate shall respond, in a timely manner and in accordance with HIPAA and the HIPAA Rules, to requests by Individuals for an accounting of disclosures of PHI.
- (4) Business Associate record keeping procedures shall be sufficient to respond to a request for an accounting under this section for the six (6) years prior to the date on which the accounting was requested.

b. Access

- (1) Business Associate shall make available PHI that it holds that is part of a Designated Record Set when requested by DSHS or the Individual as necessary to satisfy DSHS's obligations under 45 CFR 164.524 (Access of Individuals to Protected Health Information).
- (2) When the request is made by the Individual to the Business Associate or if DSHS asks the Business Associate to respond to a request, the Business Associate shall comply with requirements in 45 CFR 164.524 (Access of Individuals to Protected Health Information) on form, time and manner of access. When the request is made by DSHS, the Business Associate shall provide the records to DSHS within ten (10) business days.

c. Amendment.

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

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(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).

- 33. 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) .
- 34. 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).
- 35. 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.
- 36. Breach Notification.**
- a. In the event of a Breach of unsecured PHI or disclosure that compromises the privacy or security of PHI obtained from DSHS or involving DSHS clients, Business Associate will take all measures required by state or federal law.
 - b. Business Associate will notify DSHS within one (1) business day by telephone and in writing of any acquisition, access, Use or disclosure of PHI not allowed by the provisions of this Contract or not authorized by HIPAA Rules or required by law of which it becomes aware which potentially compromises the security or privacy of the Protected Health Information as defined in 45 CFR 164.402 (Definitions).
 - c. Business Associate will notify the DSHS Contact shown on the cover page of this Contract within one (1) business day by telephone or e-mail of any potential Breach of security or privacy of PHI by the Business Associate or its Subcontractors or agents. Business Associate will follow telephone or e-mail notification with a faxed or other written explanation of the Breach, to include the following: date and time of the Breach, date Breach was discovered, location and nature of the PHI, type of Breach, origination and destination of PHI, Business Associate unit and personnel associated with the Breach, detailed description of the Breach, anticipated mitigation steps, and the name, address, telephone number, fax number, and e-mail of the individual who is responsible as the primary point of contact. Business Associate will address communications to the DSHS Contact. Business Associate will coordinate and cooperate with DSHS to provide a copy of its investigation and other information requested by DSHS, including advance copies of any notifications required for DSHS review before disseminating and verification of the dates notifications were sent.

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- d. If DSHS determines that Business Associate or its Subcontractor(s) or agent(s) is responsible for a Breach of unsecured PHI:
- (1) requiring notification of Individuals under 45 CFR § 164.404 (Notification to Individuals), Business Associate bears the responsibility and costs for notifying the affected Individuals and receiving and responding to those Individuals' questions or requests for additional information;
 - (2) requiring notification of the media under 45 CFR § 164.406 (Notification to the media), Business Associate bears the responsibility and costs for notifying the media and receiving and responding to media questions or requests for additional information;
 - (3) requiring notification of the U.S. Department of Health and Human Services Secretary under 45 CFR § 164.408 (Notification to the Secretary), Business Associate bears the responsibility and costs for notifying the Secretary and receiving and responding to the Secretary's questions or requests for additional information; and
 - (4) DSHS will take appropriate remedial measures up to termination of this Contract.

37. Miscellaneous Provisions.

- a. Regulatory References. A reference in this Contract to a section in the HIPAA Rules means the section as in effect or amended.
- b. Interpretation. Any ambiguity in this Contract shall be interpreted to permit compliance with the HIPAA Rules.

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1. **Definitions Specific to Special Terms.** The words and phrases listed below, as used in this Contract, shall each have the following definitions:
- a. "Business Day" means Monday through Friday excluding state holidays. A business day starts at 12:00am (midnight) and ends at 11:59 pm.
 - b. "Client" means a person applying for or receiving TANF/SFA benefits.
 - c. "Client Identification Number" means the unique client identification number supplied by DSHS.
 - d. "CSD" means the Community Services Division, a division of the Economic Services Administration (ESA) within DSHS.
 - e. "Data" means the information that is disclosed or exchanged as described by this Contract.
 - f. "DSHS Contact" means the DSHS Contact listed on page 1 of this Contract or their designee.
 - g. "Disability" is an impairment (or combination of impairments) which, of itself, is so severe that it meets or equals a set of criteria in the Listing of Impairments in appendix 1 of subpart P of part 404 of chapter 20 of the Federal Code of Regulations (CFR) or which, when considered with the person's age, education and work experience, would result in a finding that the person is disabled under §416.994.
 - h. "Division of Disability Determination Services" means a division of the Economic Services Administration (ESA) within DSHS.
 - i. "ESA" means the Economic Services Administration, an administration within DSHS.
 - j. "Federal disability criteria" or "Disability" means the definition of disability provided by the Social Security Administration.
 - k. "Medical Evidence" means clinical findings from an examination or interview, and supporting documentation, including testing.
 - l. "Pending Disciplinary Action" means a statement of charges has been filed with the Washington State Department of Health or any administration of the Department has ordered the Contractor to suspend or discontinue services.
 - m. "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.
 - n. "Portable Media" includes but is not limited to: Optical media (e.g. CDs, DVDs) magnetic media (e.g. floppy disks, tape, removable or external hard disk drives), or flash media (e.g. Compact Flash, SC, MMC).
 - o. "Referrals" means sending medical evidence to the Contractor for review using a web-based application or secure email.
 - p. "SFA" means State Family Assistance. SFA is a cash assistance program administered by CSD.

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- q. "SSI" means Supplemental Security Income. SSI is a Federal income supplement program administered by Social Security Administration (SSA).
- r. "TANF" means Temporary Assistance for Needy Families. TANF is a cash assistance program administered by CSD.
- s. "Written Notice" means a letter or memorandum on paper or a message sent electronically (e-mail). DSHS has discretion over which medium is used.

2. Purpose.

The purpose of this Contract is for the Contractor to use their diagnostic and clinical expertise to review clients' medical evidence to determine if the client is likely to meet federal SSI disability criteria, and to assist DSHS in determining whether to refer clients for federal SSI disability.

3. Qualifications and Licensing Requirements.

- a. Qualification Requirements. To perform work under this Contract, the Contractor must have the following:
 - (1) An active license as a physician, psychologist or psychiatrist issued by Washington State.
 - (2) No pending or active disciplinary actions or licensure sanctions, and
 - (3) Provided a copy of their Curriculum Vitae to the DSHS Contact in order to confirm the Contractor has the requisite training and experience to perform services.
- b. Experience. To perform work under this Contract, the Contractor must have the following:
 - (1) At least one (1) year of practice in Clinical or Forensic psychology; or
 - (2) At least one (1) year of experience evaluating work-related impairments; or
 - (3) At least six (6) months experience working as a:
 - (a) Medical Consultant for the Division of Disability Determination Services; or
 - (b) Medicaid Eligibility Review Contractor for CSD.
- c. Maintenance of Licensing Requirements.
 - (1) The Contractor shall immediately cease providing services when the Contractor receives any notice that:
 - (a) Their license to practice has been suspended or expired; or
 - (b) A disciplinary or sanction has been filed or taken against accreditation, license or registration.
 - (2) The Contractor shall provide a copy of all notices listed in subsection c.(1) above to the DSHS Contact by email or fax within one (1) business day of receipt of any such notice.

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- 4. Statement of Work.** The Contractor shall provide the services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:
- a. Accept and respond to CSD referrals for review of medical evidence, as follows:
 - (1) Referrals shall be sent through a designated website where the Contractor can log in and view referrals, or by secure email at the discretion of the DSHS Contact.
 - (2) Images sent in electronic referrals can be up to 10MB in size, and are typically between 2 and 5MB each referral.
 - (3) Medical evidence attachments shall be limited to documents on file for the twelve (12) months prior to the date of referral; unless a prior report or chart notes are necessary to establish a potentially disabling condition by a doctor, or to establish duration of a potentially disabling impairment.
 - b. Evaluate the evidence of the Client's specific impairments and determine if the:
 - (1) Medical evidence is objective and sufficient to support the findings of the provider; and
 - (2) Description of impairments is supported by the medical evidence.
 - c. Respond to accepted referrals by:
 - (1) Complete the Disability Assessment: TANF Decision form (DSHS 14-507B).
 - (2) Document the evaluation on the 14-507B Form, as follows:
 - (a) Provide a brief summary of the medical evidence;
 - (b) Provide a statement of whether the reported impairments are supported by the medical evidence;
 - (c) If applicable, provide a statement regarding how substance abuse contributes to the functional limitations; and
 - (d) Provide corrections to functional limitations when those provided by the DSHS staff are not consistent with the medical evidence.
 - (3) Send the completed Form 14-507B to the Community Services Office (CSO) that made the referral by use of a designated website or by secure email at the discretion of the DSHS Contact.
 - (4) Except when requesting additional information as specified in electronic referrals below, the Contractor shall respond to referrals and complete a Form 14-507B within five (5) business days of receipt of the referral.
 - (5) Notify the DSHS Contact when their response to a referral and completion of the Form 14-507B will be delayed beyond five (5) business days.
 - (6) Notify the DSHS Contact within one (1) business day of when there's a discovery of a

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discrepancy with a referral or the completed Form 14-507B.

- (7) If the Contractor determines additional medical information is necessary, and there is an indication that such information is available, the Contractor shall send the referring DSHS worker a message using secure email or the designated website when requesting additional information.
- (8) The Contractor shall evaluate the evidence of the client's specific impairments by comparing the information in the referral packet to the evidentiary requirements, disability listings, and other requirements, such as age, education, and work history, as specified in the most recent edition of the Disability Evaluation Under Social Security (Blue Book – available online at: <http://www.ssa.gov/disability/professionals/bluebook/>).
- (9) Determine, based on the information in the referral packet and in accordance with the requirements for evaluating that evidence under the SSI program as specified in 20 CFR 416.901 through 416.998, whether the individual appears to meet the federal disability criteria as defined in the CFR.

d. Document delivery of services by submitting a list of completed referrals using a State Form A-19 Invoice Voucher or other such forms as designated by DSHS with the monthly invoice document.

(1) The list must include at a minimum the following elements for each completed referral:

- (a) First and last name of client.
- (b) Client Identification Number.
- (c) Date of referral. and
- (d) Date the 14-507B Form was completed

(2) The list shall be typewritten or completed using a computer word processing or worksheet program

(3) The Contractor shall provide the list to the DSHS Contact each month.

e. Provide relevant consultation services to DSHS staff when required by the DSHS Contact.

f. Attend meetings with DSHS staff, or training sessions provided by DSHS when required by the DSHS Contact.

g. Notify the DSHS Contact within one (1) business day when the Contractor has examined or is treating the client. The DSHS Contact shall reassign the referral.

5. Consideration. Total consideration payable to Contractor for satisfactory performance of the work under this Contract, including any and all expenses shall be based on the following:

a. \$19 per each completed DSHS Disability Assessment TANF Decision (form 14-507B) evaluation that is returned to CSD **within** five (5) business days of the receipt of the referral; or

b. \$15 per each completed DSHS Disability Assessment TANF Decision (form 14-507B) evaluation

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that is returned to CSD **more than** five (5) business days of the receipt of the referral and the Contractor did not notify the DSHS Contact that the 14-507B Form would be delayed beyond the five (5) business days; and

- c. Travel expenses shall be reimbursed at the published state travel rates only when:
 - (1) The Contractor is required to provide consultation, attend meetings or trainings; and
 - (2) A written pre-approval from the DSHS Contact was provided.

6. Billing and Payment.

a. Invoice System.

- (1) The Contractor shall submit invoices and documentation of delivery of services using a State A-19 Invoice Voucher, or such other form as designated by DSHS.
- (2) The Contractor shall also submit documentation of delivery of services in the form of the monthly list as required in Section 4, Statement of Work, subsection d. of this Contract.
- (3) Consideration for services rendered shall be payable upon receipt of properly completed invoices which shall be submitted to DSHS, Community Services Division (CSD), P.O. Box 45470, Olympia, WA 98504-5470 by the Contractor not more often than monthly and no less than quarterly.
- (4) The invoices shall describe and document the work performed, activities accomplished, the progress of the project, and fees to the satisfaction of DSHS.
- (5) DSHS shall not make any payments in advance or anticipation of the delivery of services to be provided pursuant to this Agreement.
- (6) The rates shall be in accordance with those set forth in Section 5, Consideration, of this Contract.

b. Payment.

- (1) Payment shall be considered timely if made by DSHS within thirty (30) days after receipt and acceptance by the DSHS Contact Person of the properly completed invoices.
- (2) Payment shall be sent to the address designated by the Contractor on page 1 of this Contract.
- (3) 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.

7. Contract Suspension

- a. DSHS may take certain actions in the event the Contractor, or any of its partners, officers, directors, or employees, is investigated by a local, county, state or federal agency, for a matter which DSHS determines may adversely affect the delivery of services provided under this Contract.

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- b. DSHS may, without prior notice, suspend the delivery of services pending final resolution of the investigation.

8. Contractor Information.

- a. The Contractor shall within ten (10) business days provide to the DSHS Contact, any information concerning the Contractor's change of circumstances.
- b. Changes in the Contractor's circumstances include but are not limited to:
 - (1) change of business name,
 - (2) change of address, telephone number, fax number, e-mail address; and
 - (3) change in location of practice.
- c. The Contractor shall provide a minimum of thirty (30) days advance notice to the DSHS Contact of the Contractor's decision to limit, suspend or withdraw their availability to perform services including, but not limited to, retirement.

9. Data Sharing. In addition to the requirements in Exhibit A: Data Security Requirements, the Contractor must follow these instructions as well:

- a. Purpose.
 - (1) Activity for which the Data is needed: To assist DSHS in determining whether Clients are likely to meet federal SSI disability standards.
 - (2) How the Contractor will use the Data: The Contractor's use is limited to reviewing and evaluating medical evidence provided by DSHS.
- b. Description of Data.
 - (1) Data Elements:
 - (a) Personal Identification Information, which may include, but is not limited to, the following:
 - i. Client Name;
 - ii. Client ID Number; and
 - iii. Client personal health information, including medical records.
 - (b) Referral text comments.

This data may only be used for the purposes intended under the terms of this Contract.

- (2) Time frame(s) for Data disclosure or exchange: Contract period of performance.
- (3) Conditions under which, if any, that data disclosed or exchanged can be linked to other data:

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The Contractor shall not link the data with Personal Information or individually identifiable data from any other source nor re-disclose or duplicate the data unless specifically authorized to do so in this Contract or by the prior written consent of DSHS.

c. Data Access or Transfer.

- (1) Method. Electronic referrals from CSOs through DSHS secure website, via secure email, and at the discretion of the DSHS Contact.
- (2) Portable Devices and Portable Media.
 - (a) The Contractor must obtain written permission from the DSHS Contact listed on page 1 of this Contract prior to using portable devices or portable media for purposes related to providing services under this Contract.
 - (b) The Contractor shall provide DSHS with information about the type of portable devices or portable media that will be used.
 - (c) The use of portable devices or portable media is subject to requirements of Exhibit A: Data Security Requirements.
 - (d) The Contractor shall keep the following records about their use of portable devices or media:
 - i. Type of portable devices or portable media used;
 - ii. Serial Numbers;
 - iii. Proof of encryption of DSHS Data; and
 - iv. Check-in and check-out system which identifies which of the Contractors staff is using the portable devices or media that contains DSHS Data.
 - (e) The Contractor must have a process in place that will ensure that they download all DSHS Data on a weekly basis from portable device or portable media to a secure storage method, as described in Exhibit A: Data Security Requirements.
 - (f) The Contractor shall keep a record of dates of the weekly storage download and the storage method.
- (3) The Contractor shall upon the request of DSHS make the records required in this section available to DSHS.
- (4) When services stop or the Contract ends for any reason, or the Contractor is no longer authorized to use a portable device or media to store DSHS client data, the Contractor must immediately:
 - (a) Remove all DSHS Client data from the portable device or media and transfer the Client data to a secure storage method as described in Exhibit A: Data Security Requirements.
 - (b) Submit a signed Declaration of Data Disposition form (DSHS 27-108) that states that all

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DSHS client information has been deleted, purged, erased or destroyed from the Contractor's hard copy and/or electronic files before DSHS authorizes the final payment.

(5) Requirements for Data Access.

- (a) The Contractor shall limit access to DSHS Client information to their employees whose duties specifically require access to such data in the performance of their assigned duties.
- (b) Prior to making the information available, the Contractor shall notify all employees with access to the information of the use and disclosure requirements.
- (c) The Contractor and any employee(s) with access to clients' information shall sign a Notice of Nondisclosure form (provided by DSHS) to acknowledge the data access requirements prior to being granted access to the data.
- (d) The Contractor shall retain the original signed Notice of Nondisclosure forms for monitoring purposes. The shall make the forms available to DSHS upon request for contract monitoring purposes and ensure they are protected in accordance with Exhibit A: Data Security Requirements.
- (e) The Contractor and its employee(s) must read and sign the Nondisclosure forms annually.
- (f) Violations of the Nondisclosure provisions of this Contract may result in criminal or civil penalties. Violation is a gross misdemeanor under RCW 74.04.060, punishable by imprisonment of not more than one (1) year and/or a fine not to exceed five-thousand dollars (\$5,000).

d. Security of Data.

(1) Data Protection.

The Contractor shall exercise due care to protect data from unauthorized physical and electronic access. Due care includes establishing and maintaining security policies, standards, and procedures which detail:

- (a) Access security, identification, and authentication;
- (b) Network and workstation security;
- (c) Premise security; and
- (d) Sanctions for unauthorized use or disclosure of data.

(2) Data Disposition.

- (a) When the Contract ends for any reason, the Contractor must properly secure all DSHS Client data as described in Exhibit A: Data Security Requirements.
- (b) DSHS shall not process the Contractor's final invoice for payment until such time that the Contractor has completed, signed and submitted a Disposition of Data Form (DSHS 27-108) stating that DSHS client records created or obtained for the purposes of the Contract have

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been deleted, purged, erased or destroyed from the Contractor's hard copy and/or electronic files.

10. Confidentiality and Nondisclosure.

- a. The data to be shared under this Contract is confidential in nature and is subject to state and federal confidentiality requirements that bind the Contractor, its employees, and its subcontractors to protect the confidentiality of the personal information contained in Economic Services Administration data.
- b. The Contractor may use personal data and other data gained by reason of this Contract only for the purpose of this Contract.
- c. The Contractor shall not disclose, transfer, or sell any such information to any party, except as provided by law or, in the case of Personal Information, without the prior written consent of the person to whom the Personal Information pertains
- d. The Contractor shall maintain the confidentiality of personal data in accordance with state and federal laws, and shall have adequate policies and procedures in place to ensure compliance with confidentiality requirements, including restrictions on re-disclosure. The Contractor agrees to keep client information according to DSHS policy and procedures.
- e. Violations of the Nondisclosure provisions of this agreement may result in criminal or civil penalties. Violation is a gross misdemeanor under RCW 74.04.060, punishable by imprisonment of not more than one year and/or a fine not to exceed five-thousand dollars (\$5,000).

11. Equipment and Supplies

The Contractor shall provide all equipment and supplies necessary to provide the contracted services.

12. Termination

In addition to the requirements of Section 26 of the General Terms and Conditions of this contract, entitled Termination or Expiration Procedure, the Contractor shall submit a completed, signed Declaration of Data Disposition Form DSHS 27-108 declaring under penalty of perjury that all Client records have been deleted, purged, erased or destroyed from the Contractor's hard copy and/or electronic files. This declaration is to be addressed to the DSHS contact listed on page 1 of the Contract regardless of the reason for termination.

13. Insurance.

The DSHS insurance requirements have been waived for this Contract.

14. Monitoring.

The Contractor shall be available upon the request of DSHS to participate in the following Contract monitoring activities:

- a. Monitoring at the locations where the Contractor provides contracted services.
- b. Telephone interviews.

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c. Completion of self-assessment monitoring checklists provided by DSHS.

15. Subcontracting.

Subcontracting is not permitted under the terms of this Contract.

16. Referrals.

DSHS, at its sole discretion, shall make referrals to the Contractor on an as-needed basis, and does not guarantee that any referrals will be made to the Contractor during the period of this Contract. DSHS reserves the right to withdraw any referrals made to the Contractor.

17. Disputes.

Either party may submit a request for resolution of a contract dispute (rates set by law, regulation or DSHS policy are not disputable). The requesting party shall submit a written statement identifying the issue(s) in dispute and the relative positions of the parties. A request for a dispute resolution must include the Contractor's name, address, and contract number, and be mailed to the address listed below within thirty (30) calendar days after the party could reasonably be expected to have knowledge of the issue in dispute.

DSHS/Community Services Division
Attn: Contracts Unit
PO Box 45470
Olympia, WA 98504-5470

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Exhibit A – Data Security Requirements

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

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- 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

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- (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.

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