

**PROFESSIONAL SERVICES CONTRACT FOR HUMAN SERVICES  
AGING AND LONG TERM CARE PROGRAM SERVICES**

This contract for Human Services (the Contract) is entered into by Kitsap County, a municipal corporation, having its principal offices at 614 Division Street, Port Orchard, Washington, 98366 (the County) and Young Mens Christian Association (YMCA) of Pierce and Kitsap Counties, having its principal office at 4717 S 19<sup>th</sup> Street, Ste 201, Tacoma, WA 98405 (the Contractor).

**SECTION 1. TERM AND EFFECTIVE DATE**

1.1 The Contract will become effective July 1, 2022 and terminate June 30, 2023, unless terminated or extended. The Contract may be extended for additional consecutive terms at the mutual agreement of the parties, not to exceed a total of \$10,000. In no event will the Contract become effective unless and until it is approved and executed by the duly authorized representative of Kitsap County.

**SECTION 2. SERVICES TO BE PROVIDED**

2.1. Scope of Work. The Contractor shall provide all “Services” identified in Attachment B: Statement of Work, which is incorporated herein by reference. The Contractor shall provide its own equipment, labor, and materials.

2.2. Contract. “Contract” means this Contract and any exhibits, amendments, and solicitation documents accepted by the County, Attachments, and Exhibits. All such documents are incorporated herein in full by this reference.

2.3. Personnel. The Contractor shall have and maintain complete responsibility for its Personnel. “Personnel” means Contractor and Contractor’s employees, subcontractors, volunteers, interns, agents, and any other person utilized by the Contractor directly or indirectly or through third parties to perform any Services under the Contract. The Contractor shall promptly remove any Personnel performing Services on request from the County Representative.

2.4. Standards. The Contractor warrants that i) Contractor has the qualifications, knowledge, experience, skills, and resources necessary to provide all Services; ii) all Services shall be provided by Personnel experienced in their respective fields and in a manner consistent with the standards of care, skill, diligence, and knowledge commonly possessed and exercised by experienced professionals in the same discipline in the same or similar circumstances; and iii) all Services shall be performed to the County’s reasonable satisfaction and according to the schedule agreed to by the parties.

2.5. Communication. The Contractor shall keep the County informed of the progress of the Services in the manner, method, and intervals requested by the County.

### **SECTION 3. COMPENSATION AND PAYMENT**

- 3.1. Compensation. The maximum amount of compensation paid under the Contract by the County shall not exceed \$10,000. A description of the compensation is provided in Attachment C: Compensation & Budget, which is incorporated herein by reference.
- 3.2. Invoice. The Contractor will submit one (1) invoice to the County per month for payment of Services completed to date, unless otherwise provided herein. Each invoice shall identify the Services performed, dates performed, and any other information requested by the County.
- 3.3. Payment. The County will make reasonable efforts to pay the Contractor within thirty (30) days from the date the County receives a complete and correct invoice, unless otherwise provided herein. All funds disbursed to the Contractor will be processed by Direct Deposit via Automated Clearing House (ACH), unless otherwise agreed to by the parties.
- 3.4. Insurance/W-9 Compliance. All payments are expressly conditioned upon the Contractor's compliance with all insurance requirements and submission of a current IRS W-9 form to the County. Payments may be suspended in full in the event of noncompliance. Upon full compliance, payments will be released to the Contractor unless otherwise provided herein.
- 3.5. Restrictions. The Contractor will only be entitled to receive payment for Services expressly authorized in the Contract, and received during the Contract term and accepted by the County. The Contractor acknowledges oral requests and approvals of additional services or additional compensation are prohibited and unenforceable. Advance payments are not authorized.

### **SECTION 4. TERMINATION**

- 4.1. For Convenience. The County may terminate the Contract, in whole or in part, without penalty, for any reason or no reason, with ten days prior notice to the Contractor.
- 4.2. For Funding issues. If any funding for Services is not available, withdrawn, reduced, or limited in any way, or if additional or modified conditions are placed on the funding after the Contract becomes effective, the County may: (1) accept a decreased price offered by the Contractor; (2) terminate the Contract; or (3) terminate the Contract and re-solicit the requirements.
- 4.3. Termination for Default. The County may immediately terminate the Contract, in whole or part, due to the failure of the Contractor to comply with any Contract term or condition, or to make satisfactory progress in performing the Contract, subject to the provisions of 11.1, or if the County determines the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity. The Contractor shall immediately notify the County if the Contractor becomes suspended or debarred.
- 4.4. Procedures. Upon receipt of notice of termination, the Contractor shall stop all Services as directed in the notice, notify Personnel of the termination date, and

minimize further costs. All goods, materials, documents, data, and reports prepared by the Contractor under the Contract shall become the property of, and delivered to, the County on demand. A final payment will be made to the Contractor only for Services performed and accepted by the County through the effective date of termination. No costs incurred after the effective date of the termination will be paid.

## **SECTION 5. INDEMNIFICATION**

- 5.1. To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless Kitsap County and its elected and appointed officials, officers, employees, and agents (collectively "Indemnitees") from and against all Claims resulting from or arising out of the performance of the Contract, whether such Claims arise from the acts, errors, or omissions of the Contractor, its Personnel, third parties, or Kitsap County, or anyone directly or indirectly employed by any of them or anyone for whose acts, errors, or omissions any of them may be liable. It is the specific intent of the parties that the Indemnitees shall, in all instances, except Claims arising from the sole negligence or willful misconduct of the Indemnitees, be indemnified by the Contractor from and against any and all Claims.
- 5.2. With regard to any Claim against any Indemnitee by any of the Contractor's Personnel, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the Contractor's indemnification obligation shall not be limited in any way by a limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or Contractor's Personnel under workers compensation acts, disability benefit acts, or other employee benefit acts. Solely for the purposes of this indemnification provision, the Contractor expressly waives its immunity under Title 51 RCW (Industrial Insurance) and acknowledges this waiver was mutually negotiated by the parties.
- 5.3. Architectural, Landscape Architectural, Engineering, or Land Surveying Services. Should a court of competent jurisdiction determine the Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the County, its officers, officials, employees, and agents, the Contractor's liability hereunder, including the duty and cost to defend, will be only to the extent of the Contractor's negligence.
- 5.4. Claim. "Claim" means all losses, claims, suits, actions, liabilities, damages, demands, judgments, settlements, expenses, fines, or other liabilities of any kind or nature whatsoever, including without limitation, all costs including costs of Claim processing, investigation, reasonable attorneys' fees, and damages, for any personal or bodily injury, sickness, disease, disability, or death, or loss or damage to tangible or intangible business or property, including the loss of use. Claim includes any infringement of copyright, patent, trademark, or other proprietary rights of any third parties arising out of Contract performance or use by the County of materials furnished or work performed under the Contract.
- 5.5. Obligations/Notice of Claim. The County will provide the Contractor notice of the assertion of liability by a third party that may give rise to a Claim by County against the Contractor based on the indemnity contained herein. The Contractor shall respond to the County's tender of defense of a claim in writing within fourteen (14)

calendar days from the notice date, and will advise the County if the Contractor accepts or denies tender of the claim. The County may in its discretion withhold all or part of any payment due the Contractor under the Contract until the Contractor responds to such notice. The Contractor shall keep the County timely and fully informed through all stages of the defense and promptly respond to and comply with County's requests for information. The County at all times reserves the right, but has no obligation to participate in the defense and settlement of any Claim. Such participation shall not constitute a waiver of the Contractor's indemnity and defense obligations under the Contract. The Contractor shall not settle or compromise any Claim in any manner that imposes any obligations upon the County without the prior written consent of the County. The Contractor shall promptly advise the County of any occurrence or information known to the Contractor that could reasonably result in a Claim against the County. The violation of any provisions of this Section, including improper refusal to accept tender, is a material breach.

## **SECTION 6. INSURANCE**

- 6.1. Minimum Insurance Required. The Contractor and its subcontractors, if any, shall procure and maintain, until all of the Contract obligations have been fully discharged, including any warranty period, all insurance required in this Section with an insurance company duly licensed in Washington State with an A.M. Best Company ratings of not less than A-VIII and a category rating of not less than "8", with policies and forms satisfactory to the County. Use of alternative insurers requires prior written approval from the County. Coverage limits shall be at minimum the limits identified in this Section, or the limits available under the policies maintained by the Contractor without regard to the Contract, whichever is greater.
- 6.2. Professional Liability. Not less than \$1,000,000 per claim and \$2,000,000 annual aggregate. Coverage will apply to liability for professional error, act or omission arising out of or in connection with the Contractor's Services under the Contract. The coverage shall not exclude bodily injury, property damage or hazards related to the work rendered as part of the Contract or within the scope of the Contractor's services under the Contract, including testing, monitoring, measuring operations or laboratory analysis where such Services are rendered under the Contract.
- 6.3. Commercial General Liability ("CGL"). Not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Coverage shall include personal injury, bodily injury, and property damage for premise-operations liability, products/completed operations, personal/advertising injury, contractual liability, independent contractor liability, and stop gap/employer's liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required herein, without the prior written approval of the County. The certificate of insurance for the CGL policy shall expressly cover the indemnification obligations required by the Contract.
- 6.4. Automobile Liability.
  - Contractor shall maintain personal automobile insurance on all vehicles used for Contract purposes as required by law.
  - Not less than \$100,000 per occurrence and \$300,000 annual aggregate. If

a personal automobile liability policy is used to meet this requirement, it must include a business rider and cover each vehicle to be used in the performance of the Contract. If Contractor will use non-owned vehicles in performance of the Contract, the coverage shall include owned, hired, and non-owned automobiles.

- Not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Coverage shall include liability for any and all owned, hired, and non-owned vehicles. Coverage may be satisfied with an endorsement to the CGL policy.

- 6.5. **Umbrella or Excess Liability.** The Contractor may satisfy the minimum liability limits required for the CGL and Automobile Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the annual aggregate limit shall not be less than the highest "Each Occurrence" limit for either CGL or Automobile Liability. The Contractor agrees to an endorsement naming the County as an additional insured as provided in this Section, unless the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- 6.6. **Workers' Compensation and Employer Liability.** If applicable, the Contractor shall maintain workers' compensation insurance as required under the Title 51 RCW (Industrial Insurance), for all Contractor's Personnel eligible for such coverage. If the Contract is for over \$50,000, then the Contractor shall also maintain employer liability coverage with a limit of not less than \$1,000,000.
- 6.7. **Primary, Non-Contributory Insurance/Subcontractors.** The Contractor's and its subcontractors' insurance policies and additional named insured endorsements will provide primary insurance coverage and be non-contributory. Any insurance or self-insurance programs maintained or participated in by the County will be excess and not contributory to such insurance policies. All Contractor's and its subcontractors' liability insurance policies must be endorsed to show as primary coverage. The Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All subcontractors shall comply with all insurance and indemnification requirements herein.
- 6.8. **Review of Policy Provisions.** Upon request, the Contractor shall provide a full and complete copy of all requested insurance policies to the County. The County reserves the right without limitation, but has no obligation to revise any insurance requirement, or to reject any insurance policies that fail to meet the requirements of the Contract. The County also has the right, but no obligation to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington. The County has the right to request and review the self-insurance retention limits and deductibles, and the Contractor's most recent annual financial reports and audited financial statements, as conditions of approval. Failure to demand evidence of full compliance with the insurance requirements or failure to identify any insurance deficiency shall not relieve the Contractor from, nor be construed or deemed a waiver, of its obligation to maintain all the required insurance at all times as required herein.

- 6.9. Waiver of Subrogation. In consideration of the Contract award, the Contractor agrees to waive all rights of subrogation against the County, its elected and appointed officials, officers, employees, and agents. This waiver does not apply to any policy that includes a condition that expressly prohibits waiver of subrogation by the insured or that voids coverage should the Contractor enter into a waiver of subrogation on a pre-loss basis.
- 6.10. Additional Insured, Endorsement and Certificate of Insurance. All required insurance coverage, other than the workers' compensation and professional liability, shall name the County, its elected and appointed officials, officers, employees, and agents, as additional insureds and be properly endorsed for the full available limits of coverage maintained by Contractor and its subcontractors. Endorsement is not required if the Contractor is a self-insured government entity, or insured through a government risk pool authorized by Washington State.

The Certificate of Insurance and endorsement shall identify the Contract number and shall require not less than thirty (30) days' prior notice of termination, cancellation, nonrenewal or reduction in coverage. At the time of execution, the Contractor shall provide the Certificate of Insurance, endorsement, and all insurance notices to: Risk Management Division, Kitsap County Department of Administrative Services, 614 Division Street, MS- 7, Port Orchard, Washington 98366.

- 6.11. General. The coverage limits identified herein are minimum requirements only and will not in any manner limit or qualify the liabilities or obligations of the Contractor under the Contract. All insurance policy deductibles and self-insured retentions for policies maintained under the Contract shall be paid by the Contractor. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County, its elected and appointed officials, officers, employees, or agents. The Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, subject to the limits of the insurer's liability.
- 6.12. Claims-Made. If the Contractor's liability coverage is written as a claims-made policy, the Contractor shall purchase an extended-reporting period or "tail" coverage for a minimum of three (3) years following completion of the performance or attempted performance of the provisions of this Contract.

## **SECTION 7. NOTICE AND CONTRACT REPRESENTATIVES**

- 7.1. Any notices, demands and other communications required by the Contract will be effective if personally served upon the other party or if mailed by registered or certified mail, postage prepaid, return receipt requested, to the other party's Contract Representative at the address below. Notice may also be given by facsimile with the original to follow by regular mail. Notice will be deemed to be given three (3) days following the date of mailing, or immediately if personally served. For service by facsimile, service will be effective at the beginning of the next working day. Each party will designate a "Contract Representative", which may be changed by providing fifteen (15) days prior notice to the other party.

County's Contract Representative

Name: Stacey Smith  
Title: Aging Administrator  
Address: 614 Division St., MS-5  
Port Orchard, WA 98366  
Phone: (360) 337-5700  
Email: [sasmith@co.kitsap.wa.us](mailto:sasmith@co.kitsap.wa.us)

Contractor's Contract Representative

Name: Toko Thompson  
Title: Vice President and Chief Operating Officer  
Business Name: YMCA of Pierce and Kitsap Counties  
Address: 4717 S 19<sup>th</sup> Street, St 201,  
Tacoma WA 98405  
Phone: 253-534-7812  
Email: [tthompson@ymcapkc.org](mailto:tthompson@ymcapkc.org)

**SECTION 8. AMENDMENTS, SUBCONTRACTS, INDEPENDENT CONTRACTOR**

- 8.1. Amendment. No amendment or modification to the Contract will be effective without the prior written consent of the authorized representatives of the parties.
- 8.2. Successors and Assigns. To the extent permitted by law, the Contract is binding on the parties' respective partners, successors, assigns, executors, and legal representatives.
- 8.3. Assignments. Except with the prior written consent of the other party, each party shall not assign or transfer, including by merger (whether that party is the surviving or disappearing entity), consolidation, dissolution, or operation of law any right, duty, obligation, or remedy under the Contract. Any purported assignment or transfer in violation of this section shall be void.
- 8.4. Subcontracts. The Contractor shall provide the County a list of all subcontractors and the subcontractors' proposed responsibilities. "Subcontract" means any contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or service for the performance of the Contract. All subcontracts shall incorporate by reference the terms and conditions of this Contract. The Contractor is solely responsible for the performance and payment of its subcontractors.
- 8.5. Independent Contractor. Each party under the Contract shall be for all purposes an independent contractor. Nothing contained herein will be deemed to create an association, a partnership, a joint venture, or a relationship of principal and agent, or employer and employee between the parties. The Contractor shall have complete responsibility and control over its Personnel. Neither the Contractor nor its Personnel shall be, or be deemed to be, or act or purport to act, as an employee,

agent or representative of the County. The Contractor and its Personnel shall have no County employee-type benefits of any kind whatsoever, including without limitation, insurance, pension plan, vacation pay or sick pay, or other right or privilege afforded to County employees. The Contractor and its Personnel shall be responsible for payment of all insurance, taxes, and benefits.

## **SECTION 9. OWNERSHIP, CONFIDENTIAL INFORMATION AND BREACH**

- 9.1. Ownership. Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films, or any other materials created, prepared, produced, constructed, assembled, made performed, or otherwise produced by the Contractor or its Personnel for delivery to the County under this Contract shall be the sole and absolute property of the County. All such property shall constitute “work made for hire” as defined by the U.S. Copyright Act of 1976, 17 U.S.C § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material the Contractor uses to perform this Contract that is not created, prepared, constructed, assembled, made, performed, or otherwise produced for or paid for by the County is owned by the Contractor and is not “work made for hire” within the terms of the Contract.
- 9.2. Confidential Information/Breach. The Contractor shall ensure that all personal identifying information, financial information, and other information submitted or made available to the Contractor by, or on behalf of, the County, or acquired or developed by the Contractor in the performance of the Contract (unless publicly available) is kept confidential, secured, and protected to prevent unauthorized access. Such information will be utilized by the Contractor solely as necessary for the performance of Services under the Contract and not made available to any other person without the County’s prior written consent. In the event of unauthorized access or other security breach, the Contractor shall immediately notify the Contract Representative and shall at its sole expense comply with all requirements of RCW 19.255.010, in effect at any given time. Upon expiration or termination of the Contract, all confidential information shall be returned to the County or destroyed at the County’s discretion.

## **SECTION 10. REPRESENTATIONS AND RECORDS**

- 10.1. No Fee. The Contractor certifies it has not received, nor paid or agreed to pay, another person or entity, other than a bona fide employee working exclusively for the Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of the Contract.
- 10.2. Licenses, Permits and Taxes. The Contractor shall, at its own expense, have and maintain all licenses, registrations, permits, and approvals necessary for the performance of the Contract, including without limitation, registration with the Washington State Department of Revenue. The Contractor shall pay all fees (including licensing fees) and applicable federal, state, and local taxes.
- 10.3. Compliance. The Contractor and its Personnel, and the Services provided by the Contractor and its Personnel, shall comply with all applicable laws, codes, and

standards in effect at any given time regardless as to whether such laws are referred to by the County. If required for the Services provided, the Contractor and its Personnel shall submit to a background check as directed by the County.

- 10.4. Nondiscrimination. The Contractor and its Personnel shall not discriminate against any person on the basis of race, color, creed, religion, national origin, age, sex, marital status, sexual orientation, veteran status, disability, or other circumstance prohibited by federal, state, or local law, and shall comply with Title VI of the Civil Rights Act of 1964, P.L. 88-354 and Americans with Disabilities Act of 1990 in the performance of the Contract.
- 10.5. Public Records. The Contractor agrees that the Contract and all records associated with the Contract shall be available to the County for inspection and copying by the public pursuant to the Public Records Act, Chapter 42.56 RCW ("Act"). If the County determines that records in the custody of the Contractor are needed to respond to a request under the Act, the Contractor shall make all such records promptly available to the County at no cost to the County. With the exception of the Contract, if the Contractor considers any portion of any record, electronic or hard copy, to be protected from disclosure under the Act, the Contractor shall clearly identify all specific information it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy proprietary information that has been identified by the Contractor as protected from disclosure and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligation will be to make a reasonable effort to notify the Contractor of the request and the date that such protected information will be released unless the Contractor obtains a court order to enjoin disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified. The County has no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County will not be liable to the Contractor for releasing records pursuant to the Act.
- 10.6. Advertising, Logo. The Contractor shall not use, advertise, or promote for commercial benefit information concerning the Contract or use any trade name, trademark, or logo of the County, without the County's prior written consent.
- 10.7. Audit and Record Retention. The Contractor and its Personnel shall retain all books, documents, and records relating to performance of the Contract and Services provided in connection with this Contract for six (6) years after completion of the Contract or longer if requested by the County. All records shall be subject to inspection and audit by the County. Upon request, the Contractor shall promptly make available to the County a legible copy of all books, documents, and records at no cost to the County.

## **SECTION 11. RIGHTS AND REMEDIES**

- 11.1. Failure to Perform. If County determines the Contractor has failed to perform any material obligation of the Contract, and such failure has not been cured within ten (10) days' following notice from the County, the County may without penalty, in its discretion, withhold all monies due the Contractor until such failure is cured to the

reasonable satisfaction of the County.

- 11.2. Right of Assurance. If the County in good faith has reason to believe the Contractor does not intend, or is unable to perform, or continue performing under the Contract, the County may demand in writing that the Contractor give a written assurance of intent to perform. Should the Contractor fail to provide adequate assurance to the reasonable satisfaction of the County, by the date specified the demand, the County may terminate all or part of the Contract and pursue all other rights and remedies available at law and in equity.
- 11.3. Responsibility for Errors. All Services shall be completed to the reasonable satisfaction of the County and as required herein. Upon request, the Contractor shall provide any clarifications and/or explanations regarding any Services provided as required by the County, at no additional cost to the County. In the event of an error or omission under the Contract, the Contractor shall, at no cost to the County, provide all necessary design drawings, estimates, and all other professional services the County deems necessary to rectify and correct the matter to the satisfaction of the County. The Contractor shall continue to be responsible for the accuracy of Services, even after the Work is accepted by the County and the termination or expiration of the Contract.
- 11.4. Remedies. All County rights and remedies under the Contract are in addition to, and shall in no way limit, any other rights and remedies that may be available to the County at law and in equity.
- 11.5. Right of Off-Set; Reimbursement. The County will be entitled to offset against any sums due the Contractor and to reimbursement from the Contractor for any damages, expenses, or costs incurred by the County due to the Contractor's nonconforming performance or failure to perform the Services under the Contract.
- 11.6. Waiver. Either party's failure to insist upon the strict performance of any provision of the Contract, or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach, will not constitute a waiver of any right or remedy under the Contract unless expressly so agreed in writing by an authorized representative.
- 11.7. Breach. In the event of a material breach by the Contractor, the County may procure, on terms and in the manner that it deems appropriate, Services to replace those under the Contract. The Contractor shall be liable to the County for any and all costs, expenses, penalties, and fees incurred by the County in procuring such Services in substitution for those due from the Contractor under the Contract.

## **SECTION 12. GOVERNING LAW, DISPUTES**

- 12.1. Governing Law; Venue. The Contract will be governed in all respects by the laws of the State of Washington, both as to interpretation and performance, without regard to conflicts of law or choice of law provisions. Any action arising out of or in connection with the Contract may be instituted and maintained only in a court of competent jurisdiction in Kitsap County, Washington or as provided by RCW 36.01.050.

- 12.2. Disputes. Conflicts and disagreements between the parties related to the Contract will be promptly brought to the attention of the County. Any dispute relating to the quality or acceptability of performance or compensation due the Contractor will be decided by the County's Contract Representative. All decisions of the County's contract Representative are considered final; however, nothing herein prohibits either party from seeking judicial relief.

### **SECTION 13. PREVAILING WAGE**

- 13.1 Contractor shall comply with the prevailing wage requirements of chapter 39.12 RCW and WAC 296-127, specifically including RCW 39.12.020 and WAC 296-127-023 (Building Service Maintenance), if applicable. Contractor shall pay not less than the prevailing rate of per diem wages to its employees and shall provide documentation to the County of its compliance with prevailing wage laws and regulations. A copy of such prevailing rates of wage statement shall be posted by the Contractor in a location readily visible to workers at the job site or as provided in RCW 39.12.020

For contracts greater than \$2,500, a "Statement of Intent to Pay Prevailing Wages: (hereinafter "Statement of Intent") must be submitted to and approved by the State Department of Labor and Industries prior to beginning work by the Contractor. If the Contract is more than \$10,000, the Statement of Intent shall include the Contractor's registration number, the prevailing wage for each classification of workers, and an estimate of the number of workers in each classification. An "Affidavit of Wages Paid" must be submitted to and approved by the State Department of Labor and Industries by the Contractor prior to release of the retained percentage. Copies of these documents shall be provided to the County prior to any payment being made to the Contractor. The fee for each of these documents shall be paid by the Contractor.

For contracts \$2,500 or less, the Contractor may submit the Statement of Intent to the County directly without the approval by the Washington State Department of Labor & Industries. Upon final acceptance of the work, the Contractor will submit an "Affidavit of Wages Paid" to the County.

The Statement of Intent and Affidavit of Wages Paid must be submitted on forms approved by the Department of Labor and Industries. Contractors must file weekly certified payroll reports for all prevailing wage jobs (regardless of project amount) and submit them directly to L&I.

### **SECTION 14. GENERAL PROVISIONS**

- 14.1. Implied Contract Terms. Each provision of law and any terms required by law to be in the Contract are made a part of the Contract as if fully stated in it.
- 14.2. Headings/Captions. Headings and captions used are for convenience only and are not a part of the Contract and do not in any way limit or amplify the terms and provisions hereof.

- 14.3. No Party the Drafter. The Contract is the product of negotiation between the parties, and no party is deemed the drafter of the Contract.
- 14.4. No Third Party Beneficiary. No provision of the Contract is intended to, nor will it be construed to, create any third party beneficiary or provide any rights or benefits to any person or entity other than the County and the Contractor.
- 14.5. Severability. If a court of competent jurisdiction holds any provision of the Contract to be illegal, invalid, or unenforceable, in whole or in part, the validity of the remaining provisions will not be affected, and the parties' rights and obligations will be construed and enforced as if the Contract did not contain the particular provision held to be invalid. If any provision of the Contract conflicts with any statutory provision of the State of Washington, the provision will be deemed inoperative to the extent of the conflict or modified to conform to statutory requirements.
- 14.6. Counterparts. The Contract may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.
- 14.7. Non-Exclusive Contract. The County may at its discretion enter into multiple agreements to obtain the same or similar services that are the subject of this Contract or may have its own employees perform the same or similar services contemplated by the Contract.
- 14.8. Survival. Those provisions of this Contract that by their sense and purpose should survive expiration or termination of the Contract shall so survive. Those provisions include, without limitation: Sections 5 (Indemnification), 6 (Insurance), 8.5 (Independent Contractor), 9 (Ownership, Confidential Information and Breach), 11 (Rights and Remedies), 12 (Governing Law, Disputes), and 14 (General Provisions).
- 14.9. Entire Agreement. The parties acknowledge the Contract is the product of negotiation between the parties and represents the entire agreement of the parties with respect to its subject matter. All previous agreements and representations, whether oral or written, entered into prior to this Contract are hereby revoked and superseded by the Contract.
- 14.10. Authorization. Each party signing below warrants to the other party, that they have the full power and authority to execute this Contract on behalf of the party for whom they sign.

## **SECTION 15. ATTACHMENTS**

- 15.1 The parties acknowledge that the following attachments, which are attached to this Contract, are expressly incorporated by this reference:

Attachment A: COVID ARP Interlocal Agreement

Attachment B: Statement of Work

Attachment C: Budget & Compensation

Attachment D: Data Share and Security Requirements

Attachment E: Contractor Agreement on Nondisclosure of Confidential Information

Attachment F: Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Attachment G: Certification Regarding Lobbying

Attachment H: Assurance of Compliance Rehabilitation Act

Attachment I: Assurance of Compliance Civil Rights Acts

Attachment J: Assurance of Compliance Omnibus Budget Reconciliation

Attachment K: Contractor Signature Page

In the event of an inconsistency between these General Terms and Conditions and the attachments, precedence shall be given in the following order: (1) General Terms and Conditions; (2) Special Terms and Conditions; (3) Statement of Work; (4) Budget Summary/Estimated Expenditures; (5) Data Share and Security Requirements.

Dated this 24<sup>th</sup> day of May, 2022

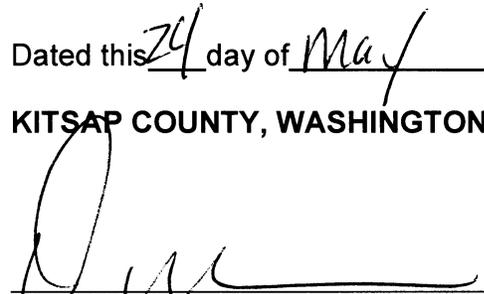
**CONTRACTOR**  
**YMCA**

*Toko Thompson*

\_\_\_\_\_  
Toko Thompson,  
Vice President and Chief Financial Officer

Dated this 24 day of May, 2022

**KITSAP COUNTY, WASHINGTON**

  
\_\_\_\_\_  
Doug Washburn,  
Human Services Department Director

**ATTACHMENT A: COVID INTERLOCAL AGREEMENT AMERICAN RESCUE PLAN ACT** [DSHS Agreement #2169-30863] Effective April 1, 2021 – September 30, 2024. Any subcontract for the Kitsap County Area Agency on Aging is subject to the provisions of the applicable Interlocal Agreement between the Department of Social and Health Services (DSHS) and the Area Agency on Aging, unless otherwise provided for in the contract between the Kitsap County Area Agency on Aging and the Contractor. When referencing the applicable Interlocal Data Share Agreement in relation to the subcontract, the Kitsap County Area Agency on Aging replaces DSHS and subcontractor replaces AAA.

#### **AAA General Terms And Conditions**

1. **Amendment.** This Agreement, or any term or condition, may be modified only by a written amendment signed by both parties. Only personnel authorized to bind each of the parties shall sign an amendment.
2. **Assignment.** Except as otherwise provided herein, the AAA shall not assign rights or obligations derived from this Agreement to a third party without the prior, written consent of the DSHS Contracts Administrator and the written assumption of the AAA's obligations by the third party.
3. **Client Abuse.** The AAA shall report all instances of suspected client abuse to DSHS, in accordance with RCW 74.34.
4. **Client Grievance.** The AAA shall establish a system through which applicants for and recipients of services under the approved area plans may present grievances about the activities of the AAA or any subcontractor(s) related to service delivery. Clients receiving Medicaid funded services must be informed of their right to a fair hearing regarding service eligibility specified in WAC 388-02 and under the provisions of the Administrative Procedures Act, Chapter 34.05 RCW.
5. **Compliance with Applicable Law.** At all times during the term of this Agreement, the AAA and DSHS shall comply with all applicable federal, state, and local laws, regulations, and rules, including but not limited to, nondiscrimination laws and regulations.
6. **Confidentiality.** The parties shall use Personal Information and other confidential information gained by reason of this Agreement only for the purpose of this Agreement. DSHS and the AAA shall not otherwise disclose, transfer, or sell any such information to any other party, except as provided by law or, in the case of Personal Information except as provided by law or with the prior written consent of the person to whom the Personal Information pertains. The parties shall maintain the confidentiality of all Personal Information and other confidential information gained by reason of this Agreement and shall return or certify the destruction of such information if requested in writing by the party to the Agreement that provided the information.
7. **AAA Certification Regarding Ethics.** By signing this Agreement, the AAA certifies that the AAA is in compliance with Chapter 42.23 RCW and shall comply with Chapter 42.23 RCW throughout the term of this Agreement.
8. **Debarment Certification.** The AAA, by signature to this Agreement, certifies that the AAA is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any Federal department or agency. The AAA also agrees to include the above requirement in all subcontracts into which it enters, resulting directly from the AAA's duty to provide services under this Agreement.
9. **Disputes.** In the event of a dispute between the AAA and DSHS, every effort shall be made to resolve the dispute informally and at the lowest level. If a dispute cannot be resolved informally, the AAA shall present their grievance in writing to the Assistant Secretary for Aging and Long-Term Support Administration. The Assistant Secretary shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. If the dispute remains unresolved after the Assistant Secretary's determination, either party may request intervention by the Secretary of DSHS, in which event the Secretary's process shall control. The Secretary will make a determination within 45 days. Participation in this dispute process shall precede any judicial or quasi-judicial action and shall be the final administrative remedy available to the parties. However, if the Secretary's determination is not made within 45 days, either party may proceed with judicial or quasi-judicial action without awaiting the Secretary's determination.
10. **Drug-Free Workplace.** The AAA shall maintain a work place free from alcohol and drug abuse.

### AAA General Terms And Conditions

11. **Entire Agreement.** This Agreement including all documents attached to or incorporated by reference, contain all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind the parties.
12. **Governing Law and Venue.** The laws of the State of Washington govern this Agreement. In the event of a lawsuit by the AAA against DSHS involving this Agreement, venue shall be proper only in Thurston County, Washington. In the event of a lawsuit by DSHS against a County AAA involving this Agreement, venue shall be proper only as provided in RCW 36.01.050.
13. **Independent Status.** Except as otherwise provided in Paragraph 26 herein below, for purposes of this Agreement, the AAA acknowledges that the AAA is not an officer, employee, or agent of DSHS or the State of Washington. The AAA shall not hold out itself or any of its employees as, nor claim status as, an officer, employee, or agent of DSHS or the State of Washington. The AAA shall not claim for itself or its employees any rights, privileges, or benefits, which would accrue to an employee of the State of Washington. The AAA shall indemnify and hold harmless DSHS from all obligations to pay or withhold federal or state taxes or contributions on behalf of the AAA or the AAA's employees.
14. **Inspection.** Either party may request reasonable access to the other party's records and place of business for the limited purpose of monitoring, auditing, and evaluating the other party's compliance with this Agreement, and applicable laws and regulations. During the term of this Agreement and for one (1) year following termination or expiration of this Agreement, the parties shall, upon receiving reasonable written notice, provide the other party with access to its place of business and to its records which are relevant to its compliance with this Agreement and applicable laws and regulations. This provision shall not be construed to give either party access to the other party's records and place of business for any other purpose. Nothing herein shall be construed to authorize either party to possess or copy records of the other party.
15. **Insurance.** DSHS certifies that it is self-insured under the State's self-insurance liability program, as provided by RCW 4.92.130, and shall pay for losses for which it is found liable. The AAA certifies that it is self-insured, is a member of a risk pool, or maintains the types and amounts of insurance identified below and shall, prior to the execution of this Agreement by DSHS, provide certificates of insurance to that effect to the DSHS contact on page one of this Agreement.

Commercial General Liability Insurance (CGL) – to include coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The policy shall include liability arising out of premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The State of Washington, DSHS, its elected and appointed officials, agents, and employees shall be named as additional insureds.

16. **Maintenance of Records.** During the term of this Agreement and for six (6) years following termination or expiration of this Agreement, both parties shall maintain records sufficient to:
  - a. Document performance of all acts required by law, regulation, or this Agreement;
  - b. Demonstrate accounting procedures, practices, and records that sufficiently and properly document the AAA's invoices to DSHS and all expenditures made by the AAA to perform as required by this Agreement.

For the same period, the AAA shall maintain records sufficient to substantiate the AAA's statement of its organization's structure, tax status, capabilities, and performance.

### AAA General Terms And Conditions

17. **Medicaid Fraud Control Unit (MFCU).** As required by federal regulations, the Health Care Authority, the Department of Social and Health Services, and any contractors or subcontractors, shall promptly comply with all MFCU requests for records or information. Records and information includes, but is not limited to, records on micro-fiche, film, scanned or imaged documents, narratives, computer data, hard copy files, verbal information, or any other information the MFCU determines may be useful in carrying out its responsibilities.
18. **Order of Precedence.** In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence, in the following order, to:
  - a. Applicable federal CFR, CMS Waivers and Medicaid State Plan;
  - b. State of Washington statutes and regulations;
  - c. AL TSA Management Bulletins and policy manuals;
  - d. This Agreement; and
  - e. The AAA's Area Plan.
19. **Ownership of Client Assets.** The AAA shall ensure that any client for whom the AAA or Subcontractor is providing services under this Agreement shall have unrestricted access to the client's personal property. For purposes of this paragraph, client's personal property does not pertain to client records. The AAA or Subcontractor shall not interfere with the client's ownership, possession, or use of such property. Upon termination of this Agreement, the AAA or Subcontractor shall immediately release to the client and/or DSHS all of the client's personal property.
20. **Ownership of Material.** Material created by the AAA and paid for by DSHS as a part of this Agreement shall be owned by DSHS and shall be "work made for hire" as defined by Title 17 USCA, Section 101. This material includes, but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Material which the AAA uses to perform this Agreement but is not created for or paid for by DSHS is owned by the AAA and is not "work made for hire"; however, DSHS shall have a license of perpetual duration to use, modify, and distribute this material at no charge to DSHS, provided that such license shall be limited to the extent which the AAA has a right to grant such a license.
21. **Ownership of Real Property, Equipment and Supplies Purchased by the AAA.** Title to all property, equipment and supplies purchased by the AAA with funds from this Agreement shall vest in the AAA. When real property, or equipment with a per unit fair market value over \$5000, is no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS. If the per unit fair market value of equipment is under \$5000, the AAA may retain, sell, or dispose of it with no further obligation. Proceeds from the sale or lease of property that was purchased with revenue accrued under the Case Management/Nursing Services unit rate must be expended in Medicaid TXIX or Aging Network programs.

When supplies with a total aggregate fair market value over \$5000 are no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS. If the total aggregate fair market value of equipment is under \$5000, the AAA may retain, sell, or dispose of it with no further obligation.

Disposition and maintenance of property shall be in accordance with 45 CFR Parts 92 and 74.

### AAA General Terms And Conditions

22. **Ownership of Real Property, Equipment and Supplies Purchased by DSHS.** Title to property, equipment and supplies purchased by DSHS and provided to the AAA to carry out the activities of this Agreement shall remain with DSHS. When real property, equipment or supplies are no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS.

Disposition and maintenance of property shall be in accordance with 45 CFR Parts 92 and 74.

23. **Responsibility.** Each party to this Agreement shall be responsible for the negligence of its officers, employees, and agents in the performance of this Agreement. No party to this Agreement shall be responsible for the acts and/or omissions of entities or individuals not party to this Agreement. DSHS and the AAA shall cooperate in the defense of tort lawsuits, when possible. Both parties agree and understand that this provision may not be feasible in all circumstances. DSHS and the AAA agree to notify the attorneys of record in any tort lawsuit where both are parties if either DSHS or the AAA enters into settlement negotiations. It is understood that the notice shall occur prior to any negotiations, or as soon as possible, and the notice may be either written or oral.

24. **Restrictions Against Lobbying.** The AAA certifies to the best of its knowledge and belief that no federal appropriated funds have been paid or will be paid, by or on behalf of the AAA, to any person for influencing or attempting to influence an officer or employee of a federal agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

If any funds other than federal appropriated funds have or will be paid for the purposes stated above, the AAA must file a disclosure form in accordance with 45 CFR Section 93.110.

The AAA shall include a clause in all subcontracts restricting subcontractors from lobbying in accordance with this section and requiring subcontractors to certify and disclose accordingly.

25. **Severability.** The provisions of this Agreement are severable. If any court holds any provision of this Agreement, including any provision of any document incorporated by reference, invalid, that invalidity shall not affect the other provisions this Agreement.

26. **Subcontracting.**

- a. The AAA may, without further notice to DSHS; subcontract for those services specifically defined in the Area Plan submitted to and approved by DSHS, except subcontracts with for-profit entities must have prior DSHS approval.
- b. The AAA must obtain prior written approval from DSHS to subcontract for services not specifically defined in the approved Area Plan.
- c. Any subcontracts shall be in writing and the AAA shall be responsible to ensure that all terms, conditions, assurances and certifications set forth in this Agreement are included in any and all client services Subcontracts unless an exception to including a particular term or terms has been approved in advance by DSHS.
- d. Subcontractors are prohibited from subcontracting for direct client services without the prior written approval from the AAA.
- e. When the nature of the service the subcontractor is to provide requires a certification, license or

### AAA General Terms And Conditions

approval, the AAA may only subcontract with such contractors that have and agree to maintain the appropriate license, certification or accrediting requirements/standards.

- f. In any contract or subcontract awarded to or by the AAA in which the authority to determine service recipient eligibility is delegated to the AAA or to a subcontractor, such contract or subcontract shall include a provision acceptable to DSHS that specifies how client eligibility will be determined and how service applicants and recipients will be informed of their right to a fair hearing in case of denial or termination of a service, or failure to act upon a request for services with reasonable promptness.
- g. If DSHS, the AAA, and a subcontractor of the AAA are found by a jury or trier of fact to be jointly and severally liable for damages rising from any act or omission from the contract, then DSHS shall be responsible for its proportionate share, and the AAA shall be responsible for its proportionate share. Should the subcontractor be unable to satisfy its joint and several liability, DSHS and the AAA shall share in the subcontractor's unsatisfied proportionate share in direct proportion to the respective percentage of their fault as found by the jury or trier of fact. Nothing in this term shall be construed as creating a right or remedy of any kind or nature in any person or party other than DSHS and the AAA. This term shall not apply in the event of a settlement by either DSHS or the AAA.
- h. Any subcontract shall designate subcontractor as AAA's Business Associate, as defined by HIPAA, and shall include provisions as required by HIPAA for Business Associate contract. AAA shall ensure that all client records and other PHI in possession of subcontractor are returned to AAA at the termination or expiration of the subcontract.

#### 27. Subrecipients.

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

### AAA General Terms And Conditions

<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 AAA is a subrecipient and expends \$750,000 or more in federal awards from all sources in any fiscal year, the AAA shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the AAA 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 the required audit, that the AAA has been paid unallowable costs under this Agreement, DSHS may require the AAA to reimburse DSHS in accordance with 2 CFR Part 200.
  - (1) For any identified overpayment involving a subcontract between the AAA and a tribe, DSHS agrees it will not seek reimbursement from the AAA, if the identified overpayment was not due to any failure by the AAA.
- 28. **Survivability.** The terms and conditions contained in this Agreement, which by their sense and context, are intended to survive the expiration of the particular agreement shall survive. Surviving terms include, but are not limited to: Confidentiality, Disputes, Inspection, Maintenance of Records, Ownership of Material, Responsibility, Termination for Default, Termination Procedure, and Title to Property.
- 29. **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. The Contract or Program Agreement may be renegotiated under the revised funding conditions.
  - b. At DSHS's discretion, DSHS may give notice to the AAA to suspend performance when DSHS determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this contract.
    - (1) During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
    - (2) When DSHS determines that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to DSHS informing DSHS whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.
    - (3) If the AAA'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

## AAA General Terms And Conditions

Contract for services rendered prior to the retroactive date of termination.

- c. DSHS may immediately terminate this Contract by providing written notice to the AAA. 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.
30. **Termination for Convenience.** The Contracts Administrator may terminate this Agreement or any in whole or in part for convenience by giving the AAA at least thirty (30) calendar days' written notice. The AAA may terminate this Agreement for convenience by giving DSHS at least thirty (30) calendar days' written notice addressed to: Central Contract Services, PO Box 45811, Olympia, Washington 98504-5811.
  31. **Termination for Default.**
    - a. The Contracts Administrator may terminate this Agreement for default, in whole or in part, by written notice to the AAA, if DSHS has a reasonable basis to believe that the AAA has:
      - (1) Failed to meet or maintain any requirement for contracting with DSHS;
      - (2) Failed to perform under any provision of this Agreement;
      - (3) Violated any law, regulation, rule, or ordinance applicable to this Agreement; and/or
      - (4) Otherwise breached any provision or condition of this Agreement.
    - b. Before the Contracts Administrator may terminate this Agreement for default, DSHS shall provide the AAA with written notice of the AAA's noncompliance with the agreement and provide the AAA a reasonable opportunity to correct the AAA's noncompliance. If the AAA does not correct the AAA's noncompliance within the period of time specified in the written notice of noncompliance, the Contracts Administrator may then terminate the agreement. The Contracts Administrator may terminate the agreement for default without such written notice and without opportunity for correction if DSHS has a reasonable basis to believe that a client's health or safety is in jeopardy.
    - c. The AAA may terminate this Agreement for default, in whole or in part, by written notice to DSHS, if the AAA has a reasonable basis to believe that DSHS has:
      - (1) Failed to meet or maintain any requirement for contracting with the AAA;
      - (2) Failed to perform under any provision of this Agreement;
      - (3) Violated any law, regulation, rule, or ordinance applicable to this Agreement; and/or
      - (4) Otherwise breached any provision or condition of this Agreement.
    - d. Before the AAA may terminate this Agreement for default, the AAA shall provide DSHS with written notice of DSHS' noncompliance with the Agreement and provide DSHS a reasonable opportunity to correct DSHS' noncompliance. If DSHS does not correct DSHS' noncompliance within the period of time specified in the written notice of noncompliance, the AAA may then terminate the Agreement.
  32. **Termination Procedure.** The following provisions apply in the event this Agreement is terminated:

### AAA General Terms And Conditions

- a. The AAA shall cease to perform any services required by this Agreement as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination which are related to the transfer of clients, distribution of property, and termination of services.
  - b. The AAA shall promptly deliver to the DSHS contact person (or to his or her successor) listed on the first page this Agreement, all DSHS assets (property) in the AAA's possession, including any material created under this Agreement. Upon failure to return DSHS property within ten (10) working days of the Agreement termination, the AAA shall be charged with all reasonable costs of recovery, including transportation. The AAA shall take reasonable steps to protect and preserve any property of DSHS that is in the possession of the AAA pending return to DSHS.
  - c. DSHS shall be liable for and shall pay for only those services authorized and provided through the effective date of termination. DSHS may pay an amount mutually agreed by the parties for partially completed work and services, if work products are useful to or usable by DSHS.
  - d. If the Contracts Administrator terminates this Agreement for default, DSHS may withhold a sum from the final payment to the AAA that DSHS determines is necessary to protect DSHS against loss or additional liability. DSHS shall be entitled to all remedies available at law, in equity, or under this Agreement. If it is later determined that the AAA was not in default, or if the AAA terminated this Agreement for default, the AAA shall be entitled to all remedies available at law, in equity, or under this Agreement.
33. **Treatment of Client Property.** Unless otherwise provided in the applicable Agreement, the AAA shall ensure that any adult client receiving services from the AAA under this Agreement has unrestricted access to the client's personal property. The AAA shall not interfere with any adult client's ownership, possession, or use of the client's property. The AAA shall provide clients under age eighteen (18) with reasonable access to their personal property that is appropriate to the client's age, development, and needs. Upon termination or completion of this Agreement, the AAA shall promptly release to the client and/or the client's guardian or custodian all of the client's personal property. This section does not prohibit the AAA from implementing such lawful and reasonable policies, procedures and practices as the AAA deems necessary for safe, appropriate, and effective service delivery (for example, appropriately restricting clients' access to, or possession or use of, lawful or unlawful weapons and drugs).
34. **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 Agreement unless amended as set forth in Section 1, Amendment. Only the Contracts Administrator or designee has the authority to waive any term or condition of this Agreement on behalf of DSHS.

## Special Terms And Conditions

### 1. Definitions.

- a. "AAA" or "Contractor" shall mean the Area Agency on Aging that is a party to this agreement, and includes the AAA's officers, directors, trustees, employees and/or agents unless otherwise stated in this Agreement. For purposes of this Agreement, the AAA or agent shall not be considered an employee of DSHS
- b. "Agreement" means this Agreement, including all documents attached or incorporated by reference.
- c. "Allocable costs" are those costs which are chargeable or assignable to a particular cost objective in accordance with the relative benefits received by those costs.
- d. "Allowable costs" are those costs necessary and reasonable for proper and efficient performance of this Agreement and in conformance with this Agreement. Allowable costs under federal awards to local or tribal governments must be in conformance with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local and Indian Tribal Governments; allowable costs under federal awards to non-profit organizations must be in conformance with OMB Circular A-122, Cost Principles for Non-Profit Organizations.
- e. "Area Plan" means the document submitted by the AAA to DSHS for approval every four years, with updates every two years, which sets forth goals, measurable objectives, outcomes, units of service, and identifies the planning, coordination, administration, social services and evaluation of activities to be undertaken by the AAA to carry out the purposes of the Older Americans Act, the Social Security Act, the Senior Citizens Services Act, or any other statute for which the AAA receives funds.
- f. "Assignment" means the act of transferring to another the rights and obligations under this Agreement.
- g. "Business Associate" means a Business Associate as defined in 45 CFR 160.103, who performs or assists in the performance of an activity for or on behalf of the Covered Entity that involves the use or disclosure of protected health information (PHI). Any reference to Business Associate under this Agreement includes Business Associate's employees, agents, officers, subcontractors, third party contractor's, volunteers, or directors.
- h. "CFR" means Code of Federal Regulations. All references in this Agreement to the CFR shall include any successor, amended, or replacement regulation.
- i. "Client" means an individual that is eligible for or receiving services provided by the AAA in connection with this Agreement.
- j. "Covered Entity" means DSHS, a Covered Entity as defined in 45 CFR 160.103.
- k. "Contracts Administrator" means the manager, or successor, of Central Contract Services or successor section or office.
- l. "Debarment" means an action taken by a Federal official to exclude a person or business entity from participating in transactions involving certain federal funds.
- m. "Designated Record Set" means a group of records maintained by or for the Covered Entity that is the medical and billing records about the individuals or the enrollment, payment, claims adjudication, and case or medical management records, used in whole or part by or for the Covered Entity to make decisions about individuals.

### Special Terms And Conditions

- n. "DSHS" or "the Department" means the state of Washington Department of Social and Health Services and its employees and authorized agents.
- o. "Data Universal Number System (DUNS) Number" means– a unique nine-digit identification number provided by Dun & Bradstreet (D&B). It is used by the Federal government to identify related organizations that are receiving funding under grants and cooperative agreements, and to provide consistent name and address data for electronic grant application systems.
- p. "Equipment" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5000 or more per unit.
- q. "HIPAA" means the Health Information Portability and Accountability Act of 1996, as codified at 42 USCA 1320d-d8.
- r. "Individual" means the person who is the subject of PHI and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- s. "Older Americans Act" refers to P.L. 106-501, 106th Congress, and any subsequent amendments or replacement statutes thereto.
- t. "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.
- u. "PHI" means protected health information and is information created or received by Business Associate from or on behalf of 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 past, present or future payment for provision of health care to an individual. 45 CFR 160 and 14. 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, maintained, or stored in any form or medium. 45 CFR 164.501. PHI does not include education records covered by the Family Educational Right and Privacy Act, as amended, 20 USCA 1232g(a)(4)(b)(iv).
- v. "RCW" means the Revised Code of Washington. All references in this Agreement to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at <http://slc.leg.wa.gov/>.
- w. "Real Property" means land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.
- x. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
- y. "Subcontract" means any separate agreement or contract between the AAA 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 Agreement.
- z. "Subcontractor" means an individual or entity (including its officers, directors, trustees, employees, and/or agents) with whom the AAA contracts to provide services that are specifically defined in the Area Plan or are otherwise approved by DSHS in accordance with this Agreement.
- aa. "Subrecipient" means a non-federal entity that expends federal awards received from a pass-

## Special Terms And Conditions

through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.

- bb. "Supplies" means all tangible personal property other than equipment as defined herein.
- cc. "WAC" means the Washington Administrative Code. All references in this Agreement to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at <http://slc.leg.wa.gov/>

2. **Statement of Work.** The AAA shall comply with all applicable state and federal statute and rules, including but not limited to the United States Code, the Code of Federal Regulations, the Revised Code of Washington, the Washington Administrative Code, and any and all DSHS/ADS standards, guidelines, policy manuals, and management bulletins, and otherwise do all things necessary for or incidental to the performance of work, as set forth below in Exhibit A, Statement of Work.
3. **Consideration.** Total consideration payable to Contractor for satisfactory performance of the work under this Agreement shall not exceed \$992,576, including any and all expenses and shall be based on the attached Exhibit B, Budget.
4. **Billing and Payment.**
  - a. **Invoice System.** The Contractor shall submit invoices using BARS form, or such other form as designated by DSHS. Consideration for services rendered shall be payable upon receipt of properly completed invoices which shall be submitted to the DSHS Project Manager, or his/her 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 3, Consideration, of this Contract.

The DSHS Project Manager (ADSA NCOA Choices for Self Care Challenges Grant Project Manager) for this Agreement is Aime Fink, State Unit on Aging, PO Box 45600, Olympia WA 98504-5600.
  - b. **Payment.** Payment shall be considered timely if made by DSHS within thirty (30) days after receipt and acceptance by the DSHS Project Manager, or his/her designee or successor, 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.
5. **Confidentiality.** In addition to General Terms and Conditions Confidentiality language, the AAA or its Subcontractors may disclose information to each other, to DSHS, or to appropriate authorities, for purposes directly connected with the services provided to the client. This includes, but is not limited to, determining eligibility, providing services, and participation in disputes, fair hearings or audits. The AAA and its Subcontractors shall disclose information for research, statistical, monitoring and evaluation purposes conducted by appropriate federal agencies and DSHS.
6. **DUNS Number.** In accordance with the Federal Funding Accountability and Transparency Act (FFATA, Public Law 109-282) implemented on October 1, 2010, the Contractor must provide their DUNS Number for this Agreement. The Contractor's DUNS Number is 071855191. If the DUNS Number changes, the Contractor must immediately notify the DSHS Contact listed on Page 1 of this Agreement and provide the correct DUNS Number.

**Exhibit A  
Statement of Work**

**1. Funding Purpose.**

- a. The American Rescue Plan (ARP) Act, P.L. 117-2, grant is funding for activities authorized under Title III Part B of the Older Americans Act of 1965, as amended through P.L. 116-131, enacted March 25, 2020. The intent of this funding is support home and community-based services—ensuring that the needs of older adults could be met in their local communities during and in the aftermath of the COVID-19 pandemic.
- b. Allowable expenditures under this grant include:
  - (1) All allowable activities under the OAA Titles:
    - (a) Title IIIB—Supportive Services;
    - (b) Title III C-1—Congregate Meals;
    - (c) Title III C-2—Home Delivered Meals;
    - (d) Title IIID—Preventative Health; and
    - (e) Title IIIE—Family Caregiver Programs;
  - (2) Title IIIB—other allowable Supportive Services include:
    - (a) Efforts related to COVID-19 vaccination outreach, including education, communication, transportation, and other activities to facilitate vaccination of older individuals; and
    - (b) Prevention and mitigation activities related to COVID-19 focused on addressing extended social isolation among older individuals, including activities for investments in technological equipment and solutions or other strategies aimed at alleviating negative health effects of social isolation due to long-term stay-at-home recommendations for older individuals for the duration of the COVID-19 public health emergency.
  - (3) The legislation provides for the following flexibilities:
    - (a) With notice to SUA, 100% of funds may be transferred between Title III C-1 and Title III C-2 until the Public Health Emergency (PHE) ends or 8/15/2022, whichever is sooner; and
    - (b) Additional flexibilities during a Major Disaster Declaration as provided for OAA funding through P.L. 116-131 enacted March 25, 2020.

**2. Reporting and Area Plan Amendments.**

- a. Response efforts provided under this funding shall be updated in the 2022-23 Area Plan Update in the Budget Section and in the new section for COVID-19 service provision. The entire amount of ARP funding allocation for each AAA may be reflected in their Area Plan Budget, if the AAA believes they will spend more funding earlier in the project period.
- b. The AAA will report OAA service provision utilizing the NAPIS reporting guidance provided in MB

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H19-055. Beginning, October 1, 2021 data reporting requirements will be provided in the Older Americans Act Reporting System (OAAPS) guidance MB.

c. The AAA will report Support Services utilizing the guidance provided in the ARP Act funding MB.

**3. Administration and Matching Fund Requirements.**

a. Up to 10% of funding can be spent on administration.

b. 25% match is required for all administration expenditures.

c. Service Match for Support Services, Congregate Meals, and Home Delivered Meals is 15%. Program Income may be used for match.

d. Service Match for Family Caregiver Support Program/Kinship Caregiver Support Program Services is 25%.

e. At least 33% (1/3) of the 15% match for services for TIII-B, TIII C-1, and TIII C-2 must come from state sources.

f. If any 2021 T3B is charged to Coordination, administration charges must be exactly 10% of all 2021 OAA funding. The 10% admin will be calculated based on funding from the regular 2021 Title 3, the Consolidated Appropriations Act Supplemental Nutrition, the Consolidated Appropriations Act Expanding Access to COVID-19 Vaccines grants, and ARP grants.

## **ATTACHMENT B: STATEMENT OF WORK**

### **Purpose**

American Rescue Act stimulus funding provides flexibility to serve older adults in response to increased needs due to COVID-19. The purpose of this subcontract is to reimburse the subcontractor, YMCA, for developing and administering a pilot service Community Café for older adults to decrease social isolation due to COVID-19. The intent is to provide a neutral setting that promotes social engagement and well-being for older adults to gather, share ideas, promote healthy aging, and decrease the negative impacts of isolation. The Community Café model will be available to individuals over the age of 60 years and their caregivers (regardless of age).

### **Objective**

The subcontractor will provide a Community Café pilot program for individuals over the age of 60 years and their caregivers to engage in meaningful learning and sharing about relevant topics with the goal to build spirit, mind, and body health toward thriving with greater purpose, connection, and well-being.

### **Scope**

Develop, promote, and administer a Community Café service for older adults and their caregivers to decrease negative impacts of social isolation due to COVID. Facilitating in-person and/ or virtual experiences and promoting healthy aging using appropriate personal protective equipment and social distancing, at a minimum, per Washington State Department of Health guidelines.

The Contractor agrees to:

- a) Provide space for at least one (1) virtual, in-person, or hybrid Community Café per week.
- b) Post any cancellation notices deemed necessary within the organization;
- c) Collect, maintain and submit Community Café attendance records on a monthly basis. The attendance service logs shall accompany the monthly invoice and expenditure reports.

The Contractor shall provide monthly attendance records that includes

#### The participant's:

- name or unique identifier
- age
- zip code or county
- Contractor's membership status
- dates of participation
- status caregiver attendee for an older adult

The monthly attendance record shall indicate:

- If the participant is new to the program, within the past 12 months

The following information is required *each month*:

- Total number of unduplicated participants', including caregiver status, self-reported and voluntary, demographic data for:
  1. ethnicity,
  2. race,
  3. gender,
  4. income above or below 100% of the federal poverty level,
  5. preferred language, and
  6. veteran status
- Total number of in-person Community Café's offered
- Total number of virtual Community Café's offered
- Total number of hybrid Community Café's offered

**Performance Targets and Satisfaction Survey**

Performance targets are used to determine if the new program is reaching the intended community need. They are not intended to be used for payment reimbursement.

Kitsap County residents of older adults and caregivers and shall be counted. This includes Kitsap County residents that participate in the program available through the Gig Harbor facility.

Total unduplicated Kitsap older adults and caregivers served for FY (July 2022-June 2023)	50
Total unduplicated Kitsap older adults attendees served each month	10
Total unduplicated Kitsap caregiver attendees served each month	5

**PROGRAM SATISFACTION SURVEY**

The Contractor shall develop and distribute a satisfaction survey to all participants. The survey results shall be compiled with a report submitted to Kitsap County Aging & Long Term Care at the end of the calendar year.

**Schedule/Deliverables**

Monthly Invoice with attached demographic for each person that receives an assembled bundle of items must be received by the 10<sup>th</sup> of each month.

**ATTACHMENT C: BUDGET & COMPENSATION**

Payment amount and schedule is set forth below. These funds can only be used for purchase of supplies and direct service reimbursement.

A completed demographic document for each client must accompany the monthly invoice.

July 1, 2022- June 30, 2023

Program/Funding Source	Total	July	August	September	October	November	December	January	February	March	April	May	June
ARP(COVID MDD Flex)	\$ 10,000.00	\$ 835.00	\$ 835.00	\$ 835.00	\$ 835.00	\$ 835.00	\$ 835.00	\$ 835.00	\$ 835.00	\$ 835.00	\$ 835.00	\$ 835.00	\$ 815.00
Match - N/A													
<b>Total Project</b>	<b>\$ 10,000.00</b>	<b>\$ 835.00</b>	<b>\$ 815.00</b>										

Funding Source	CFDA #	Amount
ARP (COVID MDD Flex)	93.044/93.052	\$10,000.00

Any cumulative amount of transfers among the Approved Summary Budget(s) direct cost subject categories, which exceeds five percent (5%) of the total object category budget for any funding source, will require a contract amendment.

## **ATTACHMENT E: DATA SHARE AND SECURITY REQUIREMENTS**

[DSHS Agreement #2269-34801] Effective January 1, 2022 – December 31, 2023. Any subcontract for the Kitsap County Area Agency on Aging is subject to the provisions of the applicable Interlocal Data Share Agreement between the Department of Social and Health Services and the Area Agency on Aging, unless otherwise provided for in the contract between the Kitsap County Area Agency on Aging and the Contractor. When referencing the applicable Interlocal Data Share Agreement in relation to the subcontract, the Kitsap County Area Agency on Aging replaces DSHS and subcontractor replaces AAA

### **AAA General Terms and Conditions**

1. **Amendment.** This Agreement, or any term or condition, may be modified only by a written amendment signed by both parties. Only personnel authorized to bind each of the parties shall sign an amendment.
2. **Assignment.** Except as otherwise provided herein, the AAA shall not assign rights or obligations derived from this Agreement to a third party without the prior, written consent of the DSHS Contracts Administrator and the written assumption of the AAA's obligations by the third party.
3. **Compliance with Applicable Law.** At all times during the term of this Agreement, the AAA and DSHS shall comply with all applicable federal, state, and local laws, regulations, and rules, including but not limited to, nondiscrimination laws and regulations.
4. **Confidentiality.** The parties shall use Personal Information and other confidential information gained by reason of this Agreement only for the purpose of this Agreement. DSHS and the AAA shall not disclose, transfer, or sell any such information to any other party, except as provided by law or, in the case of Personal Information except as provided by law or with the prior written consent of the person to whom the Personal Information pertains. The parties shall maintain the confidentiality of all Personal Information and other confidential information gained by reason of this Agreement and shall return or certify the destruction of such information if allowed by law and requested in writing by the party to the Agreement that provided the information.
5. **AAA Certification Regarding Ethics.** By signing this Agreement, the AAA certifies that the AAA is in compliance with Chapter 42.23 RCW and shall comply with Chapter 42.23 RCW throughout the term of this Agreement.
6. **Debarment Certification.** The AAA, by signature to this Agreement, certifies that the AAA is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any Federal department or agency. The AAA also agrees to include the above requirement in all subcontracts into which it enters, resulting directly from the AAA's duty to provide services under this Agreement.
7. **Disputes.** In the event of a dispute between the AAA and DSHS, every effort shall be made to resolve the dispute informally and at the lowest level. If a dispute cannot be resolved informally, the AAA shall present their grievance in writing to the Assistant Secretary for Aging and Long-Term Support Administration. The Assistant Secretary shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. If the dispute remains unresolved after the Assistant Secretary's determination, either party may request intervention by the Secretary of DSHS, in which event the Secretary's process shall control. The Secretary will make a determination within 45 days. Participation in this dispute process shall precede any judicial or quasi-judicial action and shall be the final administrative remedy available to the parties. However, if the Secretary's determination is not made within 45 days, either party may proceed with judicial or quasi-judicial action without awaiting the Secretary's determination.
8. **Drug-Free Workplace.** The AAA shall maintain a work place free from alcohol and drug abuse.
9. **Entire Agreement.** This Agreement including all documents attached to or incorporated by reference, contain all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind the parties.
10. **Governing Law and Venue.** The laws of the State of Washington govern this Agreement. In the event of a lawsuit by the AAA against DSHS involving this Agreement, venue shall be proper only in

## AAA General Terms and Conditions

Thurston County, Washington. In the event of a lawsuit by DSHS against a County AAA involving this Agreement, venue shall be proper only as provided in RCW 36.01.050.

11. **Independent Status.** Except as otherwise provided in Paragraph 24 herein below, for purposes of this Agreement, the AAA acknowledges that the AAA is not an officer, employee, or agent of DSHS or the State of Washington. The AAA shall not hold out itself or any of its employees as, nor claim status as, an officer, employee, or agent of DSHS or the State of Washington. The AAA shall not claim for itself or its employees any rights, privileges, or benefits, which would accrue to an employee of the State of Washington. The AAA shall indemnify and hold harmless DSHS from all obligations to pay or withhold federal or state taxes or contributions on behalf of the AAA or the AAA's employees.
12. **Inspection.** Either party may request reasonable access to the other party's records and place of business for the limited purpose of monitoring, auditing, and evaluating the other party's compliance with this Agreement, and applicable laws and regulations. During the term of this Agreement and for one (1) year following termination or expiration of this Agreement, the parties shall, upon receiving reasonable written notice, provide the other party with access to its place of business and to its records which are relevant to its compliance with this Agreement and applicable laws and regulations. This provision shall not be construed to give either party access to the other party's records and place of business for any other purpose. Nothing herein shall be construed to authorize either party to possess or copy records of the other party.
13. **Insurance.** DSHS certifies that it is self-insured under the State's self-insurance liability program, as provided by RCW 4.92.130, and shall pay for losses for which it is found liable. The AAA certifies that it is self-insured, is a member of a risk pool, or maintains the types and amounts of insurance identified below and shall, prior to the execution of this Agreement by DSHS, provide certificates of insurance to that effect to the DSHS contact on page one of this Agreement.

Commercial General Liability Insurance (CGL) – to include coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The policy shall include liability arising out of premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The State of Washington, DSHS, its elected and appointed officials, agents, and employees shall be named as additional insureds.

14. **Maintenance of Records.** During the term of this Agreement and for six (6) years following termination or expiration of this Agreement, both parties shall maintain records sufficient to:
  - a. Document performance of all acts required by law, regulation, or this Agreement.
  - b. Demonstrate accounting procedures, practices, and records that sufficiently and properly document the AAA's invoices to DSHS and all expenditures made by the AAA to perform as required by this Agreement.

For the same period, the AAA shall maintain records sufficient to substantiate the AAA's statement of its organization's structure, tax status, capabilities, and performance.

15. **Medicaid Fraud Control Unit (MFCU).** As required by federal regulations, the Health Care Authority, the Department of Social and Health Services, and any contractors or subcontractors, shall promptly comply with all MFCU requests for records or information. Records and information includes, but is not limited to, records on micro-fiche, film, scanned or imaged documents, narratives, computer data, hard copy files, verbal information, or any other information the MFCU determines may be useful in carrying out its responsibilities.

### AAA General Terms and Conditions

16. **Order of Precedence.** In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence, in the following order, to:
  - a. Applicable federal CFR, CMS Waivers and Medicaid State Plan;
  - b. State of Washington statutes and regulations;
  - c. ALTA Management Bulletins and policy manuals.
  - d. This Agreement; and
  - e. The AAA's Area Plan.
17. **Ownership of Client Assets.** The AAA shall ensure that any client for whom the AAA or Subcontractor is providing services under this Agreement shall have unrestricted access to the client's personal property. The AAA or Subcontractor shall not interfere with the client's ownership, possession, or use of such property. Upon termination of this Agreement, the AAA or Subcontractor shall immediately release to the client and/or DSHS all of the client's personal property.
18. **Ownership of Material.** Material created by the AAA and paid for by DSHS as a part of this Agreement shall be owned by DSHS and shall be "work made for hire" as defined by Title 17 USCA, Section 101. This material includes, but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Material which the AAA uses to perform this Agreement but is not created for or paid for by DSHS is owned by the AAA and is not "work made for hire"; however, DSHS shall have a perpetual license to use this material for DSHS internal purposes at no charge to DSHS, provided that such license shall be limited to the extent which the AAA has a right to grant such a license.
19. **Ownership of Real Property, Equipment and Supplies Purchased by the AAA.** Title to all property, equipment and supplies purchased by the AAA with funds from this Agreement shall vest in the AAA. When real property, or equipment with a per unit fair market value over \$5000, is no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS. If the per unit fair market value of equipment is under \$5000, the AAA may retain, sell, or dispose of it with no further obligation.

When supplies with a total aggregate fair market value over \$5000 are no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS. If the total aggregate fair market value of equipment is under \$5000, the AAA may retain, sell, or dispose of it with no further obligation.

Disposition and maintenance of property shall be in accordance with 45 CFR Parts 92 and 74.
20. **Ownership of Real Property, Equipment and Supplies Purchased by DSHS.** Title to property, equipment and supplies purchased by DSHS and provided to the AAA to carry out the activities of this Agreement shall remain with DSHS. When real property, equipment or supplies are no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS.

Disposition and maintenance of property shall be in accordance with 45 CFR Parts 92 and 74.
21. **Responsibility.** Each party to this Agreement shall be responsible for the negligence of its officers, employees, and agents in the performance of this Agreement. No party to this Agreement shall be

## AAA General Terms and Conditions

responsible for the acts and/or omissions of entities or individuals not party to this Agreement. DSHS and the AAA shall cooperate in the defense of tort lawsuits, when possible. Both parties agree and understand that this provision may not be feasible in all circumstances. DSHS and the AAA agree to notify the attorneys of record in any tort lawsuit where both are parties if either DSHS or the AAA enters into settlement negotiations. It is understood that the notice shall occur prior to any negotiations, or as soon as possible, and the notice may be either written or oral.

22. **Restrictions Against Lobbying.** The AAA certifies to the best of its knowledge and belief that no federal appropriated funds have been paid or will be paid, by or on behalf of the AAA, to any person for influencing or attempting to influence an officer or employee of a federal agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

If any funds other than federal appropriated funds have or will be paid for the purposes stated above, the AAA must file a disclosure form in accordance with 45 CFR Section 93.110.

The AAA shall include a clause in all subcontracts restricting subcontractors from lobbying in accordance with this section and requiring subcontractors to certify and disclose accordingly.

23. **Severability.** The provisions of this Agreement are severable. If any court holds any provision of this Agreement, including any provision of any document incorporated by reference, invalid, that invalidity shall not affect the other provisions this Agreement.

24. **Subcontracting.**

- a. The AAA may, without further notice to DSHS, subcontract for those services specifically defined in the Area Plan submitted to and approved by DSHS, except subcontracts with for-profit entities must have prior DSHS approval.
- b. The AAA must obtain prior written approval from DSHS to subcontract for services not specifically defined in the approved Area Plan.
- c. Any subcontracts shall be in writing and the AAA shall be responsible to ensure that all terms, conditions, assurances and certifications set forth in this Agreement are included in any and all client services Subcontracts unless an exception to including a particular term or terms has been approved in advance by DSHS.
- d. Subcontractors are prohibited from subcontracting for direct client services without the prior written approval from DSHS.
- e. When the nature of the service the subcontractor is to provide requires a certification, license or approval, the AAA may only subcontract with such contractors that have and agree to maintain the appropriate license, certification or accrediting requirements/standards.
- f. In any contract or subcontract awarded to or by the AAA in which the authority to determine service recipient eligibility is delegated to the AAA or to a subcontractor, such contract or subcontract shall include a provision acceptable to DSHS that specifies how client eligibility will be determined and how service applicants and recipients will be informed of their right to a fair hearing in case of denial or termination of a service, or failure to act upon a request for services with reasonable promptness.

## AAA General Terms and Conditions

- g. If DSHS, the AAA, and a subcontractor of the AAA are found by a jury or trier of fact to be jointly and severally liable for damages arising from any act or omission from the contract, then DSHS shall be responsible for its proportionate share, and the AAA shall be responsible for its proportionate share. Should the subcontractor be unable to satisfy its joint and several liability, DSHS and the AAA shall share in the subcontractor's unsatisfied proportionate share in direct proportion to the respective percentage of their fault as found by the jury or trier of fact. Nothing in this term shall be construed as creating a right or remedy of any kind or nature in any person or party other than DSHS and the AAA. This term shall not apply in the event of a settlement by either DSHS or the AAA.
- h. Any subcontract shall designate subcontractor as AAA's Business Associate, as defined by HIPAA, and shall include provisions as required by HIPAA for Business Associate contract. AAA shall ensure that all client records and other PHI in possession of subcontractor are returned to AAA at the termination or expiration of the subcontract.

### 25. Subrecipients.

- (1) General. If the AAA is a subrecipient of federal awards as defined by 2 CFR Part 200 and this Agreement, the AAA shall:
  - (2) 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;
  - (3) Maintain internal controls that provide reasonable assurance that the AAA 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;
  - (4) Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
  - (5) Incorporate 2 CFR Part 200, Subpart F audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;
  - (6) 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
  - (7) 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 [www.oip.usdoj.gov/ocr/](http://www.oip.usdoj.gov/ocr/) for additional information and access to the aforementioned Federal laws and regulations.)
- b. Single Audit Act Compliance. If the AAA is a subrecipient and expends \$750,000 or more in federal awards from all sources in any fiscal year, the AAA shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the AAA 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).

## AAA General Terms and Conditions

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 the required audit, that the AAA has been paid unallowable costs under this Agreement, DSHS may require the AAA to reimburse DSHS in accordance with 2 CFR Part 200.

(1) For any identified overpayment involving a subcontract between the AAA and a tribe, DSHS agrees it will not seek reimbursement from the AAA, if the identified overpayment was not due to any failure by the AAA.

26. **Survivability.** The terms and conditions contained in this Agreement, which by their sense and context, are intended to survive the expiration of the particular agreement shall survive. Surviving terms include, but are not limited to: Confidentiality, Disputes, Inspection, Maintenance of Records, Ownership of Material, Responsibility, Termination for Default, and Termination Procedure.

27. **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. The Contract or Program Agreement may be renegotiated under the revised funding conditions.

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

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

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

(3) If the AAA'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 AAA. 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.

28. **Termination for Convenience.** The Contracts Administrator may terminate this Agreement or any in

## AAA General Terms and Conditions

whole or in part for convenience by giving the AAA at least thirty (30) calendar days' written notice. The AAA may terminate this Agreement for convenience by giving DSHS at least thirty (30) calendar days' written notice addressed to: Central Contract Services, PO Box 45811, Olympia, Washington 98504-5811.

### 29. Termination for Default.

- a. The Contracts Administrator may terminate this Agreement for default, in whole or in part, by written notice to the AAA, if DSHS has a reasonable basis to believe that the AAA has:
  - (1) Failed to meet or maintain any requirement for contracting with DSHS;
  - (2) Failed to perform under any provision of this Agreement;
  - (3) Violated any law, regulation, rule, or ordinance applicable to this Agreement, and/or
  - (4) Otherwise breached any provision or condition of this Agreement.
- b. Before the Contracts Administrator may terminate this Agreement for default, DSHS shall provide the AAA with written notice of the AAA's noncompliance with the agreement and provide the AAA a reasonable opportunity to correct the AAA's noncompliance. If the AAA does not correct the AAA's noncompliance within the period of time specified in the written notice of noncompliance, the Contracts Administrator may then terminate the agreement. The Contracts Administrator may terminate the agreement for default without such written notice and without opportunity for correction if DSHS has a reasonable basis to believe that a client's health or safety is in jeopardy.
- c. The AAA may terminate this Agreement for default, in whole or in part, by written notice to DSHS, if the AAA has a reasonable basis to believe that DSHS has:
  - (1) Failed to meet or maintain any requirement for contracting with the AAA;
  - (2) Failed to perform under any provision of this Agreement;
  - (3) Violated any law, regulation, rule, or ordinance applicable to this Agreement, and/or
  - (4) Otherwise breached any provision or condition of this Agreement.
- d. Before the AAA may terminate this Agreement for default, the AAA shall provide DSHS with written notice of DSHS' noncompliance with the Agreement and provide DSHS a reasonable opportunity to correct DSHS' noncompliance. If DSHS does not correct DSHS' noncompliance within the period of time specified in the written notice of noncompliance, the AAA may then terminate the Agreement.

### 30. Termination Procedure. The following provisions apply in the event this Agreement is terminated:

- a. The AAA shall cease to perform any services required by this Agreement as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination which are related to the transfer of clients, distribution of property, and termination of services.
- b. The AAA shall promptly deliver to the DSHS contact person (or to his or her successor) listed on the first page of this Agreement, all DSHS assets (property) in the AAA's possession, including any material created under this Agreement. Upon failure to return DSHS property within ten (10)

### AAA General Terms and Conditions

working days of the Agreement termination, the AAA shall be charged with all reasonable costs of recovery, including transportation. The AAA shall take reasonable steps to protect and preserve any property of DSHS that is in the possession of the AAA pending return to DSHS.

- c. DSHS shall be liable for and shall pay for only those services authorized and provided through the effective date of termination. DSHS may pay an amount mutually agreed by the parties for partially completed work and services, if work products are useful to or usable by DSHS.
  - d. If the Contracts Administrator terminates this Agreement for default, DSHS may withhold a sum from the final payment to the AAA that DSHS determines is necessary to protect DSHS against loss or additional liability. DSHS shall be entitled to all remedies available at law, in equity, or under this Agreement. If it is later determined that the AAA was not in default, or if the AAA terminated this Agreement for default, the AAA shall be entitled to all remedies available at law, in equity, or under this Agreement.
31. **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 Agreement unless amended as set forth in Section 1, Amendment. Only the Contracts Administrator or designee has the authority to waive any term or condition of this Agreement on behalf of DSHS.

### HIPAA Compliance

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

32. **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.

## AAA General Terms and Conditions

- 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.
33. **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
34. **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).

### AAA General Terms and Conditions

- 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;

### AAA General Terms and Conditions

- (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.

#### 35. 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.

## AAA General Terms and Conditions

### 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).

36. **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).
37. **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).
38. **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.
39. **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

### AAA General Terms and Conditions

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.

#### 40. 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. Definitions.

- a. "AAA" or "Contractor" shall mean the Area Agency on Aging that is a party to this Agreement, and includes the AAA's officers, directors, trustees, employees and/or agents unless otherwise stated in this Agreement. For purposes of this Agreement, the AAA or agent shall not be considered an employee of DSHS.
- b. "ACD" means Agency Contracts Database. ACD is used to access, produce and manage contracts and manage contractor information for DSHS and AAAs.
- c. "ACES" or "Automated Client Eligibility System" is a database managed by ESA ITS to support field operations.
- d. "Authorizer" A representative appointed by the AAA to assure users AAA level and ALTSA level access requests are processed using the Secure Access Request Form 17-226. Authorizers assure users meet attestation, training and other system access requirements. They assure paperwork is processed in accordance with MB's instructions, and data share agreement requirements. Authorizers manage AAA level access requirement locally establishing profiles and user level permissions. Authorizers are the first point of contact when issues occur for users and route issues to local IT or escalate to ALTSA as needed. AAA Authorizers are responsible for keeping track of their pool of employee IDs, for applicable systems.
- e. "Automated Client Eligibility System (ACES)" Online is a tool for public assistance eligibility determination, issuing benefits, management support, and sharing of data between agencies to include client demographics.
- f. "ADSA Reporting" is now referred to as DDA/HCS Reporting and interfaces with reporting services to provide a subset of information to case management or supervisor level data for individual AAA offices.
- g. "Agreement" means this Agreement, including all documents attached or incorporated by reference.
- h. "DataMart" means a self-service cube that allows users with active directory accounts to access consolidated ALTSA and DDA data to support operations, management or ad-hoc data needs. It feeds excel spreadsheets or other tools connected to a cube that allow users to easily create their own ad hoc reports. This applies to the 17-226 ALTSA Data Mart – CARE and ALTSA Data Mart – P1/AFRS.
- i. "Area Plan" means the document submitted by the AAA to DSHS for approval every four years, with updates every two years, which sets forth goals, measurable objectives, outcomes, units of service, and identifies the planning, coordination, administration, social services and evaluation of activities to be undertaken by the AAA to carry out the purposes of the Older Americans Act, the Social Security Act, the Senior Citizens Services Act, or any other statute for which the AAA receives funds.
- j. "Barcode" is a client server system that manages workflow and document images. Twenty major component subsystems include childcare eligibility and social service case management. Provides programmed and ad hoc access to ACES, eJAS, and native Barcode data.
- k. "BCS" Background Check System – Provides background check information on clients, vendors and staff to meet DSHS requirements where appropriate.

## Special Terms and Conditions

- i. "Comprehensive Assessment and Reporting Evaluation (CARE)" is the tool used by case managers to document a client's functional ability, determine eligibility for long-term care services, evaluate what and how much assistance a Client will receive, and develop a plan of care. CARE interfaces to the Consumer Direct Caregiver Network of WA (CDWA), and the legacy Tailored Caregiver Assessment and Referral (TCARE) system and their reporting systems for demographic, assessment, and service plan information.
- m. "CFR" means Code of Federal Regulations. All references in this Agreement to the CFR shall include any successor, amended, or replacement regulation.
- n. "CITRIX" is a method to access DSHS resources for staff on the DSHS network working from a remote location. CITRIX is allowed on personal devices to remote into a DSHS computer in network and other virtual desktop environment applications.
- o. "Client" means an individual who is eligible for or receiving services provided by the AAA in connection with this Agreement.
- p. "Client Registry" (CReg) is a secure web-based application centralizing client information and providing a single location to support client service research. Client Registry is used to provide high-level demographic information and service history for AAA case management staff from multiple DSHS administrations. Client Registry (CReg) is managed by DSHS Technology Security Division (TSD)
- q. "CLC" means Community Living Connections. Washington State's name for the No-Wrong Door access network of Area Agencies on Aging and their state, regional and local partners.
- r. "CLC-GetCare" means a version of RTZ's GetCare product modified to support Washington State's Community Living Connections. It is used for managing programs funded by the Older Americans Act, CMS, state general fund, local resources, and federal grants, including Medicaid Alternative Care (MAC) and Tailored Supports for Older Adults (TSOA). It is a cloud-based platform for client and program management that supports reporting for the National Aging Program Information System and Older Americans Act Performance System (OAAAPS). It also supports the CLC public website with a consumer portal and a resource directory. CLC/GetCare System is used in order to manage, record, and report service provision and utilization, demographics, resource directory, consumer website information and to access TCARE screening, assessment, and care planning tools.
- s. "Contracts Administrator" means the manager, or successor, of Central Contract Services or successor section or office
- t. DDAMCS Reporting interfaces with reporting services to provide a subset of information to case management or supervisor level data for individual AAA offices.
- u. "Disclosure" means the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information.
- v. "DMS" or "Document Management Service" is an automated subsystem of Barcode that uses imaging technology and document assignments to manage client documents and workflow.
- w. "DSHS" or "the Department" means the state of Washington Department of Social and Health Services and its employees and authorized agents.

### Special Terms and Conditions

- x. "Equipment" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5000 or more per unit.
- y. "ESA" or "Economic Services Administration" is an administration under the Department of Social and Health Services.
- z. "HIPAA" means the Health Information Portability and Accountability Act of 1996, as codified at 42 USCA 1320d-d8.
- aa. "Individual" means the person who is the subject of PHI and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- bb. "IPOne" means Individual Provider One. IPOne is an online electronic payment system that allows individual Providers to submit timesheets, receive pay for in home clients, and allows providers to manage Medicaid claims.
- cc. "LC" is Washington State Learning Center (WSLC) an e-learning platform for accessing DSHS and ALTA level trainings. LC is a Learning Management System (LMS) for limited designated AAA staff members to access DSHS training. AAAs may purchase additional licenses if desired.
- dd. "MMIS" means Medicaid Management Information System and it is associated with ProviderOne
- ee. "OAA" means Older Americans Act and refers to P.L. 106-501, 106th Congress, and any subsequent amendments or replacement statutes thereto.
- ff. "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.
- gg. "PHI" means protected health information and is information created or received by Business Associate from or on behalf of 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 past, present or future payment for provision of health care to an individual. 45 CFR 160 and 14. 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, maintained, or stored in any form or medium. 45 CFR 164.501. PHI does not include education records covered by the Family Educational Right and Privacy Act, as amended, 20 USCA 1232g(a)(4)(b)(iv).
- hh. "ProviderOne" is a Medicaid Management Information System (MMIS) for service providers and staff to view authorization, payment, scheduling and client service data. It interfaces between ACES and the HCA. Uses the info to authorize payment from medical providers, generate reports, and obtain federal funding.
- ii. "PRISM" stands for Predictive Risk Intelligence System. It is a secure web-based application accessed through Secure Access Washington for care coordination. A separate Data Share Agreement with the AAA governs use and requirements.
- jj. "RCW" means the Revised Code of Washington. All references in this Agreement to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at <http://slic.leg.wa.gov/>

## Special Terms and Conditions

- kk. "Real Property" means land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.
  - ll. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
  - mm. "QA Monitor" means Quality Assurance Monitor and it is used to assess the assessor or do supervisory reviews. Quality Assurance monitoring ensures that all services promote health, safety, and self-determination for all participants. Identifies efficient and effective practices in services delivery and ensures federal and state assurances are met.
  - nn. "SAW" means SecureAccess Washington. SAW is a single sign-on application gateway created by Washington State's Department of Information Services to access government services accessible via the Internet.
  - oo. "Subcontract" means any separate agreement or contract between the AAA 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 Agreement.
  - pp. "Subcontractor" means an individual or entity (including its officers, directors, trustees, employees, and/or agents) with whom the AAA contracts to provide services that are specifically defined in the Area Plan or are otherwise approved by DSHS in accordance with this Agreement.
  - qq. "Subrecipient" means a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.
  - rr. "Supplies" means all tangible personal property other than equipment as defined herein.
  - sa. "TCARE" Tailored Caregiver Assessment and Referral is a caregiver assessment and referral protocol designed to assist care managers who work with family caregivers who care for their adult relatives.
  - tb. "Use" means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.
  - uu. "User" means the AAA employee who has registered or approved access to a system listed in this Agreement.
  - vv. "VPN" Virtual Private Networking is a method of AAAs non on the DSHS network to access DSHS applications and internal resources
  - ww. "WaCareRpt Database" is an ALTSA/DDA relational database containing a copy of all CARE-related data and is used by developers to create reports.
  - xx. "WAC" means the Washington Administrative Code. All references in this Agreement to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at <http://wac.wa.gov/>.
2. **Statement of Work.** The AAA shall perform the services as set forth below and in accordance with Exhibit A, Data Security Requirements:

## Special Terms and Conditions

a. **Authority to Access Data.** RCW 74.39A.090 mandates that DSHS contract with Area Agencies on Aging (AAA's) to provide case management services to individuals receiving Title XIX personal care services and to reassess and reauthorize these individuals for Title XIX personal care services or other home and community services as defined by this statute. In order to effectively administer these DSHS services, the AAA's must have access to client data, and to certain DSHS information systems.

b. **Systems Access and Method of Access.** The AAA may access or may request permission to access the following

### (1) System Access

(a) By submitting AAA DSHS / HCA System Access Request (SAR) Form 17-226

#### i. ALTSA Level

- (A) ACES Online
- (B) ProviderOne – View Only
- (C) IPOne (AAA retain access until the IP contracts are fully transitioned to CDWA)
- (D) CReg
- (E) PRISM
- (F) VPN

#### ii. ALTSA Level – Requiring DSHS Active Directory

- (A) ALTSA Data Mart – CARE
- (B) ALTSA Data Mart – P1/AFRS
- (C) WaCareRpt Database

#### iii. AAA Level

- (A) ACD – Agency Contracts Database
- (B) DDA/HCS Reporting
- (C) BarCode (DMS)
- (D) BCS – Background Check
- (E) CARE Production + Practice
- (F) CARE Web Production + Practice
- (G) CLC/GetCare
- (H) QA Monitor

(b) Aging and Long-Term Support Administration (ALTSA) and Developmental Disabilities Administration (DDA) SharePoint sites.

(c) DSHS' Internal Forms Picker Site.

(d) "LC" Washington State Learning Center (WSLC) Trainings with monetary cost are prohibited unless AAA has created their own account. The number of AAA staff with access will be negotiated with DSHS and may require a separate account for billing individual licenses.

### (2) Method of Access

(a) The AAA shall access these systems through the State Government Network (SGN), the Inter-Governmental Network (IGN), SecureAccess Washington (SAW), or through a DSHS approved method of secure access.

(b) The AAA agrees to follow the DSHS IT Security Policy Manual (Section 4.2.3.1. S1) that

### Special Terms and Conditions

covers unique user IDs and security elements of constructing safe passwords and protecting them from unauthorized disclosure.

3. **Access and Disclosure information.** The AAA shall not disclose the contents of any Client records, files, papers and communications except as necessary for the administration of programs to provide services to clients as required by law.
  - a. The AAA shall limit access to client data to the AAA and any subcontractor staff whose duties specifically require access to such data in the performance of their assigned duties. AAA or subcontractor staff shall not access any individual client data for personal purposes. Clients shall only be permitted to access their own data.
  - b. The AAA shall ensure each employee signs the Contractor Agreement on Nondisclosure of Confidential Information form, attached as Exhibit C, provided by the Department to acknowledge the data access requirements prior to DSHS granting access. Access will be given only to data necessary to the performance of this Agreement. The AAA shall retain the original Nondisclosure form on file. The AAA shall have the form available for DSHS review upon request.

The AAA must provide an annual written reminder of the Nondisclosure requirements to all employees with access to the data to remind them of the limitations, use or publishing of data. The AAA shall retain documentation of such reminder on file for monitoring purposes.
  - c. The AAA shall not use or disclose any information concerning any DSHS client for any purpose not directly connected with the administration of the AAA's responsibilities under this Agreement except by prior written consent of the DSHS client, his/her attorney, parent or guardian.
  - d. The AAA or its service provider may disclose information to each other or to DSHS for purposes directly connected with the administration of their programs. This includes, but is not limited to, determining eligibility, providing services, and participation in an audit. The AAA and its service providers shall disclose information for authorized research, statistical, monitoring and evaluation purposes conducted by appropriate federal agencies and DSHS. DSHS must authorize in writing the disclosure of this information to any other party not identified in this section.
  - e. The AAA staff shall not link the data with personal data or individually identifiable data from any other source nor re-disclose the data unless specifically authorized in this Agreement or by the prior written consent of DSHS.
  - f. The AAA shall notify each system Administrator within five business days when a User leaves employment or otherwise no longer requires system access. Upon notification, the system Administrator will deactivate the User ID and terminate access to the applicable application(s). The AAA shall confirm the need for continued access for each User of the ACD on a quarterly basis.
  - g. The AAA shall ensure that only registered system Users access and use the systems in this Agreement, use only their own User ID and password to access the systems and do not allow employees who are not registered to borrow a User ID or password to access any systems.
  - h. Access to systems may be continuously tracked and monitored. DSHS reserves the right at any time to conduct audits of systems access and use, and to investigate possible violations of this Agreement and/or violations of federal and state laws and regulations governing access to protected health information.
4. **Dissemination to Staff.** Prior to making information available to new staff and annually thereafter, the

## Special Terms and Conditions

AAA shall ensure that staff accessing the Personal Information or PHI under this Agreement are trained in HIPAA use and disclosure of PHI requirements and understand:

### a. Confidentiality of Client Data

- (1) Client data is confidential and is protected by various state and federal laws. The basis for this protection is the individual's right to privacy as outlined in the HIPPA Privacy Rule- 45 CFR 160 to 45 CFR 164.
- (2) Personal Information means demographic and financial information about a particular individual that is obtained through one or more sources (such as name, address, SSN, and phone numbers). RCW 42.56.210 lists the information that is exempted from public inspection and copying.

### b. Use of Client Data

- (1) Client data may be used only for purposes of these contracted services, directly related to providing services to the client or for the operation of aging and long-term care programs.
- (2) Any personal use of client information is strictly prohibited.
- (3) Access to data must be limited to those staff whose duties specifically require access to such data in the performance of their assigned duties.

### c. Disclosure of Information

- (1) Client information may be provided to the client, client's authorized guardian, or a client-authorized 3rd party per WAC 388-01, and the Long-Term Care Manual.
- (2) Client information may be disclosed to other individuals or agencies only for purposes of administering DSHS programs, within regulatory constraints for each data type.
- (3) Questions related to disclosure are to be directed to the Home and Community Programs Public Disclosure Coordinator.
- (4) Any disclosure of information contrary to this section is unauthorized and is subject to penalties identified in law.

## 5. Security of Data

- a. The AAA shall take reasonable precautions to secure against unauthorized physical and electronic access to data, which shall be protected in a manner that prevents unauthorized persons, including the general public, from retrieving data by means of computer, remote terminal, or other means. The AAA shall take due care to ensure AAA and its subcontractors protect said data from unauthorized physical and electronic access. The data will be stored on computers with security systems that require individual user IDs and hardened passwords. Only persons who have signed the *Contractor Agreement on Nondisclosure of Confidential Information form* covering this data share agreement will be able to access the data that Washington State shares with the AAA under this Agreement.
- b. The AAA shall ensure disks and/or documents generated in printed form from the electronic file are properly returned, destroyed or shredded when no longer needed so unauthorized individuals

## Special Terms and Conditions

cannot access client information. Data destroyed shall include all copies of any data sets in possession after the data has been used for the purpose specified herein or within 30 days of the date of termination and certify such destruction to DSHS. DSHS shall be responsible for destroying the returned documents to ensure confidentiality is maintained. The Data provided by DSHS will remain the property of DSHS and will be promptly destroyed as allowed by law and when the AAA and its subcontractors have completed the work for which the information was required, as fully described by incorporated Exhibit A Data Security Requirements.

- c. The AAA shall protect information according to state and federal laws including the following incorporated by reference:
  - (1) Privacy Act 1974 5 USC subsection 552a;
  - (2) Chapter 40.14 RCW Preservation and Destruction of Public Records;
  - (3) Chapter 74.04 RCW General Provisions – Administration;
  - (4) Chapter 42.56.210 RCW Certain Personal & Other Records Exempt;
  - (5) 45 CFR 205.50 provides for Safeguarding information for the financial assistance Programs and identifies limitations to disclosure of said information; and,
  - (6) Public Law 99-506 (18 USC section 2510et. Seq. Electronic Communications Privacy Act of 1986) Part A of Title IV of the Social Security Act authorizes disclosure of client information and provides for safeguards, which restrict the use or disclosure of information concerning applicants or recipients to purposes directly connected with administration of the program.
- d. AAA employees, contractors, and agents that have access to the ACES system will ensure that they comply with the security and safeguarding requirements as per the ALTSA/ESA Data Sharing MOU
- e. ADS/Seattle King County AAA - DSHS expressly acknowledges and agrees that Contractor may share PHI with Collective Medical and place PHI on the Collective Medical system, thereby permitting other medical providers to access and use the PHI for purposes of medical treatment. Contractor shall submit its contract with Collective Medical to DSHS for approval.

## 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](http://www.fedramp.gov)), which is an assessment and authorization process that federal government agencies have been directed to use to ensure security is in place when accessing Cloud computing products and services.
  - h. "Hardened Password" means a string of at least eight characters containing at least three of the following four character classes: Uppercase alphabetic, lowercase alphabetic, numeral, and special characters such as an asterisk, ampersand, or exclamation point.

## Special Terms and Conditions

- 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/na/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:

### Special Terms and Conditions

- 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.

## Special Terms and Conditions

- 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

## Special Terms and Conditions

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:

## Special Terms and Conditions

- (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.

### Special Terms and Conditions

- (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,

**Special Terms and Conditions**

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

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

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

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

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

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

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



# AAA DSHS / HCA Systems Access Request



### AAA Adding Users

An Area Agency on Aging (AAA) may request access to various systems for its employees or contractors (AAA Users) under its Data Share Agreements (DSA) with DSHS and HCA. This Systems Access Request (SAR) form must be signed by the AAA Authorizer and AAA User then sent to the ALTSA SUA Coordinator via secure email at: [hcaaaaquest@dshs.wa.gov](mailto:hcaaaaquest@dshs.wa.gov).

### AAA Removing Users

The AAA Authorizer must also notify the DSHS ALTSA SUA Coordinator using the SAR form within five (5) business days whenever an employee (AAA User) with access rights leaves employment or has a change of duties such that the employee no longer requires access. If the removal of access is emergent, please include that information with the request.

### AAA Subcontractors Adding Users

If access is being requested by an AAA subcontractor, the subcontractor must send the SAR form to the AAA via secure email, who will then send it to the ALTSA SUA Coordinator via secure email at [hcaaaaquest@dshs.wa.gov](mailto:hcaaaaquest@dshs.wa.gov). The ALTSA SUA Coordinator will accept the completed SAR form only from the AAA, not the subcontractor.

### AAA Subcontractors Removing Users

The AAA subcontractor must also use the SAR form to provide notice to the AAA within five (5) business days whenever a subcontractor employee (AAA User) with access rights leaves employment or has a change of duties such that the employee no longer requires access. If the removal of access is emergent, please include that information with the request.

DSHS and HCA will grant / remove the appropriate access permissions to the AAA User.

<b>REQUEST TYPE</b> <input type="checkbox"/> New user access <input type="checkbox"/> Update user access <input type="checkbox"/> Remove user access <input type="checkbox"/> Change user name	<b>REQUESTING ORGANIZATION AND MAILING ADDRESS</b>  	<b>DATE RECEIVED</b>  
		<b>USER'S CARE ID (IF APPLICABLE)</b>  
<b>SYSTEMS ACCESS REQUESTED THROUGH ALTSA</b> <input type="checkbox"/> VPN*** <input type="checkbox"/> ACES Online <input type="checkbox"/> PRISM *** <input type="checkbox"/> ProviderOne View Only <input type="checkbox"/> Client Registry *** <input type="checkbox"/> IPOne <u>Select One</u>		<b>SYSTEMS ACCESS REQUIRING DSHS ACTIVE DIRECTORY</b> <input type="checkbox"/> ALTSA Data Mart - CARE <input type="checkbox"/> ALTSA Data Mart - P1 / AFRS <input type="checkbox"/> WaCareRpt Database
<b>SYSTEMS ACCESS REQUEST SET UP AT AAA LEVEL</b> <input type="checkbox"/> CARE Production + Practice <input type="checkbox"/> DDA/HCS Reporting <input type="checkbox"/> Barcode <u>Select One</u> <input type="checkbox"/> QA Monitor <input type="checkbox"/> CARE Web Production + Practice <input type="checkbox"/> CLC / GetCare <input type="checkbox"/> BCS - Background Check <input type="checkbox"/> ACD <u>Select One</u>		
<b>AAA / Subcontractor User Information</b>		
<b>LAST NAME</b>	<b>FIRST NAME</b>	<b>MIDDLE INITIAL</b>
<b>DATE OF BIRTH****</b>		
<b>ID NUMBER*</b>	<b>PHONE NUMBER (AREA CODE)</b>	<b>USER'S EMAIL ADDRESS**</b>
<b>TITLE</b>		<b>PRIOR NAME (CHANGE NAME REQUEST)</b>
<b>AAA / SUBCONTRACTOR OFFICE</b>		<b>ACCESS JUSTIFICATION</b>
<p>* Required: The ID Number is assigned by the AAA Authorizer.          ** No generic email addresses (e.g. Hotmail, Gmail, Yahoo, etc )          *** Please include required forms (see instructions) in addition to the 17-226          **** DATE OF BIRTH is only required when selecting ProviderOne or IPOne - for all other applications it should be blank</p>		
<b>Protected Data Access Authorization</b> <p>The HIPAA Security rule states that every employee that needs access to electronic Protected Health Information (ePHI) receives authorization from an appropriate authority and that the need for this access based on job function or responsibility is documented. I, the undersigned AAA Authorizer, verify that the individual for whom this access is being requested (AAA User) has a business need to access this data, has completed the required HIPAA training and the annual IT Security training and has signed the required AAA User Agreement on System Usage and Non-Disclosure of Confidential Information included with this Access Request. This AAA User's access to this information is appropriate under the HIPAA Information Access Management standard. In addition, this employee has been instructed on 42 Code of Federal Regulations (CFR) Part 2 that governs the use of alcohol and drug abuse information and is aware that this type of data must be used only in accordance with these regulations. I have also ensured that the necessary steps have been taken to validate the AAA User's identity before approving access to confidential and protected information.</p>		
<b>Authorizing Signature</b>		
	<b>DATE</b>	<b>PRINTED NAME</b>
		<b>EMAIL ADDRESS</b>

AAA DSHS / HCA SYSTEMS ACCESS REQUEST  
DSHS 17-226 (REV. 01/2022)

**AAA User Agreement on System Usage and Non-disclosure of Confidential Information**

Your AAA has entered into Data Share Agreement(s) with the state of Washington Department of Social and Health Services (DSHS) and Health Care Authority (HCA) that will allow you access to data and records that are deemed Confidential Information as defined below. Prior to accessing this Confidential Information you must sign this AAA User Agreement System Usage and Non-Disclosure of Confidential Information (Agreement).

**Confidential Information**

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

"Protected Health Information" means information 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 and includes demographic information that identifies the individual or can be used to identify the individual.

"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, credit card numbers, any other identifying numbers, and any financial identifiers.

**Regulatory Requirements and Penalties**

State laws (including, but not limited to, RCW 74.04.060, RCW 74.34.095, and RCW 70.02.020) and federal regulations (including, but not limited to, HIPAA Privacy and Security Rules, 45 CFR Part 160 and Part 164, Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR, Part 2, and Safeguarding Information on Applicants and Beneficiaries, 42 CFR Part 431, Subpart F) prohibit unauthorized access, use, or disclosure of Confidential Information. Violation of these laws may result in criminal or civil penalties or fines.

**AAA User Assurance of Confidentiality**

In consideration for DSHS and HCA granting me access to the PRISM, ProviderOne, or other systems and the Confidential Information in those systems, I agree that I:

- 1) Will access, use, and disclose Confidential Information only in accordance with the terms of this Agreement and consistent with applicable statutes, regulations, and policies
- 2) Have an authorized business requirement to access and use DSHS or HCA systems and view DSHS or HCA Confidential Information.
- 3) Will not use or disclose any Confidential Information gained by reason of this Agreement for any commercial or personal purpose, research or any other purpose that is not directly connected with client care coordination and quality improvement.
- 4) Will not use my access to look up or view information about family members, friends, the relatives or friends of other employees, or any persons who are not directly related to my assigned job duties.
- 5) Will not discuss Confidential Information in public spaces in a manner in which unauthorized individuals could overhear and will not discuss Confidential Information with unauthorized individuals, including spouses, domestic partners, family members, or friends.
- 6) Will protect all Confidential Information against unauthorized use, access, disclosure, or loss by employing reasonable security measures, including physically securing any computers, documents, or other media containing Confidential Information and viewing Confidential Information only on secure workstations in non-public areas.
- 7) Will not make copies of Confidential Information or print system screens unless necessary to perform my assigned job duties and will not transfer any Confidential Information to a portable electronic device or medium, or remove Confidential Information on a portable device or medium from facility premises, unless the information is encrypted and I have obtained prior permission from my supervisor.
- 8) Will access, use or disclose only the 'minimum necessary' Confidential information required to perform my assigned job duties.
- 9) Will protect my DSHS and HCA systems User ID and password and not share them with anyone or allow others to use any DSHS or HCA system logged in as me.
- 10) Will not distribute, transfer, or otherwise share any DSHS software with anyone.
- 11) Will forward any requests that I may receive to disclose Confidential Information to my supervisor for resolution and will immediately inform my supervisor of any actual or potential security breaches involving Confidential Information, or of any access to or use of Confidential Information by unauthorized users.
- 12) Understand at any time, DSHS or HCA may audit, investigate, monitor, access, and disclose information about my use of the systems and that my intentional or unintentional violation of the terms of this Agreement may result in revocation of privileges to access the systems, disciplinary actions against me, or possible civil or criminal penalties or fines.
- 13) Understand that my assurance of confidentiality and these requirements will continue and do not cease at the time I terminate my relationship with my employer.

<b>Signature</b> _____	<b>DATE</b> _____	<b>AAA USER'S PRINTED NAME</b> _____
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AAA DSHS / HCA SYSTEMS ACCESS REQUEST  
DSHS 17-226 (REV. 01/26/22)

### AAA Systems Access Request Instructions

Please submit requests individually

The AAA DSHS / HCA Systems Access Request form is for use by AAA entities from outside and within the DSHS domain (DSHS firewall). AAA entities have different procedures to request the majority of their needed system access but will use the form for those systems requiring a set up or approval by HCS, DDA, or MSD. AAA entities will also use this form when staff transfer between agencies or to terminate access when employees leave employment.

#### Request Type

- Check one of the options (New, Update, Remove, or Name change). Removal must be submitted within five (5) days of exit.
  - New user – The user has been approved for access to one of the programs listed and has no previous requests submitted.
  - Update user – User has access to one or more of the systems listed but an additional access is needed. Only mark the box next to the additional item.
  - Remove user – Mark each of the boxes for which access is to be removed.
  - Change user name – Use to update the user name due to a change. For ProviderOne this will result in the termination of the prior account and a new account created.

#### Requesting Organization and Mailing Address

- Enter the user's office name and address (subcontractors enter their organization name and address).

#### System Access Requested Sections

- Check the box next to each system requested and attach any additional documentation required for the program. If you need a copy of the VPN form, please contact AL TSA. Check one of several options: HCRR, Case Manager, HQ, Finance L2, or Finance L1 next to IPOne.
- Applications in the DSHS Active Directory (AD) section require a DSHS domain account (e.g. an email address that ends in @dshs.wa.gov). In order to use these applications, staff must log in to their computer with their DSHS AD account.
- AL TSA Data Mart. Access is specific to each data source. If both data sources are needed, both boxes must be selected.
- Applications in the AAA section (Barcode, DDA / HCS Reporting, CARE, QA Monitor) are created at the AAA office. A signed copy of the 17-226 form must be submitted to [hcs.aaarequest@dshs.wa.gov](mailto:hcs.aaarequest@dshs.wa.gov) via secured email before the account(s) can be created.
  - Note: The PRRSM and Client Registry boxes should be checked if the new staff member will be eligible for access. An extra step of user and ethics training will be required for all PRRSM and Client Registry users and must be completed prior to system access.
  - Barcode field can be one of the following options: AAA-IT; RC-SPEC; CLER-SUP; CLERICAL; CM-JRP; CM-MTD; CM-SUP; or INTERN. These relate to the new access profiles in Barcode.
  - ACD – Contracts Database can be one of the following options: 4 – Sign Contracts; 5 – Create Contracts; or 9 – Approve Contracts.
- IPOne field can be one or more of the following options: CM role, HQ role, HCRR role, Finance L1, Finance L2.
  - Finance L1 and Finance L2 roles require additional approval from the W2 Financial Reports team.
  - Form will be rejected if the box is checked but the field is blank.

#### AAA User Information

- Enter the user information as indicated. DATE OF BIRTH (DOB) is only required when selecting ProviderOne or IPOne – for all other applications it should be blank. Forms with DoB submitted by Colville, King, Kitsap, Pierce, Snohomish, and Yakima should be submitted using secure email or secure file transfer.
- The AAA Authorizer will assign an ID number from the list provided by the AL TSA SUA Coordinator.
  - Form will be rejected if this field is left blank.
- Under AAA Office enter the AAA Authorizer's regional office.

#### Access Justification

- Enter reason access is needed such as Case Management and Coordination, Nursing Coordination, Oversight and Supervision, Determination of Eligibility.

#### Authorizing Signature

- AAA Authorizer – the authorizer will be verified by the AL TSA SUA Coordinator.  
Note: AAA Authorizer signature guarantees that the staff member who is asking for access is eligible for the systems access requested.

#### Non-Disclosure of Confidential Information

- Ensure that the AAA staff member has read the AAA User Agreement on System Usage and Non-disclosure of Confidential Information on the second page of the AAA Systems Access Request form.
- Enter the requesting user's name and have them sign and date the agreement.

Once completed, scan both sides of the form and email to [hcs.aaarequest@dshs.wa.gov](mailto:hcs.aaarequest@dshs.wa.gov) using secure email. Do not email forms directly to AL TSA Helpdesk or AL TSA Helpdesk staff.

**AAA Systems Access Request  
Frequently Asked Questions (FAQ)**

**Why was my form rejected?**

- **Missing information:**
  - The Employee ID field is left blank
  - HCA and PPL will reject forms missing a birthdate
  - IPhone is checked but role is missing
- **Incorrect information**
  - Email address is invalid (e.g. emailing credentials results in a bounce-back)
  - Employee ID is already in use – check your spreadsheet and ensure the EID hasn't been used before
- **Form is not signed**
  - Ensure both the AAA Authorizer and AAA User have signed in the appropriate fields
- **VPN request form is missing from the request**

# ATTACHMENT E: CONTRACTOR AGREEMENT ON NONDISCLOSURE OF CONFIDENTIAL INFORMATION

This form shall be signed by each agency paid and un-paid staff that interact with this service contract.



## Agreement on Nondisclosure of Confidential Information – Non Employee

This form is for contractors and other non-DSHS employees.

CONFIDENTIAL INFORMATION		
<p>"Confidential Information" means information that is exempt from disclosure to the public or other unauthorized persons under Chapter 42.56 RCW or other federal or state laws. Confidential Information includes, but is not limited to, protected health information as defined by the federal rules adopted to implement the Health Insurance Portability and Accountability Act of 1996, 42 USC §1320d (HIPAA), and Personal Information.</p> <p>"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 or as otherwise identified in RCW 42.56.230.</p>		
REGULATORY REQUIREMENTS AND PENALTIES		
<p>State laws (including RCW 74.04.060 and RCW 70.02.020) and federal regulations (including HIPAA Privacy and Security Rules; 42 CFR, Part 2; 42 CFR Part 431) prohibit unauthorized access, use, or disclosure of Confidential Information. Violation of these laws may result in criminal or civil penalties or fines. You may face civil penalties for violating HIPAA Privacy and Security Rules up to \$50,000 per violation and up to \$1,500,000 per calendar year as well as criminal penalties up to \$250,000 and ten years imprisonment.</p>		
ASSURANCE OF CONFIDENTIALITY		
<p>In consideration for the Department of Social and Health Services (DSHS) granting me access to DSHS property, systems, and Confidential Information, I agree that I:</p> <ol style="list-style-type: none"> <li>Will not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of this agreement for any purpose that is not directly connected with the performance of the contracted services except as allowed by law.</li> <li>Will protect and maintain all Confidential Information gained by reason this agreement against unauthorized use, access, disclosure, modification or loss.</li> <li>Will employ reasonable security measures, including restricting access to Confidential Information by physically securing any computers, documents, or other media containing Confidential Information.</li> <li>Have an authorized business requirement to access and use DSHS systems or property, and view its data and Confidential Information if necessary.</li> <li>Will access, use and/or disclose only the "minimum necessary" Confidential Information required to perform my assigned job duties.</li> <li>Will not share DSHS system passwords with anyone or allow others to use the DSHS systems logged in as me.</li> <li>Will not distribute, transfer, or otherwise share any DSHS software with anyone.</li> <li>Understand the penalties and sanctions associated with unauthorized access or disclosure of Confidential Information.</li> <li>Will forward all requests that I may receive to disclose Confidential Information to my supervisor for resolution.</li> <li>Understand that my assurance of confidentiality and these requirements do not cease at the time I terminate my relationship with my employer or DSHS.</li> </ol>		
FREQUENCY OF EXECUTION AND DISPOSITION INSTRUCTIONS		
<p>This form will be read and signed by each non-DSHS employee who has access to Confidential information, and updated at least annually. Provide the non-DSHS employee signor with a copy of this Agreement and retain the original of each signed form on file for a minimum of six years.</p>		
SIGNATURE		
PRINT/TYPER NAME Toko Thompson	NON-DSHS EMPLOYEE'S SIGNATURE <i>Toko Thompson</i>	DATE 05-24-2022

NONDISCLOSURE OF CONFIDENTIAL INFORMATION – NON EMPLOYEE  
DSHS 03-374B (REV. 09/2014)

**ATTACHMENT F: CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
AND OTHER RESPONSIBILITY MATTERS**

Primary Covered Transactions 45 CFR 76

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principles:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
  - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connections with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charges by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1.b. of this certification; and
  - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participants are unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

This Certification is executed by the person(s) signing below who warrant they have authority to execute this Certification.

**CONTRACTOR:**

Name: *Toko Thompson*

Title: Vice President and CFO

DATE: 05-24-2022

**ATTACHMENT G: CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of his or her knowledge and believe, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

YMCA of Pierce and Kitsap Counties

Contractor Organization

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*Toko Thompson*

05-24-2022

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Signature of Certifying Official

Date

**ATTACHMENT H: ASSURANCE OF COMPLIANCE REHABILITATION ACT  
AGING AND LONG TERM SUPPORT ADMINISTRATION  
ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE  
REHABILITATION ACT OF 1973, AS AMENDED**

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with section 504 of the Rehabilitation Act of 1973, PL 93-112, as amended (29 U.S.C. 794), all requirements imposed by the applicable Department of Health and Human Services (HHS) regulation (45 CFR Part 84), including (PL 101-336) Americans With Disabilities Act, (28 CFR Part 35) Nondiscrimination on the Basis of Disability in State and Local Government Services, and all guidelines and interpretations issued pursuant thereto.

Pursuant to § 84.5(a) of the regulation 45 CFR 84.5(a), the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (except procurement contracts and contracts of insurance or guaranty), property, discounts, or other Federal financial assistance extended by the Department of Health, Education, and Welfare after the date of this Assurance, including payments or other assistance made after such date on applications for Federal financial assistance that were approved before such date. The recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which Federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in § 84.5(b) of the regulation 45 CFR 84.5(b).

The recipient: (Check "a" or "b")

- a.  employs fewer than fifteen persons;
- b.  employs fifteen or more persons and, pursuant to § 84.7(a) of the regulation 45 CFR 84.7(a), has designated the following person(s) to coordinate its efforts to comply with the HHS regulation:

Toko Thompson

Name of Designee(s) -- Type or Print  
YMCA of Pierce and Kitsap Counties

Name of Recipient - Type or Print  
4717 S. 19<sup>th</sup> Street, Ste 201, Tacoma, WA 98405

Street Address or P.O. Box, City, State, Zip

I certify that the above information is complete and correct to the best of my knowledge.

*Toko Thompson*

Vice President and CFO

Signature and Title of Authorized Official

**ATTACHMENT I: ASSURANCE OF COMPLIANCE CIVIL RIGHTS ACTS**

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE REGULATION UNDER  
TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

\_\_\_\_\_ hereinafter called the "Applicant"  
(Name of Applicant)

HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (PL 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 CFR Part 80) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this CONTRACT.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Date 05-24-2022

Name *Toko Thompson*

Title Vice President and CFO

Address 4717 S. 19<sup>th</sup> Street, Ste 201, Tacoma, WA 98405

**ATTACHMENT J: ASSURANCE OF COMPLIANCE OMNIBUS BUDGET RECONCILIATION**

AGING AND LONG TERM SUPPORT ADMINISTRATION  
ASSURANCE OF COMPLIANCE WITH OMNIBUS BUDGET RECONCILIATION  
(OBRA) ACT OF 1990 - ADVANCE DIRECTIVES, AS AMENDED

The undersigned (hereafter called the "Applicant") hereby agrees that it will comply with the OBRA of 1990 (Public Law 101-508) as amended and all requirements imposed by the applicable Department of Health and Human Services (HHS) regulation (42 USC Section 1396a), and all guidelines and interpretations issued pursuant thereto. This act requires all service providers, participating in Medicaid, maintain written policies and procedures concerning "Advance Directives." (WAC 388-501-0125 gives further details.)

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Date 05-24-2022

Name *Toko Thompson*

Title Vice President and CFO

Address 4717 S. 19<sup>th</sup> Street, Ste 201, Tacoma, WA 98405

# ATTACHMENT K: AUTHORIZED SIGNATURE PAGE



Division of Aging & Long Term Care

## SIGNATURE AUTHORIZATION FORM

This signature Authorization Form shall be retained on file by Kitsap County Division of Aging & Long Term Care and shall remain in effect until a new one is submitted by the Subcontractor.

**SUBCONTRACTOR NAME AND ADDRESS**

**CONTRACT NUMBER  
PROJECT NAME**

**I. CONTRACTS & AMENDMENTS**

This is to certify that the following named persons are authorized to enter into contract and/or contract amendments on behalf of the Subcontractor and their specimen signatures are genuine.

TYPED NAME & TITLE

SIGNATURE

1. \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

3. \_\_\_\_\_

**II. VOUCHERS**

This is to certify that the following named persons are authorized to sign and submit reimbursement vouchers on behalf of the Subcontractor and their specimen signatures are genuine.

TYPED NAME & TITLE

SIGNATURE

1. Susan Buell \_\_\_\_\_

*Susan Buell*

1 Susan Buell (May 24, 2022 08:37 PDT)

2. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

3. \_\_\_\_\_

**EFFECTIVE DATE OF AUTHORIZATION**

05 / 24 / 2022  
month day year

**AUTHORIZED BY:**

*Toko Thompson*

Signature

Toko Thompson, Vice President and CFO  
Typed name and title

^^^

**Parker, Smith & Feek, Inc.**  
**2233 112th Avenue NE**  
**Bellevue, WA 98004**

**Kitsap County**  
**c/o Kitsap County Division of Aging and Long**  
**Term Care**  
**Attn: Stacey Smith, Administrator**  
**614 Division Street, MS-5**  
**Port Orchard, WA 98366**

**THIS PAGE INTENTIONALLY LEFT BLANK**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
01/12/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Parker, Smith & Feek, Inc. 2233 112th Avenue NE Bellevue, WA 98004	CONTACT NAME:		
	PHONE (A/C, No, Ext):	425-709-3600	FAX (A/C, No): 425-709-7460
	E-MAIL ADDRESS:		
	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A :	Great American Assurance Company	
INSURED YMCA of Pierce and Kitsap Counties 4717 S. 19th St, Ste 201 Tacoma, WA 98405	INSURER B :	Great American Insurance Company	
	INSURER C :		
	INSURER D :		
	INSURER E :		
	INSURER F :		

### COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC	X	PAC327464102 General Liability	07/01/2021	07/01/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 20,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000
B	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	CAP327464202 Auto	07/01/2021	07/01/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below					WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability		PAC327464102	07/01/2021	07/01/2022	\$1,000,000 Each Act / \$3,000,000 Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
Kitsap County, its officers, agents, and employees are additional insured and coverage is primary and non-contributory on the general liability and automobile liability policies per the attached endorsements/forms. Notice of Cancellation for the general liability policy applies per the attached form.

### CERTIFICATE HOLDER

Kitsap County  
c/o Kitsap County Division of Aging and Long Term Care  
Attn: Stacey Smith, Administrator  
614 Division Street, MS-5  
Port Orchard, WA 98366

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE  
*Dominique Ortiz-Pineda*

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**V. ADDITIONAL INSURED - FUNDING SOURCES**

1. **Section II - Who Is An Insured** is amended to include as an additional insured any Funding Source which requires you in a written contract to name the Funding Source as an additional insured but only with respect to liability arising out of:

- a. your premises; or
- b. "your work" for such additional insured; or
- c. acts or omissions of such additional insured in connection with the general supervision of "your work"

and only to the extent set forth as follows:

- a. The Limits of Insurance applicable to the additional insured are the lesser of those specified in the written contract or agreement or in the Declarations for this Policy and subject to all the terms, conditions and exclusions for this Policy. The Limits of Insurance applicable to the additional insured are inclusive of and not in addition to the Limits of Insurance shown in the Declarations.
- b. The insurance afforded to the additional insured only applies to the extent permitted by law.
- c. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
- d. In no event shall the coverages or Limits of Insurance in this Coverage Form be increased by such contract.

**W. ADDITIONAL INSUREDS - BY CONTRACT**

1. **Section II - Who Is An Insured** is amended to include as an insured any person or organization whom you have agreed to add as an additional insured in a written contract, written agreement or permit. Such person or organization is an additional insured but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of:

- a. Your acts or omissions, or the acts or omissions of those acting on your behalf, in the performance of your ongoing operations for the additional insured that are subject of the written contract or written agreement provided that the "bodily injury" or "property damage" occurs, or the offense resulting in "personal and advertising injury" is committed, subsequent to the signing of such written contract or written agreement; or
- b. The maintenance, operation or use by you of equipment rented or leased to you by such person or organization; or
- c. The additional insureds financial control of you; or
- d. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide such additional insured.

With respect to paragraph 1.a. above, a person's or organization's status as an additional insured under this endorsement ends when:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed for or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

With respect to paragraph 1.b. above, this insurance does not apply to any "occurrence" which takes place after the equipment rental or lease agreement has expired or you have returned such equipment to the lessor.

The insurance provided by this endorsement applies only if the written contract or written agreement is signed prior to the "bodily injury" or "property damage" occurs, or prior to when any offense resulting in "personal and advertising injury" is committed.

2. With respect to the insurance provided by this endorsement, the following are added to paragraph 2. **Exclusions under Section I - Coverage A - Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

- a. "Bodily injury" or "property damage" that occurs prior to your commencing operations at the location where such "bodily injury" or "property damage" occurs.
- b. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:
  - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal or advertising injury", involved the rendering of, or failure to render, any professional architectural, engineering or surveying services.

- c. "Bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed for or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

d. Any person or organization specifically designated as an additional insured for ongoing operations by a separate additional insured endorsement issued by us and made part of this Policy.

3. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement; or
- b. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

#### **X. PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED EXTENSION**

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this Policy.

Condition 4. **Other Insurance of Section IV - Commercial General Liability Conditions** is amended as follows:

As respects any additional insured, this insurance is excess unless:

- a. the additional insured is a named insured under such other insurance; or
- b. you have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

#### **Y. ADDITIONAL INSUREDS - PROTECTION OF YOUR LIMITS**

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this Policy.

1. The following is added to **Condition 2. Duties In The Event Of Occurrence, Offense, Claim or Suit:**

An additional insured under this endorsement will as soon as practicable:

- a. Give written notice of an "occurrence" or an offense that may result in a claim or "suit" under this insurance to us; as soon as practicable;
- b. Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and

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(5) water under the ground surface pressing on, or flowing or seeping through:

(a) foundations, walls, floors or paved surfaces;

(b) basements, whether paved or not;

(c) doors, windows or other openings; or

(6) waterborne material carried or otherwise moved by any of the water referred to in paragraphs (1), (3) or (5), or material carried or otherwise moved by mudslide or mudflow.

This exclusion applies if any of the above, in paragraphs (1) through (6):

(a) occurs independently;

(b) is caused by an act of nature;

(c) is caused by an act or omission of humans or animals; or

(d) is attributable to the failure, in whole or in part, of a dam, levee, seawall or other boundary or containment system.

E. Under F. **Additional Conditions**, the following 3. **Cancellation** is deleted and replaced with the following:

### 3. Cancellation

a. The first Named Insured shown in the Declarations may cancel this Policy by notifying us or the insurance producer in one of the following ways:

(1) written notice by mail, fax or e-mail;

(2) surrender of the Policy or binder; or

(3) verbal notice.

Upon receipt of such notice, we will cancel this Policy or any binder issued as evidence of coverage, effective on the later of the following:

(1) the date on which notice is received or the Policy or binder is surrendered; or

(2) the date of cancellation requested by the first Named insured.

b. We may cancel this Policy by mailing or delivering to the first Named Insured and the first Named Insured's agent or broker written notice of cancellation, including the actual reason for the cancellation, to the last mailing address know to us, at least:

(1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or

(2) 45 days before the effective date of cancellation if we cancel for any other reason;

c. Notice of cancellation will state the effective date of cancellation. The Policy period will end on that date.

d. If this Policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata.

If the first Named Insured cancels, the refund will be at least 75% of the pro rata refund.

The cancellation will be effective even if we have not made or offered a refund.

e. If notice is mailed, proof of mailing will be sufficient proof of notice.

F. Under F. **Additional Conditions**, the following is added to condition 7. **Inspections and Surveys**:

d. Paragraph b. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

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(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

d. Any person or organization specifically designated as an additional insured for ongoing operations by a separate additional insured endorsement issued by us and made part of this Policy.

3. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement; or
- b. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

#### **X. PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED EXTENSION**

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this Policy.

Condition 4. **Other Insurance of Section IV - Commercial General Liability Conditions** is amended as follows:

As respects any additional insured, this insurance is excess unless:

- a. the additional insured is a named insured under such other insurance; or
- b. you have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

#### **Y. ADDITIONAL INSURED - PROTECTION OF YOUR LIMITS**

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this Policy.

1. The following is added to **Condition 2. Duties In The Event Of Occurrence, Offense, Claim or Suit:**

An additional insured under this endorsement will as soon as practicable:

- a. Give written notice of an "occurrence" or an offense that may result in a claim or "suit" under this insurance to us; as soon as practicable;
- b. Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**SIGNATURE BUSINESS AUTO BROADENING ENDORSEMENT**

This endorsement modifies insurance provided under the following form:

**BUSINESS AUTO COVERAGE FORM**

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the policy, the provisions of this endorsement apply.

This is a summary of the various additional coverages and coverage modifications provided by this endorsement. For complete details on specific coverages, consult the actual policy wording.

Coverage	Limit of Insurance	Page
Who is an Insured - Employees, Partners, Members, Volunteers and Board Members	Included	2
Automatic Additional Insureds - By Contract and Primary and Non-Contributory Provision	Included	2
Leased Auto Coverage	Included	3
Owned Subsidiaries and Newly Acquired or Formed Organizations	Included	4
Supplementary Payments - Bail Bonds	\$5,000	4
Supplementary Payments - Loss of Earnings	\$1,000 per day	4
Fellow Employee	Included	5
Physical Damage Coverage Extensions - Towing	\$200 - any auto	5
Physical Damage Coverage Extensions - Glass Breakage	No Deductible	5
Physical Damage Coverage Extensions - Transportation Expenses	\$100 per day, \$3,000 max	5
Hired Auto Physical Damage Coverage	\$100 per day, \$3,000 max	5
Total Theft of a Covered Auto	\$500 - personal items, \$1,000 - reasonable expenses to return stolen auto	6
Auto Loan / Lease Gap Protection	Included	6
Customization Coverage	\$2,000	7

Coverage	Limit of Insurance	Page
Newly Acquired Owned Autos and Donated Autos Physical Damage Coverage	\$100,000	7
Rental Reimbursement Coverage	\$100 per day up to 30 days	8
	\$500 for reasonable expenses to remove and replace your materials and equipment	8
Accidental Discharge - Airbag Coverage	Included	8
Original Equipment Manufacturer OEM Part Replacement	Included	8
Multiple Deductibles	Included	8
Notice and Knowledge of Occurrence - Duties in the Event of Accident, Claim, Suit or Loss	Included	8
Blanket Waiver of Subrogation By Written Contract	Included	9
Unintentional Failure to Disclose Hazards	Included	9
Mental Anguish	Included	9

**A. WHO IS AN INSURED - EMPLOYEES, PARTNERS, MEMBERS, VOLUNTEERS AND BOARD MEMBERS**

**SECTION II - COVERED AUTOS LIABILITY COVERAGE, A. 1. Who is An Insured** is amended by adding the following:

- d. Any "employee", partner or member of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.
- e. Anyone volunteering services to you while using a covered "auto" you don't own, hire or borrow in activities necessary to your business. Anyone else who furnishes that "auto" is also an "insured".
- f. Board members (or their spouses) while renting a vehicle while on business for the named insured.

**B. AUTOMATIC ADDITIONAL INSUREDS - BY CONTRACT AND PRIMARY AND NON-CONTRIBUTORY PROVISION**

**SECTION II - COVERED AUTOS LIABILITY COVERAGE, A. 1. Who is An Insured** is amended to include as an Insured any person or organization whom you are required to add as an Additional Insured on this policy under:

- a. a written contract or written agreement:
  - (1) in effect on the date of the "accident"; and

(2) signed by all parties prior to the "accident."

This person or organization is an Additional Insured only to the extent you are liable for an "accident" caused, in whole or in part, by the use of a covered "auto" being driven by you or any "insured." However;

- a. the insurance afforded to such Additional Insured only applies to the extent permitted by law; and
- b. if coverage provided to the Additional Insured is required by a written contract or written agreement, the insurance afforded to such Additional Insured will not be broader than that which you are required by the written contract or written agreement to provide for such Additional Insured.

With respect to insurance provided to an Additional Insured the following provisions apply:

a. This insurance is primary to and will not seek contribution from any other insurance available to an Additional Insured under your policy provided that:

(1) The Additional Insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the Additional Insured.

b. When a written contract or written agreement does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the Additional Insured is designated as a Named Insured.

c. Regardless of the written contract or written agreement between you and an Additional Insured, this insurance is excess over any other insurance whether primary, excess, contingent or any other basis for which the Additional Insured has been added as an additional insured on other policies.

d. If coverage provided to the additional insured is required by a written contract or written agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

(1) Required by the written contract or written agreement; or

(2) Available under the applicable Limits of Insurance show in the Declarations;

whichever is less.

### C. LEASED AUTO COVERAGE

With respect to insurance provided to an Additional Insured who is a lessor of a "leased auto" the following provisions apply:

**SECTION II - COVERED AUTOS LIABILITY COVERAGE, A. Coverage** is amended by adding the following:

Any "leased auto" designated or described in the Schedule will be considered a covered "auto" you own and not covered "auto" you hire or borrow.

For a covered "auto" that is a "leased auto" Who Is An Insured is changed to include as an "Insured" the lessor.

The coverages provided under this endorsement apply to any "leased auto" described in the

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Home > Exclusions

Visit our tips page to learn how to best use the Exclusions Database. If you experience technical difficulties, please email the webmaster at [webmaster@oig.hhs.gov](mailto:webmaster@oig.hhs.gov).

### Exclusions Search Results: Entities

No Results were found for

> YMCA of Pierce and Kitsap Counties

If no results are found, this individual or entity (if it is an entity search) is not currently excluded. Print this Web page for your documentation

[Search Again](#)

Search conducted 4/11/2022 6:33:06 PM EST on OIG LEIE Exclusions database.  
Source data updated on 4/8/2022 9:00:00 AM EST

[Return to Search](#)

# KC-258-22 COVID ARP YMCA Community Cafe-Contract All

Final Audit Report

2022-05-24

Created:	2022-05-24
By:	Toko Thompson (tthompson@ymcapkc.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAANuxf20YFdIWwAR5D7m7gjRhAEWv36-Ag

## "KC-258-22 COVID ARP YMCA Community Cafe-Contract All" History

-  Document created by Toko Thompson (tthompson@ymcapkc.org)  
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