



Washington State
Department of Social
& Health Services

Transforming lives

IT SERVICES CONTRACT LMS COURSE CONTENT

DSHS Contract Number:

☒ Resulting From Competition No.
2423-868

☐ Competition Exempt

☐ Sole Source

Program Contract Number:

Contractor Contract Number:

This Contract is between the state of Washington Department of Social and Health Services (DSHS) and the contractor identified below ("Contractor"), and is governed by chapter 43.19 and 43.105 RCW.

CONTRACTOR NAME
To Be Determined

CONTRACTOR doing business as (DBA)

CONTRACTOR ADDRESS

WASHINGTON UNIFORM
BUSINESS IDENTIFIER (UBI)

DSHS INDEX NUMBER

CONTRACTOR CONTACT

CONTRACTOR TELEPHONE

CONTRACTOR FAX

CONTRACTOR E-MAIL ADDRESS

DSHS ADMINISTRATION
Aging & Long Term Support
Admin

DSHS DIVISION
Division of Home And Community Services

DSHS CONTRACT CODE
1000SC-23

DSHS CONTACT NAME AND TITLE

DSHS CONTACT ADDRESS

DSHS CONTACT TELEPHONE

DSHS CONTACT FAX

DSHS CONTACT E-MAIL ADDRESS

IS CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT?
No

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, incorporated by reference, is DSHS RFP 2423-868. Exhibit B, incorporated by reference, is Contractor's proposal in response to RFP 2424-868, Exhibit C, Purchased Course License List With Prices*

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.

CONTRACTOR SIGNATURE

PRINTED NAME AND TITLE

DATE SIGNED

Draft - Please Do Not Sign

DSHS SIGNATURE

PRINTED NAME AND TITLE

DATE SIGNED

Draft - Please Do Not Sign

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 Contractor, including any Exhibits, documents, or materials incorporated by reference, including RFP 2423-868 and Contractor's response thereto. 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 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 Contractor and DSHS containing special terms and conditions, including a statement of work to be performed by Contractor and payment to be made by DSHS.
 - l. "RCW" means the Revised Code of Washington. All references in this Contract to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at <http://apps.leg.wa.gov/rcw/>.

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- m. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
- n. "Secured Area" means an area to which only authorized representatives of the entity possessing the Confidential Information have access. Secured Areas may include buildings, rooms or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.
- o. "Subcontract" means any separate agreement or contract between Contractor and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that 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. 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 Contractor only for authorized goods and/or services provided in accordance with this Contract.
- b. DSHS shall not pay any claims for payment for goods and/or services submitted more than twelve (12) months after the calendar month in which the goods were received or services were performed.

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

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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 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. Nondiscrimination.

- (1) **Nondiscrimination Requirement.** During the term of this Contract, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.
- (2) **Obligation to Cooperate.** Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).

- d. **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. Contractor, by affixing its signature to this Contract, certifies that 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. Contractor also agrees to include the above certification in any and all Subcontracts into which it enters. 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. 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. 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 Contractor to employ reasonable security measures, which include restricting access to the

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Confidential Information by:

- (1) Allowing access only to staff that have an authorized business requirement to view the Confidential Information.
 - (2) Physically Securing any computers, documents, or other media containing the Confidential Information.
 - (3) Ensure the security of Confidential Information transmitted via fax (facsimile) by:
 - (a) Verifying the recipient phone number to prevent accidental transmittal of Confidential Information to unauthorized persons.
 - (b) Communicating with the intended recipient before transmission to ensure that the fax will be received only by an authorized person.
 - (c) Verifying after transmittal that the fax was received by the intended recipient.
 - (4) When transporting six (6) or more records containing Confidential Information, outside a Secured Area, do one or more of the following as appropriate:
 - (a) Use a Trusted System.
 - (b) Encrypt the Confidential Information, including:
 - i. Encrypting email and/or email attachments which contain the Confidential Information.
 - ii. Encrypting Confidential Information when it is stored on portable devices or media, including but not limited to laptop computers and flash memory devices.
 - (5) Send paper documents containing Confidential Information via a Trusted System.
 - (6) Following the requirements of the DSHS Data Security Requirements Exhibit, if attached to this contract.
- c. Upon request by DSHS, at the end of the Contract term, or when no longer needed, Confidential 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.

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7. **Debarment Certification.** Contractor, by signature to this Contract, certifies that 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). Contractor also agrees to include the above requirement in any and all Subcontracts into which it enters. 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. Contractor and his or her employees or agents performing under this Contract are not employees or agents of the Department. 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 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.** 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 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.** 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;

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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 subsection, "written notice" may include email.
 - (3) If 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 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.** Other than payments for subscription services, DSHS shall not make any payments in advance or in anticipation of the delivery of services to be provided pursuant to this Contract.
19. **Commencement of Work.** No work shall be performed by Contractor until the Contract is executed by Contractor and DSHS and received by DSHS.

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- 20. 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.
- 21. Contractor Certification Regarding Ethics.** Contractor certifies that Contractor is now, and shall remain, in compliance with Chapter 42.52 RCW, Ethics in Public Service, throughout the term of this Contract.
- 22. Contractor Commitments, Warranties and Representations.** Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes but is not limited to: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its response to the solicitation resulting in this Contract ("Bid") or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Bid or used to effect the sale to DSHS.
- 23. Subcontractor / Prompt Payment & Retainage.** Contractor is required to pay each subcontractor for satisfactorily completed work performed under this Contract within thirty (30) days from the receipt of each payment Contractor receives from DSHS. Contractor further agrees to return any retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed and any liens have been secured. Any delay or postponement of payment within this time period may occur only for a good cause following written approval of DSHS. In addition, DSHS will not pay Contractor for subcontractor work unless Contractor can show that a prompt payment method for subcontractors is established.
- 24. Disputes.**
- a. In the event a bona fide dispute concerning a question of fact arises between DSHS and Contractor that cannot be resolved between the parties, either party may initiate the dispute resolution procedure provided herein.
 - b. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days (which shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington). The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.
 - (1) If the dispute cannot be resolved after three (3) Business Days, a dispute resolution panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) Business Days.
 - (2) The dispute resolution panel will review the written descriptions of the dispute, gather additional information as needed, and render a written decision on the dispute in the shortest practical time.
 - (3) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

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- c. Unless irreparable harm will result, the parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.
- d. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a dispute resolution panel whenever possible.
- e. Except to the extent that disclosure is required by applicable law or court order, all negotiations pursuant to this clause are confidential and shall be treated by the parties as statements made in compromise negotiations for purposes of the rules of evidence.
- f. DSHS and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.
- g. If the subject of the dispute is the amount due and payable by DSHS for services being provided by Contractor, Contractor shall continue providing services pending resolution of the dispute provided DSHS pays Contractor the amount DSHS, in good faith, believes is due and payable, and may withhold the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

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

26. Indemnification and Hold Harmless.

- a. 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 or nature, arising out of or relating to a) Contractor's or any Subcontractor's performance or failure to perform this Contract, or b) the acts or omissions of Contractor or any Subcontractor.
- b. 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. 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 Contractor's obligation to procure insurance in accordance with this Contract or the scope of said insurance.

27. Industrial Insurance Coverage. Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If 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 Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by Contractor to the accident fund from the amount payable to 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 Contractor.

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28. Limitation of Liability.

- a. The Parties agree that neither Contractor nor DSHS shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract.
- b. This section does not modify any sections or any other conditions as are elsewhere agreed to herein between the parties. The following are not considered consequential, incidental, indirect, or special damages as the term is used in the foregoing section.
 - (1) Claims pursuant to any provision of this Contract calling for liquidated damages;
 - (2) Claims for attorney's fees and other litigation costs DSHS becomes entitled to recover as a prevailing party in an action;
 - (3) Claims for physical damage to real or tangible property;
 - (4) Claims arising from reckless or intentional misconduct;
 - (5) Amounts due or obligations under the following sections, if included: (i) indemnification; (ii) intellectual property indemnification; (iii) inspection and maintenance of records; (iv) damages resulting from default; (v) data security requirements; (vi) or breaches of confidentiality including disclosure of PHI; or
 - (6) Any loss or claim to the extent the loss or claim is covered by a policy of insurance maintained, or required by this contract to be maintained, by Contractor.
- c. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

29. Notice of Overpayment. If Contractor receives a Contractor overpayment notice or a letter communicating the existence of an overpayment from DSHS, Contractor may protest the overpayment determination by requesting an adjudicative proceeding. 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 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. Contractor may be offered a pre-hearing or alternative dispute resolution conference in an attempt to resolve the overpayment dispute prior to the hearing.

Failure to provide OFR with a written request for a hearing within twenty-eight (28) days of service of a Contractor overpayment notice or other overpayment letter will result in an overpayment debt against Contractor. DSHS may charge Contractor interest and any costs associated with the collection of this

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overpayment. DSHS may collect an overpayment debt through lien, foreclosure, seizure and sale of Contractor's real or personal property; order to withhold and deliver; or any other collection action available to DSHS to satisfy the overpayment debt.

30. Ownership/Rights in Data.

- a. Both Custom Services and Commercial Off-The-Shelf material that is delivered under this Contract, but that does not originate therefrom ("Preexisting Material"), shall, for the duration of the Contract and any valid extensions thereto, be transferred to DSHS with a non-exclusive, royalty-free, license to use for the purposes of providing training to caregivers, as contemplated herein, except that such license shall be limited to the extent to which Contractor has a right to grant such a license. DSHS shall not have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor. Contractor shall exert all reasonable efforts to ensure that to advise DSHS at the time of the delivery of Preexisting Material furnished under this Contract does not infringe on a third party's rights pertaining to publicity, privacy and intellectual property. If it has not already done so, Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material prior to the delivery of such material. DSHS shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract.
- b. Commercial Off-The-Shelf. This Contract involves licenses for commercial off-the-shelf products, subject to the following provisions:
 - (1) Contractor shall maintain all title, copyright, and other proprietary rights in the Software. DSHS does not acquire any rights, express or implied, in the Software, other than those specified in this Contract.
 - (2) Contractor represents and warrants that Contractor has the right to license the Software to DSHS as provided in this Contract and that DSHS' use of the Software and documentation within the terms of this Contract will not infringe upon any copyright, patent, trademark, or other intellectual property right worldwide or violate any third party's trade secret, contract, or confidentiality rights worldwide.
 - (3) Contractor represents and warrants that: (i) Contractor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Software infringes any patents, copyrights, or trade secrets of any third party, and (ii) that Contractor has no actual knowledge that the Software infringes upon any patents, copyrights, or trade secrets of any third party.

31. Patent and Copyright Indemnification.

- a. Contractor, at its expense, shall defend, indemnify, and hold DSHS harmless from and against any claims against DSHS that any Product or Work Product supplied hereunder, or DSHS's use of the Product or Work Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Product shall mean any Contractor-supplied equipment, Software, or documentation. Contractor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by DSHS provided that DSHS:
 - (1) Promptly notifies Contractor in writing of the claim, but DSHS's failure to provide timely notice shall only relieve Contractor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Contractor; and

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

- b. If such claim has occurred, or in Contractor's opinion is likely to occur, DSHS agrees to permit Contractor, at its option and expense, either to procure for DSHS the right to continue using the Product or Work Product or to replace or modify the same so that they become non-infringing and functionally equivalent. If use of the Product or Work Product is enjoined by a court and Contractor determines that none of these alternatives is reasonably available, Contractor, at its risk and expense, will take back the Product or Work Product and provide DSHS a refund. In the case of Work Product, Contractor shall refund to DSHS the entire amount DSHS paid to Contractor for Contractor's provision of the Work Product. In the case of Product, Contractor shall refund to DSHS its depreciated value. No termination charges will be payable on such returned Product, and DSHS will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of four (4) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by DSHS shall be refunded by Contractor.
- c. Contractor has no liability for any claim of infringement arising solely from:
 - (1) Contractor's compliance with any designs, specifications or instructions of DSHS;
 - (2) Modification of the Product or Work Product by DSHS or a third party without the prior knowledge and approval of Contractor; or
 - (3) Use of the Product or Work Product in a way not specified by Contractor, unless the claim arose against Contractor's Product or Work Product independently of any of these specified actions.
- d. This Section, *Patent and Copyright Indemnification*, is intended to survive the expiration or termination of the agreement.

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

33. Publicity. 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.

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- 34. Subcontracting.** Except as otherwise provided in this Contract, 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 Contractor from its obligations hereunder or diminish DSHS' rights or remedies available under this Contract.
- 35. Access Equity.** This section applies only if Contractor utilizes an Office of Minority and Women's Business Enterprises (OMWBE) Certified subcontractor to perform this Contract. In such circumstances, this Contract is subject to compliance tracking using Access Equity, Washington's online business diversity vendor management system (B2Gnow), which is managed by OMWBE. Access Equity is web-based and can be accessed at <https://omwbe.diversitycompliance.com/>. User guides and documentation related to Contractor and subcontractor access to and use of Access Equity are available online at <https://omwbe.wa.gov/access-equity-help-center>. Contractor may contact the DSHS Contract Manager for technical assistance in using the Access Equity system.
- a. **Contract Payment Reporting & Verification.** Contractor and any OMWBE Certified subcontractors utilized by Contractor to perform this Contract shall utilize Access Equity to report and confirm receipt of payments made to Contractor by DSHS and to each subcontractor.
- b. **Contractor Requirements.**
- (1) **Registration.** Contractor, within fifteen (15) calendar days of the effective date of this Contract, shall register in Access Equity and enter all required subcontractor information. **Confidential information (Tax ID, etc.) is not required for vendor registration, and SHOULD NOT BE INCLUDED as this information is available to all B2Gnow customers.** In the event DSHS approves a change to subcontractors after the effective date of this Contract, Contractor shall update Access Equity within fifteen (15) calendar days of such change.
 - (2) **Training.** Contractor, within twenty (20) calendar days of the effective date of this Contract (or later engagement of a subcontractor), shall complete the required Access Equity user training (two (2) one-hour online sessions).
 - (3) **Subcontractors.** Contractor shall require any OMWBE Certified subcontractor(s) utilized by Contractor to perform this Contract to:
 - (a) Register in Access Equity;
 - (b) Complete the required Access Equity user training;
 - (c) Use Access Equity to verify the amount and date of receipt of each payment from Contractor or, if applicable, a higher tier subcontractor;
 - (d) Use Access Equity to report payments made by subcontractor to any lower tier subcontractor(s), if any, in the same manner as specified herein;
 - (e) Promptly respond to any requests or instructions from Contractor or system-generated messages to check or provide information in Access Equity; and
 - (f) When necessary, promptly coordinate with Contractor and/or Procuring Agency to resolve any discrepancies between reported and received payments.
 - (4) **Reporting.** Contractor, quarterly shall report the amount and date of:
 - (a) All payments received from Procuring Agency; and
 - (b) All payments paid to subcontractor(s).Provided, however, that Contractor shall mark as "final" and report final subcontractor payments no later than thirty (30) calendar days after final payment is due to subcontractor(s).

DSHS General Terms and Conditions

- (5) Monitor & Respond. Contractor shall monitor contract payments and respond promptly to any requests or instructions from DSHS or system-generated messages to check or provide information in Access Equity.
- (6) Resolve Discrepancies. When necessary, promptly coordinate with subcontractor(s) and/or DSHS to resolve any discrepancies between reported and received payments.

- c. Right to withhold Payment for Noncompliance. In the event Contractor or subcontractors, if any, fails to comply with this section, DSHS may, in addition to any other lawful remedy, upon written notice of such noncompliance, withhold payment to Contractor until such time as such noncompliance is cured.

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

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

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

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

- a. 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, Contractor shall comply with all instructions contained in the termination notice.
- c. 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 Contractor's possession. Contractor grants DSHS the right to enter upon Contractor's premises for the sole purpose of recovering any DSHS property that 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, 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 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.

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39. 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.

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

If Contractor's response to RFP 2423-868 contained an assertion that Contractor does not require its employees to sign an agreement in which employees forego their rights to have their legal disputes with Contractor heard in a court or administrative office of competent jurisdiction, the following will apply:

- 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. Contractor, by signature to this Contract, certifies that 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.

DSHS Special Terms and Conditions

1. **Definitions Specific to Special Terms.** The words and phrases listed below, as used in this Contract, shall each have the following definitions:
 - a. **"Accessibility Standards"** means the Digital Acceptability Standards published by WaTech at [USER-01-01-S Digital Accessibility Standard.pdf](#). Meeting these standards is mandatory for all state agencies as of July 1, 2026.
 - b. **"COTS" or "Commercial Off-the-Shelf"** means a hardware or software product that already exists in the commercial market and is available for sale to the general public.
 - c. **"CareLearn"** refers to the CareLearn, online, Learning Management System administered by DSHS/ALTSA.
 - d. **"Cornerstone's SumTotal LMS"** refers to the SumTotal Learning Management System platform, owned and operated by Cornerstone.
 - e. **"Course Content Modules"** means the individual courses that are provided as SCORM files or other suitably formatted files.
 - f. **"HCS"** refers to the Home and Community Service Division of DSHS's Aging and Long Term Care Administration.
 - g. **"Learning Management System (LMS)"** refers to a software system that manages, delivers, and tracks the use of online training courses.
 - h. **"RFP" and "RFP Response"** refers to the Request for Proposal 2326-868 that was issued by Washington State's Department of Social and Health Services, to which Contractor responded by submitting a proposal, referred to as Contractor's RFP Response.
 - i. **"SCORM"** stands for "Sharable Content Object Reference Model"
 - j. **"SCORM File"** refers to a file format similar to a zip file that encapsulates all the necessary components of an eLearning course.
2. **Purpose.** The purpose of this Contract is to establish the terms and conditions under which DSHS will obtain annually renewed licenses for currently existing, off-the-shelf course content that will be made available to registered users of an online CareLearn LMS. These online training courses will support DSHS's training efforts to ensure quality, available, affordable, consistent, and portable training to caregivers that will include sufficient content to allow those caregivers who must be certified to meet WAC requirements and maintain their certifications.
3. **Contract Effective Date and Term.** This Contract will be effective upon the date of signing by the last signatory to affix his/her/their signature to this document. The initial term of this Contract will end at midnight on June 30, 2026. At the sole discretion of DSHS, this contract may be extended by amendment for up to three, one-year terms, each having an effective date of July 1st of the applicable year and expiring on June 30th of the following year.

Only licenses for courses meeting Washington state mandated Accessibility Requirements may be renewed following the initial term of the contract. If any such courses are contained in a library of courses licensed to DSHS during the initial term of the contract, those courses must be replaced

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with courses that DSHS selects that are compliant with the Accessibility Requirements.

If Contractor cannot replace the non-compliant course with an equivalent course that is compliant, the course must be removed from the library and the cost of the library must be commensurately reduced. Should 50% or more of a library's course content be non-compliant with the Accessibility Requirements at the time of renewal, DSHS at its sole discretion, may elect not to renew the license(s) for that library.

4. Statement of Work. 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. Contractor will make course content available to DSHS within 2 weeks of contracting. Transfer of files to DSHS will be through a secure FTP system. Instructions will be sent separately.
- b. The course content must be delivered in a format currently supported by Cornerstone's SumTotal LMS and must work as expected. Among other things, it must successfully pass all relevant data into the DSHS CareLearn LMS.
- c. All course content must comply with WaTech's [USER 01 Accessibility Policy](#). DSHS, at its sole discretion, may purchase content that Contractor has flagged as non-compliant provided Contractor agrees to provide fully compliant materials within a reasonable, but specific, time period. Failure of Contractor to meet the deadline for compliance will be considered a breach of contract and will result in the removal of the course from the CareLearn LMS, with the pro-rated cost of the course treated as an overpayment.
- d. Contractor must notify the DSHS Contract Manager via email of all changes to contracted content within a reasonable time of finalizing such changes. The email must describe in detail what those changes entail. DSHS will then decide whether to continue to make the previously delivered content available without changes, or use the new content. If DSHS decides to use the new content, Contractor must deliver the new files within seven (7) business days of receiving notification that DSHS intends to use the modified content.
- e. Contractor must notify the DSHS Contract Manager via email of any errors or outdated information discovered in contracted content. They should do so as soon as possible and communicate an estimated time for re-release.
- f. Upon request from DSHS, Contractor will provide source materials, references and supporting documentation that support the information and instructions disseminated in the purchased courses.

5. Functionality and Compatibility Warranty.

- a. Contractor attests that any course files that it supplies to DSHS under this contract will be fully functional and operate as advertised on the DSHS CareLearn LMS. Should DSHS discover that a course, courses, or library is/are not performing as required or as advertised (such as courses that do not meet accessibility requirements when represented in a Bid proposal as being compliant), DSHS will notify Contractor of the deficiency via email or other written notification. Within 15 business days of receiving notification of non-conformance, Contractor will replace the non-performing file or files with versions that are fully functioning on the DSHS CareLearn LMS. If Contractor is unable to replace the non-performing file or files, DSHS will either deduct the cost of the file or files from a pending payment, or, if payment has already been made, treat the full cost of the file or files as an overpayment to Contractor.
- b. Should course files become less than fully functional on the DSHS CareLearn LMS due to a

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non-discretionary upgrade or modification to the CareLearn LMS (such as may be required for security, operating system compatibility, or other essential purposes), DSHS will notify Contractor of the deficiency via email or other written communication. Within 20 business days of receiving notice of the deficiency, Contractor will either replace the incompatible course file or notify DSHS that a replacement is not possible. Should replacement be impossible, at its sole discretion, DSHS may select a replacement course from a list of courses that Contractor offers or remove the course from the CareLearn LMS system. Should DSHS elect to remove the course from the CareLearn LMS, DSHS will calculate the cost of the unused portion of the year-long license (based on a daily rate for the course) and treat that cost as an overpayment to Contractor.

6. Consideration. Total consideration payable to Contractor for satisfactory performance of the work under this Contract is \$TBD

7. Billing and Payment.

- a. **Invoice System.** 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 via email to the DSHS Contract Manager, by Contractor upon or after the course content files are delivered. The invoices shall describe and document to DSHS' satisfaction a description of the work performed, activities accomplished, the progress of the project, and fees. The rates shall be in accordance with those set forth in Section 4, Consideration, of this Contract.
- b. **Payment.** Payment shall be considered timely if made by DSHS within thirty (30) days after receipt and acceptance by the DSHS Contract Manager of the properly completed invoices. Payment shall be sent to the address designated by Contractor on page one (1) of this Contract. DSHS may, at its sole discretion, withhold payment claimed by Contractor for services rendered if Contractor fails to satisfactorily comply with any term or condition of this Contract.

8. Insurance

Contractor shall obtain and maintain for the duration of the Contract, at Contractor's expense, the following insurance coverages, and comply with the following insurance requirements. Contractor shall obtain and maintain for the duration of the Contract, at Contractor's expense, the following insurance coverages, and comply with the following insurance requirements.

a. **General Liability Insurance**

Contractor shall maintain Commercial General Liability Insurance or Business Liability Insurance, no less comprehensive than coverage 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 \$2,000,000 per occurrence and \$4,000,000 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. In lieu of general liability insurance mentioned in Subsection a. above, if Contractor is a sole proprietor with less than three contracts, 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

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cover Contractor wherever the service is performed with minimum limits of \$2,000,000 per occurrence; and \$4,000,000 General Aggregate. The State of Washington, DSHS, its elected and appointed officials, agents, and employees shall be named as additional insureds;

or

Workplace Liability Insurance, including coverage for bodily injury and property damage that provides coverage wherever the service is performed with minimum limits of \$2,000,000 per occurrence; and \$4,000,000 General Aggregate. The State of Washington, DSHS, its elected and appointed officials, agents, and employees shall be named as additional insureds:

or

Premises Liability Insurance if services are provided only at their recognized place of business, including coverage for bodily injury, property damage with minimum limits of \$2,000,000 per occurrence; and \$4,000,000 General Aggregate. The State of Washington, DSHS, its elected and appointed officials, agents, and employees shall be named as additional insureds.

b. Workers' Compensation

Contractor shall comply with all applicable Workers' 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 Workers' Compensation under Title 51 RCW by Contractor or its employees under such laws and regulations.

c. Employees and Volunteers

Insurance required of Contractor under the Contract shall include coverage for the acts and omissions of Contractor's employees and volunteers. In addition, 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.

d. Subcontractors

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

e. Separation of Insureds

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

f. Insurers

Contractor shall obtain insurance from insurance companies identified as an admitted insurer/carrier in the State of Washington, with a current Best's Reports' rating of A-, Class VII, or better.

g. Evidence of Coverage

Contractor shall, upon request by DSHS, submit a copy of the Certificate of Insurance, policy, and additional insured endorsement for each coverage required of Contractor under this Contract. The Certificate of Insurance shall identify the Washington State Department of Social and Health

DSHS Special Terms and Conditions

Services as the Certificate Holder. A duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Contract, shall execute each Certificate of Insurance.

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.

h. Material Changes

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

i. Waiver of Subrogation

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

j. 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 Contractor. Such coverage and limits shall not limit Contractor's liability in excess of the required coverage and limits, and shall not limit Contractor's liability under the indemnities and reimbursements granted to the State and DSHS in this Contract.

k. Primary Coverage

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

l. Waiver

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

m. Liability Cap

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

n. Business Automobile Liability Insurance

Contractor shall maintain a Business Automobile Policy on all vehicles used to transport clients,

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including vehicles hired by Contractor or owned by Contractor's employees, volunteers or others, with the following minimum limits: \$1,000,000 per accident combined single limit. Contractor's carrier shall provide DSHS with a waiver of subrogation or name DSHS as an additional insured.

o. Professional Liability (errors & omissions)

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

Incorporated by Reference

Incorporated by Reference

EXHIBIT C – Purchased Course License List and Prices

To Be Determined