



ARLINGTON COUNTY, VIRGINIA  
OFFICE OF THE PURCHASING AGENT  
2100 CLARENDON BOULEVARD, SUITE 500  
ARLINGTON, VIRGINIA 22201

**CONTRACT AWARD COVERPAGE**

<b>TO:</b> LUTHERAN FAMILY SERVICES OF VIRGINIA DBA ENCIRCLE 2965 COLONNADE DRIVE, SUITE 310 ROANOKE, VIRGINIA 24018	<b>DATE ISSUED:</b> 8/31/2023
	<b>CONTRACT NO:</b> 23-DHS-RFPLW-473
	<b>CONTRACT TITLE:</b> RESIDENTIAL SERVICES FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

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**THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.**

The contract documents consist of the terms and conditions of AGREEMENT No. 23-DHS-RFPLW-473, including any attachments or amendments thereto.

**EFFECTIVE DATE:** SEPTEMBER 1, 2023

**EXPIRES:** AUGUST 31, 2024

**RENEWALS:** NINE (9), ONE (1) YEAR RENEWALS OPTIONS REMAINING FROM SEPTEMBER 1, 2024 TO AUGUST 31, 2033

**COMMODITY CODE(S):** 95262

**LIVING WAGE:** Y

**ATTACHMENTS:**

AGREEMENT No. 23-DHS-RFPLW-473

**EMPLOYEES NOT TO BENEFIT:**

**NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.**

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**VENDOR CONTACT:** HOLLY RHODENHIZER

**VENDOR TEL. NO.:** (800) 359-3834

**EMAIL ADDRESS:** [HRHODENHIZER@ENCIRCLEALL.ORG](mailto:HRHODENHIZER@ENCIRCLEALL.ORG)

**COUNTY CONTACT:** JENNIFER MCKINNEY ACHESON, DHS-  
ADSD

**COUNTY TEL. NO.:** (703) 228-1717

**COUNTY CONTACT EMAIL:** [JMCKIN@ARLINGTONVA.US](mailto:JMCKIN@ARLINGTONVA.US)

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**PURCHASING DIVISION AUTHORIZATION**

**Kaylin Schreiber** Title: Procurement Officer Date: 8/10/2023



**ARLINGTON COUNTY, VIRGINIA  
OFFICE OF THE PURCHASING AGENT  
2100 CLARENDON BOULEVARD, SUITE 500  
ARLINGTON, VA 22201**

**AGREEMENT NO. 23-DHS-RFPLW-473**

THIS AGREEMENT is made, on 8/31/2023, between Lutheran Family Services of Virginia dba enCircle, 2965 Colonnade Drive, Suite 310, Roanoke, Virginia 24018 ("Contractor"), a Virginia corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Contractor, for the consideration hereinafter specified, agree as follows:

**1. CONTRACT DOCUMENTS**

The "Contract Documents" consist of:

- This Agreement
- Exhibit A – Scope of Work
- Exhibit B – Contract Pricing
- Exhibit C – Living Wage Forms
- Exhibit D – Living Wage Compliance Report Form
- Exhibit E – Business Associate Agreement

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement will prevail over the other Contract Documents, and the remaining Contract Documents will be complementary to each other. If there are any conflicts, the most stringent terms or provisions will prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either party has made any representation or promise with respect to the parties' agreement that is not contained in the Contract Documents. The Contract Documents may be referred to below as the "Contract" or the "Agreement".

**2. SCOPE OF WORK**

The Contractor agrees to perform the services described in the Contract Documents (the "Work"). As detailed in the "Scope of Work" (Exhibit A), the primary purpose of the Work is to provide residential services for individuals with developmental disabilities in a group home and attached single-residency apartment setting. It will be the Contractor's responsibility, at its sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in

the Contract Documents limits the Contractor's responsibility to manage the details and execution of the Work.

**3. PROJECT OFFICER**

The performance of the Contractor is subject to the review and approval of the County Project Officer, who will be appointed by the Director of the Arlington County department or agency requesting the Work under this Contract.

**4. CONTRACT TERM**

Time is of the essence. The Work will commence on September 1, 2023 and must be completed no later than August 31, 2024 ("Initial Contract Term"), subject to any modifications provided in the Contract Documents. Upon satisfactory performance by the Contractor the County may, through issuance of a bilateral Notice of Renewal, authorize continuation of the Agreement under the same contract prices for not more than nine (9) additional 12-month periods, from September 1, 2024 to August 31, 2033 (each a "Subsequent Contract Term"). The Initial Contract Term and any Subsequent Contract Term(s) are together the "Contract Term".

**5. CONTRACT AMOUNT**

This is a fixed-price contract. The Contractor agrees that the total payment for the Work will not exceed a one-time start-up cost of \$6,440.00 with an additional yearly operating expense of \$227,545.57, regardless of the number of hours spent in the performance of the Work.

The County will not compensate the Contractor for any goods or services beyond those included in Exhibit A unless those additional goods or services are covered by a fully executed amendment to this Contract. Additional services will be billed at the rates set forth in Exhibit B unless otherwise agreed by the parties in writing.

**6. CONTRACT PRICE ADJUSTMENTS**

The Contract Amount/unit price(s) will remain firm until August 31, 2025 ("Price Adjustment Date"). To request a price adjustment, the Contractor or the County must submit a written request to the other party not less than 90 days before the Price Adjustment Date. Adjustments to the Contract Amount/unit price(s) will not exceed the percentage of change in the U.S. Department of Labor Consumer Price Index, All Items, Unadjusted, Urban Areas ("CPI-U") for the 12 months of statistics available at the time of the Contract's renewal.

Any Contract Amount/unit price(s) that result from this provision will become effective the day after the Price Adjustment Date and will be binding for 12 months. The new Price Adjustment Date will be 12 months after the price adjustment.

If the Contractor and the County have not agreed on a requested adjustment by 30 days before the Price Adjustment Date, the County may not renew the Contract, whether or not the County has previously elected to renew the Contract's term.

**7. PAYMENT**

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. The County will pay the Contractor within forty-five (45) days after receipt of an invoice for completed work that is reasonable and allocable to the Contract and that has been performed to the satisfaction of the Project Officer. All payments will be made from the County to the Contractor via

ACH. The number of the County Purchase Order pursuant to which goods or services have been delivered or performed must appear on all invoices.

If the County makes a partial payment, it will retain 5% of the estimate upon which the partial payment is based until completion and final acceptance of the Work.

**8. REIMBURSABLE EXPENSES**

The County will not reimburse the Contractor for any expenses under this Contract. The amount in Exhibit B includes all costs and expenses of providing the services described in this Contract.

**9. PAYMENT OF SUBCONTRACTORS**

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment, with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of 1% per month.

The Contractor must include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

**10. NO WAIVER OF RIGHTS**

The County's approval or acceptance of or payment for any goods or services under this Contract will not waive any rights or causes of action arising out of the Contract.

**11. NON-APPROPRIATION**

All payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.

**12. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR**

This Contract does not obligate the County to purchase a specific quantity of items or services during the Contract Term. Any quantities that are included in the Contract Documents are the present expectations of the County for the period of the Contract; and the County is under no obligation to buy that or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The County may require more goods and/or services than the estimated annual quantities, and any such additional quantities will not give rise to any claim for compensation other than at the unit prices and/or rates in the Contract.

The County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by this Contract. The items or services covered by this Contract may be or become available under other County contract(s), and the County may determine that it is in its best interest to procure the items or services through those contract(s).

**13. COUNTY PURCHASE ORDER REQUIREMENT**

County purchases are authorized only if the County issues a Purchase Order in advance of the transaction, indicating that the ordering County agency has sufficient funds available to pay for the purchase. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense. The County will not be liable for payment for any purchases made by its employees that are not authorized by the County Purchasing Agent.

**14. BACKGROUND CHECK**

The Contractor is responsible for completing a criminal background check and a Virginia Central Registry check through the Virginia Department of Social Services for each person working on this contract and ensuring that subcontractors and volunteers comply with this background check requirement. The Contractor must inform the County immediately of any findings involving its staff or a subcontractor. Any finding may result in the immediate removal of the individual from the contract.

**15. REPLACEMENT OF PERSONNEL AND SUBCONTRACTORS**

The County has the right reasonably to reject staff or subcontractors whom the Contractor assigns to the project. The Contractor must then provide replacement staff or subcontractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's and its subcontractors' employees is the sole responsibility of the Contractor.

The Contractor may not replace key personnel or subcontractors identified in its proposal, including the approved Project Manager, without the County's written approval. The Contractor must submit any request to remove or replace key personnel or subcontractors to the County Project Officer at least 15 calendar days in advance of the proposed action. The request must contain a detailed justification, including identification of the proposed replacement and his or her qualifications.

If the approved Project Manager must be absent for an extended period, the Contractor must provide an interim Project Manager, subject to the County's written approval.

If the approved Project Manager resigns or is terminated by the Contractor, the Contractor will replace the Project Manager with an individual with similar qualifications and experience, subject to the County's written approval.

**16. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED**

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.
- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

**17. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED**

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

**18. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR**

During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violating such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

**19. SEXUAL HARASSMENT POLICY**

If the Contractor employs more than five employees, the Contractor shall (i) provide annual training on the Contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the Contractor's

sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the Contractor owns or leases for business purposes and (b) the Contractor's employee handbook.

**20. SAFETY**

The Contractor must ensure that it and its employees and subcontractors comply with all applicable local, state and federal policies, regulations and standards relating to safety and health, including the standards of the Virginia Occupational Safety and Health program of the Department of Labor and Industry for General Industry and for the Construction Industry and the applicable Federal Environmental Protection Agency and Virginia Department of Environmental Quality standards.

**21. TERMINATION**

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all documents related to the terminated Work to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience.

**A. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE**

1. Termination for Unsatisfactory Performance. If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within 15 days or any other period specified by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. The Contractor must submit any request for termination costs, with all supporting documentation, to the County Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for termination costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date.

2. Termination for Breach or Default. If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of

termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek termination costs.

Upon any termination pursuant to this section, the Contractor will be liable to the County for costs that the County must expend to complete the Work, including costs resulting from any related delays and from unsatisfactory or non-compliant work performed by the Contractor or its subcontractors. The County will deduct such costs from any amount due to the Contractor; or if the County does not owe the Contractor, the Contractor must promptly pay the costs within 15 days of a demand by the County. This section does not limit the County's recovery of any other damages to which it is entitled by law.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

**B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY**

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 15 days' notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to termination costs, plus any other reasonable amounts that the parties might negotiate; but no amount will be allowed for anticipatory profits.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

**22. INDEMNIFICATION**

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "County Indemnitees") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, demands or exposure resulting from, arising out of or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

**23. INTELLECTUAL PROPERTY INDEMNIFICATION**

The Contractor warrants and guarantees that in providing services under this Contract neither the Contractor nor any subcontractor is infringing on the intellectual property rights (including, but not limited to, copyright, patent, mask and trademark) of third parties.

If the Contractor or any of its employees or subcontractors uses any design, device, work or material that is covered by patent or copyright, it is understood that the Contract Amount includes all royalties, licensing fees, and any other costs arising from such use in connection with the Work under this Contract.



The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability or exposure for infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

**24. COPYRIGHT**

By this Contract, the Contractor irrevocably transfers, assigns, sets over and conveys to the County all rights, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor will execute any documents that the County requests to formalize such transfer or assignment.

The rights granted to the County by this section are irrevocable and may not be rescinded or modified, including in connection with or as a result of the termination of or a dispute concerning this Contract.

The Contractor may not use subcontractors or third parties to develop or provide input into any copyrightable materials produced pursuant to this Contract without the County's advance written approval and unless the Contractor includes this Copyright provision in any contract or agreement with such subcontractors or third parties related to this Contract.

**25. OWNERSHIP OF WORK PRODUCT**

This Contract does not confer on the Contractor any ownership rights or rights to use or disclose the County's data or inputs.

All work product, in any form, that results from this Contract is the property of the County and must be provided or returned to the County upon completion, termination, or cancellation of this Contract. The Contractor will not use or allow others to use the work product for any purpose other than performance of this Contract without the written consent of the County.

The work product is confidential, and the Contractor may neither release the work product nor share its contents. The Contractor will refer all inquiries regarding the status of any work product to the Project Officer or to his or her designee. At the County's request, the Contractor will deliver all work product, including hard copies of electronic files, to the Project Officer and will destroy all electronic files.

The Contractor must include the provisions of this section as part of any contract or agreement related to this Contract into which it enters with subcontractors or other third parties.

The provisions of this section will survive any termination or cancellation of this Contract.

**26. CONFIDENTIAL INFORMATION**

The Contractor and its employees, agents and subcontractors will hold as confidential all County information obtained under this Contract. Confidential information includes, but is not limited to, nonpublic personal information; personal health information (PHI); social security numbers; addresses; dates of birth; other contact information or medical information about a person; and information

pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans and expertise. The Contractor must take reasonable measures to ensure that all of its employees, agents and subcontractors are informed of and abide by this requirement.

**27. ETHICS IN PUBLIC CONTRACTING**

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its proposal was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

**28. COUNTY EMPLOYEES**

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

**29. FORCE MAJEURE**

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism or act of God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract, provided that the affected party gives notice to the other party as soon as practicable after the force majeure event, including reasonable detail and the expected duration of the event's effect on the party.

**30. AUTHORITY TO TRANSACT BUSINESS**

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.

**31. RELATION TO COUNTY**

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will be considered employees, servants or agents of the County. The County will not be responsible for any negligence or other wrongdoing by the Contractor or its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes or Social Security tax or for any other benefits. The County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation.

**32. ANTITRUST**

The Contractor conveys, sells, assigns and transfers to the County all rights, title and interest in and to all causes of action under state or federal antitrust laws that the Contractor may have relating to this Contract.

**33. REPORT STANDARDS**

The Contractor must submit all written reports required by this Contract for advance review via secure email. Reports must be accurate and grammatically correct and should not contain spelling errors. The Contractor will bear the cost of correcting grammatical or spelling errors and inaccurate report data and of other revisions that are required to bring the report(s) into compliance with this section.

Whenever possible, reports must avoid unnecessary attachments or documents or superfluous use of paper (e.g. separate title sheets or chapter dividers)

**34. AUDIT**

The Contractor must retain all books, records and other documents related to this Contract for at least five years, or such period of time required by the County's funding partner(s), if any, whichever is greater, after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, or such period of time required by the County's funding partner(s), if any, whichever is greater, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

The Purchasing Agent may require the Contractor to demonstrate that it has the necessary facilities, ability, and financial resources to comply with the Contract and furnish the service, material or goods specified herein in a satisfactory manner at any time during the term of this Contract.

**35. ASSIGNMENT**

The Contractor may not assign, transfer, convey or otherwise dispose of any award or any of its rights, obligations or interests under this Contract without the prior written consent of the County.

**36. AMENDMENTS**

This Contract may not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

**37. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES**

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution, which is incorporated herein by reference, or any applicable County policy.

**38. DISPUTE RESOLUTION**

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning

contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution. The Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board or a court of law.

**39. APPLICABLE LAW, FORUM, VENUE AND JURISDICTION**

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court.

**40. ARBITRATION**

No claim arising under or related to this Contract may be subject to arbitration.

**41. NONEXCLUSIVITY OF REMEDIES**

All remedies available to the County under this Contract are cumulative, and no remedy will be exclusive of any other at law or in equity.

**42. NO WAIVER**

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

**43. SEVERABILITY**

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect.

**44. ATTORNEY'S FEES**

In the event that the County prevails in any legal action or proceeding brought by the County to enforce any provision of this Contract, the Contractor will pay the County's reasonable attorney's fees and expenses.

**45. SURVIVAL OF TERMS**

In addition to any statement that a specific term or paragraph survives the expiration or termination of this Contract, the following sections also survive: INDEMNIFICATION; INTELLECTUAL PROPERTY INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP OF WORK PRODUCT; AUDIT; COPYRIGHT; DISPUTE RESOLUTION; APPLICABLE LAW AND JURISDICTION; ATTORNEY'S FEES, AND CONFIDENTIAL INFORMATION.

**46. HEADINGS**

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scope.

**47. AMBIGUITIES**

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

**48. NOTICES**

Unless otherwise provided in writing, all legal notices and other communications required by this Contract are deemed to have been given when either (a) delivered in person; (b) delivered by an agent, such as a delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

**TO THE CONTRACTOR:**

Holly Rhodenhizer, Vice President  
Lutheran Family Services of Virginia dba enCircle  
2965 Colonnade Drive, Suite 310  
Roanoke, Virginia 24018  
Phone: (800)-359-3834  
Email: [hrhodenhizer@encircleall.org](mailto:hrhodenhizer@encircleall.org)

**TO THE COUNTY:**

Jennifer McKinney Acheson, Project Officer  
Arlington County, Virginia  
2100 Washington Boulevard, 4<sup>th</sup> Floor  
Arlington, Virginia 22204  
Phone: (703) 228-1717  
Email: [jmckin@arlingtonva.us](mailto:jmckin@arlingtonva.us)

**AND**

Dr. Sharon T. Lewis, LL.M, MPS, VCO, CPPB  
Purchasing Agent  
Arlington County, Virginia  
2100 Clarendon Boulevard, Suite 500  
Arlington, Virginia 22201  
Phone: (703) 228-3294  
Email: [slewis1@arlingtonva.us](mailto:slewis1@arlingtonva.us)

**TO COUNTY MANAGER'S OFFICE (FOR PROJECT CLAIMS):**

Mark Schwartz, County Manager  
Arlington County, Virginia  
2100 Clarendon Boulevard, Suite 318  
Arlington, Virginia 22201

**49. ARLINGTON COUNTY BUSINESS LICENSES**

The Contractor must comply with the provisions of Chapter 11 ("Licenses") of the Arlington County Code, if applicable. For information on the provisions of that Chapter and its applicability to this Contract, the Contractor must contact the Arlington County Business License Division, Office of the Commissioner of the Revenue, 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, telephone number (703) 228-3060, or e-mail [business@arlingtonva.us](mailto:business@arlingtonva.us).

**50. NON-DISCRIMINATION NOTICE**

Arlington County does not discriminate against faith-based organizations.

**51. LIMITED ENGLISH PROFICIENCY**

The Contractor must comply with Executive Order 13166, Title VI of the Civil Rights Act of 1964 and make reasonable efforts to ensure that as part of the services that it provides, adequate communication services, including interpretation and translation, are available to persons who have limited English proficiency. If such services are not included in the Contract's scope of services and pricing, the Contractor will use a County-contracted service provider, and the County will make arrangements with a County-contracted service provider and pay the fees.

**52. HIPAA COMPLIANCE**

The Contractor must comply with the privacy, security and electronic transaction components of the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"). Pursuant to 45 C.F.R. §164.502(e) and §164.504(e), the Contractor is designated a Business Associate for purposes of this Contract and must execute the attached Arlington County Business Associate Agreement (Exhibit E). Pursuant to 45 C.F.R. § 164.308(b)(1) and the Health Information Technology for Economic and Clinic Health Act ("HITECH"), § 13401, the Contractor must also enter into an agreement with any subcontractors that, in a form approved by the County, requires the subcontractor to protect PHI to the same extent as the Arlington County Business Associate Agreement. The Contractor must ensure that its subcontractors notify the Contractor immediately of any breaches in security regarding PHI. Software and platforms used in performance of this Contract must be HIPAA compliant.

The Contractor takes full responsibility for HIPAA compliance, for any failure to execute the appropriate agreements with its subcontractors and for any failure of its subcontractors to comply with the existing or future regulations of HIPAA and/or HITECH. The Contractor will indemnify the County for any and all losses, fines, damages, liability, exposure or costs that arise from any failure to comply with this paragraph.

**53. ADA COMPLIANCE**

The Contractor is solely responsible for its compliance with the ADA and must defend and hold the County harmless from any expense or liability arising from the Contractor's non-compliance. The Contractor also must respond promptly to and cooperate fully with all inquiries from the U.S. Department of Labor.

The Contractor's responsibilities related to ADA compliance include, but are not limited to, the following:

- a. Access to Programs, Services and Facilities: The Contractor must ensure that its programs, services and facilities are accessible to persons with disabilities. If a particular facility or program is not accessible, the Contractor must provide equivalent services in an accessible alternate location or manner.
- b. Effective Communication: Upon request, the Contractor, must provide appropriate communication aids and services so that qualified persons with disabilities can participate equally in the Contractor's programs, services and activities. Communication aids and services can include, but are not limited to, qualified sign language interpreters, Braille documents and other means of facilitating communications with people who have speech, hearing or vision impairments.
- c. Modifications to Policies and Procedures: The Contractor must modify its policies and procedures as necessary to ensure that people with disabilities have an equal opportunity to enjoy the

Contractor's programs, services and activities. For example, individuals' service animals must be allowed in the Contractor's offices or facilities, even if pets are generally prohibited.

- d. No Extra Charges: The Contractor may not charge a person with a disability or any group of individuals with disabilities to cover the cost of providing aids or services or of reasonable modifications to policies and procedures.

**54. SERVICE CONTRACT WAGE REQUIREMENTS**

a. LIVING WAGE

The County has determined that the provisions of Section 4-103 of the Arlington County Purchasing Resolution (regarding "Service Contract Wage" or "Living Wage") apply to this Contract. All employees of the Contractor and any subcontractors working on County-owned, County controlled property, facilities owned, or leased, and operated by a Contractor if services provided at that location are exclusive to Arlington County, or contracts for home-based client services must be paid no less than the hourly Living Wage rate that is published on the County's web site.

The Contractor shall submit a quarterly compliance report and certified copies of quarterly payroll reports for each employee, including subcontractor employees, through the [eComply website](#). If the Contractor or any subcontractor does not have an eComply profile, a one-time registration process immediately following the Notice of Award or Notice of Intent to Award and training on system functionality are required for each non-registered entity.

b. COMPLAINTS BY AGGRIEVED EMPLOYEES

If the Contractor fails to pay the Living Wage rate, an aggrieved employee or subcontractor may file a complaint with the County Purchasing Agent within six months of the underpayment. If the Purchasing Agent determines that the Contractor has failed to comply with the Living Wage rate provisions of the Purchasing Resolution, the Contractor will be liable to the employee for the unpaid wages, plus interest at the judgment rate from the date originally due, and less any deductions required or permitted by Virginia law. The Contractor must not discharge, reduce the compensation of or otherwise retaliate against any employee who files a complaint with the County Purchasing Agent or takes any other action to enforce the requirements of this section.

c. ADDITIONAL COMPLIANCE REQUIREMENTS

At all times during the term of the Contract, the Contractor must:

1. Post the current Living Wage rate, in English and Spanish, in a prominent place at its offices and at each location where its employees perform services under this Contract Go (see sample notice in Exhibit C);
2. Within five days of an employee's request, provide a written statement of the applicable Living Wage rate, using the same form provided in Exhibit C;
3. Include the provisions of this section in all subcontracts for work performed under the Contract; and
4. Submit to the Purchasing Agent, within five working days of the end of each quarter, certified copies of quarterly payroll reports for each employee, including subcontractor employees, working under the Contract during the quarter and a completed Arlington County Contractor Living Wage Quarterly Compliance Report (Exhibit D).

d. CONTRACTOR RECORD KEEPING

The Contractor must preserve for five years after the expiration or termination of this Contract records of wages and benefits provided to each employee who worked under the Contract and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request at the Contractor's expense.

e. VIOLATIONS

Violation of this section, as determined by the Purchasing Agent, will be a ground for termination of this Contract and suspension or debarment of the Contractor from consideration for future County contracts.

f. QUESTIONS

For questions regarding Living Wage, please email [livingwage@arlingtonva.us](mailto:livingwage@arlingtonva.us).

**55. INSURANCE REQUIREMENTS**

Before beginning work under the Contract or any extension, the Contractor must provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force at a minimum the coverage below. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

- a. Workers Compensation - Virginia statutory workers compensation (W/C) coverage, including Virginia benefits and employer's liability with limits of \$500,000/500,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 per occurrence, with \$2,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractors, and products liability. The general aggregate limit must apply to this Contract. Evidence of contractual liability coverage must be typed on the certificate.
- c. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- d. Professional Liability - \$1,000,000 per occurrence.
- e. Sexual Abuse and Molestation Liability - \$1,000,000 per occurrence.
- f. Crime Liability - \$1,000,000 per occurrence.
- g. Additional Insured – The County and its officers, elected and appointed officials, employees and agents must be listed as additional insureds on all policies except workers compensation and automotive and professional liability; and the additional insured endorsement must be typed on the certificate.



- h. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the Contract Term, the Contractor must notify the Purchasing Agent immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this Contract. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- i. Claims-Made Coverage - Any "claims made" policy must remain in force, or the Contractor must obtain an extended reporting endorsement, until the applicable statute of limitations for any claims has expired.
- j. Contract Identification - All insurance certificates must state this Contract's number and title.

The Contractor must disclose to the County the amount of any deductible or self-insurance component of any of the required policies. With the County's approval, the Contractor may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate sufficient financial capacity. In order to do so, the Contractor must provide the County with its most recent actuarial report and a copy of its self-insurance resolution.

The County may request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible and may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the County.

The County's acceptance or approval of any insurance will not relieve the Contractor from any liability or obligation imposed by the Contract Documents.

The Contractor is responsible for the Work and for all materials, tools, equipment, appliances and property used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with the Work and for of all damage or injury to any person or property, wherever located, resulting from any action, omission, commission or operation under the Contract or in connection in any way whatsoever with the Work. The Contractor's insurance shall be the primary non-contributory insurance for any work performed under this Contract.

The Contractor is as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons whom the Contractor employs directly.

## **56. COUNTERPARTS**

This Agreement may be executed in one or more counterparts and all of such counterparts shall together constitute one and the same instrument. Original signatures transmitted and received via facsimile or other electronic transmission, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall be effective as delivery of a manually executed original counterpart.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA

LUTHERAN FAMILY SERVICES OF VIRGINIA DBA  
ENCIRCLE

AUTHORIZED SIGNATURE: DocuSigned by:  
*Kaylin Schreiber*  
2513E5602A3A4DE...

AUTHORIZED SIGNATURE: DocuSigned by:  
*Ray Ratke*  
C28B616A44A34A9...

NAME: kaylin schreiber

NAME: Ray Ratke

TITLE: Procurement Officer

TITLE: CEO

DATE: 8/31/2023

DATE: 8/30/2023

## EXHIBIT A

### SCOPE OF SERVICES

The Contractor shall perform all services in accordance with the following requirements.

**I. RESIDENTIAL SERVICES REQUIREMENTS APPLICABLE TO GROUP HOME AND SINGLE RESIDENCY UNIT**

- A. Provide Core Services - Residential Services as defined by the Virginia Department of Behavioral Health and Developmental Services ([DBHDS Core Services Taxonomy](#)). Residential services must support individuals with skill-building activities to achieve and maintain residential and community stability and independence in the most appropriate, least restrictive environment. Core Residential Services include:
  - 521 - Intensive Residential Services, including Center-Based Respite
  - 551 - Supervised Residential Services
- B. Provide residential services for which the funding is authorized by DBHDS or the Project Officer for adults with a developmental disability, with the goal of providing the support and supervision necessary to maintain residential stability and independence.
- C. Provide residential services maintaining adherence to best practices and compliance with the Home and Community Based Services (HCBS) final regulation:  
(<http://www.dmas.virginia.gov/#/generalreq>).
- D. Provide services that are inclusive of individual differences, including, but not limited to, language, race, ethnicity, and sexual orientation, in alignment with DHS's Mission, Vision and Values: <https://www.youtube.com/watch?v=D8hHTcXk7K4>.
- E. Receive referrals from Arlington County Support Coordinators for County individuals who have been deemed eligible for this residential setting. Additionally, when the setting is initially opened, the Contractor may receive a one-time referral for one regional group home bed from a neighboring CSB (i.e., City of Alexandria, Fairfax-Falls Church, Loudoun, or Prince William).
- F. Residential Support activities shall be based on an resident's Individual Plan for Supports (ISP). The ISP has to be created in the Virginia Waiver Management System (WaMS) by the Contractor's staff in collaboration with the individual, the County Support Coordinator, the individual's legal guardian or Community Services Board (CSB) Authorized Representative, if indicated, and other support systems, as appropriate.
- G. The ISP must be based on the annual assessments and developed within 60 calendar days of the initiation of services, submitted to the individual's County Support Coordinator, and pre-authorized by DBHDS for DD Medicaid Waiver-funded services. ISPs must include: an assessment of individuals' strengths and preferences, support activities, target dates for achievement of outcomes, actual outcomes, and identified staff responsible for supporting the individual. Contractor staff must collaborate with County staff in annual assessments of each individual to determine continued support needs and interests.

- H. Complete a quarterly person-centered review of the ISP to evaluate the individual's progress and adjust existing outcomes as needed.
- I. Residential support must be provided where the individual lives. The ISP shall provide for regularly scheduled activities during evening hours, as well as weekends. The supports must include hands-on teaching, coaching, and training to develop, maintain, and enhance community living skills.
- J. As part of an interdisciplinary approach to service delivery, ensure that residential staff is part of each individual's Interdisciplinary Teams (IDT), including for the development and implementation of the ISP, and collaborates with staff of other service providers.
- K. Residential Services must include the following:
1. Residential activities that promote the principles of engagement and person-centered planning: [Person Centered ISP Guidance](#).
  2. Skill-building reinforcement of functional skills and appropriate behavior related to the individual's health and safety and activities of daily living.
  3. Skill-building reinforcement of functional skills for independent living, to include, but not limited to, personal care activities (i.e., toileting, bathing and grooming, dressing, eating, mobility, communication, assistance with household chores, food preparation, and shopping.)
  4. Skill-building reinforcement of functional skills related to the use of community resources (i.e., transportation, shopping, restaurants, and social and recreational activities), as appropriate.
  5. Skill-building in adapting behavior for community engagement and home environments, for example (not all-inclusive):
    - Developing a circle of friends.
    - Handling social encounters with others.
    - Redirecting anger towards others.
  6. Monitoring of health, nutrition, and physical condition and support with medication management according to the ISP and documented in the quarterly progress report.
  7. Specialized supports and protocols to ensure the individual's health and safety, as necessary based on assessment.
  8. Assistance with personal care, activities of daily living, and use of community resources, for example (not all inclusive):
    - Completing personal care tasks when physically unable to do so independently.
    - Ensuring hygiene and eating needs are met, such as hand-over-hand shaving or tooth brushing.
    - Completing daily tasks, such as laundry, meal preparation, banking, or other tasks essential to the individual's health and welfare.
    - Support with transportation to and from community outings and resources.
  9. **For group home services only:** Provide access to skilled nursing services for up to 40 hours per week for individuals needing that level of care. These medical services are ordered by a physician, nurse practitioner, or physician assistant and are not otherwise available under the State Plan for Medicaid Assistance. For health needs that require a higher level of nursing support, the Contractor will work with the individual's support coordinator to set up skilled nursing through the DD Waiver.

10. **For group home services only:** Provide access to a registered nurse to train and supervise Direct Support Professionals (DSP) for administration of medication and nutrition using Gastronomy Tube (G-Tube). (Reference: <https://vacetraining.com/train-the-trainer/>).

- L. **For center-based respite services only:** One (1) bedroom in the group home will be designated to provide respite services for individuals ages 18 years and older experiencing a short-term emergency or a scheduled respite stay if the bed is vacant. The County Project Officer will monitor respite referrals submitted to the provider by Arlington County Support Coordinators and will screen for medical and behavior acuity. Individuals that exhibit moderate to high behavior acuity will not be considered for the respite bed given a heightened risk to permanent residents with exceptional medical support needs. Individuals experiencing moderate to high medical acuity may be referred for respite if they can be supported based on the residential setting milieu at the time of the referral.

In the event of medical emergencies for individuals using respite, the Contractor's staff must call 911. The Contractor shall be familiar with and follow medical protocols for individuals using respite. The Contractor's staff must immediately notify the individual's family or other emergency contacts.

## II. **REGULATORY REQUIREMENTS**

- A. The Contractor must be a licensed residential provider in the Commonwealth of Virginia that meets the compliance and other related service delivery requirements, as applicable to the services being offered.
- B. Must hold and maintain DBHDS licensure for the duration of this agreement:  
<http://dbhds.virginia.gov/quality-management/Office-of-Licensing>.
- C. Must meet all Center for Medicare & Medicaid Services (CMS) and Virginia Department of Medical Assistance Services (DMAS) standards applicable to their respective programs and services and must comply with (CMS) Final Rule for Home and Community Based Services: [Provider Participation Requirements \(DD Waiver\) | MES \(virginia.gov\)](#).
- D. Must comply with all applicable federal and state statutes, regulations, policies, and reporting requirements that affect or are applicable to the services included in the [DBHDS Core Services Taxonomy 7.3 Addendum](#) and the [State Performance Contract](#).
- E. Must comply with the DBHDS Licensing Rules and Regulations.
- F. Must comply with the [Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the DBHDS \(12VAC35-10-250\)](#) and [Human Rights Regulations](#).
- G. Must comply with all applicable local licensure and regulatory requirements regarding facilities/homes at which services are provided, including, but not limited to: certificate(s) of occupancy, zoning and fire and health department codes, as applicable.

- H. The Contractor's policy and/or procedure regarding the reporting of individual abuse, neglect or exploitation must be in compliance with Child and Adult Protective Services standards. [Mandated Reporters - Training & Resources - Virginia Department of Social Services.](#)
- I. Must comply with laws governing all health professionals.
- J. Must comply with all applicable provisions of [Behavioral Health and Developmental Services \(Title 37.2\) of the Code of Virginia](#) and all other applicable statutory, constitutional mandates, regulations, and policies.
- K. Must comply with the Virginia Freedom of Information Act, [2.2-3700-3714](#), including its notice of meeting and public meeting provisions,
- L. Must comply with Government Data Collection and Dissemination Practices Act, Sections [2.2-3800 through 3809](#).
- M. Must comply with Confidentiality of Alcohol and Substance Abuse Records, [42 C.F.R. Part 2](#).

### III. **STAFFING REQUIREMENTS**

- A. Ensure the group home and single occupancy unit have adequate staffing (365) days per year, 24 hours per day. There must always be a minimum of two employees working each shift in the group home. If fewer than two employees are available for a shift, the Contractor must provide a written explanation in the monthly report (see Section VI. Reporting Requirements). For the single occupancy unit, staffing shall be determined by the resident's DBHDS-approved customized rate.
- B. Ensure that all employees working under this contract are Direct Support Professionals (DSPs), have received training in working with individuals who have developmental disabilities (including those who have co-occurring mental health and behavioral support needs), and have been instructed in implementing individual and behavioral support plans into practice, as required by DBHDS. DSPs will hold, at minimum, a high school diploma or a General Equivalency Diploma (GED).
- C. Ensure there is at least one Qualified Developmental Disabilities Professional (QDDP)- or Qualified Intellectual Disabilities Professional (QIDP)-level employee on the premises during all core evening and weekend hours (including days with inclement weather conditions, federal holidays, group day program closure, etc.) when the house manager is not present.
- D. The Contractor's administrative and managerial staff must be available to County staff during normal business office hours, Monday – Friday, 8:00AM to 5:00PM, excluding County holidays.
- E. Provide a 24-hour emergency response system during non-business hours.
- F. The Contractor must ensure that all staff who work directly with individuals pass the [Orientation Manual for Direct Support Professionals \(DSPs\) and Supervisors: Supporting People in their Homes and Communities](#) test. Upon request, the Contractor must provide proof of the completed test to the Project Officer.

- G. Maintain a personnel system with policies that address employee ethics, conflicts of interest, performance evaluations, equal employment opportunities, proper initial employee orientation, and employee-County contract protocol.
- H. Must have written, up-to-date job descriptions for all positions that include identified essential functions, explicit responsibilities, and qualification statements expressed in terms of knowledge, skills, and abilities, as well as business necessity and bona fide occupational qualifications or requirements. Incumbents of positions that require specific levels of education or training shall have documentation of this education or training in their personnel files.
- I. Conduct a driving record check for each staff assigned to this contract, verifying that staff with points in the negative on their record shall not be permitted to transport residents.
- J. Ensure that all staff who work directly with individuals under this contract receive training prior to the start of work, consistent with licensing regulations and including but not limited to:
  - Objectives and philosophy of the organization
  - Practices of confidentiality
  - Personnel policies and procedures
  - Operational policies and procedures
  - Risk management plan including emergency plan/Continuity of Operations Plan (COOP)
  - Emergency preparedness policy and procedures; criteria included in this policy should be consistent with DBHDS licensure standards
  - Orientation to Arlington Developmental Services and Department of Human Services system(s)
  - Infection control practices and measures and safety-related monitoring
  - Other policies and procedures that apply to specific positions and specific duties and responsibilities
  - DBHDS licensure standards regarding prohibition of smoking in licensed settings
  - Health and safety protocols targeting the "Fatal 7" health conditions: aspiration pneumonia, constipation, dehydration, pressure Injuries, sepsis, falls, and seizures
  - Crisis prevention and intervention
  - First Aid and CPR training, including AED
  - All applicable aspects of program operation necessary to the fulfillment of service objectives under terms of the contract
  - Terms of the contract that are relevant to the conduct of staff responsibilities, to include reporting requirements
  - Principles of person-centered approaches to delivery of supports
  - Principles of community inclusion and community engagement, accompanied by information about community resources
  - Behavioral support principles and the appropriate implementation of positive behavior support plans
  - Race and equity training
- K. Ensure that all staff who work directly with individuals receive annual training per Arlington CSB requirements for residential services for individuals with developmental disabilities in the following areas:

- Sexual harassment and sexual abuse prevention and reporting
  - Trauma Informed Care (TIC)
  - Abuse, neglect, and exploitation of vulnerable adults
- L. Ensure that for short-term emergency respite the Contractor's staff is available Monday through Friday to conduct an intake meeting, as needed.

**IV. PROGRAM ADMINISTRATION REQUIREMENTS**

- A. The Contractor's management team must facilitate a quarterly meeting with families, Support Coordinators, and the County's Project Officer. They must also and participate in a monthly meeting with the County's DDS management team. Meeting invites shall be provided by the Contractor's Management Team.
- B. The Program Manager or QIDP must participate in a monthly residential meeting with assigned Support Coordinators. Support Coordinators shall inform Contractor staff of the meeting dates and times.
- C. The Program Manager or QIDP must facilitate a monthly meeting with individuals. Topics may include, but are not limited to, the planning of group and individual activities (that are based on the individuals' preferences and abilities to participate), meal planning, art projects, etc. Based on the discussions, staff should develop a monthly activity calendar, including transportation needs to and from activities. A copy of the activity calendar shall be provided to Support Coordinators and the County's Project Officer upon request.
- D. Collaborate with the County prior to the implementation of any material changes in support/ service models or program philosophy. Report to the County's Project Officer in writing any plans for expansion or reduction of services or changes in licensing at least 90 days in advance. This shall include increasing or decreasing the number of beds for which the residential setting is licensed or changes in licensing status.
- E. Participate in meetings, such as Person-Centered Planning meetings, with other service providers, including community employment and habilitation programs.
- F. Maintain updated ISPs for all individuals receiving services with the appropriate medical and/or behavioral protocols included.
- G. Maintain Standard Operation Procedures (SOP) for discharge criteria for all programs. The Contractor shall notify the individual's Support Coordinator at least 30 days prior to discharge. At that time, the Contractor shall establish a coordinated discharge plan with the individual's Support Coordinator and the individual and/or legal guardian, unless it is determined that inclusion of the individual in the discharge planning will result in undue harm or distress. A discharge report shall be submitted to the County's Project Officer and the Support Coordinator within 10 calendar days of discharge.
- H. Make available to the County upon request any data, procedures, or policies related to programs and services covered by the contract. Provide access to the facility, individuals, records, materials, and data arising from this contract in a manner that is consistent with legally required client confidentiality and presents a minimum disruption to program operations.



- I. Collect room and board fees from individuals (no more than 75% of an individual’s gross monthly income). The Contractor must have written fee collection policies and procedures that maximize revenues from individuals and responsible third-party payors.
- J. Bill DMAS for DD Medicaid Waiver services, including respite, provided to all individuals who qualify for this funding. In the event of an emergency respite admission for an individual who is funded by the DD Waiver, the County will cover up to five days of funding at the DMAS respite rate with the expectation that the Contractor will enter a Service Authorization and Part 5 plan in WAMS as soon as a team meeting is able to be held.
- K. For respite stays that are expected to go beyond 30 days, the Contractor will participate in an IDT meeting prior to day 30 to develop a respite services ISP regardless of how the individual is funded (local or DD Waiver funded).

**V. OPERATIONAL REQUIREMENTS**

- A. Perform daily cleaning of the kitchen, restrooms, living room, sensory area, and conference room. As needed, wipe/disinfect surfaces with a damp disinfectant cloth, remove garbage and recyclables, and sweep/mop/vacuum the areas.
- B. Conduct weekly cleaning in resident bedrooms, laundry area, conference room, den, mud room, and foyer. Wipe/disinfect surfaces with a damp cloth, take out the trash and recycling, clean mirrors, spot clean walls, sweep/mop/vacuum, and wipe down furniture, as needed.
- C. Replace lightbulbs and batteries, and un-clog sinks and toilets. The Contractor must notify the County’s facilities maintenance team within 24 hours of any unsuccessful attempts to unclog sinks and toilets.
- D. Notify the County's facilities maintenance team of any maintenance or repair needs, other than the replacement of light bulbs and batteries, as well as any safety issues that might result in bodily harm or injury. These issues must be communicated within 24 hours via a maintenance request for all repairs needed (instructions will be provided upon contract start date). The Contractor shall not employ or otherwise engage its own or contracted providers to conduct any repairs to this residential setting unless previously approved in writing by the County’s facilities maintenance team.

**VI. REPORTING REQUIREMENTS**

The Contractor shall submit copies of the following reports and work products to the Project Officer and/or the designated County staff.

Report or Designated Product	Date due or Frequency	Designated County Staff
A quarterly report containing the following: <ul style="list-style-type: none"> <li>• A summary of aggregate data for Level I, Level II and Level III incidents as defined by DBHDS licensing</li> </ul>	Quarterly, 10 days after quarter ends	

<p>regulations. <a href="#">DBHDS Guidance for Serious Incidence Reporting</a></p> <ul style="list-style-type: none"> <li>• A summary of community integration activities for all individuals</li> <li>• A summary of respite bed-day usage and Medicaid Waiver revenue, if applicable</li> <li>• A report detailing shifts where the two-person and QIDP requirements were not met, along with an explanation and the outcome of securing replacement personnel</li> <li>• Maintenance requests submitted</li> <li>• Outstanding maintenance issues at time of reporting</li> <li>• Unmet program needs that have direct or indirect impact on residents. This may include unmet needs in the delivery of client services and program administration</li> </ul>		Project Officer via email
Part V. Plan for Supports	Annually, 15 days prior to PCP start date	DD Waiver funded: via WaMS
Person-Centered Reviews	Quarterly, 10 days after quarter ends	Project Officer via email
Physicians' Consultation Forms	Per Occurrence	Support Coordinator
Incident Reports	Level II and III Serious Incidents as defined by Chapter 106 of the DBHDS Licensing Rules and Regulations must be communicated to the Arlington County Project Officer via phone within 8 hours. Written incident reports detailing the serious incident must be submitted within twenty-four (24) hours of the incident or knowledge of the incident. All other incident reporting must be reported within five (5) business days.	Project Officer via phone (Level II and Level III) Project Officer via email (all Level I, Level II and Level III reports)
<p>Monthly Invoice</p> <ul style="list-style-type: none"> <li>*Identifies Arlington County as payer</li> <li>*Vendor name/address/contact</li> <li>*Dates of Service</li> <li>*Purchase Order Number</li> <li>*Unique Invoice Number</li> </ul>	By the 10 <sup>th</sup> of the following month (except June – due by July 7th)	Project Officer via email

Sexual Harassment and Sexual Abuse Prevention and Reporting Training for All Staff Working Directly with Individuals	Annually	Project Officer via quarterly vendor report
Response to Referrals	Within ten (10) business days	Support Coordinator via email
Discharge Reports	Within five (5) business days	Project Officer via email
DBHDS Licensure Reports & Corrective Action Plans	Five (5) business days following receipt from DBHDS	Project Officer via email
Offeror's Annual Report	Upon request	Project Officer via mail or email
Annual Audit	Upon request	Project Officer via mail or email
Annual report of staff trainings	Annually by September 1	Project Officer via email
Revisions to Policies & Procedures	Within ten (10) business days	Project Officer via email
Other data, procedures, reports or policies deemed necessary by Project Officer	Upon request.	Project Officer via email
Personal Property Inventories	Annually by August 31 for Group Home residents only	Project Officer via email
Citizen Complaints	Within three (3) business days	Project Officer via email

## **VII. COUNTY RESPONSIBILITIES**

- A. Assign a Project Officer who will be the primary point of contact for all contractual and programmatic concerns.
- B. Provide orientation and consultation for Contractor staff regarding the services and programs offered by DHS and related County agencies.
- C. Provide referral to and coordination with Mental Health Crisis intervention services, employment/habilitation services, and social and financial supportive services for individuals, where appropriate, under eligibility guidelines of the relevant programs, and in accordance with DHS intake procedures.
- D. Assign a Support Coordinator for each individual who has been authorized and accepted for services in the residential setting.
- E. Evaluate and prioritize all referrals received from the Project Officer on behalf of Arlington's Developmental Services Support Coordinators for admission to services in accordance with agreed upon admissions criteria/standards. Applications for residency to this group home will be prioritized by the Project Officer according to moderate and exceptional skilled nursing and behavior support needs. If the Contractor accepts an individual outside of this priority, the Contractor must submit a written justification to the Project Officer within three business days of its decision and prior to the individual being notified of the placement acceptance.
- F. Provide technical assistance and investigation of any fraudulent activity by Contractor staff, such as misuse of individuals' personal property or funds or intentional misreporting of critical incidents.

- G. Provide maintenance of the building, including lawn care, snow removal, pest remediation, quarterly professional cleaning of the facility, furniture replacement.
- H. Supply the following items: furnishings, household and kitchen items, televisions and other electronic equipment, internet access, and automated external defibrillator (AED). The County will replace items as they complete their regular life cycle. The County will not be responsible for items damaged due to Contractor negligence. Upon contract completion, all objects shall become the property of the County.

**VIII. TRANSITION-OUT/END OF CONTRACT RESPONSIBILITIES**

When the Contract terminates for any reason, the Contractor shall collaborate with the County to successfully transition individuals to a new contractor as follows:

- A. Continue all operations and reporting per the terms of the contract for a duration determined by the County.
- B. Actively participate with the County and the new contractor during the transition phase to ensure a seamless transfer of service without interruption for the individuals residing in the home.
- C. In collaboration with the County, communicate information regarding transition clearly and timely to individuals and their families to mitigate challenges and anxiety.
- D. All furnishings and equipment will be County property and will remain on site upon termination of the contract.
- E. Turn over to the County all hardcopy client records pertinent to physical health, as requested by the Project Officer. Records are due to the County within 15 days of a new contract award. Updated records that reflect services rendered during the transition period are due to the Project Officer within 15 calendar days of contract termination or the end of any transition period agreement, whichever is later. Hardcopy client records include, but are not limited to:
  - Medical records
  - Medication Administration Record (MAR)
  - Physicians' orders
  - Nutrition plans

# EXHIBIT B

A 1212 S. Irving Street Operations

Arlington County, Virginia Department of Human Services

Annual Personnel Expenditures*	FTE	Salary	Retirement	FICA	Health	Life	SUTA	WC	Total Cost
<b>Nursing Staff</b>									
Registered Nurse	0.25	\$90,000	\$3,600	\$6,885	\$10,285	\$239	\$294	\$1,188	\$28,123
Health Coordinator, LPN	1.00	\$55,000	\$2,200	\$4,208	\$10,285	\$239	\$294	\$726	\$72,952
<b>Nursing Staff Total</b>	<b>1.25</b>	<b>\$145,000</b>	<b>\$5,800</b>	<b>\$11,093</b>	<b>\$20,570</b>	<b>\$478</b>	<b>\$589</b>	<b>\$1,914</b>	<b>\$101,075</b>
<b>Position Type 1/House Supervisor</b>									
House Supervisor, TBD	0.00	\$0.00	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00
<b>Position Type 1 Total</b>	<b>0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Position Type 2/QIDP DSP/Shift Supervisor</b>									
QIDP - DSP, TBD	3.00	\$53,999.62	\$2,160	\$4,131	\$10,285	\$239	\$294	\$713	\$215,464.71
<b>Position Type 2 Total</b>	<b>3.00</b>	<b>\$53,999.62</b>	<b>\$2,159.98</b>	<b>\$4,130.97</b>	<b>\$10,285.00</b>	<b>\$238.80</b>	<b>\$294.40</b>	<b>\$712.79</b>	<b>\$215,464.71</b>
<b>Position Type 3/DSP</b>									
DSP, TBD	9.00	\$36,400.00	\$1,456	\$2,785	\$10,285	\$239	\$294	\$480	\$467,453.52
<b>Position Type 3 Total</b>	<b>9.00</b>	<b>\$36,400.00</b>	<b>\$1,456.00</b>	<b>\$2,784.60</b>	<b>\$10,285.00</b>	<b>\$238.80</b>	<b>\$294.40</b>	<b>\$480.48</b>	<b>\$467,453.52</b>
<b>Position Type 4/Manager</b>									
Manager, TBD	1.00	\$60,631.14	\$2,425	\$4,638	\$10,285	\$239	\$294	\$800	\$79,313.20
<b>Position Type 4 Total</b>	<b>1.00</b>	<b>\$60,631.14</b>	<b>\$2,425.25</b>	<b>\$4,638.28</b>	<b>\$10,285.00</b>	<b>\$238.80</b>	<b>\$294.40</b>	<b>\$800.33</b>	<b>\$79,313.20</b>
<b>Position Type 5/Leadership</b>									
Dan Kaktis, Regional Manager	0.20	\$77,975.87	\$3,119	\$5,965	\$6,192	\$239	\$294	\$1,029	\$18,962.91
Andrew Miller, Assistant Director	0.08	\$89,115.52	\$3,565	\$6,817	\$14,378	\$239	\$294	\$1,176	\$9,246.80
Luke Lemon, Director	0.05	\$109,457.30	\$4,378	\$8,373	\$14,378	\$239	\$294	\$1,445	\$6,928.26
Holly Rhodenbizer, Vice President	0.02	\$125,999.00	\$5,040	\$9,639	\$6,192	\$239	\$294	\$1,663	\$2,981.33
<b>Position Type 5 Total</b>	<b>0.35</b>	<b>\$402,547.69</b>	<b>\$16,101.91</b>	<b>\$30,794.90</b>	<b>\$41,140.00</b>	<b>\$955.20</b>	<b>\$1,177.60</b>	<b>\$5,313.63</b>	<b>\$38,119.29</b>
<b>Total Personnel</b>	<b>14.60</b>	<b>\$698,578.45</b>	<b>\$27,943.14</b>	<b>\$53,441.25</b>	<b>\$92,565.00</b>	<b>\$2,149.20</b>	<b>\$2,649.60</b>	<b>\$9,221.24</b>	<b>\$901,425.22</b>

Annual Operating Expenditures*	Total Cost
Staff hiring bonuses (see Tab 3)	\$8,226.00
Overtime Costs	\$61,000.00
Postage	\$120.00
Printing	\$25.00
Rent/Housing subsidy	\$0.00
Office Space	\$0.00
Staff Training	\$2,600.00
Recruitment Costs	\$6,035.00
Operating Equipment & Supplies	\$3,250.00
Office Supplies	\$635.00
Food	\$21,900.00
Vehicle	\$19,000.00
Gas	\$1,750.00
Vehicle Maintenance	\$5,000.00
Vehicle Insurance	\$2,000.00
Translation Services (phone, in-person, video)	\$540.00
ADDITIONAL ITEM	\$0.00
Staff Retention	\$336.07
Contract Services	\$4,000.00
Insurance D&O, Liability & Umbrella & Property	\$2,500.00
Travel, Lodging & Meals	\$1,358.64
Kitchen & Medical Supplies	\$3,641.79
Communications	\$4,384.71
Interest & Amortization	\$4,136.73
Service Materials	\$535.82
M&P	\$752.31
Indirect/Management Fee (audited rate or capped at 10% of the total direct costs)	\$105,515.23
<b>Total Operating</b>	<b>\$259,242.30</b>

<b>Total Yearly Expenses</b>	<b>\$1,160,667.53</b>
<b>PROJECTED YEARLY REVENUE FOR DD WAIVER RECIPIENTS</b>	<b>\$891,991.96</b>
<b>Revenue for Residential Fee</b>	<b>\$41,130.00</b>
<b>Total Yearly Expenses (less revenue for DD Waiver recipients)</b>	<b>\$227,545.57</b>
<b>Number of beds</b>	<b>5</b>
<b>Daily Cost</b>	<b>\$623.41</b>
<b>Cost Per Bed Per Day</b>	<b>\$124.68</b>



<b><i>Respite Bed Costs for any specialized personnel or supplies (please enter brief description of each item needed for respite. Please add rows as necessary)</i></b>	<b>Cost</b>	<b>Select a Unit (per hour, per day, per item, per other)</b>
Annualized rent on 5th bed based on 75% max SSI	\$8,226	Per Item
	\$0	
	\$0	
	\$0	
	\$0	
	\$0	
	\$0	
	\$0	
	\$0	
	\$0	
	\$0	
	\$0	
	\$0	
	\$0	
<b>Total*</b>	<b>\$8,226</b>	

\*Total to be used as hiring bonuses and should match cell J33 on Tab 1 of pricing sheet

EXHIBIT C

LIVING WAGE FORMS

# **WAGE NOTICE**

THE HOURLY RATE FOR EMPLOYEES OF THE CONTRACTOR AND ANY SUBCONTRACTORS WORKING ON COUNTY-OWNED, COUNTY-CONTROLLED PROPERTY, FACILITIES OWNED, OR LEASED, AND OPERATED BY A CONTRACTOR IF SERVICES PROVIDED AT THAT LOCATION ARE EXCLUSIVE TO ARLINGTON COUNTY, OR CONTRACTS FOR HOME-BASED CLIENT SERVICES MUST NOT BE LOWER THAN

**\$17.00 PER HOUR**

REFERENCE: ARLINGTON COUNTY PURCHASING RESOLUTION  
SECTION 4-103

**FOR INFORMATION CONTACT:**

ARLINGTON COUNTY  
OFFICE OF THE PURCHASING AGENT  
2100 CLARENDON BOULEVARD, SUITE 500  
ARLINGTON, VA 22201  
703-228-3410



# **AVISO de SALARIO**

## **MINIMO**

LA TARIFA HORARIA DE LOS EMPLEADOS DEL CONTRATISTA, Y DE CUALQUIER SUBCONTRATISTA QUE TRABAJE EN PROPIEDADES DEL CONDADO, EN INSTALACIONES PROPIAS/ALQUILADAS Y OPERADAS POR UN CONTRATISTA SI LOS SERVICIOS PRESTADOS EN ESE LUGAR SON EXCLUSIVOS DEL CONDADO DE ARLINGTON, O EN CONTRATOS DE SERVICIOS DOMICILIARIOS A CLIENTES, NO DEBE SER INFERIOR  
A

**\$17.00 POR HORA**

REFERENCIA: SECCIÓN 4-103, DE LA RESOLUCIÓN DE LA OFICINA DEL AGENTE DE COMPRAS DEL CONDADO DE ARLINGTON.  
(ARLINGTON COUNTY PURCHASING RESOLUTION SECTION 4-103)

**PARA OBTENER MAS INFORMACIÓN, LLAME A:**

LA OFICINA DEL AGENTE DE COMPRAS DEL CONDADO DE  
ARLINGTON.  
703-228-3410.

**PARA INFORMACION EN PERSONA DIRIJASE A:**

2100 CLARENDON BOULEVARD, OFICINA No 500  
ARLINGTON, VA 22201



## EXHIBIT E

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is hereby entered into between Lutheran Family Services of Virginia dba enCircle (hereafter referred to as "Business Associate") and the County Board of Arlington County, Virginia (hereafter referred to as "Covered Entity" or "County") (collectively "the parties") and is hereby made a part of any Underlying Agreement for goods or services entered into between the parties.

#### Recitals

The County provides services to its residents and employees which may cause it or others under its direction or control to serve as covered entities for purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The County, in its capacity as a covered entity, may provide Business Associate with certain information that may include Protected Health Information (PHI), so that Business Associate may perform its responsibilities pursuant to its Underlying Agreement(s) with and on behalf of County.

Covered Entity and Business Associate intend to protect the privacy of PHI and provide for the security of any electronic PHI received by Business Associate from Covered Entity, or created or received by Business Associate on behalf of Covered Entity in compliance with HIPAA; in compliance with regulations promulgated pursuant to HIPAA, at 45 CFR Parts 160 and Part 164; and in compliance with applicable provisions of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the "HITECH Act") and any applicable regulations and/or guidance issued by the U.S. Department of Health and Human Services ("DHHS") with respect to the HITECH Act (collectively "federal law").

WHEREAS, federal law and the specific regulations promulgated pursuant to HIPAA at 45 CFR § 164.314, 45 CFR § 164-502(e) and 45 CFR § 164.504(e) require a Covered Entity to enter into written agreements with all Business Associates (hereinafter "Business Associate Agreement");

WHEREAS, the parties desire to comply with HIPAA and desire to secure and protect such PHI from unauthorized disclosure;

THEREFORE, **Business Associate** and **Covered Entity**, intending to be legally bound, agree as follows. The obligations, responsibilities and definitions may be changed from time to time as determined by federal law and such changes are incorporated herein as if set forth in full text:

#### 1) Definitions

The capitalized terms used in this Business Associate Agreement shall have the meaning set out below:

- a) **Accounting.** "Accounting" means a record of disclosures of protected health information made by the Business Associate.

- b) **Breach.** "Breach" means the acquisition, access, use, or disclosure of protected health information in a manner not permitted by this Business Associate Agreement and/or by HIPAA, which compromises the security or privacy of the protected health information. For purposes of this Business Associate Agreement, any unauthorized acquisition, access, use, or disclosure of protected health information shall be presumed to be a breach.
- c) **Business Associate.** "Business Associate" means a person who creates, receives, maintains, or transmits protected health information on behalf of a Covered Entity to accomplish a task regulated by HIPAA and not as a member of the Covered Entity's workforce. A Business Associate shall include, but is not limited to, a non-workforce person/entity who performs data processing/analysis/transmission, billing, benefit management, quality assurance, legal, actuarial, accounting, administrative and/or financial services on behalf of the Covered Entity involving protected health information. A Business Associate also includes a subcontractor.
- d) **Covered Entity.** "Covered Entity" means a health plan, a health care clearinghouse, and/or a health care provider who transmits any health information in electronic form in connection with an activity regulated by HIPAA.
- e) **Data Aggregation.** "Data Aggregation" means, with respect to PHI created or received by Business Associate in its capacity as the Business Associate of Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- f) **Designated Record Set.** "Designated Record Set" means all records, including medical, enrollment, billing, payment, claims, and/or case management maintained by and/or for a Covered Entity.
- g) **Discovery.** "Discovery" shall mean the first day an unauthorized use or disclosure is known or reasonably should have been known by Business Associate, including when it is or should have been known by any person other than the person who engaged in the unauthorized use/disclosure who is an employee, officer, or agent of Business Associate.
- h) **Electronic Protected Health Information.** "Electronic Protected Health Information" means individually identifiable health information that is transmitted by or maintained in electronic media.
- i) **HIPAA.** "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 as in effect and/or as amended.
- j) **HITECH Act.** "HITECH Act" means the portions of the Health Information Technology for Economic and Clinical Health Act which serve as amendments to HIPAA. HITECH is included within the definition of HIPAA unless stated separately.
- k) **Individual.** "Individual" means the person who is the subject of protected health information and/or a person who would qualify as a personal representative of the person who is the subject of protected health information.

- l) **Protected Health Information.** "Protected Health Information" or "PHI" means individually identifiable health information transmitted and/or maintained in any form.
- m) **Remuneration.** "Remuneration" means direct or indirect payment from or on behalf of a third party.
- n) **Required By Law.** "Required By Law" means an activity which Business Associate is required to do or perform based on the provisions of state and/or federal law.
- o) **Secretary.** "Secretary" means the Secretary of the Department of Health and Human Services or the Secretary's designee.
- p) **Security Incident.** "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the system operations in an information system.
- q) **Underlying Agreement.** "Underlying Agreement" means the County contract for goods or services made through the County's procurement office which the parties have entered into and which the County has determined requires the execution of this Business Associate Agreement.
- r) **Unsecured Protected Health Information.** "Unsecured Protected Health Information" means protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology approved by the Secretary.

## 2) **Obligations and Activities of Business Associate**

- a) Business Associate acknowledges and agrees that it is obligated by law (or upon the effective date of any portion thereof shall be obligated) to meet the applicable provisions of HIPAA and such provisions are incorporated herein and made a part of this Business Associate Agreement. Covered Entity and Business Associate agree that any regulations and/or guidance issued by DHHS with respect to HIPAA that relate to the obligations of business associates shall be deemed incorporated into and made a part of this Business Associate Agreement.
- b) In accordance with 45 CFR §164.502(a)(3), Business Associate agrees not to use or disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law.
- c) Business Associate agrees to develop, implement, maintain and use appropriate administrative, technical, and physical safeguards that reasonably prevent the use or disclosure of PHI other than as provided for by this Business Associate Agreement, in accordance with 45 CFR §§164.306, 310 and 312. Business Associate agrees to develop, implement, maintain and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI, in accordance with 45 CFR §§164.306, 308, 310, and 312. In accordance with 45 CFR §164.316, Business Associate shall also develop and implement policies and procedures and meet the documentation requirements as and at such time as may be required by HIPAA.

- d) Business Associate agrees to 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 Business Associate Agreement.
- e) In accordance with 45 CFR §§164.308, 314 and 502, Business Associate will ensure that any workforce member or agent, including a vendor or subcontractor, whom Business Associate engages to create, receive, maintain, or transmit PHI on Business Associate's behalf, agrees to the same restrictions and conditions that apply through this Business Associate Agreement to Business Associate with respect to such information, including minimum necessary limitations. Business Associate will ensure that any workforce member or agent, including a vendor or subcontractor, whom Business Associate engages to create, receive, maintain, or transmit PHI on Business Associate's behalf, agrees to implement reasonable and appropriate safeguards to ensure the confidentiality, integrity, and availability of the PHI.
- f) At the request of Covered Entity, Business Associate will provide Covered Entity, or as directed by Covered Entity, an Individual, access to PHI maintained in a Designated Record Set in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.524, and, where required by HIPAA, shall make such information available in an electronic format where directed by the Covered Entity.
- g) At the written request of Covered Entity, (or if so directed by Covered Entity, at the written request of an Individual), Business Associate agrees to make any amendment to PHI in a Designated Record Set, in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.526.
- h) In accordance with 45 CFR §164.504(e)(2), Business Associate agrees to make its internal practices, books, and records, including policies and procedures, and any PHI, relating to the use and disclosure of PHI, available to Covered Entity or to the Secretary for purposes of determining compliance with applicable law. To the extent permitted by law, said disclosures shall be held in strictest confidence by the Covered Entity. Business Associate will provide such access in a time and manner that is sufficient to meet any applicable requirements of applicable law.
- i) Business Associate agrees to document and maintain a record of disclosures of PHI and information related to such disclosures, including the date, recipient and purpose of such disclosures, in a manner that is sufficient for Covered Entity or Business Associate to respond to a request by Covered Entity or an Individual for an Accounting of disclosures of PHI and in accordance with 45 CFR § 164.528. Business Associate further shall provide any additional information where required by HIPAA and any implementing regulations. Unless otherwise provided under HIPAA, Business Associate will maintain the Accounting with respect to each disclosure for at least six years following the date of the disclosure.
- j) Business Associate agrees to provide to Covered Entity upon written request, or, as directed by Covered Entity, to an Individual, an Accounting of disclosures in a time and manner that is sufficient to meet the requirements of HIPAA, in accordance with 45 CFR §164.528. In addition, where Business Associate is contacted directly by an Individual based upon information provided to the Individual by Covered Entity and where so required by HIPAA and/or any implementing regulations, Business Associate shall make such Accounting available directly to the Individual.

- k) In accordance with 45 CFR §164.502(b), Business Associate agrees to make reasonable efforts to limit use, disclosure, and/or requests for PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. Where required by HIPAA, Business Associate shall determine (in its reasonable judgment) what constitutes the minimum necessary to accomplish the intended purpose of a disclosure.
- l) In accordance with 45 CFR §502(a)(5), Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual, except with the express written pre-approval of Covered Entity.
- m) To the extent Business Associate is to carry out one or more obligation(s) of the Covered Entity's under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- n) In accordance with 45 CFR §164.314(a)(1)(i)(C), Business Associate agrees to promptly report to Covered Entity any Security Incident of which Business Associate becomes aware.
- o) In accordance with 45 CFR §164.410 and the provisions of this Business Associate Agreement, Business Associate will report to Covered Entity, following Discovery and without unreasonable delay, but in no event later than five business days following Discovery, any Breach of Unsecured Protected Health Information. Business Associate shall cooperate with Covered Entity in investigating the Breach and in meeting Covered Entity's obligations under HIPAA and any other applicable security breach notification laws, including, but not limited to, providing Covered Entity with such information in addition to Business Associate's report as Covered Entity may reasonably request, e.g., for purposes of Covered Entity making an assessment as to whether/what Breach Notification is required.

Business Associate's report under this subsection shall, to the extent available at the time the initial report is required, or as promptly thereafter as such information becomes available but no later than 30 days from discovery, include:

1. The identification (if known) of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach;
2. A description of the nature of the unauthorized acquisition, access, use, or disclosure, including the date of the Breach and the date of discovery of the Breach;
3. A description of the type of Unsecured PHI acquired, accessed, used or disclosed in the Breach (e.g., full name, Social Security number, date of birth, etc.);
4. The identity of the individual(s) who made and who received the unauthorized acquisition, access, use or disclosure;
5. A description of what Business Associate is doing to investigate the Breach, to mitigate losses, and to protect against any further breaches; and

6. Contact information for Business Associate's representatives knowledgeable about the Breach.

- p) Business Associate shall maintain for a period of six years all information required to be reported under paragraph "o". This records retention requirement does not in any manner change the obligation to timely disclose all required information relating to a non-permitted acquisition, access, use or disclosure of Protected Health Information to the County Privacy Officer and the County Project Officer or designee five business days following Discovery.

**3) Permitted Uses and Disclosures by Business Associate**

Except as otherwise limited in this Business Associate Agreement, Business Associate may use or disclose PHI, consistent with HIPAA, as follows:

- a) Business Associate may use or disclose PHI as necessary to perform functions, activities, or services to or on behalf of Covered Entity under any service agreement(s) with Covered Entity, including Data Aggregation services related to the health care operations of Covered Entity, if called for in the Underlying Agreement, if Business Associate's use or disclosure of PHI would not violate HIPAA if done by Covered Entity.
- b) Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- c) Business Associate may disclose PHI for the proper management and administration of Business Associate if:
1. Disclosure is Required by Law;
  2. Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will remain confidential, and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed, and the person agrees to promptly notify Business Associate of any known breaches of the PHI's confidentiality; or
  3. Disclosure is pursuant to an order of a Court or Agency having jurisdiction over said information.
- d) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

**4) Obligations of Covered Entity**

- a) Covered Entity will notify Business Associate of any limitations on uses or disclosures described in its Notice of Privacy Practices (NOPP).
- b) Covered Entity will notify Business Associate 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.



- c) Covered Entity will notify Business Associate of any restriction of the use or disclosure of PHI, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d) Covered Entity will notify Business Associate of any alternative means or locations for receipt of communications by an Individual which must be accommodated or permitted by Covered Entity, to the extent that such alternative means or locations may affect Business Associate's use or disclosure of PHI.
- e) Except as otherwise provided in this Business Associate Agreement, Covered Entity will not ask Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if such use and/or disclosure was made by Covered Entity.

**5) Term, Termination and Breach**

- a) This Business Associate Agreement is effective when fully executed and will 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, including any material provided to subcontractors. If it is infeasible to return or destroy all PHI, protections are extended to such information, in accordance with the Section 5(d) and 5(e) below.
- b) Upon Covered Entity's determination that Business Associate has committed a violation or material breach of this Business Associate Agreement, and in Covered Entity's sole discretion, Covered Entity may take any one or more of the following steps:
  - 1. Provide an opportunity for Business Associate to cure the breach or end the violation, and if Business Associate does not cure the Breach or end the violation within a reasonable time specified by Covered Entity, terminate this Business Associate Agreement;
  - 2. Immediately terminate this Business Associate Agreement if Business Associate has committed a material breach of this Business Associate Agreement and cure of the material breach is not feasible; or,
  - 3. If neither termination nor cure is feasible, elect to continue this Business Associate Agreement and report the violation or material breach to the Secretary.
- c) If Business Associate believes Covered Entity has failed to fulfill any of its duties under this Business Associate Agreement, Business Associate will promptly notify Covered Entity as to same and Covered Entity shall promptly address the matter with Business Associate.
- d) Except as provided in Section 5(e) upon termination of this Business Associate Agreement for any reason, Business Associate will return or destroy, at the discretion of Covered Entity, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision will also apply to PHI that is in the possession of workforce members, subcontractors, or agents of Business Associate. Neither Business Associate, nor any workforce member, subcontractor, or agent of Business Associate, will retain copies of the PHI.
- e) If Business Associate determines that returning or destroying all or part of the PHI received or created by and/or on behalf of Covered Entity is not feasible, Business Associate will notify

Covered Entity of the circumstances making return or destruction infeasible. If Covered Entity agrees that return or destruction is infeasible, then Business Associate will extend the protections of this Business Associate 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. Business Associate further agrees to retain the minimum necessary PHI to accomplish those tasks/responsibilities which make return and/or destruction infeasible.

**6) Miscellaneous**

- a) Covered Entity and Business Associate agree to take any action necessary to amend this Business Associate Agreement from time to time as may be necessary for Covered Entity or Business Associate to comply with the requirements of HIPAA, and/or any other implementing regulations or guidance.
- b) Notwithstanding the expiration or termination of this Business Associate Agreement or any Underlying Agreement, it is acknowledged and agreed that those rights and obligations of Business Associate which by their nature are intended to survive such expiration or termination shall survive, including, but not limited to, Sections 5(d) and 5(e) herein.
- c) In the event the terms of this Business Associate Agreement conflict with the terms of any other agreement between Covered Entity and Business Associate or the Underlying Agreement, then the terms of this Business Associate Agreement shall control.
- d) Notices and requests provided for under this Business Associate Agreement will be made in writing to Covered Entity, delivered by hand-delivery, overnight mail or first class mail, postage prepaid at:

(1) Marcy Foster,  
Arlington County Privacy Officer  
2100 Clarendon Blvd., Suite 511  
Arlington, Virginia 22201

(2) MinhChau Corr  
County Attorney  
2100 Clarendon Blvd., Suite 511  
Arlington, Virginia 22201

(3) County Project Officer  
Jennifer McKinney Acheson  
2100 Washington Blvd., 4<sup>th</sup> Floor  
Arlington, Virginia 22204

Notice and requests provided for under this Business Associate Agreement will be made in writing in the manner described above to Business Associate at:

Lutheran Family Services of Virginia dba enCircle  
Attn: Holly Rhodenhizer  
2965 Colonnade Drive, Suite 310  
Roanoke, Virginia 24018

- e) Covered Entity will have the right to inspect any records of Business Associate or to audit Business Associate to determine whether Business Associate is in compliance with the terms of this Business Associate Agreement. However, this provision does not create any obligation on the part of Covered Entity to conduct any inspection or audit.
- f) Nothing in this Business Associate Agreement shall be construed to create a partnership, joint venture, or other joint business relationship between the parties or any of their affiliates, or a relationship of employer and employee between the parties. Rather, it is the intention of the parties that Business Associate shall be an independent contractor.
- g) Nothing in this Business Associate Agreement provides or is intended to provide any benefit to any third party.
- h) The Business Associate will indemnify and hold harmless Arlington County, its elected officials, officers, directors, employees and/or agents from and against any employee, federal administrative action or third party claim or liability, including attorneys' fees and costs, arising out of or in connection with the Business Associate's violation (or alleged violation) and/or any violation and/or alleged violation by Business Associate's workforce, agent/s, or subcontractor/s of the terms of this Business Associate Agreement, federal law, HIPAA, the HITECH Act, and/or other implementing regulations or guidance or any associated audit or investigation.

The obligation to provide indemnification under this Business Associate Agreement shall be contingent upon the party seeking indemnification providing the indemnifying party with written notice of any claim for which indemnification is sought. Any limitation of liability provisions contained in the Underlying Agreement do not supersede, pre-empt, or nullify this provision or the Business Associate Agreement generally.

This indemnification shall survive the expiration or termination of this Business Associate Agreement or the Underlying Agreement.

- i) Any ambiguity in this Business Associate Agreement shall be resolved to permit the parties to comply with HIPAA, its implementing regulations, and associated guidance. The sections, paragraphs, sentences, clauses and phrases of this Business Associate agreement are severable. If any phrase, clause, sentence, paragraph or section of this Business Associate Agreement is declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences and sections of this Business Associate Agreement.
- j) If any dispute or claim arises between the parties with respect to this Business Associate Agreement, the parties will make a good faith effort to resolve such matters informally, it being the intention of the parties to reasonably cooperate with each other in the performance of the obligations set forth in this Business Associate Agreement. The Dispute Resolution clause of the Underlying Agreement ultimately governs if good faith efforts are unsuccessful.
- k) A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy as to any subsequent events.
- l) Neither party may assign any of its rights or obligations under this Business Associate Agreement without the prior written consent of the other party.

- m) This Business Associate Agreement and the rights and obligations of the parties hereunder shall be construed, interpreted, and enforced with, and shall be governed by, the laws of the Commonwealth of Virginia and the United States of America.
- n) This Business Associate Agreement shall remain in effect for the duration of the Underlying Agreement between the parties, any renewals, extension or continuations thereof, and until such time as all PHI in the possession or control of the Business Associate has been returned to the Covered Entity and/or destroyed. If such return or destruction is not feasible, the Business Associate shall use such PHI only for such limited purposes that make such return or destruction not feasible and the provision of this Business Associate Agreement shall survive with respect to such PHI.
- o) The Business Associate shall be deemed to be in violation of this Business Associate Agreement if it knew of, or with the exercise of reasonable diligence or oversight should have known of, a pattern of activity or practice of any subcontractor, subsidiary, affiliate, agent or workforce member that constitutes a material violation of that entity's obligations in regard to PHI unless the Business Associate took prompt and reasonable steps to cure the breach or end the violation, as applicable, and if such steps were unsuccessful, terminated the contract or arrangement with such entity, if feasible.
- p) Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or any change in applicable federal law including revisions to HIPAA; upon publication of any decision of a court of the United States or of the Commonwealth of Virginia, relating to PHI or applicable federal law; upon the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of PHI disclosures or applicable federal law, the County reserves the right, upon written notice to the Business Associate, to amend this Business Associate Agreement as the County determines is necessary to comply with such change, law or regulation. If the Business Associate disagrees with any such amendment, it shall so notify the County in writing within thirty (30) days of the County's notice. In case of disagreement, the parties agree to negotiate in good faith the appropriate amendment(s) to give effect to such revised obligation. In the County's discretion, the failure to enter into an amendment shall be deemed to be a default and good cause for termination of the Underlying Agreement.
- q) The County makes no warranty or representation that compliance by the Business Associate with this Business Associate Agreement, HIPAA, the HITECH Act, federal law or the regulations promulgated thereunder will be adequate or satisfactory for the Business Associate's own purposes or to ensure its compliance with the above. The Business Associate is solely responsible for all decisions made by it, its workforce members, agents, employees, subsidiaries and subcontractors regarding the safeguarding of PHI and compliance with federal law.
- r) The Business Associate agrees that its workforce members, agents, employees, subsidiaries and subcontractors shall be bound by the confidentiality requirements herein and the provisions of this Business Associate Agreement shall be incorporated into any training or contracts with the same.
- s) This Business Associate Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

t) This Business Associate Agreement shall replace and supersede any prior Business Associate Agreement entered between the parties.

IN WITNESS WHEREOF, each party hereto has executed this Business Associate Agreement in duplicate originals on the date below written:

**Arlington County, Virginia**

By:

DocuSigned by:  
*Marcy Foster*  
D80C22514FD84C5...  
(Signature)

Name: Marcy Foster

Title: County Privacy Officer

Date: 8/30/2023

**Business Associate**

By:

DocuSigned by:  
*Ray Ratke*  
C28B616A44A34A9...  
(Signature)

Name: Ray Ratke

Title: CEO

Date: 8/30/2023