This Professional Services Agreement is entered into in duplicate originals between the Thurston County Public Health & Social Services, Thurston/Mason Counties Developmental Disabilities Program, hereinafter “County,” and the Contractor identified below, hereinafter “Contractor.”

**PARTIES TO THE AGREEMENT**

| Thurston County Public Health & Social Services Division  
| Thurston/Mason Counties Developmental Disabilities Program  
| 412 Lilly Road NE  
| Olympia, Washington 98506-5132  
| Telephone: 360-867-2517 FAX: 360-867-2601 |

**TERM OF AGREEMENT:** The term of this Agreement is July 1, 2015 through June 30, 2016

**STATEMENT OF WORK.** Brokerage of training, technical assistance, and community information and education services to be performed by the Contractor is set forth in Exhibit A, Service Information Form.

**EXHIBITS:** The following exhibits are attached and are incorporated into this Agreement:
- Exhibit A, Service Information Forms
- Exhibit B, Business Associate Agreement Addendum
- Exhibit C, DSHS County Agreement on General Terms and Conditions
- Exhibit D, DDA County Program Agreement

By their signatures below, the parties agree to the terms and conditions of this Professional Services Agreement and all documents incorporated by reference. No other understandings or representations, oral or otherwise, regarding the subject matter of this Professional Services Agreement shall be deemed to exist or bind the parties. The parties signing below certify that they are authorized to sign this Professional Services Agreement. The parties hereto acknowledge that the waiver of immunity set out in Section 9.2 was mutually negotiated and specifically agreed to by the parties herein.

**FOR THE CONTRACTOR**

| Date: |
| Don Sloma, Director Public Health & Social Services |

**FOR THE COUNTY**

| Date: |

Approved as to form:

*Prosecuting Attorney’s Office*

By:

*Deputy Prosecuting Attorney*

Professional Services Agreement (XX/XX/XXXX)
1. **Definitions:** The words and phrases listed below, as used in this Agreement, shall each have the following definitions. These definitions supplement those contained in Exhibits C and D and, in the event of a conflict, supersede the definitions in Exhibits C and D.

1.1. **Agreement** means this Thurston and Mason Counties Developmental Disabilities Professional Services Agreement and any exhibits and other documents attached or incorporated by reference.

1.2. **Client Support** refers to the direct client service types as defined in the Chart of Accounts contained in the Supplementary Instructions for the Developmental Disabilities Administration in the most current BARS Manual.

1.3. **County Staff** means the Thurston/Mason County Coordinator for Developmental Disabilities and his/her designees.

1.4. **Integrated,** as referenced in Policy 4.11 County Services for Working Age Adults, means typical community settings not designed specifically for individuals with disabilities in which the majority of persons employed and participating are individuals without disabilities.

1.5. **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.

2. **Purpose:** This Professional Services Agreement is entered into between the County and the Contractor in accordance with Chapter 71A.14 RCW. Its purpose is to advance the state legislative policy to provide a coordinated and comprehensive state and local program of services for persons with developmental disabilities.

3. **References:** The Contractor is required to comply with the applicable requirements of the following referenced documents in performing services pursuant to this Agreement.

   The following exhibits are incorporated by reference and can be found at the DDA Internet site:

   3.1. *Criteria for an Evaluation System*
   3.2. *3.01 Service Plans*
   3.3. *4.11 County Services for Working Age Adults*
   3.4. *5.02 Necessary Supplemental Accommodations*
   3.5. *5.03 Client Complaints*
   3.6. *5.05 Limited English Proficient Clients*
   3.7. *5.06 Client Rights*
   3.8. *5.13 Protection from Abuse*
   3.9. *5.14 Positive Behavior Support*
   3.10. *5.15 Use of Restrictive Procedures*
   3.11. *5.17 Physical Intervention Techniques*
   3.12. *6.08 Mandatory Reporting*
   3.13. *6.13 Day Program Provider Qualifications*
   3.15. *15.01 Community Protection Program Identification and Eligibility*
   3.16. *15.03 Community Protection Standards for Employment/Day Program*
   3.18. **Access Agreement**
   3.19. **County Guidelines**
   3.20. **CMIS Billing Instructions**
   3.21. **Employment Outcomes Instructions and Job Type Codes**
3.21. **Employment Phases and Billable Activities**
3.22. **Community Access Billable Activities**

The following regulations are incorporated herein by reference:
3.23. [WAC 388-06](#) Background/Criminal History Checks
3.24. [WAC 388-823](#) Eligibility
3.25. [WAC 388-825](#) Service Rules
3.26. [WAC 388-828](#) Assessment
3.27. [WAC 388-845–001](#), [0030](#), [0110](#), [0205](#), [0210](#), [0215](#), [0220](#), [0600](#), [0605](#), [0610](#), [2100](#), and [2110](#)
3.28. [WAC 388-845-0110](#) Are there limitations to the waiver services I can receive?
3.29. [WAC 388-850](#) County Plan

The following links are located on the Thurston County Developmental Disabilities’ Web site:
Thurston-Mason County Guidelines:
3.30. [Service Termination](#)
3.31. [Social Security Benefit Review](#)
3.32. [Monthly Billing](#)
3.33. [Individual Work Plans](#)
3.34. [Request for Additional Service Hours](#)
3.35. [Client Transportation and Travel Time Reimbursement](#)
3.36. [Discovery, Assessment, Job Preparation](#)
3.37. [Incident Reporting](#)

4. **Statement of Work:**

The Contractor shall provide the services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below. The Contractor is authorized to provide the following Client Support Services as described in the Service Information Form, a detailed description of the services to be performed by the Contractor, set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

4.1. **Staff Training**
Costs incurred by the program for planned, structured activities for the purpose of providing, or improving, or enhancing job-related knowledge and skills of staff, providers, volunteers, or intern students in the provision of developmental disabilities services.

4.2. **Board Training**
Costs incurred by the program for planned, structured activities designed to provide, improve, or enhance program-related skills of board and advisory committee members.

4.3 **Community Information and Education**
Community Information and Education: Activities to inform and/or educate the general public about developmental disabilities and related services. These may include information and referral services; activities aimed at promoting public awareness and involvement; and community consultation, capacity building and organization activities.

5. **Credentials and Minimum Requirements:**

5.1. **Qualified Service Provider:** The Contractor assures that it possesses the necessary expertise, knowledge, training, skills, and has the necessary licenses and/or certifications to perform the services set forth in this Agreement, including proof of training or have confirmed knowledge of the following areas and division policies as applicable:
5.1.1. Client confidentiality;
5.1.2. DDD Policy 5.06, Client Rights;
5.1.3. DDD Policy 6.08, Mandatory Reporting Requirements Services Providers;
5.1.4. DDD Policy 4.11, County Services for Working Age Adults;
5.1.5. DDD Policy 15.03, Community Protection Standards for Employment and Day Program Services;
5.1.6. DDD Policy 5.17, Physical Intervention Techniques;
5.1.7. DDD Policy 5.14, Positive Behavior Support; and
5.1.8. DDD Policy 5.15, Use of Restrictive Procedures

5.2. Fiscal management and oversight: The Contractor shall safeguard public funds including maintaining books, records, documents and other materials relevant to the provision of goods and services. Documents used to verify compliance may include but are not limited to employee training records, agency policies, client and program records, personnel records, client earning records, employee timesheets and calendars, attendance records, newsletters, board roster, board minutes, program announcements, and emergency preparedness plans.

5.3. Establish and maintain adequate internal control system: The Contractor shall establish and maintain adequate internal control systems, including the maintenance of written policy procedural manuals for information systems, personnel, and accounting/finance in sufficient detail such that, operations can continue should staffing change or absences occur.

5.4. Background/Criminal History Check: The Contractor shall verify a background/criminal history clearance for all employees, subcontractors, and/or volunteers who may have unsupervised access to vulnerable DSHS clients, in accordance with RCW 43.43.830-845, RCW 74.15.030 and chapter 388-06 WAC as part of the hiring process and every three years thereafter. If the entity reviewing the application elects to hire or retain an individual after receiving notice that the applicant has a conviction for an offense that would disqualify the applicant from having unsupervised access to vulnerable adults as defined in Chapter 74.34 RCW, then the County shall deny payment for any subsequent services rendered by the disqualified individual provider. The DSHS Background Check Central Unit (BCCU) must be used to obtain verification of a background clearance. In addition, the Contractor shall have in place a system to ensure all background/criminal history clearance results are checked by someone other than the employee, subcontractor, intern and/or volunteer for whom it was submitted.

5.5. Qualified Board Members: The Contractor, if it uses an advisory or governing board, shall include members knowledgeable about developmental disabilities and the County Guidelines. The Contractor shall assure that board members understand their roles and responsibilities as a member of the board and that potential conflicts of interest will not arise. The inclusion of individuals with developmental disabilities is encouraged.

5.6. Single State Medicaid Agency – Health Care Authority (HCA) – Home and Community Based Waiver Services Assignment of Medicaid Billing Rights: HCA, as the single state Medicaid Agency, has administrative authority for Title XIX coverage per 42 CFR 431.10. DSHS is the operating agency for the Home and Community Based Waivers of services for people with developmental disabilities. The Contractor only has responsibility for services covered in this agreement. The Contractor shall assign to DDA its Medicaid billing rights for services to DDA clients eligible under Title XIX programs in this agreement and shall provide written documentation of the assignment to the HCA or the County upon request.

5.7. Reporting Abuse and Neglect: The Contractor is a mandated reporter under RCW 74.34.020(1), and must comply with reporting requirements described in RCW 74.34.035, 040 and Chapter 26.44 RCW. If the County is notified by DSHS that an employee, officer or agent of
the Contractor has been cited or is on the registry for a substantiated finding, the employee, officer or agent will be prohibited from providing services under this Agreement.

5.7.1. The Contractor shall promptly report to DSHS per DDA Policy 5.13, Protection from Abuse: Mandatory Reporting if: there is reasonable cause to believe that abandonment, abuse, financial exploitation or neglect (as defined by RCW 74.34.020) of a person who has a developmental disability (as defined in RCW 71A.10.020) has occurred.

5.7.2. If the Contractor has reason to suspect that sexual or physical assault of such a person has occurred, the Contractor shall also immediately report to the appropriate law enforcement agency.

5.8. Incident Reporting: The Contractor is required to report serious and emergent incidents harming and/or threatening the health and safety of DDA clients in accordance with the Thurston-Mason County Incident Reporting Guideline.

5.9. On-site Evaluation: The County may evaluate and review services delivered to reasonably assure compliance and quality. The County may conduct at least one on-site visit during the period of this Agreement. The County will document all evaluations, recommendations and corrective action. The Contractor shall take the actions necessary to carry out the recommendations and corrective actions, maintain compliance with the contract, and retain copies of the documentation provided by the County.

5.10. DSHS/DRW Access Agreement: The DRW February 27, 2001 Access Agreement with DDA is incorporated by reference. The Contractor acknowledges that it has reviewed the Access Agreement. The agreement covers DRW’s access to individuals with developmental disabilities, clients, programs and records, outreach activities, authority to investigate allegations of abuse and neglect, other miscellaneous matters, and is binding on all providers of DDA contracted services.

6. Approval of Fees, Billing and Payment:

6.1. Approval of Fees: The County approves fees/rates charged by Contractor for the services provided by the Contractor and the Contractor shall not charge rates or fees in excess of those approved by the County.

6.2. Consultation and Training Event Numbers: The number of consultation and training events is determined by the issuance of County Technical Assistance Authorizations. Consultation and training events are based on need as determined in collaboration with contractors and community partners. The number and duration of each event is dependent on the availability of funding and may vary throughout the contract period.

6.3. Administration Fee: The Contractor’s brokerage fee for technical assistance consultations and training events shall not exceed __% of the actual cost of the fee and expense charge reimbursed to the training or technical assistance provider.

6.4. Allowable Costs: The County shall pay the Contractor allowable, allocable and reimbursable costs, as defined in the most recently published BARS Supplementary Instructions for Developmental Disabilities Administration. The Contractor shall take all necessary and reasonable steps to comply with the currently effective DDA BARS Supplemental manual.

6.5. Monthly Invoices with Documentation: All requests for reimbursement by the Contractor for performance hereunder must be submitted on a county-approved invoice and including
documentation of invoicing specifics.

6.6. **Timelines and Modifications to Billings**: All initial invoices with documentation must be received within ten (10) calendar days following the last day of the month in which the service is provided. If an invoice or required documentation is incorrect, it may be returned to the Contractor. The Contractor can expect to receive payment from a correct invoice and documentation within thirty (30) days from time of receipt and approval by the County.

6.7. **Payment Standard**: The Contractor shall not be paid for services rendered under the Agreement unless and until they have been performed to the satisfaction of the County. No payment shall be made for any work performed by the Contractor, except for work identified and set forth in this Agreement or supporting exhibits or attachments incorporated by reference into this Agreement.

6.8. **Alternate Funding**: Client services shall not be reimbursed under this Agreement when the same services are paid for under the Rehabilitation Act of 1973 (DVR), P.L. 94-142 (Public Education), or any other source of public or private funding.

6.9. **Payment Withholding Due to Non-Performance**: In the event the Contractor has failed to perform any substantial obligation to be performed by the Contractor under this Agreement and such failure has not been cured within ten (10) days following notice from the County, then the County may, in its sole discretion, upon written notice to the Contractor, withhold any and all monies due and payable to the Contractor, without penalty until such failure to perform is cured or otherwise adjudicated. “Substantial” for purposes of this Agreement means faithfully fulfilling the terms of the Agreement with variances only for technical or minor omissions or defects.

6.10. **Allowable Payment Period**: Unless otherwise provided for in this Agreement or any exhibits or attachments hereto, the Contractor will not be paid for any billings or invoices presented for payment prior to the execution of the Agreement or after its termination.

6.11. **Recovery of Fees**: If the Contractor bills and is paid fees for services that the County later finds were (a) not delivered or (b) not delivered in accordance with Agreement standards, the Contractor shall reimburse those funds to the County.

7. **Information System Security and Protection of Personal Information**: See Section 1, Definitions Specific to Program Agreement in Exhibit D, DDA County Program Agreement, for definitions of the capitalized terms in this section.

7.1. **Personal information**: Personal Information collected, used or acquired in connection with this Agreement shall be used solely for the purposes of this Agreement. The Contractor shall 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 Contractor's performance of the services contemplated hereunder, except:

7.1.1. As provided by law; or,

7.1.2. In the case of Personal Information, with the prior written consent of the person or personal representative of the person who is the subject of the Personal Information.

7.2. **Information Safeguards**: The Contractor shall protect and maintain all Confidential Information gained by reason of this Agreement against unauthorized use, access, disclosure, modification or loss. This duty requires the Contractor to employ reasonable security measures, which include restricting access to the Confidential Information by:
7.2.1. Allowing access only to staff that have an authorized business requirement to view the Confidential Information.

7.2.2. Physically Securing any computers, documents, or other media containing the Confidential Information.

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

   7.2.3.1. Verifying the recipient phone number to prevent accidental transmittal of Confidential Information to unauthorized persons.

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

   7.2.3.3. Verifying after transmittal that the fax was received by the intended recipient.

7.2.4. When transporting records containing Confidential Information, outside a Secure Area, the contractor shall do one or more of the following as appropriate:

   7.2.4.1. Use a Trusted System

   7.2.4.2. Encrypt the Confidential Information, including:

      7.2.4.2.1. Encrypting email and/or email attachments which contain the Confidential Information with a hardened password, which contains a string of at least eight characters containing at least one alphabetic character, at least one number and at least one special character such as an asterisk, ampersand or exclamation point.

      7.2.4.2.2. Encrypting Confidential Information when it is stored on portable devices or media, including but not limited to laptop computers and flash memory devices.

7.2.5. All Data Security Requirements set forth the Program Agreement, which is attached hereto as Exhibit D apply to the transportation, protection, segregation, and disposition of Confidential Information obtained and used to fulfill this contract.

7.2.6. Send paper documents containing Confidential Information via a Trusted System.

7.3. **Data Disposition:** Upon request by the County or at the end of the Agreement term, or when no longer needed, the Contractor shall return the Confidential Information or certify in writing that the Contractor employed a DSHS approved method to destroy the information. Contractor may obtain information regarding approved destruction methods from County Staff.

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

7.5. **Notification of Compromise or Potential Compromise:** The compromise or potential compromise of Confidential Information must be reported to County Staff within five (5) business days of discovery for breaches of less than 500 persons’ protected data, and three (3)
business days of discovery of breaches of over 500 persons’ protected data. Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.

7.6. **Breach of this Section:** Any breach of this Section may result in termination of the Agreement and the demand for return of all records in connection with this Agreement. The Contractor agrees to indemnify and hold harmless the County for any damages related to the Contractor’s unauthorized use or disclosure of personal information.

8. **Amendments and Changes in Work:**

8.1. In the event of any errors or omissions by the Contractor in the performance of any work required under this Agreement, the Contractor shall make any and all necessary corrections without additional compensation. All work submitted by the Contractor shall be certified by the Contractor and checked for errors and omissions. The Contractor shall be responsible for the accuracy of the work, even if the work is accepted by the County.

8.2. No amendment, modification or renewal shall be made to this Agreement unless set forth in a written Agreement Amendment, signed by both parties and attached to this Agreement. Work under an Agreement Amendment shall not proceed until the County duly executes the Agreement Amendment.

9. **Indemnification and Hold Harmless.**

9.1. The Contractor shall hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys’ fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractor’s acts, errors or omissions in the performance of this Agreement. Provided however, that the Contractor’s obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the County, its officers, officials, employees or agents. Provided further, that in the event of the concurrent negligence of the parties, the Contractor’s obligations hereunder shall apply only to the percentage of fault attributable to the Contractor, its employees or agents.

9.2. In any and all claims against the County, its officers, officials, employees and agents by any employee of the Contractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or subcontractor under Worker's Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the Contractor expressly waives any immunity the Contractor might have had under Title 51 RCW. By executing the Agreement, the Contractor acknowledges that the parties have mutually negotiated the foregoing waiver and that the provisions of this Section shall be incorporated, as relevant, into any contract the Contractor makes with any subcontractor or agent performing work hereunder.

9.3. The Contractor’s obligations hereunder shall include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the Contractor, the Contractor’s employees, agents or subcontractors.

10. **Insurance:**
10.1. **Professional Legal Liability:** The Contractor, if he or she is a licensed professional, shall maintain Professional Legal Liability or Professional Errors and Omissions coverage appropriate to the Contractor’s profession and shall be written subject to limits of not less than $1,000,000 per loss.

The coverage shall apply to liability for a professional error, act or omission arising out of the scope of the Contractor’s services defined in this Agreement. Coverage shall not exclude bodily injury or property damage. Coverage shall not exclude hazards related to the work rendered as part of the Agreement or within the scope of the Contractor’s services as defined by this Agreement including testing, monitoring, measuring operations, or laboratory analysis where such services are rendered as part of the Agreement.

10.2. **Workers’ Compensation (Industrial Insurance):** The Contractor shall maintain workers’ compensation insurance as required by Title 51 RCW, and shall provide evidence of coverage to the Thurston County Public Health & Social Services Department, Thurston/Mason Counties Developmental Disabilities Program.

The Contractor shall send to the County at the end of each quarter written verification that premium has been paid to the Washington State Department of Labor and Industries for Industrial Insurance coverage. Alternatively, the Contractor shall provide certification of approval by the Washington State Department of Labor and Industries if self-insured for Workers Compensation.

10.3. **Commercial General Liability:** The Contractor shall maintain Commercial General Liability coverage for bodily injury, personal injury and property damage, subject to limits of not less than $1,000,000 per loss. The general aggregate limit shall apply separately to this Agreement and be no less than $2,000,000. If a Contractor provides services to Community Protection clients, the general aggregate limit shall be no less than $3,000,000.

10.3.1. The Contractor shall provide Commercial General Liability coverage, which does not exclude any activity to be performed in fulfillment of this Agreement. Specialized forms specific to the industry of the Contractor will be deemed equivalent provided coverage is no more restrictive than would be provided under a standard Commercial General Liability policy, including contractual liability coverage.

10.3.2. The Contractor’s Commercial General Liability Insurance shall include the County, its officers, officials, employees and agents, as additional insureds with respect to performance of services, and shall contain no special limitations on the scope of protection afforded to the County as additional insured.

10.3.3. The Contractor shall furnish the County with evidence that the additional insured provision required above has been met. An acceptable form of evidence is the endorsement pages of the policy showing the County as an additional insured.

10.3.4. If the Contractor’s liability coverage is written as a claims made policy, then the Contractor must evidence the purchase of an extended reporting period or “tail” coverage for a three-year period after project completion, or otherwise maintain the coverage for the three-year period.

10.4. If the Agreement is over $50,000 then the Contractor shall also maintain Employers Liability Coverage with a limit of not less than $1 million.

10.5. **Automobile Liability:** The Contractor shall maintain Business Automobile Liability insurance with a limit of not less than $1,000,000 each accident combined Bodily Injury and Property Damage.
10.6. **Other Insurance Provisions:**

10.6.1. The Contractor’s liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the County, its elected and appointed officers, officials, employees and agents.

10.6.2. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or agents.

10.6.3. The Contractor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

10.6.4. The Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

10.6.5. The insurance limits mandated for any insurance coverage required by this Agreement are not intended to be an indication of exposure nor are they limitations on indemnification.

10.6.6. The Contractor shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced.

10.7. **Verification of Coverage and Acceptability of Insurers:** The Contractor shall place insurance with insurers licensed to do business in the State of Washington and having A.M. Best Company’s Rating of A- or better with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.

10.7.1. Certificates of Insurance shall show the Certificate Holder as Thurston County. The address of the Certificate Holder shall be shown as the current address of Thurston County Public Health and Social Services Department.

10.7.2. Written notice of cancellation or change shall be mailed to the County at the following address:

**Thurston County Public Health and Social Services**
c/o Thurston/Mason Counties Developmental Disabilities Program
412 Lilly Road NE
Olympia, Washington 98506-5132

10.7.3. The Contractor shall furnish the County with properly executed certificates of insurance or a signed policy endorsement which shall clearly evidence all insurance required in this section prior to commencement of services. The certificate will list, at a minimum, limits of liability and coverage. The certificate will provide that the underlying insurance contract will not be canceled or allowed to expire except on thirty (30) days prior written notice to the County.

10.7.4. The Contractor or its broker shall provide a copy of any and all insurance policies specified in this Agreement upon request of the Thurston County Risk Management Division.

11. **Termination:**
11.1. The County may terminate this Agreement in whole or in part whenever the County determines, in its sole discretion that such termination is in the best interest of the County. The County may terminate this Agreement upon giving ten (10) days written notice by certified mail to the Contractor. In that event, the County shall pay the Contractor for all costs incurred by the Contractor in performing the Agreement up to the date of such notice.

11.2. In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Agreement or DSHS disapproves Contractor as a subcontractor under the County Program Agreement, the County may summarily terminate this Agreement notwithstanding any other termination provision of the Agreement. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by the County to the Contractor. After the effective date, no charges incurred under this Agreement are allowable.

11.3. If the Contractor breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the County, the County may terminate this Agreement, in which case the County shall pay the Contractor only for the costs of services accepted by the County. Upon such termination, the County, at its discretion, may obtain performance of the work elsewhere, and the Contractor shall bear all costs and expenses incurred by the County in completing the work and all damage sustained by the County by reason of the Contractor’s breach. If, subsequent to termination, it is determined for any reason that (1) the Contractor was not in default, or (2) the Contractor’s failure to perform was not its fault or its subcontractor’s fault or negligence, the termination shall be deemed to be a termination under subsection 11.1 of this section.

12. **Assignment, Delegation and Subcontracting:**

12.1. The Contractor shall perform the terms of the Agreement using only its bona fide employees or agents who have the qualifications to perform under this Agreement. The obligations and duties of the Contractor under this Agreement shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the County. The Contractor shall be responsible for the acts and omissions of its subcontractors.

12.2. The Contractor warrants that it has not paid nor has it agreed to pay any company, person, partnership, or firm, other than a bona fide employee working exclusively for Contractor, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

13. **Non-Waiver of Rights:**

The parties agree that the excuse or forgiveness of performance or waiver of any provision(s) of this Agreement does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Agreement at a later time.

14. **Independent Contractor:**

14.1. The Contractor’s services shall be furnished by the Contractor as an Independent Contractor and not as an agent, employee or servant of the County. The Contractor specifically has the right to direct and control Contractor’s own activities in providing the agreed services in accordance
with the specifications set out in this Agreement.

14.2. The Contractor acknowledges that the method for compensation for this Agreement is set forth in Section 6, Approval of Fees, Billing and Payment, of this Agreement and the Contractor is not entitled to any County benefits, including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or privileges afforded to Thurston County employees.

14.3. The Contractor shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the Contractor shall be or deem to be or act or purport to act as an employee, agent, or representative of the County.

14.4. The Contractor shall assume full responsibility for the payment of all payroll taxes, use, sales, income or other form of taxes, fees, licenses, excises, or payments required by any city, county, federal or state legislation which is now or may during the term of this Agreement be enacted as to all persons employed by the Contractor and as to all duties, activities and requirements by the Contractor in performance of the work on this project and under this Agreement and shall assume exclusive liability therefore, and meet all requirements there under pursuant to any rules or regulations.

14.5. The Contractor agrees to immediately remove any of its employees or agents from assignment to perform services under this Agreement upon receipt of a written request to do so from the County’s representative or designee.

14.6. The Contractor agrees to provide its own labor and materials. Unless otherwise provided for in the Agreement, no material, labor, or facilities will be furnished by the County.

14.7. The Contractor shall perform according to standard industry practice of the work specified by this Agreement.

14.8. The Contractor shall complete its work in a timely manner and in accordance with the schedule agreed to by the parties.

14.9. The Contractor shall, from time to time, during the progress of the work, confer with the County. At the County’s request, the Contractor shall prepare and present status reports on its work.

15. **Compliance with Applicable Law:** The Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including but not limited to, nondiscrimination laws and regulations in performing this Agreement. The relationship contemplated by this Agreement may implicate the Privacy Regulations under the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936 (1996), as amended (HIPAA). The Contractor shall comply with HIPAA and applicable regulations contained in 45 CFR parts 160 and 164 as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH Act), Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5). The Contractor shall comply with the Business Associate Agreement Addendum as set forth in Exhibit B.
16. **Inspection of Books and Records**: The County may, at reasonable times, inspect the books and records of the Contractor relating to the performance of this Agreement. The Contractor shall keep all records required by this Agreement for six (6) years after termination of this Agreement for audit purposes.

17. **Nondiscrimination**: The Contractor, its assignees, delegates or subcontractors shall not discriminate against any person in the performance of this Agreement in the performance of any of its obligations hereunder on the basis of race, color, creed, ethnicity, religion, national origin, age, sex, marital status, veteran or military status, sexual orientation or the presence of any disability. Implementation of this provision shall be consistent with RCW 49.60.400.

18. **Treatment of Client Property**: The Contractor shall ensure that any adult client receiving services under this Program Agreement has unrestricted access to the client's personal property. The Contractor shall not interfere with any adult client's ownership, possession, or use of the client's property. Upon termination or completion of the Program Agreement, the Contractor 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 Contractor from implementing such lawful and reasonable policies, procedures and practices as the Contractor 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).

19. **Ownership of Materials**: Material produced in the performance of the work under this Agreement shall be “work made for hire” as defined by the U.S. Copyright Act of 1976 and shall be owned by the County. This material includes, but is not limited to, books, computer programs, plans, specifications, documents, films, pamphlets, reports, sound reproductions, studies, surveys, tapes, and/or training materials. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. The County agrees that if it uses any materials prepared by the Contractor for purposes other than those intended by this Agreement, it does so at its sole risk and it agrees to hold the Contractor harmless therefore to the extent such use is agreed to in writing by the Contractor.

An electric copy of all or a portion of material produced shall be submitted to the County upon request or at the end of the job using the word processing program and version specified by the County.

20. **Disputes**: Differences between the Contractor and the County, arising under and by virtue of this Agreement, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the Contractor shall be decided by the County’s Contract representative or designee. All rulings, orders, instructions and decisions of the County’s Contract representative shall be final and conclusive, subject to the Contractor’s right to seek judicial relief pursuant to Section 26.

21. **Choice of Law, Jurisdiction and Venue**:

21.1. This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

21.2. Any action at law, suit in equity, or judicial proceeding arising out of this Agreement shall be instituted and maintained only in any of the courts of competent jurisdiction in Thurston County, Washington.
22. **Severability:**

   22.1. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties’ rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

   22.2. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

   22.3. Should the County determine that the severed portions substantially alter this Agreement so that the original intent and purpose of the Agreement no longer exists, the County may, in its sole discretion, terminate this Agreement.

23. **Entire Agreement:** The parties agree that this Agreement is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Agreement are specifically excluded.

24. **Notices:** Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in Page 1. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be given three days following the date of mailing or immediately if personally served. For service by facsimile, service shall be effective upon receipt during working hours. If a facsimile is sent after working hours, it shall be effective at the beginning of the next working day.

25. **Debarment Certification:** The Contractor, by signature to this Agreement, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement or any Program Agreement by any federal department or agency. The Contractor also agrees to include the above requirement in all subcontracts into which it enters.

26. The terms and conditions contained in this Agreement or any Program Agreement which, by their sense and context, are intended to survive the expiration of a particular Program Agreement shall survive. Surviving terms include, but are not limited to: Confidentiality, Disputes, Inspection, Maintenance of Records, and Ownership of Material.