

CLARK COUNTY STAFF REPORT

DEPARTMENT: Community Services

DATE: 08/10/15

REQUESTED ACTION: That the County Manager approve a grant-funded contract with DAVID PITONYAK, dba IMAGINE, to provide developmental disabilities training and consultation services to County staff, public and private entities, and individuals.

Consent
 Hearing
 County Manager

BACKGROUND

The State of Washington Department of Social and Health Services, through its Developmental Disabilities Administration, contracts with counties to provide or fund specific services in support of persons with developmental disabilities.

COUNCIL POLICY IMPLICATIONS

There are no known Council Policy implications.

ADMINISTRATIVE POLICY IMPLICATIONS

There are no known Administrative Policy implications.

COMMUNITY OUTREACH

Community outreach is conducted through the Developmental Disabilities Five-Year Comprehensive Plan and via the Developmental Disabilities Advisory Board process.

BUDGET IMPLICATIONS

YES	NO	
X		Action falls within existing budget capacity.
	X	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	X	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

BUDGET DETAILS

Local Fund Dollar Amount	\$0
Grant Fund Dollar Amount	\$41,750
Account	Fund 1953 (Developmental Disabilities Administration Grant)
Company Name	David Pitonyak, dba "Imagine"

DISTRIBUTION:

Board staff will post all staff reports to The Grid. <http://www.clark.wa.gov/thegrid/>



Mary Strehlow, Program Manager



Vanessa Gaston, Director

APPROVED: _____
CLARK COUNTY, WASHINGTON
BOARD OF COUNTY COUNCILORS

DATE: _____

SR# _____

APPROVED: 
Mark McCauley, Acting County Manager

DATE: 8/10/15

BUDGET IMPACT ATTACHMENT – NONE

Part I: Narrative Explanation

I. A – Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information

Part II: Estimated Revenues

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Total	\$0	\$0	\$0	\$0	\$0	\$0

II. A – Describe the type of revenue (grant, fees, etc.)

Part III: Estimated Expenditures

III. A – Expenditures summed up

Fund #/Title	FTE's	Current Biennium		Next Biennium		Second Biennium	
		GF	Total	GF	Total	GF	Total
Total	\$0	\$0	\$0	\$0	\$0	\$0	\$0

III. B – Expenditure by object category

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Salary/Benefits						
Contractual						
Supplies						
Travel						
Other controllables						
Capital Outlays						
Inter-fund Transfers						
Debt Service						
Total	\$0	\$0	\$0	\$0	\$0	\$0

CONTRACT #2016-DD-22

between

CLARK COUNTY

and

DAVID PITONYAK

dba Imagine

3694 Mt. Tabor Rd.

Blacksburg, VA 24060

(540) 552-5629

dimage@aol.com

THIS CONTRACT is entered into between Clark County, by and through its Department of Community Services, hereinafter referred to as the County, and Imagine, hereinafter referred to as the Contractor.

WITNESSETH

WHEREAS, the County desires to enter into a professional services contract for consultation and training;

WHEREAS, the County has budgetarily provided for these services through fund numbers 1953 in the amount of \$41,750; and

WHEREAS, the County will contract with the Contractor, as a continuation contract, to provide consultation and training services, as described in the Statement(s) of Work of this Contract;

NOW THEREFORE, in consideration of payments, covenants, and agreements hereinafter mentioned or referenced as part of this contract, to be made and performed by the parties hereto, the parties agree as follows:

1. **APPLICABILITY OF LAW**

All Agreements and Statements of Work are and shall be construed as being executed and delivered within the State of Washington, and it is mutually understood and agreed by each party hereto that all Agreements and Statements of Work shall be governed by laws of the State of Washington, both as to interpretation and performance. Venue for any litigation shall be Clark County, Washington.

The Contractor shall comply with the Revised Code of Washington (RCW), Washington Administrative Code (WAC), and all applicable federal, state, and local laws and regulations.

2. **ASSIGNMENT OF MEDICAID BILLING RIGHTS**

By its signature on this Contract, the Contractor assigns its Medicaid billing rights for home and community-based waiver services to DDA customers eligible under Title XIX programs in this Contract.

3. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION

- 3.1. This certification is required by the regulations set forth in Title 2 Code of Federal Regulations Part 180. The terms “covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded,” as used in this clause, have the meanings set out in Title 2 CFR Part 180.995.
- 3.2. By signing this Contract, the Contractor certifies that neither it nor its principals, (as defined by Title 2 Code of Federal Regulations Part 180) are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The Contractor shall provide immediate written notice to the Clark County Department of Community Services if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 3.3. Before entering into a “covered transaction” with another party at the next lower tier, the Contractor agrees by signing this Contract that it will first verify that the person or party with whom it intends to do business is not excluded or disqualified. The Contractor may do this by:
 - 3.3.1. Checking the federal Excluded Parties List System (EPLS) at sam.gov
 - 3.3.2. Collecting a certification from the person or party; or
 - 3.3.3. Adding a clause or condition to the covered transaction with that person or party that fully meets the requirements set out in Title 2 Code of Federal Regulations Part 180
- 3.4. The Contractor agrees by signing this Contract that it shall not knowingly enter into any lower tier covered transaction with a person or party who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
- 3.5. The certification in this clause is a material representation of fact upon which reliance is placed at the time of Contract execution and at the time of any subsequent modification(s). If it is at any time determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- 3.6. Before hiring any new employee, the Contractor shall conduct a search of the Federal Excluded Parties List System referenced above to ensure that the individual is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The search must be conducted by the Contractor

prior to making an employment offer. Evidence of search results must be maintained in the employee's personnel file.

- 3.7. The Contractor shall maintain written documentation of its compliance with the above-stated requirements and make said documentation available to Clark County for review upon request.

4. CONFLICT OF INTEREST

The Contractor assures that it has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services under this Contract, and further assures that it will not employ any person having such interest.

5. CONTRACT NUMBER

The Contractor agrees to utilize the number of this Contract on all correspondence, communications, reports, vouchers and such other data concerning this Contract or delivered hereunder.

6. CORRECTIVE ACTION

The Contractor is required to meet all of the terms and conditions in this Contract, and to perform as required in the Contract. Should a contract violation or a performance deficiency be identified by the County, the Contractor will receive a written notice for corrective action unless the County determines termination is appropriate under Section 23. The Contractor must submit a corrective action plan within thirty (30) days from the written notice by the County. In the case of a material breach, however, the County may require an immediate corrective action plan and its implementation, in lieu of termination.

The County will approve or disapprove the Contractor's corrective action plan, in writing, within fourteen (14) days of receipt of the plan. If approved, the Contractor will be required to implement the plan and ensure correction of the deficiency. If the Contractor does not correct the deficiency, submit a corrective action plan within thirty (30) days, or the County deems the plan unsatisfactory, the County will take the necessary action. Such action may include, but is not limited to, reduction in Contractor payment or termination in whole or in part of the contract. All corrective action correspondence shall be delivered by certified mail, return receipt requested.

7. CUSTOMER CONFIDENTIALITY

The Contractor shall maintain each customer's personal information in accordance with state and federal regulations regarding confidentiality. This includes ensuring that all information on supported customers is maintained in a secure and confidential manner, that files and other records shall not be left in areas of unrestricted access but kept in secure areas and in locked cabinets when not in use and not secured by staff presence. The Contractor will take reasonable steps to protect personal information in all oral and electronic communication. The use or disclosure of any information concerning a

customer who is receiving services under this Contract for any purpose not directly connected with the administration of the Contractor's or the County's responsibilities, with respect to services provided under this Contract, is prohibited except by written consent of the customer or their legal representative. The Contractor shall have a policy and procedure for meeting this obligation.

8. DOCUMENTS INCORPORATED BY REFERENCE

Each of the documents listed below are incorporated by reference into this Contract and are fully set forth herein, including any amendments, modifications, any successors or supplements thereto:

- 8.1. The "Individuals with Disabilities Education Act", Public Law 108-446, available at <http://idea.ed.gov/download/statute.html>;
- 8.2. The DSHS and County Agreement on General Terms and Conditions;
- 8.3. The 2013-2014 County Program Agreement with DSHS for DDA County Services, and subsequent agreements and amendments;
- 8.4. Home and Community-Based Services Waiver (0408) in Accordance with Section 1915(C) of the Social Security Act;
- 8.5. The Budgeting and Accounting Reporting System (BARS), available at <http://www1.dshs.wa.gov/DDA/counties.shtml>;
- 8.6. The Clark County Basic Interagency Agreement

9. DRUG-FREE WORKPLACE POLICY

The Contractor shall have a "Drug-Free Workplace" Policy that describes the steps taken to deter the use of drugs, including alcohol, in the workplace and that addresses the Drug-Free Workplace Act of 1988. The policy should include any provisions for education, scope of prohibited substances, testing, employee assistance, discipline, and employee responsibilities.

10. DUPLICATION OF PAYMENT

The Contractor certifies that work for services billed under this Contract does not duplicate any work to be charged against any other Contract, Statement(s) of Work, or other source including private pay, Division of Vocational Rehabilitation (DVR), and Social Security work incentives. The Contractor shall document the amount and type of other funding in customer case files.

11. ENTIRE AGREEMENT

The parties agree that this Contract is the complete expression of the terms hereto, and any oral representations or understanding not incorporated herein are excluded. Further, any modification of this Contract shall be in writing and signed by both parties. Failure

to comply with any of the provisions stated herein shall constitute material breach of Contract and cause for termination. Both parties recognize that time is of the essence in the performance of this Contract. It is agreed by the parties that the forgiveness of non-compliance with any provision of this Contract does not constitute a waiver of the provisions of this Contract.

12. FISCAL AUDIT

- 12.1. The Contractor shall comply with Generally Accepted Accounting Principles (GAAP) and/or Governmental Generally Accepted Accounting Principles (GGAAP) and meet the financial management systems requirements of the contract.
- 12.2. The above requirement may be demonstrated either by submission of an annual independent auditor's report, review report, or by the submission of semi-annual financial reports based upon the mid-point and end of the Contractor's fiscal year.
- 12.3. If an annual audit or review by an accountant is not performed, financial statements shall be submitted within ninety (90) days of the mid-point and end of the Contractor's fiscal year. The financial reports shall include:
 - 12.3.1. Non-Profit Contractors – A Statement of Financial Position, Statement of Activities, and Statement of Changes in Net Assets and Statement of Cash Flows.
 - 12.3.2. For-Profit Contractors – A Balance Sheet, Income Statement, and Statement of Cash Flows.
 - 12.3.3. Public Entities are exempt from the semi-annual financial reporting requirement.
- 12.4. If the Contractor is a non-profit organization or public entity, and expends federal funds or has federally-funded loan balances at the end of the Contractor's fiscal year, the Contractor shall prepare a Schedule of Expenditures of Federal Awards (SEFA) in accordance with 2 C.F.R §200.508. The Contractor shall submit the SEFA to Clark County within ninety (90) days of the end of the Contractor's fiscal year.
- 12.5. If the Contractor expends \$750,000 or more in federal funds during the fiscal year, a single audit is required. The Contractor shall provide the County with a Corrective Action Plan for any audit findings as well as a copy of any Management Letter, SAS 114, or Governance Letter within thirty (30) days of issuance by the auditor. Failure to fulfill this requirement may result in corrective action, including withholding payment until the financial information or audit is received.
 - 12.5.1. Non-Profit Contractors and Public Entities – The audit report must meet the requirements of 2 C.F.R §200 with assurances of financial record-keeping that identifies all federal funds received and expended by the

OMB Catalog of Federal Domestic Assistance number. 2 C.F.R §200 requires the Contractor to provide the auditor with a Schedule of Expenditures of Federal Awards (SEFA) for the fiscal year(s) being audited. Audits for fiscal years that include this Contract shall be completed and submitted to the County within nine (9) months from the end of the Contractor's fiscal year unless otherwise approved by the County in writing.

12.5.2. For-Profit Contractors – An independent audit, an independent limited scope audit, or other evidence negotiated with and approved by the County that provides positive assurance of meeting GAAP or GGAAP. Independent audits for fiscal years that include this Contract shall be completed and submitted to the County within nine (9) months from the end of the Contractor's fiscal year unless otherwise approved by the County in writing.

13. GENERAL AGREEMENTS

13.1. Both the County and the Contractor agree:

13.1.1. The Contractor is not an employee of Clark County and is not eligible for any employee benefits. The Contractor is responsible for all taxes applicable to this Contract. No third party beneficiary is intended.

13.1.2. The Contractor is not an agent of Clark County and does not have authority to bind Clark County.

13.1.3. Communication and Contacts. The County and Contractor contacts are listed below:

<u>County</u>	<u>Contractor</u>
Kristen Wade (360) 397-2075	David Pitonyak (540) 552-5629

13.2. The Contractor agrees:

13.2.1. To undertake the Contract in a timely manner, and to perform the tasks assigned by the County in accordance with the provisions of the Statements of Work.

13.2.2. That Contractor has had no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services hereunder. The Contractor further covenants that in the performance of this Contract, no person having such interest shall be employed.

14. INDEMNIFICATION

The Contractor does release, indemnify and promise to defend and save harmless the

County, its elected officials, officers, employees and agents from and against any and all liability, loss, damages, expense, action, and claims, including costs and reasonable attorney's fees incurred by the County, its elected officials, officers, employees and agents in defense thereof, asserting or arising directly or indirectly on account of or out of the performance of service pursuant to this Contract. In making such assurances, the Contractor specifically agrees to indemnify and hold harmless the County from any and all bodily injury claims brought by employees of the Contractor and expressly waives its immunity under the Industrial Insurance Act as to those claims that are brought against the County. Provided, however, this paragraph does not purport to indemnify the County against the liability for damages arising out of bodily injuries to person or damages caused by or resulting from the sole negligence of the County, its elected officials, officers, employees and agents.

15. INSURANCE

The Contractor shall provide to Clark County proof of a professional errors and omissions insurance policy to protect against legal liability arising out of contract activity. Such insurance shall provide a minimum of \$1,000,000 per occurrence, with a maximum deductible of \$5,000. It should be an occurrence based policy. If the policy is claims based, then tail coverage must be purchased for three years after the end of the contract.

Proof of Insurance shall be in the form of an ACORD Certificate(s) of Liability Insurance, which the Contractor shall provide to Clark County, or evidence of self-insurance. Each certificate will show the coverage, deductible, policy period and amount of coverage and shall name Clark County as an additional insured. Policies shall be endorsed to state that coverage will not be suspended, voided, canceled or reduced without a 30 day written notice by certified mail (return receipt requested) to the County. Cancellation of a policy is grounds for termination of the Contract. All policies must have an A.M. Best's Rating of A-VII or better.

16. OPERATIONAL REQUIREMENTS

The Contractor shall adhere to the following procedures in providing services and business operations:

16.1. The Contractor shall follow these procedures regarding customers' health and safety:

16.1.1. Adhere to DDA Policy 6.08: Mandatory Reporting Requirements for Employment and Day Program Services Providers and the County DD Program requirements regarding incident reporting. The Contractor shall complete the DDA Employment and Day Program Services Providers Mandatory Reporting of Abandonment, Abuse, Neglect, Exploitation, or Financial Exploitation of a Child or Vulnerable Adult Form within thirty (30) days of signing this Contract. Incidents shall be filed on a County Incident Reporting form.

- 16.1.2. Employ staff aged 18 years or older and conduct a background criminal history clearance every three (3) years for all employees, subcontractors, and/or volunteers who may have unsupervised access to vulnerable DSHS customers, in accordance with RCW 43.43.830-485, RCW 74.15.030, and WAC Chapter 388.06. If the Contractor 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 RCW Chapter 74.34.020 Definitions, then the County shall deny payment for any subsequent services rendered by the disqualified staff. The Contractor must have prior written County approval before permitting staff with other convictions to have unsupervised access to customers. The DSHS Background Check Central Unit (BCCU) shall be utilized to obtain background clearances.
- 16.1.3. If a member of the Contractor's staff is accused of an illegal or abusive act(s), the staff member shall be placed on administrative leave and the Contractor shall have (7) days to investigate the accusation. The Contractor shall immediately notify the County of the issue.
- 16.2. The Contractor, the Contractor's Board Members, or the Contractor's staff shall not serve as an employer or a decision maker for a customer or a customer's family members or provide any form of guardianship, legal representation, payee, or residential supports to customers receiving services under this Contract. An exception to this provision may be waived upon written approval of the County.
- 16.3. Use Release of Information (ROI) forms that, at a minimum:
 - 16.3.1. Include the name, address, phone number and contact person of the entity requesting the information.
 - 16.3.2. Identify only one (1) entity to receive the request for information, with that entity clearly identified.
 - 16.3.3. State specific information being requested and the purpose for the request.
 - 16.3.4. Prohibit the re-release of information.
 - 16.3.5. Include an expiration date for the request. The expiration date may not be more than ninety (90) days from the date of the request. In some instances where there is a need for on-going communication, such as DVR or a County service provider, the release may be for a maximum of one (1) year and must indicate the end date.
 - 16.3.6. Include the customer's or legal guardian's signature and date of signature.

17. PAYMENT AND BILLING PROVISIONS AND REPORTING REQUIREMENTS

- 17.1. The County shall reimburse the Contractor on a fee-for-service basis unless otherwise designated in the Statement(s) of Work for providing services described in the Statement(s) of Work. If the Contractor fails to meet billing deadlines for three (3) consecutive months, the Contractor shall be in corrective action. Services billed more than sixty (60) days after the date of service will not be paid as the County will not be able to bill the State. Payment shall be made upon receipt of an invoice and documentation of the services performed and any required County and customer reports, including copies of County approvals for any exceptions to policies, subject to the following provisions:
 - 17.1.1. The Contractor shall submit a Clark County invoice by the 10th of each month following the provision of service for reporting and payment purposes.
 - 17.1.1.1. The Contractor shall use a Clark County invoice that shall identify the month and year of service, the Contract number, and all services being billed for the previous month. If received by the 10th of the month, payment to the Contractor will be processed within twenty (20) days of the receipt of a complete and accurate invoice.
 - 17.1.1.2. If the County does not receive a complete and accurate billing by the 20th of the month, the invoice will not be processed for payment until the following month.
- 17.2. The Contractor shall send a letter to the County with the first billing designating the parties authorized to sign Contracts and invoices.
- 17.3. For cost reimbursement activities, the Contractor shall provide the following:
 - 17.3.1. A summary of expenses incurred in support of all cost reimbursement activities, by Statement of Work number, and accompanied by general ledger detail.
 - 17.3.2. For training-related travel expenses, the Contractor shall bill in accordance with the Travel Reimbursement Policy shown in Exhibit A.
- 17.4. For fee-for-service activities, the Contractor shall be reimbursed based upon the payment section of each Statement of Work. The Contractor shall maintain records of service delivery to justify the fees being claimed. Costs covered by fee-for-service payment shall not be submitted for cost reimbursement.
- 17.5. Overbilling the County for any reason will result in corrective action, repayment, and may result in Contract termination. All such actions will be reviewed for evidence of fraud or abuse.
- 17.6. Funds received from the County shall not be used to provide cash benefit to the

supported customer or family member, whether salary, bonuses or benefits.

- 17.7. The Contractor shall ensure that a Contract closeout process is completed within thirty (30) days of the end of the Contract period. Payment requests received by the County after the thirty (30) day closeout period will not be processed, as the funding may have expired.

18. PERIOD OF PERFORMANCE AND CONTRACT TERM

- 18.1 Subject to its other provisions, the Period of Performance of this Contract is **July 1, 2015 through June 30, 2016**.
- 18.2 Services must be provided and billable costs incurred within the Period of Performance. Billings shall be submitted in accordance with the schedule in Section 17, Payment. The Contractor shall have until the final day of the Contract period to submit reports and complete non-billable end of contract activities.
- 18.3 The County reserves the right to extend this Contract with the same terms and conditions, or offer an entirely new contract, upon satisfactory Contractor performance.

19. PROTECTION OF INDIVIDUAL RIGHTS

Clark County is an equal opportunity employer. As such, the Contractor agrees that it shall comply with all applicable federal, state and county laws and regulations regarding non-discrimination in the provision of employment or services, including but not limited to 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; and The Age Discrimination Act of 1975.

20. RECORDS RETENTION

The Contractor shall:

- 20.1. Retain all financial, statistical, property, materials, supplies, participant records, and supporting documentation for a period of seven (7) years from the termination of the Contract.
- 20.2. Retain records for non-expendable property for a period of seven (7) years after final disposition of the property.
- 20.3. If any litigation, audit, or bankruptcy proceeding is begun, or if a claim is instituted involving the Contract or any agreement covered by the records, retain the related records until the litigation, audit, or claim has been fully resolved.
- 20.4. Make available to the County for review any documents and records that relate to the performance of duties or other requirements of this agreement. Withholding of relevant documents may result in termination of this Contract.

21. SEVERABILITY

It is understood and agreed by the parties hereto that if any part, term, or provision of the Contract is held by the courts to be illegal, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid. Provided, that if deletion of the invalid provision substantially alters the intent, purpose or effect of the Contract or constitutes a failure of consideration, a contract may be rescinded or terminated by either party. Provided, that nothing herein contained shall be construed as giving precedence to provisions of this Contract or any subcontract over any provision of the law.

22. STATEMENT OF WORK

The Contractor shall provide services as described herein in accordance with the statement of work attached and subsequent amendments as approved by the County and the Contractor.

23. SURVIVABILITY

Certain terms and conditions are intended to survive the expiration of the Contract. Surviving terms include, but are not limited to: Records Retention, confidentiality, monitoring cooperation, financial management and data, payment terms for the last month of service, insurance provisions for potential claims through their statute of limitations, including tolling.

24. TERMINATION

If either party hereto fails to comply with the terms and conditions of this Contract or subsequent contracts, the other party may pursue such remedies as are legally available including, but not limited to, the termination of the Contract in the manner specified herein.

24.1. Termination by County for Cause. The County may terminate this Contract for a substantial and material breach thereof by the Contractor upon ten (10) days written notice of termination. The County, prior to termination, shall endeavor to work with the Contractor to remedy such breach following the Corrective Action process included in this Contract, unless the County concludes that the nature of the breach is such that immediate termination is clearly necessary to protect the public interest. Termination and corrective action correspondence shall be delivered by certified mail, return receipt requested.

24.2. Termination by Contractor for Cause. The Contractor may terminate this Contract for a substantial and material breach thereof by the County upon ten (10) days written notice of termination.

24.3. Terminations on Other Grounds. This Contract may also be terminated by mutual written agreement of the parties upon thirty (30) days written notice of termination.

24.4. County may terminate this Contract upon immediate notice to Contractor in the event that the funding for the project ceases or is reduced in amount. The Contractor will be reimbursed for services expended up to the date of termination.

25. WAIVER OF DEFAULT

If the County waives any breach of this Contract by the Contractor on any occasion, such waiver shall not be deemed to be a waiver of any subsequent breach of this Contract by the Contractor.

26. WORK PRODUCTS

Work products developed as a result of this Contract will be owned by the County. Such work products may include but are not limited to reports, maps, charts, materials, software systems and other products created as a result of the work performed under this Contract.

27. E-VERIFY

27.1 If the amount of this Contract is equal to or greater than \$25,000, the Contractor shall enter into a Memorandum of Understanding (MOU) with the Department of Homeland Security (DHS) agreeing to participate in the E-Verify Program. The Contractor shall submit a copy of the MOU to the County prior to starting work under this Contract and shall verify employment eligibility using the E-Verify website throughout the term of the Contract.

27.2 If the Contractor has sub-contracts in an amount equal to or greater than \$25,000 working in support of this Contract, the Contractor is responsible for ensuring that the sub-contractor provide a DHS MOU or proof of pending application (followed by an MOU) within 30 days after the contract start date.

27.3 Pre-employment searches must be conducted by the Contractor (and its covered subcontractors) *prior to* making offers of employment. Evidence of search results must be maintained in each employee's personnel file. Upon completion of this Contract, the Contractor shall provide the County with a written document certifying the authorized employment status of its employees and those of any sub-contractors assigned to the perform work under the Contract.

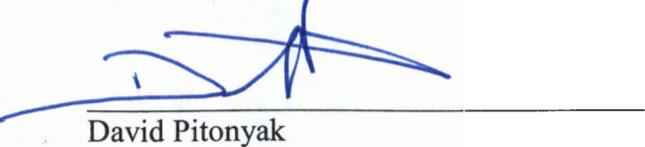
27.4 E-Verify program and enrollment information is available at the Department of Homeland Security website: <http://www.uscis.gov/e-verify>.

IN WITNESS WHEREOF, the parties hereto have caused this Contract with the Statement of Work and Budget Summary, to be executed by the dates and signatures hereunder affixed.

FOR CLARK COUNTY:

FOR THE CONTRACTOR:


Mark McCauley, Acting County Manager


David Pitonyak

Date: 8/10/15

Date: July 27, 2015

APPROVED AS TO FORM ONLY:


Deputy Prosecuting Attorney

**CONTRACT #2016-DD-22
STATEMENT OF WORK #1
IMAGINE**

SERVICE CATEGORY	PAYMENT	BARS	REVENUE SOURCE	BUDGET
Consultation and Training	Fee-for-Service	568.41 568.31	DDA/DD Property Taxes	\$41,750
Travel and Expenses	Cost Reimbursement	568.111		

1. SERVICE DESCRIPTION

The Contractor shall provide 21 days of developmental disabilities training and consultation to County staff, public and private entities and individuals, including but not limited to:

- County staff
- County employees with developmental disabilities
- School District teachers/staff and other school staff as arranged
- Mental health professionals, students, consumers and consumer organizations
- Families of individuals with developmental disabilities and community groups
- County contracted service providers

All services will be provided as directed by the Developmental Disabilities Program Manager. Training provided will include natural supports, educational models of inclusion, assisting individuals with developmental disabilities and mental health needs, community information and employment related challenges.

2. REPORTS

The Contractor shall provide a report with each request for payment that details services provided, list of recipients of services, and outcomes.

3. BUDGET SUMMARY

The County shall make payment to the Contractor in the amount not to exceed the Budget Summary total for professional services. Payment for professional services will be made on a fee for service basis at the rate of **\$1,750 per day**. Daily rates exclude travel time. All travel-related expenses shall be billed in accordance with the Contractor Travel Reimbursement Policy (Exhibit A).

**Business Associate Agreement and Qualified Service Organization Agreement
Between Imagine and Clark County Department of Community Services**

This Business Associate Agreement (BAA) and Qualified Service Organization Agreement (QSOA), (the “Agreement”) is made a part of the above-referenced contract and is entered into between the Clark County Department of Community Services (the “Covered Entity”) and Imagine (the “Business Associate”).

Recitals

A. Business Associate provides consultation and training for Covered Entity (the “Services”) which sometimes may involve (i) the use or disclosure of Protected Health Information (as defined below) by Business Associate, (ii) the disclosure of Protected Health Information by Covered Entity (or another business associate of Covered Entity) to Business Associate, or (iii) the creation, receipt, maintenance, or transmission of Electronic Protected Health Information (as defined below) by Business Associate. Accordingly, the use, disclosure, transmission, or maintenance of Protected Health Information by Business Associate is subject to the privacy regulations (the “HIPAA Privacy Regulations”) and the security regulations (the “HIPAA Security Regulations”) promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and 45 C.F.R. Parts 160 and 164 with respect to such Services. This Agreement is intended to document the business associate assurances required by the HIPAA Privacy Regulations (at 45 C.F.R. § 164.504(e)), and the HIPAA Security Regulations (at 45 C.F.R. § 164.314(a)).

B. This Agreement will govern the terms and conditions under which Covered Entity may disclose or have disclosed to Business Associate, and Business Associate may create, use, disclose, maintain, transmit or receive, Protected Health Information on behalf of Covered Entity. This Agreement will also govern the terms and conditions under which Covered Entity may disclose or have disclosed to Business Associate, and Business Associate may create, receive, maintain or transmit, EPHI on behalf of Covered Entity.

Agreement

1. **Definitions.** Capitalized terms used in this Agreement, but not otherwise defined in this Agreement, shall have the same meanings as those terms in the HIPAA Privacy Regulations and the HIPAA Security Regulations. Unless otherwise stated, a reference to a “Section” is to a Section in this Agreement. For purposes of this Agreement, the following terms shall have the following meanings.

1.1 **Breach.** “Breach” shall have the same meaning as the term “breach” in 45 C.F.R. § 164.402.

1.2 **Designated Record Set.** “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.

1.3 Electronic Protected Health Information or EPHI. “Electronic Protected Health Information” or “EPHI” shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.4 Individual. “Individual” shall mean the person who is the subject of Protected Health Information as provided in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.5 Individually Identifiable Health Information. “Individually Identifiable Health Information” shall have the same meaning as the term “individually identifiable health information” in 45 C.F.R. § 160.103.

1.6 Protected Health Information or PHI. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.7 Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.

1.8 Secretary. “Secretary” shall mean the Secretary of the federal Department of Health and Human Services or that person’s designee.

1.9 Security Incident. “Security Incident” shall have the same meaning as the term “security incident” in 45 C.F.R. § 164.304.

1.10 Unsecured Protected Health Information. “Unsecured Protected Health Information” shall have the same meaning as the term “unsecured protected health information” in 45 C.F.R. § 164.402, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

2. Permitted Uses and Disclosures by Business Associate.

2.1 General. Except as otherwise specified in this Agreement, Business Associate may use or disclose PHI to perform its obligations for, or on behalf of, Covered Entity, provided that such use or disclosure would not violate the HIPAA Privacy Regulations if done by Covered Entity or the minimum necessary policies and procedures of Covered Entity.

2.2 Other Permitted Uses. Except as otherwise limited by this Agreement, Business Associate may use PHI it receives or creates in its capacity as a business associate of Covered Entity, if necessary:

2.2.1 for the proper management and administration of Business Associate;

2.2.2 to carry out the legal responsibilities of Business Associate; or

2.2.3 to provide Data Aggregation services to Covered Entity which relate to the health care operations of Covered Entity in accordance with the HIPAA Privacy Regulations.

2.3 Other Permitted Disclosures. Except as otherwise limited by this Agreement, Business Associate may disclose to a third party PHI it receives or creates in its capacity as a business associate of Covered Entity for the proper management and administration of Business Associate, provided that:

2.3.1 The disclosure is Required By Law; or

2.3.2 Business Associate obtains reasonable assurances from the third party to whom the information is disclosed that (i) the PHI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the third party, and (ii) the third party notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

2.4 De-Identified Information. Health information that has been de-identified in accordance with the requirements of 45 C.F.R. §§ 164.514 and 164.502(d) and is therefore not Individually Identifiable Health Information (“De-Identified Information”) is not subject to the provisions of this Agreement. Covered Entity may disclose PHI to Business Associate to use for the purpose of creating De-Identified Information, whether or not the De-Identified Information is to be used by Covered Entity.

3. Obligations and Activities of Business Associate Regarding PHI.

3.1 Limitations on Uses and Disclosures. Business Associate will not use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law.

3.2 Safeguards. Business Associate will use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

3.3 Mitigation. Business Associate will mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

3.4 Reporting. Business Associate will report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware.

3.5 Agents and Subcontractors. Business Associate will ensure that any agent, including any subcontractor, to whom Business Associate provides PHI received from, or created or received by Business Associate on behalf of, Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

3.6 Access. Where PHI held by Business Associate is contained in a Designated Record Set, within fifteen (15) days of receiving a written request from Covered Entity, Business Associate will make such PHI available to Covered Entity or, as directed by Covered Entity to an

Individual, that is necessary for Covered Entity to respond to Individuals' requests for access to PHI about them in accordance with 45 C.F.R. § 164.524. Business Associate will provide such PHI in an electronic format upon request by Covered Entity unless it is not readily producible in such format in which case Business Associate will provide Covered Entity a standard hard copy format.

3.7 Amendment of PHI. Where PHI held by Business Associate is contained in a Designated Record Set, within fifteen (15) days of receiving a written request from Covered Entity or an Individual, Business Associate will make any requested amendment(s) or correction(s) to PHI in accordance with 45 C.F.R. § 164.526.

3.8 Disclosure Documentation. Business Associate will document its disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

3.9 Accounting of Disclosures. Within thirty (30) days of receiving a request from Covered Entity, Business Associate will provide to Covered Entity information collected in accordance with Section 3.8 of this Agreement, as necessary to permit Covered Entity to make an accounting of disclosures of PHI about an Individual in accordance with 45 C.F.R. § 164.528.

3.10 Access to Business Associate's Internal Practices. Except to the extent that it violates or interferes with attorney-client privilege, the duty of client confidentiality, or the applicable rules of professional responsibility, Business Associate will make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of (a) PHI received from, or created or received by Business Associate on behalf of, Covered Entity; and (b) EPHI created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, available to the Secretary or to Covered Entity, in a time and manner designated by the Secretary or reasonably specified by Covered Entity, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Privacy Regulations and HIPAA Security Regulations.

3.11 Breach Notification. Business Associate, following the discovery of a Breach of Unsecured Protected Health Information, shall notify Covered Entity of such breach. Except as otherwise required by law, Business Associate shall provide such notice without unreasonable delay, and in no case later than thirty (30) calendar days after discovery of the Breach.

3.11.1 Notice to Covered Entity required by this Section 3.11 shall include: (i) to the extent possible, the names of the individual(s) whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during the Breach; (ii) a brief description of what happened including the date of the Breach and the date of the discovery of the Breach, if known; (iii) a description of the types of Unsecured Protected Health Information that were involved in the Breach; (iv) a brief description of what Business Associate is doing or will be doing to investigate the Breach, to mitigate harm to the individual(s), and to protect against further Breaches; and (v) any other information that Covered Entity determines it needs to include in notifications to the individual(s) under 45 C.F.R. § 164.404(c).

3.11.2 After receipt of notice, from any source, of a Breach involving Unsecured Protected Health Information used, disclosed, maintained, or otherwise possessed by Business Associate or of a Breach, involving Unsecured Protected Health Information, for which the Business Associate is otherwise responsible, Covered Entity may in its sole discretion (i) require Business Associate, at Business Associate's sole expense, to use a mutually agreed upon written notice to notify, on Covered Entity's behalf, the individual(s) affected by the Breach, in accordance with the notification requirements set forth in 45 C.F.R. § 164.404, without unreasonable delay, but in no case later than sixty (60) days after discovery of the Breach; or (ii) elect to provide notice to the individual(s) affected by the Breach.

4. Obligations of Covered Entity.

4.1 Requested Restrictions. Covered Entity shall notify Business Associate, in writing, of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, which permits an Individual to request certain restrictions of uses and disclosures, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4.2 Changes in or Revocation of Permission. Covered Entity will notify Business Associate in writing of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate's use or disclosure of PHI.

4.3 Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Regulations and HIPAA Security Regulations if done by Covered Entity, except to the extent that Business Associate will use or disclose PHI for Data Aggregation or management and administrative activities of Business Associate.

5. Security Restrictions on Business Associate.

5.1 General. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Security Regulations.

5.2 Agents; Subcontractors. Business Associate will ensure that any agent, including a subcontractor, to whom Business Associate provides EPHI agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of such EPHI.

5.3 Reporting of Security Incidents. Business Associate shall report to Covered Entity any Security Incident affecting EPHI created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, of which Business Associate becomes aware. This Section constitutes notice to Covered Entity of routine and ongoing attempts to gain unauthorized access to Business Associate's information systems (each an "Unsuccessful Attack"), including but not limited to pings, port scans, and denial of service attacks, for which no additional notice shall be required provided that no such incident results in unauthorized

access to Electronic PHI.

5.4 HIPAA Security Regulations Compliance. Business Associate agrees to comply with Sections 164.308, 164.310, 164.312, and 164.316 of title 45, Code of Federal Regulations.

6. Term and Termination.

6.1 Term. This Agreement shall take effect on the Effective Date (as defined below), and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section 6.

6.2 Termination for Cause. If Covered Entity determines that Business Associate has breached a material term of this Agreement, Covered Entity will provide written notice to Business Associate which sets forth Covered Entity's determination that Business Associate breached a material term of this Agreement, and Covered Entity may:

6.2.1 Provide written notice to Business Associate which provides an opportunity for Business Associate to cure the breach or end the violation, as applicable. If Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, then Covered Entity may immediately thereafter terminate this Agreement; or

6.2.2 Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.

6.2.3 If neither termination nor cure is feasible as provided in Sections 6.2.1 and 6.2.2 of this Agreement, Covered Entity will report the violation to the Secretary.

6.3 Effect of Termination.

6.3.1 Except as provided in Section 6.3.2 of this Agreement, upon termination of this Agreement, for any reason, Business Associate will return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision also applies to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate will retain no copies of the PHI.

6.3.2 In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate will provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon reasonable determination that return or destruction of PHI is infeasible, Business Associate will extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

7. Qualified Service Organization Agreement. Covered Entity and Business Associate hereby acknowledge that Business Associate and its agents and employees have, as applicable, complied, and will comply, with 42 USC §290dd-2 and 42 CFR Ch. 1, part 2, §§2.11 et seq. (the

“Federal Drug and Alcohol Regulations”) in that:

7.1 The parties acknowledge that if Business Associate receives, processes, reviews, or otherwise deals with any Covered Entity patient records during the course of the Services Business Associate and its employees will be providing to Covered Entity, that each and every one of said employees will be fully bound by the Federal Drug and Alcohol Regulations;

7.2 Each of Business Associate’s employees and agents will maintain Covered Entity’s patient identifying information in accordance with federal and state confidentiality rules governing drug and alcohol treatment records;

7.3 Each of Business Associate’s employees and agents will comply, as applicable, with the limitations on disclosure, redisclosure and use set forth in 42 CFR Ch. 1, part 2, §§ 2.16 and 2.53; and

7.4 If necessary, each of Business Associate’s employees and agents will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Federal Drug and Alcohol Regulations.

8. Miscellaneous.

8.1 Regulatory References. A reference in this Agreement to a section in the HIPAA Privacy Regulations or the HIPAA Security Regulations means the section as in effect or as amended.

8.2 Amendment. If any new state or federal law, rule, regulation, or policy, or any judicial or administrative decision, affecting the use or disclosure of PHI is enacted or issued, including but not limited to any law or regulation affecting compliance with the requirements of the HIPAA Privacy Regulations or the HIPAA Security Regulations, the parties agree to take such action in a timely manner and as is necessary for Covered Entity and Business Associate to comply with such law, rule, regulation, policy or decision. If the parties are not able to agree on the terms of such an amendment, either party may terminate this Agreement on at least thirty (30) days’ prior written notice to the other party.

8.3 Survival. The respective rights and obligations of Business Associate under Section 6.3 of this Agreement (“Effect of Termination”) shall survive the termination of this Agreement.

8.4 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the Federal Drug and Alcohol Regulations. The section and paragraph headings of this Agreement are for the convenience of the reader only, and are not intended to act as a limitation of the scope or meaning of the sections and paragraphs themselves.

8.5 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Business Associate and Covered Entity and their respective successors or assigns, any rights, remedies,

obligations or liabilities whatsoever.

8.6 Assignment. This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent shall not be unreasonably withheld; provided that no such consent shall be required for either party's assignment or transfer of this Agreement in connection with a sale or transfer of all or substantially all of the business or assets of the assigning party. This Agreement shall be binding on and inure to the benefit of the parties hereto and their permitted successors and assigns.

8.7 Entire Agreement. This Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all prior communications, representations, and agreements, oral or written, of the parties with respect to its subject matter.

8.8 Severability and Waiver. The invalidity of any term or provision of this Agreement will not affect the validity of any other provision. Waiver by any party of strict performance of any provision of this Agreement will not be a waiver of or prejudice any party's right to require strict performance of the same provision in the future or of any other provision of this Agreement.

8.9 Notices. Any notices permitted or required by this Agreement will be addressed as follows or to such other address as either party may provide to the other:

If to Covered Entity: Clark County Department of Community Services
Attn: Contract Section
PO Box 5000
Vancouver, WA 98666-5000

If to Business Associate: Imagine
Attn: David Pitonyak
3694 Mt Tabor Rd
Blacksburg, VA 24060

8.10 Counterparts. This Agreement may be executed in multiple counterparts, all of which together will constitute one agreement, even though all parties do not sign the same counterpart.

8.11 Effective Date. This Agreement will become effective on **July 1, 2015**.

IN WITNESS WHEREOF, the parties hereto have caused this BUSINESS ASSOCIATE AGREEMENT AND QUALIFIED SERVICE ORGANIZATION AGREEMENT to be duly executed as of the Effective listed above.

EXHIBIT A

CONTRACTOR TRAVEL REIMBURSEMENT POLICY

- I. The following travel related expenses are allowable costs if incurred in conjunction with travel for the performance of work under contract with Clark County. ⁽¹⁾
 - A. Actual costs of air, bus, train, taxi, tolls, car rentals and parking fees. Personal automobile usage will be reimbursed at the prevailing IRS rate per mile from the employee's business location to the travel destination. In instances where personal automobile usage exceeds the cost of airfare, reimbursement will be limited to the cost of traveling to the same destination by coach class airfare.
 - B. Actual costs of hotel or motel accommodations at single occupancy rates up to the per diem maximum lodging rate for the applicable locality established by the U.S. General Services Administration ⁽²⁾. The maximum lodging rate is exclusive of lodging taxes.
 - C. Meals and incidental expenses (M&IE) at the per diem rates for each locality as established by the U.S. General Services Administration ⁽²⁾.
 - D. Other reasonable and ordinary expenses that are related to the performance of the contract and incurred by the contractor while on official business. Examples of these costs are business related phone calls, registration fees and fax transmissions.
- II. It is expected that travel for business conducted in Vancouver, WA will be based upon the per diem rates established for the Vancouver, WA per diem locality, without regard to actual location of lodging.
- III. Travel and expense reimbursements must be submitted in accordance with Section I with supporting documentation for days of travel and include receipts for expenses that are reimbursed at actual cost. The Contractor will be required to state, on the invoice, departure time for the first day of the trip and the return time on last day of the trip (or both for a one day trip) ⁽³⁾.
- IV. Definitions for M&IE
 - A. Meals. Expenses for breakfast, lunch, dinner and related tips and taxes (specifically excluded are alcoholic beverage and entertainment expenses, and any expenses incurred for other persons).
 - B. Incidental expenses. Fees and tips given to porters, baggage carriers, bellhops, hotel maids, stewards or stewardesses and others on ships, and hotel servants in foreign countries; and, transportation between places of lodging or business and

places where meals are taken, if suitable meals cannot be obtained at the lodging or business site.

- (1) Federal Travel Regulations are available at the GSA website, www.gsa.gov/federaltravelregulation. Domestic per diem locality rates may be accessed from the section on Travel and Per Diem at <http://www.gsa.gov/perdiem>. Do not use this site for the mileage reimbursement rates. The Department of Community Services uses the IRS published mileage reimbursement rates.
- (2) The per diem locality rate for Vancouver, WA, is up to \$113 plus taxes for lodging and \$56 for M&IE (meals and incidental expenses).
- (3) M&IE per diem calculation based on County Policy. To calculate the M&IE per diem on travel days, use the chart below. On the first day of travel, the "Departure Before" time refers to the time the Contractor departs home or office to travel to Vancouver or final destination for trip. The "Return After" time refers to the time the Contractor arrives back at the place of departure.

Departure Before	Return After	Percent of Per Diem
7 am	10 am	25%
11 am	2 pm	30%
5 pm	7 pm	45%

Data Security Requirements

1. **Definitions.** The words and phrases listed below, as used in this Exhibit, shall each have the following definitions:
 - a. "Authorized User(s)" means an individual or individuals with an authorized business requirement to access DSHS Confidential Information.
 - b. "Hardened Password" means a string of at least eight characters containing at least one alphabetic character, at least one number and at least one special character such as an asterisk, ampersand or exclamation point.
 - c. "Unique User ID" means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase or other mechanism, authenticates a user to an information system.
2. **Data Transport.** When transporting DSHS Confidential Information electronically, including via email, the Data will be protected by:
 - a. Transporting the Data within the (State Governmental Network) SGN or Contractor's internal network, or;
 - b. Encrypting any Data that will be in transit outside the SGN or Contractor's internal network. This includes transit over the public Internet.
3. **Protection of Data.** The Contractor agrees to store Data on one or more of the following media and protect the Data as described:
 - a. **Hard disk drives.** Data stored on local workstation hard disks. Access to the Data will be restricted to Authorized User(s) by requiring logon to the local workstation using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards.
 - b. **Network server disks.** Data stored on hard disks mounted on network servers and made available through shared folders. Access to the Data will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on disks mounted to such servers must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

For DSHS Confidential Information stored on these disks, deleting unneeded Data is sufficient as long as the disks remain in a Secured Area and

otherwise meet the requirements listed in the above paragraph. Destruction of the Data as outlined in Section 5. Data Disposition may be deferred until the disks are retired, replaced, or otherwise taken out of the Secured Area.

- c. **Optical discs (CDs or DVDs) in local workstation optical disc drives.** Data provided by DSHS on optical discs which will be used in local workstation optical disc drives and which will not be transported out of a Secured Area. When not in use for the contracted purpose, such discs must be locked in a drawer, cabinet or other container to which only Authorized Users have the key, combination or mechanism required to access the contents of the container. Workstations which access DSHS Data on optical discs must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
- d. **Optical discs (CDs or DVDs) in drives or jukeboxes attached to servers.** Data provided by DSHS on optical discs which will be attached to network servers and which will not be transported out of a Secured Area. Access to Data on these discs will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on discs attached to such servers must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
- e. **Paper documents.** Any paper records must be protected by storing the records in a Secured Area which is only accessible to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.
- f. **Remote Access.** Access to and use of the Data over the State Governmental Network (SGN) or Secure Access Washington (SAW) will be controlled by DSHS staff who will issue authentication credentials (e.g. a Unique User ID and Hardened Password) to Authorized Users on Contractor staff. Contractor will notify DSHS staff immediately whenever an Authorized User in possession of such credentials is terminated or otherwise leaves the employ of the Contractor, and whenever an Authorized User's duties change such that the Authorized User no longer requires access to perform work for this Contract.
- g. **Data storage on portable devices or media.**
 - (1) Except where otherwise specified herein, DSHS Data shall not be stored by the Contractor on portable devices or media unless

specifically authorized within the terms and conditions of the Contract. If so authorized, the Data shall be given the following protections:

- (a) Encrypt the Data with a key length of at least 128 bits
 - (b) Control access to devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics.
 - (c) Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity, if this feature is available. Maximum period of inactivity is 20 minutes.
 - (d) Physically secure the portable device(s) and/or media by:
 - (e) Keeping them in locked storage when not in use
 - (f) Using check-in/check-out procedures when they are shared, and
 - (g) Taking frequent inventories
- (2) When being transported outside of a Secured Area, portable devices and media with DSHS Confidential Information must be under the physical control of Contractor staff with authorization to access the Data.
 - (3) Portable devices include, but are not limited to; smart phones, tablets, flash memory devices (e.g. USB flash drives, personal media players), portable hard disks, and laptop/notebook/netbook computers if those computers may be transported outside of a Secured Area.
 - (4) Portable media includes, but is not limited to; optical media (e.g. CDs, DVDs), magnetic media (e.g. floppy disks, tape), or flash media (e.g. CompactFlash, SD, MMC).

h. Data stored for backup purposes.

- (1) DSHS data may be stored on portable media as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes. Such storage is authorized until such time as that media would be reused during the course of normal backup operations. If backup media is retired while DSHS Confidential Information still exists upon it, such media will be destroyed at that time in accordance with the disposition requirements in Section 5. Data Disposition
- (2) DSHS Data may be stored on non-portable media (e.g. Storage Area Network drives, virtual media, etc.) as part of a Contractor's existing, documented backup process for business continuity or disaster recovery purposes. If so, such media will be protected as otherwise

described in this exhibit. If this media is retired while DSHS Confidential Information still exists upon it, the data will be destroyed at that time in accordance with the disposition requirements in Section 5. Data Disposition.

4. Data Segregation.

- a. DSHS Data must be segregated or otherwise distinguishable from non-DSHS data. This is to ensure that when no longer needed by the Contractor, all DSHS Data can be identified for return or destruction. It also aids in determining whether DSHS Data has or may have been compromised in the event of a security breach. As such, one or more of the following methods will be used for data segregation.
- b. DSHS Data will be kept on media (e.g. hard disk, optical disc, tape, etc.) which will contain no non-DSHS data. And/or,
- c. DSHS Data will be stored in a logical container on electronic media, such as a partition or folder dedicated to DSHS Data. And/or,
- d. DSHS Data will be stored in a database which will contain no non-DSHS data. And/or,
- e. DSHS Data will be stored within a database and will be distinguishable from non-DSHS data by the value of a specific field or fields within database records.
- f. When stored as physical paper documents, DSHS Data will be physically segregated from non- DSHS data in a drawer, folder, or other container.
- g. When it is not feasible or practical to segregate DSHS Data from non-DSHS data, then both the DSHS Data and the non-DSHS data with which it is commingled must be protected as described in this exhibit.

5. Data Disposition. When the contracted work has been completed or when no longer needed, except as noted in Section 3. Protection of Data b. Network Server Disks above, Data shall be returned to DSHS or destroyed. Media on which Data may be stored and associated acceptable methods of destruction are as follows:

Data stored on:	Will be destroyed by:
Server or workstation hard disks, or	Using a "wipe" utility which will overwrite the Data at least three (3) times using either random or single character data, or

Removable media (e.g. floppies, USB flash drives, portable hard disks) excluding optical discs	Degaussing sufficiently to ensure that the Data cannot be reconstructed, or Physically destroying the disk
Paper documents with sensitive or Confidential Information	Recycling through a contracted firm provided the contract with the recycler assures that the confidentiality of Data will be protected.
Paper documents containing Confidential Information requiring special handling (e.g. protected health information)	On-site shredding, pulping, or incineration
Optical discs (e.g. CDs or DVDs)	Incineration, shredding, or completely defacing the readable surface with a coarse abrasive
Magnetic tape	Degaussing, incinerating or crosscut shredding

- 6. Notification of Compromise or Potential Compromise.** The compromise or potential compromise of DSHS shared Data must be reported to the DSHS Contact designated in the Contract within one (1) business day of discovery. If no DSHS Contact is designated in the Contract, then the notification must be reported to the DSHS Privacy Officer at dshsprivacyofficer@dshs.wa.gov. Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.
- 7. Data shared with Subcontractors.** If DSHS Data provided under this Contract is to be shared with a subcontractor, the Contract with the subcontractor must include all of the data security provisions within this Contract and within any amendments, attachments, or exhibits within this Contract. If the Contractor cannot protect the Data as articulated within this Contract, then the contract with the sub- Contractor must be submitted to the DSHS Contact specified for this contract for review and approval.