

Agreement #: 14-1130-0061-05(1)
Contractor: The County of Lewis
Service: Congregate Nutrition
Effective Date: January 1, 2015

GENERAL TERMS AND CONDITIONS – EXHIBIT A

LEWIS-MASON-THURSTON AREA AGENCY ON AGING

AND

THE COUNTY OF LEWIS

THIS AGREEMENT, pursuant to Chapter 39.34 RCW, is made and entered into by and between the Lewis-Mason-Thurston Council of Governments, as Grantee for the Lewis-Mason-Thurston Area Agency on Aging, hereinafter referred to as "LMTAAA," and The County of Lewis, hereinafter referred to as the "Contractor."

THE PURPOSE OF THIS DOCUMENT is to establish General Terms and Conditions for this Agreement between LMTAAA and the Contractor.

1. **Definitions.** As used throughout the Agreement, the following terms shall have meaning as set forth below:
 - a. "Agreement" means this Agreement, including all documents attached or incorporated by reference.
 - b. "AL TSA" means Aging and Long Term Support Administration, a division of the State of Washington Department of Social and Health Services.
 - c. "Allocable costs" are those costs which are chargeable or assignable to a particular cost objective in accordance with the relative benefits received by those costs.
 - d. "Allowable costs" are those costs necessary and reasonable for proper and efficient performance of this Agreement and in conformance with this Agreement. Allowable costs under federal awards to local or tribal governments must be in conformance with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local and Indian Tribal Governments; allowable costs under federal awards to non-profit organizations must be in conformance with OMB Circular A-122, Cost Principles for Non-Profit Organizations.
 - e. "Assignment" means the act of transferring to another the rights and obligations under this Agreement.
 - f. "Business Associate" means a Business Associate as defined in 45 CFR 160.103, who performs or assists in the performance of an activity for or on behalf of the Covered Entity that involves the use or disclosure of protected health information

(PHI). Any reference to Business Associate under this Agreement includes Business Associate's employees, agents, officers, subcontractors, third party contractor's, volunteers, or directors.

- g. "CFR" means Code of Federal Regulations. All references in this Agreement to the CFR shall include any successor, amended, or replacement regulation.
- h. "Client" means an individual that is eligible for or receiving services provided by the Contractor in connection with this Agreement.
- i. "Contractor" shall mean the entity that is a party to this agreement, and includes the entity's officers, directors, trustees, employees and/or agents unless otherwise stated in this Agreement. For purposes of this Agreement, the Contractor or agent shall not be considered an employee of LMTAAA.
- j. "Covered Entity" means a Covered Entity as defined in 45 CFR 160.103.
- k. "Debarment" means an action taken by a Federal official to exclude a person or business entity from participating in transactions involving certain federal funds.
- l. "Designated Record Set" means a group of records maintained by or for the Covered Entity that is the medical and billing records about the individuals or the enrollment, payment, claims adjudication, and case or medical management records, used in whole or part by or for the Covered Entity to make decisions about individuals.
- m. "DSHS" or "the Department" means the State of Washington Department of Social and Health Services and its employees and authorized agents.
- n. "Equipment" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5000 or more per unit.
- o. "HIPAA" means the Health Information Portability and Accountability Act of 1996, as codified at 42 USCA 1320d-d8.
- p. "Individual" means the person who is the subject of PHI and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- q. "Older Americans Act" refers to P.L. 106-501, 106th Congress, and any subsequent amendments or replacement statutes thereto.
- r. "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.

- s. "PHI" means protected health information and is information created or received by Business Associate from or on behalf of Covered Entity that relates to the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or past, present or future payment for provision of health care to an individual. 45 CFR 160 and 14. PHI includes demographic information that identifies the individual or about which there is reasonable basis to believe, can be used to identify the individual. 45 CFR 160.103. PHI is information transmitted, maintained, or stored in any form or medium. 45 CFR 164.501. PHI does not include education records covered by the Family Educational Right and Privacy Act, as amended, 20 USCA 1232g(a)(4)(b)(iv).
- t. "RCW" means the Revised Code of Washington. All references in this Agreement to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at <http://apps.leg.wa.gov/rcw/>.
- u. "Real Property" means land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.
- v. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
- w. "Subcontract" means any separate agreement or contract between the Contractor and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Agreement.
- x. "Subcontractor" means an individual or entity (including its officers, directors, trustees, employees, and/or agents) with whom the Contractor contracts to provide services that are approved by LMTAAA in accordance with this Agreement.
- y. "Subrecipient" means a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.
- z. "Supplies" means all tangible personal property other than equipment as defined herein.
- aa. "Use" means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.
- bb. "User" means the Contractor employee who has registered or approved access to a system listed in this Agreement.
- cc. "WAC" means the Washington Administrative Code. All references in this Agreement to WAC chapters or sections shall include any successor, amended, or

replacement regulation. Pertinent WAC chapters or sections can be accessed at <http://apps.leg.wa.gov/wac/>.

2. **Agreement Types.** LMTAAA may use four types of contracts for purchasing services:

a. Fee for Service

- The Contractor is reimbursed a negotiated fixed rate of pay based on performance of a defined unit of service. The unit rate is determined by a line item budget approved by LMTAAA. If a staffing plan is submitted, it may not be changed without LMTAAA approval. The actual cost to the Contractor may be more or less than the amount provided under the Agreement.
- Payment is made for each specified unit of service delivered and an upper limit is placed on the maximum consideration allowed (e.g., total number of services delivered). Typically, payment is made monthly based on a report of the number of service units delivered.

b. Cost Reimbursement

- The Contractor is reimbursed for actual costs up to the maximum consideration allowed in the contract. A line-item budget negotiated and contained in the Agreement must be adhered to or amended with prior approval from LMTAAA.
- Payment is made for actual cost incurred for performing at a certain level of effort, regardless of the level of output achieved. Reimbursement is made for actual expenditures within the specified line-item budget categories. Billings must be accompanied by a line-item expenditure report. It is possible to reimburse Contractors for an agreed upon amount per a unit or service provided.

c. Set Rate/Fixed Price/Lump Sum

- The Contractor is reimbursed a set fixed amount or lump sum payment based on terms established in the Agreement; a negotiated lump sum for completion of the agreed upon performance. As with Fee for Service, the cost to the Contractor may be more or less than the Agreement provides. Unlike Fee for Service, the lump sum contract does not pay a rate for each repeated unit of service.
- Payment is made for a specified amount of delivered service or product. Typically, payment is tied to completion of agreed upon performance achievements. Other payment arrangements are possible, such as progress payments made to compensate for activities conducted over the specific period of the contract. LMTAAA will not pay if the specific terms in the contract are not met.

d. Performance Based

- These Agreements are based on attainment of specific outcomes (e.g., placement of a client into unsubsidized employment for six months).
- The rate of payment is generally negotiated based on cost information provided by the Contractor. In some cases, the rate may be set by LMTAAA policy or other means. LMTAAA will not pay if the specific terms in the contract are not met.

3. **Amendment.** This Agreement, or any term or condition, may be modified only by a written amendment signed by both parties. Only personnel authorized to bind each of the parties shall sign an amendment.
4. **Assignment.** Except as otherwise provided herein, the Contractor shall not assign rights or obligations derived from this Agreement to a third party without the prior, written consent of LMTAAA and the written assumption of the Contractor's obligations by the third party.
5. **Billing Procedure.** The Contractor shall request payment with the use of forms as designated by LMTAAA for services performed or costs incurred under this Agreement as set forth in the attached Special Terms and Conditions (Exhibit C).
6. **Client Abuse.** The Contractor shall report all instances of suspected client abuse to DSHS, in accordance with RCW 74.34.
7. **Client Grievance.** The Contractor shall establish a system through which applicants for and recipients of services under this Agreement may present grievances about the activities of the Contractor or any Subcontractor(s) related to service delivery. Clients receiving Medicaid funded services must be informed of their right to a fair hearing regarding service eligibility specified in WAC 388-02 and under the provisions of the Administrative Procedures Act, Chapter 34.05 RCW.

The client grievance procedure shall be formalized with clearly and concisely written procedures for hearing grievances, documenting information taken, referring the grievance to the next level and/or resolving the grievance. The Contractor shall record and maintain in writing all complaints and the action taken to resolve them.

8. **Compliance with Applicable Law.** At all times during the term of this Agreement, the Contractor and LMTAAA shall comply with all applicable federal, state and local laws, regulations and rules, including but not limited to, nondiscrimination laws and regulations.
9. **Data Security Requirements**

a. Data Transmission

Contractor may transmit client data electronically via email using Contractor's internal network or the DSHS Secure Email System. Any client data that will be transmitted outside of Contractor's internal network or the DSHS Secure Email

System (over the public internet, for instance) must be encrypted.

Contractor staff whose email addresses are outside of the DSHS firewall are required to use the DSHS Secure Email system for the transmission of any electronic mail message containing a name, Personal Information or PHI for a client, care recipient or caregiver. This system is intended for the exchange of data between DSHS/LMTAAA and Contractor for the performance of services outlined in this Contract and shall not be used for any other transmissions.

Each person with a unique email address must obtain his or her own Secure Email Account and password by "invitation" from a LMTAAA Projects Coordinator who has an email address ending in @dshs.wa.gov. Once a Secure Email Account is set up for a specific person with a specific email address, then that person can access the Secure Email System to receive and initiate secure messages.

Contractor shall not place individuals' names in the subject line of these emails because this part of the message is not secure. Contractor is required to notify the LMTAAA Projects Coordinator within eight (8) working days when a Secure Email Account should be disabled.

b. Protection of Data

The contractor agrees to store data on one or more of the following media and protect the data as described:

(1) Hard disk drives:

Data stored on local workstation hard disks. Access to the data will be restricted to authorized users by requiring logon to the local workstation using a unique user ID and complex password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards.

(2) 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 complex 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 confidential data stored on these disks, deleting unneeded data is sufficient as long as the disks remain in a secured area and otherwise meets the requirements listed in the above paragraph. Destruction of the data as outlined in 9.e. Data Disposition may be deferred until the disks are retired, replaced, or otherwise taken out of the secure environment.

(3) Optical discs (CDs or DVDs) in local workstation optical disc drives:

Data provided by DSHS/LMTAAA on optical discs which will be used in local workstation optical disc drives and which will not be transported out of a secure area. When not in use for the contracted purpose, such discs must be 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/LMTAAA 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.

(4) Optical discs (CDs or DVDs) in drives or jukeboxes attached to servers:

Data provided by DSHS/LMTAAA on optical discs which will be attached to network servers and which will not be transported out of a secure area. Access to data on these discs will be restricted to authorized users through the use of access control lists which will grant access only after the authorized user has authenticated to the network using a unique user ID and complex 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.

(5) Paper documents:

Any paper records must be protected by storing the records in a secure area which is only accessible to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.

c. Data storage on portable devices or media

(1) The Contractor shall ensure that any portable devices and media that contain client data are kept secure from unauthorized access. Portable devices and media include, but are not limited to, the following: laptop/notebook computers, handheld PDAs, USB flash drives, DVDs, CDs, personal media players, portable hard disks, magnetic media (e.g. floppy disks, tape, Zip or Jaz disks), or flash media (e.g. CompactFlash, SD, MMC).

(2) Contractor shall give client data the following protections:

(i) Encrypt the data with a key length of at least 128 bits;

(ii) Control access to devices with a unique user ID and password or stronger authentication method such as a physical token or biometrics; and

(iii) Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity (maximum period of inactivity is

20 minutes).

- (3) The Contractor shall physically protect the portable device(s) and/or media by:
 - (i) Keeping them in locked storage when not in use;
 - (ii) Using check-in/check-out procedures when they are shared; and
 - (iii) Taking frequent inventories.
- (4) When being transported outside of a secure area, portable devices and media with confidential data must be under the physical control of contractor staff with authorization to access the data.

d. Data Segregation

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

e. Data Disposition

For the duration of the contract Performance Periods for services outlined in this Contract, Contractor shall dispose of DSHS/LMTAAA client data on device(s) and/or media using the methods listed below.

Data stored on:	Will be destroyed by:
Server or workstation hard disks, or Removable media (e.g. floppies, USB flash drives, portable hard disks, Zip or similar disks)	Using a “wipe” utility which will overwrite the data at least three (3) times using either random or single character data, or Degaussing sufficiently to ensure that the data cannot be reconstructed, or Physically destroying the disk.
Paper documents with sensitive or confidential data	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 course abrasive.
Magnetic tape	Degaussing, incinerating or crosscut shredding.

f. Data shared with sub-contractors

If DSHS/LMTAAA client data provided under this contract is to be shared with a sub-contractor, the contract with the sub-contractor must include all of the data security provisions within this contract and within any amendments, attachments, or exhibits within this contract. If the sub-contractor cannot protect the data as articulated within this contract, then the contract with the sub-contractor must be submitted to LMTAAA for review and approval.

10. Data Share Requirements.

a. Access and Disclosure Information

The Contractor shall not disclose the contents of any client records, files, papers and communications except as necessary for the administration of programs to provide services to clients as stated in RCW 74.17.450, WAC 388-01-030 and chapter 388-01 WAC. As required by RCW 74.04.060, the Contractor shall treat information accessed under this Agreement with the degree of confidentiality required by the federal Social Security Act.

(1) The Contractor shall limit access to client data to staff members (owners, board members, employees, volunteers, interns) whose duties specifically require access to such data in the performance of their assigned duties. No person

shall access individual client data for personal purposes. Clients shall only be permitted to access their own data.

- (2) The Contractor shall ensure each employee signs the Contractor Agreement on Nondisclosure of Confidential Information form, provided by LMTAAA, to acknowledge the data access requirements prior to gaining access to confidential information. Access will be given only to data necessary to the performance of this Agreement. The Contractor shall retain the original Nondisclosure form on file. The Contractor shall have the form available for LMTAAA review upon request.

The Contractor must provide an annual written reminder of the Nondisclosure requirements to all employees with access to data to remind them of the limitations, use or publishing of data. The Contractor shall retain documentation of such reminder on file for monitoring purposes.

- (3) The Contractor shall not use or disclose any information concerning any client for any purpose not directly connected with the administration of the Contractor's responsibilities under this Agreement except by prior written consent of the client, his/her attorney, parent or guardian.
- (4) The Contractor may disclose client data to LMTAAA and DSHS for purposes directly connected with the administration of DSHS/LMTAAA programs and services. This includes, but is not limited to, determining eligibility, providing services, and participation in an audit. The Contractor shall disclose client data for research, statistical, monitoring and evaluation purposes conducted by appropriate federal agencies, DSHS and LMTAAA. LMTAAA must authorize in writing the disclosure of this information to any other party not identified in this section.
- (5) The Contractor shall not link the data with personal data or individually identifiable data from any other source nor re-disclose the data unless specifically authorized in this Agreement or by the prior written consent of LMTAAA.

b. Dissemination to Staff

Prior to making information available to new staff and annually thereafter, the Contractor shall ensure that staff accessing the Personal Information or PHI under this Agreement are trained in HIPAA use and disclosure of PHI requirements and understand:

(1) Confidentiality of Client Data

- (i) Client data is confidential and is protected by various state and federal laws. The basis for this protection is the individual's right to privacy as outlined in the HIPAA Privacy Rule- 45 CFR 160 to 45 CFR 164.
- (ii) Personal Information means demographic and financial information about a

particular individual that is obtained through one or more sources (such as name, address, SSN, and phone numbers). RCW 42.17.310 lists the information that is exempted from public inspection and copying.

(2) Use of Client Data

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

(3) Disclosure of Information

- (i) Client information may be provided to the client, client's authorized guardian, or a client-authorized 3rd party per WAC 388-01.
- (ii) Client information may be disclosed to other individuals or agencies only for purposes of administering DSHS programs.
- (iii) Questions related to disclosure are to be directed to the LMTAAA Projects Coordinator.
- (iv) Any disclosure of information contrary to this section is unauthorized and is subject to penalties identified in law.

c. Security of Data

- (1) The Contractor shall take reasonable precautions to secure against unauthorized physical and electronic access to data, which shall be protected in a manner that prevents unauthorized persons, including the general public, from retrieving Data by means of computer, remote terminal, or other means. The Contractor shall take due care to ensure Contractor and its subcontractors protect said Data from unauthorized physical and electronic access. The Contractor is authorized to store data on portable devices and media. The data will be stored on computers with security systems that require individual user IDs and hardened passwords.
- (2) The Contractor shall ensure disks and/or documents generated in printed form from the electronic file are properly returned, destroyed or shredded when no longer needed, so unauthorized individuals cannot access client information. Data destroyed shall include all copies of any data sets in possession after the data has been used for the purpose specified herein or within 30 days of the date of termination, and certify such destruction to LMTAAA. LMTAAA shall be responsible for destroying the returned documents to ensure confidentiality is maintained. The Data provided by LMTAAA will remain the property of LMTAAA and will be promptly destroyed when the Contractor and its

subcontractors have completed the work for which the information was required, as fully described herein.

(3) The Contractor shall protect information according to state and federal laws including the following incorporated by reference:

- (i) Privacy Act 1974 5 USC subsection 552a;
- (ii) Chapter 40.14 RCW Preservation and Destruction of Public Records;
- (iii) Chapter 74.04 RCW General Provisions – Administration;
- (iv) Chapter 42.17.310 RCW Certain Personal & Other Records Exempt;
- (v) 45 CFR 205.50 provides for Safeguarding information for the financial assistance Programs and identifies limitations to disclosure of said information; and
- (vi) Public Law 99-508 (18 USC section 2510et. Seq. Electronic Communications Privacy Act of 1986) Part A of Title IV of the Social Security Act authorizes disclosure of client information and provides for safeguards, which restrict the use or disclosure of information concerning applicants or recipients to purposes directly connected with administration of the program.

11. **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 by any Federal department of agency.

12. **Disputes.** In the event of a dispute between LMTAAA and the Contractor, every effort shall be made to resolve the dispute informally and at the lowest level.

If a dispute cannot be resolved informally, the Contractor shall follow the LMTAAA Grievance Procedure and, in writing:

- 1. State the disputed issues;
- 2. State the relative positions of the parties;
- 3. State the Contractor's name and address; and
- 4. LMTAAA must receive the documentation within thirty (30) days after the party could reasonably be expected to have knowledge of the issue that is being disputed.

The LMTAAA Director shall review the written dispute. The Director's decision will be documented and mailed to the Contractor within thirty (30) days of the receipt. The decision of the Director shall be final and conclusive unless, within thirty (30) days

from the date of mailing of the Director's decision, the Contractor mails to LMTAAA a written appeal addressed to the Chairman of the LMTAAA Council of Governments.

An appeal date will be set within forty-five (45) days of receipt of the request. All parties required to participate in the appeal will be notified in writing of the appeal date at least ten (10) days prior to the appeal. A written response to all parties will be made within fifteen (15) days after the appeal.

If the Contractor is dissatisfied with the LMTAAA Council of Governments' decision, the Contractor has the right to appeal through the Department of Social and Health Services, Aging and Long Term Support Administration (AL TSA). The appeal must be in writing and filed with AL TSA within thirty (30) days of the date the LMTAAA mailed the complaint resolution determination to the Contractor. A copy of the appeal must also be sent to the LMTAAA. The appeal shall:

1. State specifically the issue or issues and regulation or regulations involved in the basis for considering the LMTAAA's determination to be in error.
2. Include any supporting documentation.
3. Include a copy of the complaint and LMTAAA's determination that is being appealed.

Upon receipt of an appeal from the Contractor, ADSA has thirty (30) days to review and issue a final determination on the appeal. Final determination will be mailed to the Contractor and to the LMTAAA.

13. **Drug-Free Workplace.** The Contractor shall maintain a work place free from alcohol and drug abuse.
14. **Emergency Plan.** The Contractor shall have a plan for serving currently authorized clients during periods when normal services may be disrupted. This may include earthquakes, floods, snowstorms, pandemic flu, etc. The plan needs to include the maintenance of lists, including the identification of those clients who are at most risk, as well as emergency provisions for service delivery.
15. **Employee Whistleblower Rights.** For those Contracts over the simplified acquisition threshold of \$150,000 as described in 48 CFR 2.101:
 - a. This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.
 - b. The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.
16. **Entire Agreement.** This Agreement, including all documents attached to or incorporated by reference, contain all the terms and conditions agreed upon by the

parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind the parties.

17. **Governing Law and Venue.** The laws of the State of Washington govern this Agreement. In the event of a lawsuit by the Contractor against LMTAAA involving this Agreement, venue shall be proper only in Thurston County, Washington. In the event of a lawsuit by LMTAAA against a County involving this Agreement, venue shall be proper only as provided in RCW 36.01.050.

18. **HIPAA Compliance.**

- a. Compliance. Contractor shall perform all Agreement duties, activities and tasks in compliance with HIPAA and regulations enacted pursuant to its provisions, successor law and/or regulation. Contractor shall comply with the provisions of 45 CFR 164.502(e) applying to Business Associates and shall implement policies and procedures to safeguard and maintain PHI in accordance with the requirements of state and federal law. In the event of a conflict in interpretation of Contract terms relevant to HIPAA, the language and intent of this section shall control.
- b. Use and Disclosure of PHI. Contractor is limited to the following permitted and required uses or disclosures of DSHS client PHI:
 - (1) Contractor shall only use or disclose PHI as required to perform the services specified in this Contract or as required by law, and shall not use or disclose such PHI in any manner inconsistent with the use and disclosure restrictions placed on the DSHS, as the Covered Entity, by HIPAA, or the resulting policies and procedures of DSHS.
 - (2) Contractor shall protect PHI from, and shall establish appropriate safeguards to prevent, the unauthorized disclosure of PHI in accordance with the terms and conditions of this Amendment and state and federal law, including any regulations governing the security of PHI and the transmission, storage or maintenance of electronic data that contains PHI for as long as the PHI is within its possession and control, even after the termination or expiration of this Contract.
- c. Report of Unauthorized Use or Disclosures of Protected Health Information. Contractor shall report in writing all unauthorized uses or disclosures of PHI to LMTAAA within five (5) working days of becoming aware of the unauthorized use or disclosure of the PHI.
- d. Third Party Agreements. If Contractor subcontracts for services under this agreement, any subcontract must provide for appropriate confidentiality of any client records or other PHI retained by or provided to subcontractor. Contractor shall enter into a written agreement with any agent, subcontractor, independent contractor, volunteer, or any other third party with access to PHI, that contains the same duties, terms, restrictions, and conditions on use of PHI as those binding Contractor under this section.

- e. Consent to Audit. Contractor shall give reasonable access to PHI, records, books, documents, electronic data and/or all other business information received from, or created or received by Contractor on behalf of LMTAAA, to LMTAAA for use in determining compliance with HIPAA privacy requirements.
- f. Return of Information. Contractor shall, within ten (10) working days of termination or expiration of this Contract, in accordance with Contract Termination and Expiration Procedures, return all client records and other documents including PHI in its possession to LMTAAA, including PHI previously in possession of third parties under contract to Contractor, unless otherwise directed by LMTAAA.
- g. Accounting of Disclosures. Contractor shall document all disclosures of PHI and information related to such disclosures. Within ten (10) working days of a request from LMTAAA, Contractor shall provide LMTAAA with an accounting of those disclosures of PHI, as required by 45 CFR 164.504 and 164.528.
- h. PHI Amendment. Contractor shall, within ten (10) working days of a request from LMTAAA, provide LMTAAA with information regarding amendment of PHI contained in a Designated Record Set as defined herein. Contractor, as directed by LMTAAA thereafter shall incorporate any amendments to the PHI in the Designated Record Set. 45 CFR 164.526.
- i. PHI Access. Contractor shall provide LMTAAA with reasonable access to PHI in a Designated Record Set, or as directed by LMTAAA, Contractor shall provide a client with reasonable access to such PHI as provided for in 45 CFR 164.524.
- j. Client's Access to Information. If any client asks Contractor for an accounting of disclosures of PHI, or for access to or amendment of PHI in a Designated Record Set, Contractor shall within two (2) working days forward the request to LMTAAA for response.
- k. Nothing in this agreement shall be construed to relieve any party or subcontractor with any legal obligations they may have regarding protected health information, whether as a covered entity or business associate under HIPAA, or otherwise. Each party is responsible for complying with HIPAA and other applicable laws as to any PHI in its possession.

19. HITECH Compliance.

- a. The Health Information Technology for Economic and Clinical Health Act (HITECH Act) was adopted as part of the American Recovery and Reinvestment Act of 2009. The HITECH Act and its implementing regulations impose requirements on Business Associates (Contractors) with respect to privacy, security and breach notification. These provisions of the HITECH Act and the regulations applicable to Business Associates are collectively referred to as the "HITECH Business Associate Provisions." The Contractor acknowledges and agrees that to the extent it is functioning as a Business Associate of DSHS (Covered Entity), the Contractor will comply with the HITECH Business Associate Provisions and with the obligations of a Business Associate, as prescribed by HIPAA and the HITECH Act.

b. Breach Notification.

- (1) In the event of a "PHI Breach" or disclosure that compromises the privacy or integrity of PHI obtained from DSHS/LMTAAA or involving clients, caregivers or care recipients, Contractor shall take all measures required by state or federal law. Business Associate will provide LMTAAA with a copy of its investigation results and other information requested by LMTAAA.
- (2) Contractor will notify LMTAAA Projects Coordinator within one (1) business day by telephone and in writing of any acquisition, access, use or disclosure of PHI and/or electronic PHI not allowed by the provisions of this Contract of which it becomes aware, and of any instance where the PHI is subpoenaed, copied or removed by anyone except an authorized representative of DSHS, LMTAAA, or Contractor. 45 CFR 164.304, 164.314(a)(2)(C), 164.504 (e)(2)(ii)(C), and 164.400-.414.
- (3) Contractor will notify LMTAAA Projects Coordinator within one (1) business day by telephone and e-mail of any potential PHI Breach of security or privacy.

Business Associate will follow telephone and email notification with a faxed or written explanation of the breach, to include the following: date and time of the breach, medium that contained the PHI, origination and destination of PHI, Business Associate unit and personnel associated with the breach, detailed description of PHI, anticipated mitigation steps, and the name, address, telephone number, fax number, and email of the individual who is responsible for the mitigation.

- (4) If LMTAAA determines that Contractor or its agent(s) is responsible for a breach of unsecured PHI:
 - a. Necessitating notification of individuals under 45 CFR 164.404 - Contractor bears the responsibility and costs for notifying the affected individuals and receiving and responding to those individuals' questions or requests for additional information;
 - b. Necessitating notification of the media under 45 CFR 164.406 - Contractor bears the responsibility and costs for notifying the media and receiving and responding to media questions or requests for additional information;
 - c. Necessitating notification of the Department of Health and Human Services (DHHS) Secretary under 45 CFR 164.408 - Contractor bears the responsibility and costs for notifying the Secretary and receiving and responding to the Secretary's questions or request for additional information; and
 - d. LMTAAA will take appropriate remedial measures up to termination of this Contract.

20. **Incorporations.** All rights and obligations of the parties to this Agreement shall be subject to and governed by:
- a. All the applicable federal and state laws and regulations are incorporated by reference herein.
 - b. All policies and procedures in the “Policies and Procedures for Area Agency on Aging Operations Manual,” as existing and as hereafter revised, are incorporated by reference herein.
 - c. All DSHS Aging and Disability Services Administration Management Bulletins, guidelines, standards, and policies and procedures, as existing and as hereafter revised, are incorporated by reference herein.
21. **Independent Status.** For purposes of this Agreement, the Contractor acknowledges that the Contractor is not an officer, employee, or agent of LMTAAA, DSHS, or the State of Washington. The Contractor shall not hold out itself or any of its employees as, nor claim status as, an officer, employee, or agent of LMTAAA, DSHS or the State of Washington. The Contractor shall not claim for itself or its employees any rights, privileges, or benefits, which would accrue to an employee LMTAAA or the State of Washington. The Contractor shall indemnify and hold harmless LMTAAA from all obligations to pay or withhold federal or state taxes or contributions on behalf of the Contractor or the Contractor’s employees.
22. **Information Requirements.** The Contractor shall provide to LMTAAA the following documents, as applicable:
- a. The Contractor's liability insurance;
 - b. Signature Authorizations Forms;
 - c. Roster of Board of Directors, Board of Trustees, and/or Advisory Board members;
 - d. Licenses and certifications;
 - e. Budget;
 - f. Staffing plan;
 - g. Personnel policies and procedures;
 - h. Job descriptions;
 - i. By-laws; and
 - j. Articles of Incorporation.

All documents listed above must be submitted annually and/or as changes occur throughout the term of this Agreement, with any changes made from previous

documents on file with LMTAAA indicated with an asterisk, along with the date changes were formally adopted. All of the above documents are subject to review and approval by LMTAAA. Should such changes affect the scope of this Agreement, LMTAAA reserves the right to amend or terminate this Agreement.

23. **Inspection.** Either party may request reasonable access to the other party's records and place of business for the limited purpose of monitoring, auditing, and evaluating the other party's compliance with this Agreement and applicable laws and regulations. During the term of this Agreement and for one (1) year following termination or expiration of this Agreement, the parties shall, upon receiving reasonable written notice, provide the other party with access to its place of business and to its records which are relevant to its compliance with this Agreement and applicable laws and regulations. This provision shall not be construed to give either party access to the other party's records and place of business for any other purpose. Nothing herein shall be construed to authorize either party to possess or copy records of the other party.
24. **Insurance.** The Contractor certifies that it is self-insured, is a member of a risk pool, or maintains the types and amounts of insurance identified below and shall, prior to and throughout the term of this Agreement, provide certificates of insurance to that effect to LMTAAA.

Commercial General Liability Insurance (CGL) – to include coverage for bodily injury, property damage, and professional/contractual liability with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The policy shall include liability arising out of premises, operations, independent Contractors, products-completed operations, personal injury, advertising injury, and liability assumed under this Contract. The State of Washington and LMTAAA shall be named as additional insureds.

Business Automobile Coverage – The Contractor shall maintain Business Automobile Liability insurance on all vehicles used to transport clients, including vehicles hired by the Contractor or owned by the Contractor's employees, volunteers or others. Minimal insurance limits are \$1,000,000 combined single limit. The Contractor's carrier shall provide LMTAAA with a waiver of subrogation to prevent the insurer from recovering loss payments from LMTAAA if the Contractor caused the loss.

Exclusions or Waivers to Insurance Requirements – The following types of contractors are excluded from any insurance requirements: State colleges and universities (except the University of Washington), consultants, trainers, facilitators, speakers, Indian Tribes and Individual Providers.

The additional insured requirement is waived for providers who are insured through insurance pools.

25. **Maintenance of Records.** During the term of this Agreement and for six (6) years following termination or expiration of this Agreement, both parties shall maintain records sufficient to:
- a. Document performance of all acts required by law, regulation, or this Agreement;

- b. Demonstrate accounting procedures, practices and records that sufficiently and properly document the Contractor's invoices to LMTAAA and all expenditure made by the Contractor to perform as required by this Agreement.
- a. For the same period, the Contractor shall maintain records sufficient to substantiate the Contractor's statement of its organization's structure, tax status, capabilities, and performance.

26. **Non-Discrimination.** The Contractor shall maintain a current affirmative action/ non-discrimination plan that has been approved by an appropriate authority. The affirmative action/non-discrimination plan must contain sufficient information to meet, at a minimum, requirements of Title VI of the Civil Rights Act of 1964 as amended by Title VII of the Equal Employment Opportunity Act of 1972, and the Older Americans Act of 1965, as amended.

The Contractor must submit an Affirmative Action/Non-Discrimination Statement of Compliance dated and bearing the original signature of a person with authority to commit the Contractor.

27. **Order of Precedence.** In the event of an inconsistency in the Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence, in the following order, to:
- a. Applicable federal and State of Washington statutes and regulations;
 - b. This Agreement
28. **Ownership of Client Assets.** The Contractor shall ensure that any client for whom the Contractor or Subcontractor is providing services under this Agreement shall have unrestricted access to the client's personal property. For purposes of this paragraph, client's personal property does not pertain to client records. The Contractor or Subcontractor shall not interfere with the client's ownership, possession, or use of such property. Upon termination of this Agreement, the Contractor or Subcontractor shall immediately release to the client and/or LMTAAA all of the client's personal property.

29. **Ownership of Material.** Material created by the Contractor and paid for by LMTAAA as a part of this Agreement shall be owned by LMTAAA and shall be "work made for hire" as defined by Title 17 USCA, Section 101. This material includes, but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Material which the Contractor uses to perform this Agreement but is not created for or paid for by LMTAAA is owned by the Contractor and is not "work made for hire"; however, LMTAAA shall have a license of perpetual duration to use, modify, and distribute this material at no charge to LMTAAA, provided that such license shall be limited to the extent which the Contractor has a right to grant such a license.

30. **Ownership of Real Property, Equipment and Supplies Purchased by the Contractor.** Title to all property, equipment and supplies purchased by the Contractor with funds from this Agreement shall vest in the Contractor. When real property, or

equipment with a per unit fair market value over \$5,000, is no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the Contractor shall request disposition instructions from LMTAAA. If the per unit fair market value of equipment is under \$5,000, the Contractor may retain, sell, or dispose of it with no further obligation.

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

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

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

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

32. **Payment.** Funding for services performed under this Agreement shall be in whole or in part through LMTAAA. LMTAAA shall pay the Contractor an amount not to exceed the maximum consideration of this Agreement for the satisfactory performance of all work set forth in the Statement of Work (Exhibit B). If this Agreement is terminated, LMTAAA shall only pay for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

If the Contractor claims and is reimbursed for costs under this Agreement which LMTAAA later finds were claimed in error or not allowable costs under the terms of this Agreement, LMTAAA shall recover said costs. The Contractor shall fully cooperate during such recovery.

The Contractor shall not charge or accept additional payment from any client or relative, friend, guardian, or attorney of the client, or any other person for services provided under this Agreement other than those specifically permitted herein or as authorized in writing by LMTAAA. In the event that this provision is violated, LMTAAA shall have the right to assert a claim against the Contractor on its own behalf and/or on behalf of the client.

LMTAAA shall not make any payments in advance or anticipation of the delivery of services to be provided pursuant to this Agreement. Unless otherwise specified in this Agreement, LMTAAA shall not pay any claims for payment for services submitted more than forty-five (45) days after completion of the Agreement period. The Contractor shall not bill LMTAAA for services performed under this Agreement, and

LMTAAA shall not pay the Contractor, if the Contractor has charged or will charge any other party under any other contract or agreement for the same services.

33. **Program Income.** All program income derived from the provision of services described in this Agreement (i.e. client donations), and/or derived or generated through program fundraising activities supported by funds authorized through this Agreement, shall be used by the Contractor to provide increased levels of service or improve the quality of services as set forth in the Statement of Work (Exhibit B). The Contractor shall report all program income to LMTAAA when it is received. The Contractor shall use program income prior to funds authorized through this Agreement. If actual program income received is significantly higher than what was projected in the budget, the Contractor shall notify LMTAAA and request LMTAAA approval as to how such program income will be used.

The Contractor shall assure that clients receiving Older Americans Act services have the opportunity to make a voluntary donation towards the cost of service provided under this Agreement. The Contractor shall assure that the methods of receiving donations from individuals shall be handled in such a manner to ensure confidentiality. The Contractor shall not differentiate among individuals based on their ability, or inability, to make a donation.

34. **Public Information.** All notices, informational brochures, press releases, research reports, and similar public notices prepared and released by the Contractor for the services described in this Agreement shall include a statement indicating the funding source as awarded under this Agreement with the Lewis-Mason-Thurston Area Agency on Aging. Failure to comply with the requirements of this section may result in the termination or suspension of this Agreement and/or non-reimbursement for the costs of said brochures, advertising, etc.
35. **Responsibility.** Each party to this Agreement shall be responsible for the negligence of its officers, employees, and agents in the performance of this Agreement. No party to this Agreement shall be responsible for the acts and/or omissions of entities or individuals not party to the Agreement. LMTAAA and the Contractor shall cooperate in the defense of tort lawsuits, when possible. Both parties agree and understand that this provision may not be feasible in all circumstances. LMTAAA and the Contractor agree to notify the attorneys of record in any tort lawsuit where both are parties if either LMTAAA or the Contractor enters into settlement negotiations. It is understood that the notice shall occur prior to any negotiations, or as soon as possible, and the notice may be either written or oral.
36. **Restrictions Against Lobbying.** The Contractor certifies to the best of its knowledge and belief that no federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of a federal agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

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

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

37. **Severability.** The provisions of this Agreement are severable. If any court holds any provision of this Agreement, including any provision of any document incorporated by reference, invalid, that invalidity shall not affect the other provisions of this Agreement.
38. **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 in the attached Statement of Work (Exhibit B).
39. **Subcontracting.**
 - a. The Contractor must obtain prior written approval from LMTAAA to subcontract any portion of the services provided within the terms of this Agreement.
 - b. Any subcontracts shall be in writing and the Contractor shall be responsible to ensure that all terms, conditions, assurances and certifications set forth in this Agreement are included in any and all subcontracts.
 - c. Subcontractors are prohibited from further subcontracting for direct client services without prior written approval from LMTAAA.
 - d. When the nature of the service the Subcontractor is to provide requires a certification, license or approval, the Contractor may only subcontract with such Subcontractors that have and agree to maintain the appropriate license, certification or accrediting requirements/standards.
 - e. In any contract or subcontract awarded to or by the Contractor in which the authority to determine service recipient eligibility is delegated to the Contractor or to a Subcontractor, such contract or subcontract shall include a provision acceptable to LMTAAA that specifies how client eligibility will be determined and how service applicants and recipients will be informed of their right to a grievance procedure in case of denial or termination of a service, or failure to act upon a request for services with reasonable promptness.
 - f. If LMTAAA, the Contractor, and a Subcontractor of the Contractor are found by a jury or trier of fact to be jointly and severally liable for damages rising from any act or omission from this Agreement, then LMTAAA shall be responsible for its proportionate share, and the Contractor shall be responsible for its proportionate share. Should the Subcontractor be unable to satisfy its joint and several liability, LMTAAA and the Contractor shall share in the Subcontractor's unsatisfied proportionate share in direct proportion to the respective percentage of their fault as found by the jury or trier of fact. Nothing in this term shall be construed as

creating a right or remedy of any kind or nature in any person or party other than LMTAAA and the Contractor. This term shall not apply in the event of a settlement by either LMTAAA or the Contractor.

- g. Any subcontract shall designate subcontractor as Contractor's Business Associate, as defined by HIPAA, and shall include provision as required by HIPAA for Business Associate contract. The Contractor shall ensure that all client records and other PHI in possession of subcontractor are returned to Contractor at the termination or expiration of the subcontract.

40. Subrecipients.

- a. General. If the Contractor is a subrecipient of federal awards as defined by Office of Management and Budget (OMB) Circular A-133 and the Agreement, the Contractor shall:
 - (1) Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;
 - (2) Maintain internal controls that provide reasonable assurance that the Contractor is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;
 - (3) Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
 - (4) Incorporate OMB Circular A-133 audit requirements into all agreements between the Contractor and its sub Contractor who are subrecipients;
 - (5) Comply with any future amendments to OMB Circular A-133 and any successor or replacement Circular or regulation;
 - (6) Comply with the applicable requirements of OMB Circular A-87 and any future amendments to OMB Circular A-87, and any successor or replacement Circular or regulation;
 - (7) Comply with the Omnibus Crime Control and Safe Streets Act of 1968; Title VI of the Civil Right Act of 1964; Section 504 of the Rehabilitation Act of 1973; Title II of the Americans with Disabilities Act of 1990; Title IX of the Education Amendments of 1972; The Age Discrimination Act of 1975; and The Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G, and 28 CFR Part 35 and Part 39. (See http://www.usa.gov/Topics/Reference_Shelf/Laws.shtml for additional information and access to the aforementioned Federal laws and regulations)

- b. Single Audit Act Compliance. If the Contractor is a subrecipient and expends \$500,000 or more in federal awards from all sources in any fiscal years, the Contractor shall procure and pay for a single audit or a program-specific audit for the fiscal year. Upon completion of each audit, the Contractor shall:
 - (1) Submit to LMTAAA the data collection form and reporting package specified in OMB Circular A-133, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;
 - (2) Follow-up and develop corrective action for all audit findings; in accordance with OMB Circular A-133, and prepare a "Summary Schedule of Prior Audit Findings."
- c. Overpayments. If it is determined by LMTAA, or during the course of the required audit, that the Contractor has been paid unallowable costs under the Agreement, LMTAAA may required the Contractor to reimburse LMTAAA in accordance with OMB Circular A-87.
 - (1) For any identified overpayment involving a subcontract between the Contractor and a Tribe, LMTAAA agrees it will not seek reimbursement from the Contractor, if the identified overpayment was not due to any failure by the Contractor.
- 41. **Survivability.** The terms and conditions contained in this Agreement, which by their sense and context, are intended to survive the expiration of the particular agreement shall survive. Surviving terms include, but are not limited to: Confidentiality, Disputes, Inspection, Maintenance of Records, Ownership of Material, Responsibility, Termination for Default, Termination Procedure, and Title to Property.
- 42. **Termination Due to Change in Funding.** If the funds upon which LMTAAA relied to establish this Agreement are withdrawn, reduced, or limited, or if additional or modified conditions are placed on such funding, LMTAAA may terminate this Agreement by providing at least thirty (30) days' written notice to the Contractor or a shorter time if required by law. The termination shall be effective on the date specified in the notice of termination.
- 43. **Termination for Convenience.** Either party may terminate this Agreement in whole or in part for convenience by giving a minimum of thirty (30) days' written notice addressed to the other party.
- 44. **Termination for Default.**
 - a. LMTAAA may terminate this Agreement for default, in whole or in part, by written notice to the Contractor, if LMTAAA has a reasonable basis to believe that the Contractor has:
 - (1) Failed to meet or maintain any requirement for contracting with LMTAAA;
 - (2) Failed to perform, or perform adequately, under any provision of this Agreement;

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

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

- a. The Contractor shall cease to perform any services required by this Agreement as of the effective date of termination, and shall comply with all reasonable instructions contained in the notice of termination which are related to the transfer of clients, distribution of property, and termination of services.
- b. The Contractor shall promptly deliver to LMTAAA, all LMTAAA assets (property) in the Contractor's possession, including any material created under this Agreement. Upon failure to return LMTAAA property within ten (10) working days of the Agreement termination, the contractor shall be charged with all reasonable costs of recovery, including transportation. The Contractor shall take reasonable steps to protect and preserve any property of LMTAAA that is in the possession of the

Contractor pending return to LMTAAA.

- c. LMTAAA shall be liable for and shall pay for only those services authorized and provided through the effective date of termination. LMTAAA may pay an amount mutually agreed by the parties for partially completed work and services, if work products are useful to or usable by LMTAAA.
- d. If LMTAAA terminates this Agreement for default, LMTAAA may withhold a sum from the final payment to the Contractor that LMTAAA determines necessary to protect LMTAAA against loss or additional liability. LMTAAA shall be entitled to all remedies available at law, in equity, or under this Agreement. If it is later determined the Contractor was not in default, or if the Contractor terminated this Agreement for default, the Contractor shall be entitled to all remedies available at law, in equity, or under this Agreement.

46. **Treatment of Client Property.** Unless otherwise provided in the applicable Agreement, the Contractor shall ensure that any adult client receiving services from the Contractor under this 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. The Contractor shall provide clients under age eighteen (18) with reasonable access to their personal property that is appropriate to the client's age, development, and needs. Upon termination of completion of this 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 restricted clients' access to, or possession or use of, lawful or unlawful weapons and drugs).
47. **Vendors.** Vendors currently do not fall under the requirements of the Single Audit Act and shall have an audit in accordance with the Special Terms and Conditions or Statement of Work of this Agreement. LMTAAA determines that a Contractor is a Vendor based on the following criteria:
- a. The Agreement is a Fee for Service Contract, which is a negotiated fixed rate of pay based on performance of a defined unit of service; and
 - b. The Contractor provides services to the beneficiaries determined eligible by an entity independent of the Contractor; and
 - c. The services performed under this Agreement are consistent with the purpose of the Contractor and similar goods and services are provided to many different purchasers.
48. **Waiver.** Waiver of any breach of default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Agreement unless amended as set forth in the section entitled "Amendment". Only LMTAAA has the authority to waive any term or condition of this Agreement on behalf of LMTAAA.