# SERVICES CONTRACT

## Program of All-Inclusive Care for the

## Elderly (PACE) Rate Setting

DSHS Contract Number:

Resulting From Procurement Number:

This Contract is between the state of Washington Department of Social and Health Services (DSHS) and the Contractor identified below, and is governed by chapter 39.26 RCW.

Program Contract Number:
Contractor Contract Number:

| CONTRACTOR NAME | CONTRACTOR doing business as (DBA) | |
|---|---|---|
| CONTRACTOR ADDRESS | | DSHS INDEX NUMBER |

| CONTRACTOR CONTACT | CONTRACTOR TELEPHONE | CONTRACTOR FAX | CONTRACTOR E-MAIL ADDRESS |
|---|---|---|---|

| DSHS ADMINISTRATION | DSHS DIVISION | DSHS CONTRACT CODE |
|---|---|---|

| DSHS CONTACT NAME AND TITLE | DSHS CONTACT ADDRESS |
|---|---|

| DSHS CONTACT TELEPHONE | DSHS CONTACT FAX | DSHS CONTACT E-MAIL ADDRESS |
|---|---|---|

| IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT? | ASSISTANCE LISTING NUMBER(S) |
|---|---|

| CONTRACT START DATE | CONTRACT END DATE | CONTRACT MAXIMUM AMOUNT |
|---|---|---|

**EXHIBITS.** The following Exhibits are attached and are incorporated into this Contract by reference:

☒ **Exhibits (specify):** Exhibit A - Data Security Requirements

☐ **No Exhibits.**

The terms and conditions of this Contract are an integration and representation of the final, entire and exclusive understanding between the parties superseding and merging all previous agreements, writings, and communications, oral or otherwise, regarding the subject matter of this Contract. The parties signing below represent that they have read and understand this Contract, and have the authority to execute this Contract. This Contract shall be binding on DSHS only upon signature by DSHS.

| CONTRACTOR SIGNATURE | PRINTED NAME AND TITLE | DATE SIGNED |
|---|---|---|

| DSHS SIGNATURE | PRINTED NAME AND TITLE | DATE SIGNED |
|---|---|---|

**DSHS General Terms and Conditions**

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

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

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

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

   d.   "CCLS Chief" means the manager, or successor, of Central Contracts and Legal Services or successor section or office.

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

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

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

   h.   "Encrypt" means to encode Confidential Information into a format that can only be read by those possessing a "key;" a password, digital certificate or other mechanism available only to authorized users.  Encryption must use a key length of at least 256 bits for symmetric keys, or 2048 bits for asymmetric keys.  When a symmetric key is used, the Advanced Encryption Standard (AES) must be used if available.

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

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

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

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

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 and Washington State Requirements.**

    a.  **Applicable Law**. Throughout the performance of this Agreement, Contractor shall comply with all federal, state, and local laws, regulations, and executive orders to the extent they are applicable to this Agreement.

    b.  **Civil Rights and Nondiscrimination**. Contractor shall comply with all federal and state civil rights

and nondiscrimination laws, regulations, and executive orders to the extent they are applicable to this Agreement, including, but not limited to, and as amended, Titles VI and VII of the Civil Rights Act of 1964; Sections 503 and 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act (ADA); Executive Order 11246; the Health Insurance Portability and Accountability Act of 1996 (HIPAA); the Age Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, and Chapter 49.60 of the Revised Code of Washington, Washington's Law Against Discrimination. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated.

In the event of the Contractor's noncompliance or refusal to comply with any applicable nondiscrimination laws, regulations, and executive orders, this Agreement may be rescinded, canceled, or terminated in whole or in part.

c. **Certification Regarding Russian Government Contracts and/or Investments**. Contractor shall abide by the requirements of Governor Jay Inslee's Directive 22-03 and all subsequent amendments. The Contractor, by signature to this Contract, certifies that the Contractor is not presently an agency of the Russian government, an entity which is Russian-state owned to any extent, or an entity sanctioned by the United States government in response to Russia's invasion of Ukraine. The Contractor also agrees to include the above certification in any and all Subcontracts into which it enters. The Contractor shall immediately notify DSHS if, during the term of this Contract, Contractor does not comply with this certification. DSHS may immediately terminate this Contract by providing Contractor written notice if Contractor does not comply with this certification during the term hereof.

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. **E-Signature and Records.** An electronic signature or electronic record of this Contract or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Contract or such other ancillary agreement for all purposes.

9. **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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **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.

15. **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.

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

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

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

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

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

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

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

**Additional General Terms and Conditions – Professional Service Contracts:**

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

**19.**    **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.

**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.**    **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 the tenth (10th) working day following the date of filing subject to DES approval.  In the event DES fails to approve the Contract or any amendment hereto, the Contract or amendment shall be null and void.

22. **Health and Safety.**  Contractor shall perform any and all of its obligations under this Contract in a manner that does not compromise the health and safety of any DSHS client with whom the Contractor has contact.

23. **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.

24. **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.

25. **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.

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

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

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

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

    d.  Include a copy of the overpayment notice.

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

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

27. **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.

28. **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.

29. **Subrecipients**.

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

        (1) Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;

        (2) Maintain internal controls that provide reasonable assurance that the Contractor is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;

        (3) Prepare appropriate financial statements, including a schedule of expenditures of federal awards;

        (4) Incorporate 2 CFR Part 200, Subpart F audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;

        (5) Comply with the applicable requirements of 2 CFR Part 200, including any future amendments to 2 CFR Part 200, and any successor or replacement Office of Management and Budget (OMB) Circular or regulation; and

        (6) Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39. (Go to https://ojp.gov/about/offices/ocr.htm for additional information and access to the aforementioned Federal laws and regulations.)

    b.  Single Audit Act Compliance.  If the Contractor is a subrecipient and expends $750,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor shall procure and pay for a single audit or a program-specific audit for that fiscal year.  Upon completion of each audit, the

Contractor shall:

(1) Submit to the DSHS contact person the data collection form and reporting package specified in 2 CFR Part 200, Subpart F, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;

(2) Follow-up and develop corrective action for all audit findings; in accordance with 2 CFR Part 200, Subpart F; prepare a "Summary Schedule of Prior Audit Findings" reporting the status of all audit findings included in the prior audit's schedule of findings and questioned costs.

    c. Overpayments.  If it is determined by DSHS, or during the course of a required audit, that the Contractor has been paid unallowable costs under this or any Program Agreement, DSHS may require the Contractor to reimburse DSHS in accordance with 2 CFR Part 200.

**30.** **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.

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

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

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

    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.

**32.** **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.

33.  **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.

34.  **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.

35.  **Preventing Disruption of Adult Care, Mental Health, Addiction, Disability Support, or Youth Services Due to Labor Management Disputes and Employee Unrest.**

Washington law requires that all services, direct or ancillary, for adult care, mental health, addiction, disability support, and youth services, be warranted by the Contractor providing those services against disruption. Contractor and DSHS agree that disruptions to these services such as strikes, walk-offs, sick-ins, slowdowns, or any other such action designed to pressure Contractor's management to meet labor, workforce, or subcontractor demands ("Economic or Industrial Action") are covered under this warranty.

If this Contract includes adult care, mental health, addiction, disability support, or youth services, Contractor agrees to execute and maintain one or more of the following mandatory contractual commitments through the life of the Contract:

a.  An agreement between the Contractor and any exclusive representative labor organization

representing the employees performing the contracted services. This agreement must contain a provision prohibiting Economic or Industrial Action on the part of all parties. This agreement must also include a process for the resolution of disputes between them; or

b.  An agreement between the Contractor and any labor organization seeking to represent the employees performing the contracted services. This agreement must contain a provision prohibiting the parties from causing, promoting, or encouraging Economic or Industrial Action, or other disruptive activity. This agreement must also include a process for resolution of disputes between parties.

Contractor must notify DSHS if it is unable to form a compliant agreement with a labor organization within 30 days of executing this Contract.

If services under this Contract are interrupted due to Contractor's failure to maintain one or more of the required contractual commitments listed above, DSHS may immediately terminate, suspend, or revoke this Contract for default, and arrange for the provision of services by other means. Contractor shall provide reimbursement of the actual costs to DSHS arising out of the inadequacy of the warranty provided by the Contractor.

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

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

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

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

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

### HIPAA Compliance

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

37.  **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.

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.

38. **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.

39. **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 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;

    (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.

**40.    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).

(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).

41.  **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) .

42.  **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).

43.  **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.

**44.    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.

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.

**45.    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.

**Special Terms and Conditions**

1. **Purpose**.  The purpose of this Contract is for actuarial services needed to set actuarial sound rates for the Program of All-Inclusive Care for the Elderly (PACE) for King, Pierce, Snohomish, and Spokane Counties or any other counties to which the PACE model expands.  The contractor will provide analysis and consultation on the capitated rates for PACE.

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

   a. The Contractor Shall:

      (1) Participate in rate negotiations between DSHS/ALTSA, Center for Medicaid and Medicare Services (CMS) and all PACE contractors.  The cost for this deliverable is per the hourly rate set forth in this Contract. **This deliverable is ongoing.**

      (2) Complete a finalized rate letter for submission to PACE and CMS that outlines the rates for the next rate setting cycle for each county. **This deliverable is due upon completion of rate negotiations with the PACE contractors and no later than March 1 of the year that rates are being set**.  The cost for this deliverable shall be paid per the hourly rate set forth in this Contract.

      (3) Complete a finalized rates checklist for submission to CMS for the rate setting cycle. **This deliverable is due no later than May 1 of the year the rates are being set.**  The cost for this deliverable shall be paid per the hourly rate set forth in this Contract.

      (4) Ad-hoc assignments which may include revising rates based on necessary change and yearly review of rates.  This includes answering questions via email, letters and/or telephone calls. **This deliverable is ongoing.**  The cost for this deliverable is per the hourly rate set forth in this Contract.

      (5) Assignment to assist the state with analysis of quality metrics and payment of quality incentive payments. **This deliverable is ongoing.**

      (6) Certification of rates for a proposed PACE contractor, for submission of PACE applications. **Deliverable due based on CMS submission timelines.**

   b. DSHS Shall:

      (1) Provide the Contractor with all data that will be needed for the consultation services.

      (2) Provide the Contractor with the work papers and proposed rates to CMS.

      (3) Provide the coordination between itself, the Contractor, health care providers, Washington State Health Care Authority and CMS.

3. **Data Share**.  The Contractor shall comply with the attached Exhibit A, Data Security Requirements when receiving data as described below:

   a. Data Elements: Identifiable eligibility files and Claims/encounter Data for specific sets of service codes.

   b. Method:  DSHS, ALTSA will encrypt and electronically transmit, via email, the data to the Contractor.

    c.   Conditions under which, if any, that Data disclosed or exchanged can be linked to other data:  None.

**4.**    **Consideration**.  Total consideration payable to Contractor for satisfactory performance of the work under this Contract is up to a maximum of $1,500,000, including any and all expenses, and shall be based on the following:

| Staff Category | Hourly Rate |
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**5.**    **Billing and Payment**.

    a.   Invoice System. The Contractor shall submit invoices using State Form A-19 Invoice Voucher, or such other form as designated by DSHS. Consideration for services rendered shall be payable upon receipt of properly completed invoices which shall be submitted to XXXXX  or designee or successor, 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 DSHS 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.  Contractor reserves the right to suspend its performance hereunder if any undisputed sums owed to it go unpaid for more than sixty (60) days.

**6.**    **Insurance**.

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

# Special Terms and Conditions

a. General Liability Insurance

   The Contractor shall maintain Commercial General Liability Insurance, or Business Liability Insurance, no less comprehensive than covered under Insurance Service Offices, Inc (ISO) form CG 00-01, including coverage for bodily injury, property damage, and contractual liability.  The amount of coverage shall be no less than$1,000,000 per occurrence and $2,000,000 General Aggregate.  The policy shall include liability arising out of 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.

b. In lieu of general liability insurance mentioned in Section 1.a. above, if the contractor is a sole proprietor with less than three contracts, the contractor may choose one of the following three general liability policies but only if attached to a professional liability policy.  If selected the policy shall be maintained for the life of the contract:

   Supplemental Liability Insurance, including coverage for bodily injury and property damage that will cover the contractor wherever the service is performed with minimum limits of $1,000,000 per occurrence; and General Aggregate - $2,000,000.  The State of Washington, DSHS, its elected and appointed officials, agents, and employees shall be named as additional insured's;

   or

   Workplace Liability Insurance, including coverage for bodily injury and property damage that provides coverage wherever the service is performed with minimum limits of $1,000,000 per occurrence; and General Aggregate - $2,000,000.  The State of Washington, DSHS, its elected and appointed officials, agents, and employees of the state, shall be named as additional insured's;

   or

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

c. 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.

d. Professional Liability Insurance (errors & omissions)

   The Contractor shall maintain of at least $1,000,000 per claim, $2,000,000 general annual aggregate for errors and omissions.

e. Worker's Compensation

   The Contractor shall comply with all applicable Worker's Compensation, occupational disease, and

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

f.   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.

g.   Subcontractors

The Contractor shall ensure that all subcontractors have and maintain insurance with the same types and limits of coverage as required of the Contractor under the Contract. Failure of Subcontractors to comply with the insurance requirements in this Contract does not limit the Contractor's liability or responsibility.

h.   Separation of Insured's

The general liability insurance policy shall include coverage for cross liability and contain a "Separation of Insured's" provision.

i.   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.

j.   Evidence of Coverage

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

k.   Material Changes

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

l.   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.  The general liability and automobile 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.

m.  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.

n.  Waiver of Subrogation

Contractor waives all rights of subrogation against DSHS for the recovery of damages to the extent such damages are or would be covered by Contractor's commercial general liability and workers' compensation insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies whether or not DSHS receives the waiver of subrogation endorsement form the insurer.

o.  Coverage Limits

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

p.  Primary Coverage

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

q.  Liability Cap

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

7.  **Contractor Property**.  Contractor shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs, methods, ideas, concepts, know-how, techniques, generic documents and templates that have been previously developed by Contractor or developed during the course of the provision of the Services provided such generic documents or templates do not contain any DSHS Confidential Information or Data.  Rights and ownership by Contractor of original technical designs, methods, ideas, concepts, know-how, and techniques shall not extend to or include all or any part of DSHS's DSHS Confidential Information or Data. To the extent that Contractor may include in the materials any pre-existing Contractor proprietary information or other protected Contractor materials, Contractor agrees that DSHS shall be deemed to have a fully paid up license to make copies of the Contractor owned materials as part of this engagement for its internal business purposes and provided that such materials cannot be modified or distributed outside the DSHS without the written permission

of Contractor or except as otherwise permitted hereunder.

8.  **No Third-Party Distribution**. Contractor's work is prepared solely for the use and benefit of DSHS in accordance with its statutory and regulatory requirements.  Contractor recognizes that materials it delivers to DSHS may be public records subject to disclosure to third parties, however, Contractor does not intend to benefit and assumes no duty or liability to any third parties who receive Contractor's work and may include disclaimer language on its work product so stating.  DSHS agrees not to remove any such disclaimer language from Contractor's work.  To the extent that Contractor's work is not subject to disclosure under applicable public records laws, DSHS agrees that it shall not disclose Contractor's work product to third parties without Contractor's prior written consent; provided, however, that DSHS may distribute Contractor's work to (i) its professional service providers who are subject to a duty of confidentiality and who agree to not use Contractor's work product for any purpose other than to provide services to DSHS, or (ii) any applicable regulatory or governmental agency, as required.

9.  **Disputes**.  The parties shall use their best, good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Contract.  Both parties will continue without delay to carry out their respective responsibilities under this Contract while attempting to resolve the dispute.  When a genuine dispute arises between DSHS and the Contractor regarding the terms of this Contract or the responsibilities imposed herein which cannot be resolved at the contract management level, the parties agree that the dispute will be resolved by final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association.  The arbitration shall take place before a panel of three arbitrators.  Within 30 days of the commencement of the arbitration, each party shall designate in writing a single neutral and independent arbitrator.  The two arbitrators designated by the parties shall then select a third arbitrator.  The arbitrators shall have a background in either insurance, actuarial science or law.  The arbitrators shall have the authority to permit limited discovery, including depositions, prior to the arbitration hearing, and such discovery shall be conducted consistent with the Federal Rules of Civil Procedure.  The arbitrators shall have no power or authority to award punitive or exemplary damages.  The arbitrators may, in their discretion, award the cost of the arbitration, including reasonable attorney fees, to the prevailing party.  Any award made may be confirmed in any court having jurisdiction.  Any arbitration shall be confidential, and except as required by law, neither party may disclose the content or results of any arbitration hereunder without the prior written consent of the other parties, except that disclosure is permitted to a party's auditors and legal advisors.

10. **Use of Name**.  DSHS agrees that it shall not use Contractor's name, trademarks or service marks, or refer to Contractor directly or indirectly in any media release, public announcement or public disclosure, including in any promotional or marketing materials, customer lists, referral lists, websites or business presentations without Contractor's prior written consent for each such use or release, which consent shall be given in Contractor's sole discretion.

**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.  "AES" means the Advanced Encryption Standard, a specification of Federal Information Processing Standards Publications for the encryption of electronic data issued by the National Institute of Standards and Technology (http://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.197.pdf).

    b.  "Authorized Users(s)" means an individual or individuals with a business need to access DSHS Confidential Information, and who has or have been authorized to do so.

    c.  "Business Associate Agreement" means an agreement between DSHS and a contractor who is receiving Data covered under the Privacy and Security Rules of the Health Insurance Portability and Accountability Act of 1996.  The agreement establishes permitted and required uses and disclosures of protected health information (PHI) in accordance with HIPAA requirements and provides obligations for business associates to safeguard the information.

    d.  "Category 4 Data" is data that is confidential and requires special handling due to statutes or regulations that require especially strict protection of the data and from which especially serious consequences may arise in the event of any compromise of such data.  Data classified as Category 4 includes but is not limited to data protected by: the Health Insurance Portability and Accountability Act (HIPAA), Pub. L. 104-191 as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH), 45 CFR Parts 160 and 164; the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g; 34 CFR Part 99; Internal Revenue Service Publication 1075 (https://www.irs.gov/pub/irs-pdf/p1075.pdf); Substance Abuse and Mental Health Services Administration regulations on Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2; and/or Criminal Justice Information Services, 28 CFR Part 20.

    e.  "Cloud" means data storage on servers hosted by an entity other than the Contractor and on a network outside the control of the Contractor.  Physical storage of data in the cloud typically spans multiple servers and often multiple locations.  Cloud storage can be divided between consumer grade storage for personal files and enterprise grade for companies and governmental entities.  Examples of consumer grade storage would include iTunes, Dropbox, Box.com, and many other entities.  Enterprise cloud vendors include Microsoft Azure, Amazon Web Services, and Rackspace.

    f.  "Encrypt" means to encode Confidential Information into a format that can only be read by those possessing a "key"; a password, digital certificate or other mechanism available only to authorized users.  Encryption must use a key length of at least 256 bits for symmetric keys, or 2048 bits for asymmetric keys.  When a symmetric key is used, the Advanced Encryption Standard (AES) must be used if available.

    g.  "FedRAMP" means the Federal Risk and Authorization Management Program (see www.fedramp.gov), which is an assessment and authorization process that federal government agencies have been directed to use to ensure security is in place when accessing Cloud computing products and services.

    h.  "Hardened Password" means a string of at least eight characters containing at least three of the following four character classes:  Uppercase alphabetic, lowercase alphabetic, numeral, and special characters such as an asterisk, ampersand, or exclamation point.

    i.  "Mobile Device" means a computing device, typically smaller than a notebook, which runs a mobile operating system, such as iOS, Android, or Windows Phone. Mobile Devices include smart phones, most tablets, and other form factors.

    j.  "Multi-factor Authentication" means controlling access to computers and other IT resources by requiring two or more pieces of evidence that the user is who they claim to be.  These pieces of evidence consist of something the user knows, such as a password or PIN; something the user has such as a key card, smart card, or physical token; and something the user is, a biometric identifier such as a fingerprint, facial scan, or retinal scan. "PIN" means a personal identification number, a series of numbers which act as a password for a device.  Since PINs are typically only four to six characters, PINs are usually used in conjunction with another factor of authentication, such as a fingerprint.

    k.  "Portable Device" means any computing device with a small form factor, designed to be transported from place to place.  Portable devices are primarily battery powered devices with base computing resources in the form of a processor, memory, storage, and network access.  Examples include, but are not limited to, mobile phones, tablets, and laptops.  Mobile Device is a subset of Portable Device.

    l.  "Portable Media" means any machine readable media that may routinely be stored or moved independently of computing devices. Examples include magnetic tapes, optical discs (CDs or DVDs), flash memory (thumb drive) devices, external hard drives, and internal hard drives that have been removed from a computing device.

    m.  "Secure Area" means an area to which only authorized representatives of the entity possessing the Confidential Information have access, and access is controlled through use of a key, card key, combination lock, or comparable mechanism.  Secure Areas may include buildings, rooms or locked storage containers (such as a filing cabinet or desk drawer) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.  In otherwise Secure Areas, such as an office with restricted access, the Data must be secured in such a way as to prevent access by non-authorized staff such as janitorial or facility security staff, when authorized Contractor staff are not present to ensure that non-authorized staff cannot access it.

    n.  "Trusted Network" means a network operated and maintained by the Contractor, which includes security controls sufficient to protect DSHS Data on that network.  Controls would include a firewall between any other networks, access control lists on networking devices such as routers and switches, and other such mechanisms which protect the confidentiality, integrity, and availability of the Data.

    o.  "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.**    **Authority**.  The security requirements described in this document reflect the applicable requirements of Standard 141.10 (https://ocio.wa.gov/policies) of the Office of the Chief Information Officer for the state of Washington, and of the DSHS Information Security Policy and Standards Manual.  Reference material related to these requirements can be found here: https://www.dshs.wa.gov/ffa/keeping-dshs-client-information-private-and-secure, which is a site developed by the DSHS Information Security Office and hosted by DSHS Central Contracts and Legal Services.

**3.**    **Administrative Controls.**  The Contractor must have the following controls in place:

    a.  A documented security policy governing the secure use of its computer network and systems, and

which defines sanctions that may be applied to Contractor staff for violating that policy.

    b.  If the Data shared under this agreement is classified as Category 4, the Contractor must be aware of and compliant with the applicable legal or regulatory requirements for that Category 4 Data.

    c.  If Confidential Information shared under this agreement is classified as Category 4, the Contractor must have a documented risk assessment for the system(s) housing the Category 4 Data.

**4.**    **Authorization, Authentication, and Access.**  In order to ensure that access to the Data is limited to authorized staff, the Contractor must:

    a.  Have documented policies and procedures governing access to systems with the shared Data.

    b.  Restrict access through administrative, physical, and technical controls to authorized staff.

    c.  Ensure that user accounts are unique and that any given user account logon ID and password combination is known only to the one employee to whom that account is assigned.  For purposes of non-repudiation, it must always be possible to determine which employee performed a given action on a system housing the Data based solely on the logon ID used to perform the action.

    d.  Ensure that only authorized users are capable of accessing the Data.

    e.  Ensure that an employee's access to the Data is removed immediately:

        (1)  Upon suspected compromise of the user credentials.

        (2)  When their employment, or the contract under which the Data is made available to them, is terminated.

        (3)  When they no longer need access to the Data to fulfill the requirements of the contract.

    f.  Have a process to periodically review and verify that only authorized users have access to systems containing DSHS Confidential Information.

    g.  When accessing the Data from within the Contractor's network (the Data stays within the Contractor's network at all times), enforce password and logon requirements for users within the Contractor's network, including:

        (1)  A minimum length of 8 characters, and containing at least three of the following character classes: uppercase letters, lowercase letters, numerals, and special characters such as an asterisk, ampersand, or exclamation point.

        (2)  That a password does not contain a user's name, logon ID, or any form of their full name.

        (3)  That a password does not consist of a single dictionary word.  A password may be formed as a passphrase which consists of multiple dictionary words.

        (4)  That passwords are significantly different from the previous four passwords.  Passwords that increment by simply adding a number are not considered significantly different.

    h.  When accessing Confidential Information from an external location (the Data will traverse the Internet or otherwise travel outside the Contractor's network), mitigate risk and enforce password and logon requirements for users by employing measures including:

(1) Ensuring mitigations applied to the system don't allow end-user modification.

(2) Not allowing the use of dial-up connections.

(3) Using industry standard protocols and solutions for remote access. Examples would include RADIUS and Citrix.

(4) Encrypting all remote access traffic from the external workstation to Trusted Network or to a component within the Trusted Network. The traffic must be encrypted at all times while traversing any network, including the Internet, which is not a Trusted Network.

(5) Ensuring that the remote access system prompts for re-authentication or performs automated session termination after no more than 30 minutes of inactivity.

(6) Ensuring use of Multi-factor Authentication to connect from the external end point to the internal end point.

i. Passwords or PIN codes may meet a lesser standard if used in conjunction with another authentication mechanism, such as a biometric (fingerprint, face recognition, iris scan) or token (software, hardware, smart card, etc.) in that case:

(1) The PIN or password must be at least 5 letters or numbers when used in conjunction with at least one other authentication factor

(2) Must not be comprised of all the same letter or number (11111, 22222, aaaaa, would not be acceptable)

(3) Must not contain a "run" of three or more consecutive numbers (12398, 98743 would not be acceptable)

j. If the contract specifically allows for the storage of Confidential Information on a Mobile Device, passcodes used on the device must:

(1) Be a minimum of six alphanumeric characters.

(2) Contain at least three unique character classes (upper case, lower case, letter, number).

(3) Not contain more than a three consecutive character run. Passcodes consisting of 12345, or abcd12 would not be acceptable.

k. Render the device unusable after a maximum of 10 failed logon attempts.

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

a. **Hard disk drives**. For Data stored on local workstation hard disks, access to the Data will be restricted to Authorized User(s) by requiring logon to the local workstation using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards.

b. **Network server disks**. For Data stored on hard disks mounted on network servers and made available through shared folders, access to the Data will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has

authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on disks mounted to such servers must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

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

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

d. **Optical discs (CDs or DVDs) in drives or jukeboxes attached to servers**. Data provided by DSHS on optical discs which will be attached to network servers and which will not be transported out of a Secure Area. Access to Data on these discs will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on discs attached to such servers must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

e. **Paper documents**. Any paper records must be protected by storing the records in a Secure Area which is only accessible to authorized personnel. When not in use, such records must be stored in a Secure Area.

f. **Remote Access**. Access to and use of the Data over the State Governmental Network (SGN) or Secure Access Washington (SAW) will be controlled by DSHS staff who will issue authentication credentials (e.g. a Unique User ID and Hardened Password) to Authorized Users on Contractor's staff. Contractor will notify DSHS staff immediately whenever an Authorized User in possession of such credentials is terminated or otherwise leaves the employ of the Contractor, and whenever an Authorized User's duties change such that the Authorized User no longer requires access to perform work for this Contract.

g. **Data storage on portable devices or media**.

(1) Except where otherwise specified herein, DSHS Data shall not be stored by the Contractor on portable devices or media unless specifically authorized within the terms and conditions of the Contract. If so authorized, the Data shall be given the following protections:

(a) Encrypt the Data.

(b) Control access to devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics.

(c) Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity, if this feature is available.  Maximum period of inactivity is 20 minutes.

(d) Apply administrative and physical security controls to Portable Devices and Portable Media by:

    i.    Keeping them in a Secure Area when not in use,

    ii.   Using check-in/check-out procedures when they are shared, and

    iii.  Taking frequent inventories.

(2) When being transported outside of a Secure Area, Portable Devices and Portable Media with DSHS Confidential Information must be under the physical control of Contractor staff with authorization to access the Data, even if the Data is encrypted.

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

(1) DSHS Confidential Information may be stored on Portable Media as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes.  Such storage is authorized until such time as that media would be reused during the course of normal backup operations.  If backup media is retired while DSHS Confidential Information still exists upon it, such media will be destroyed at that time in accordance with the disposition requirements below in Section 8 *Data Disposition*.

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

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

(1) DSHS Data will not be stored in any consumer grade Cloud solution, unless all of the following conditions are met:

(a) Contractor has written procedures in place governing use of the Cloud storage and Contractor attests in writing that all such procedures will be uniformly followed.

(b) The Data will be Encrypted while within the Contractor network.

(c) The Data will remain Encrypted during transmission to the Cloud.

(d) The Data will remain Encrypted at all times while residing within the Cloud storage solution.

(e) The Contractor will possess a decryption key for the Data, and the decryption key will be possessed only by the Contractor and/or DSHS.

      (f)  The Data will not be downloaded to non-authorized systems, meaning systems that are not on either the DSHS or Contractor networks.

      (g)  The Data will not be decrypted until downloaded onto a computer within the control of an Authorized User and within either the DSHS or Contractor's network.

(2) Data will not be stored on an Enterprise Cloud storage solution unless either:

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

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

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

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

  a. Systems containing DSHS Data must have all security patches or hotfixes applied within 3 months of being made available.

  b. The Contractor will have a method of ensuring that the requisite patches and hotfixes have been applied within the required timeframes.

  c. Systems containing DSHS Data shall have an Anti-Malware application, if available, installed.

  d. Anti-Malware software shall be kept up to date. The product, its anti-virus engine, and any malware database the system uses, will be no more than one update behind current.

**7.**     **Data Segregation**.

  a. DSHS Data must be segregated or otherwise distinguishable from non-DSHS data. This is to ensure that when no longer needed by the Contractor, all DSHS Data can be identified for return or destruction. It also aids in determining whether DSHS Data has or may have been compromised in the event of a security breach. As such, one or more of the following methods will be used for data segregation.

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

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

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

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

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

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

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

| Data stored on: | Will be destroyed by: |
|---|---|
| Server or workstation hard disks, or<br><br>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<br><br>Degaussing sufficiently to ensure that the Data cannot be reconstructed, or<br><br>Physically destroying the disk |
| | |
| Paper documents with sensitive or Confidential Information | Recycling through a contracted firm, provided the contract with the recycler assures that the confidentiality of Data will be protected. |
| | |
| Paper documents containing Confidential Information requiring special handling (e.g. protected health information) | On-site shredding, pulping, or incineration |
| | |
| Optical discs (e.g. CDs or DVDs) | Incineration, shredding, or completely defacing the readable surface with a coarse abrasive |
| | |
| Magnetic tape | Degaussing, incinerating or crosscut shredding |

9.  **Notification of Compromise or Potential Compromise**.  The compromise or potential compromise of DSHS shared Data must be reported to the DSHS Contact designated in the Contract within one (1) business day of discovery.  If no DSHS Contact is designated in the Contract, then the notification must be reported to the DSHS Privacy Officer at dshsprivacyofficer@dshs.wa.gov.  Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.

10.  **Data shared with Subcontractors**.  If DSHS Data provided under this Contract is to be shared with a subcontractor, the Contract with the subcontractor must include all of the data security provisions within this Contract and within any amendments, attachments, or exhibits within this Contract.  If the Contractor cannot protect the Data as articulated within this Contract, then the contract with the sub-Contractor must be submitted to the DSHS Contact specified for this contract for review and approval.