**FORM**

**VIRGINIA PUBLIC GUARDIAN & CONSERVATOR PROGRAM SERVICE CONTRACT**

For SFYs 2022-2026

This Virginia Public Guardian & Conservator Program Service Contract is made as of the July 1, 2021, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_ [Insert full Legal Name] a legal entity organized under the laws of Commonwealth of Virginia (the "PGP Contractor”), and the Commonwealth of Virginia, Department for Aging and Rehabilitative Services (the "State Agency” or “DARS”).

**RECITALS**

The State Agency is authorized by § 51.5-150 of the *Code of Virginia* to contract with public and private entities for the establishment and operation of public guardian and conservator programs operated in compliance with §§ 51.5-149 through 51.5-151 of the *Code of Virginia* and the regulations promulgated thereunder. Such programs are established to serve adults found by a Virginia circuit court to be incapacitated and eligible to receive public guardianship services, or public conservatorship services, or both, as applicable, pursuant to § 64.2-2010 of the *Code of Virginia* because (i) the incapacitated person is not able to pay for the services of a guardian, or conservator, or both, as applicable, and (ii) no other proper and suitable person who is willing and able to serve as the person’s guardian, or conservator, or both, as applicable, can be identified. The State Agency, pursuant to statute, provides administrative oversight, monitoring, and technical support to PGP Contractors operating Local PGPs.

The PGP Contractor desires to operate a Virginia public guardian and conservator program in accordance with the requirements of Virginia law.

**NOW, THEREFORE,** in consideration of the mutual covenants and representations included herein, the PGP Contractor and the State Agency agree as follows:

**ARTICLE I**

**DEFINITIONS**

**For ease of reference, throughout the remainder of this document the term “guardian” will be used in lieu of the phrase “guardian, or conservator, or both” and the services provided by the PGP Contractor through its public guardian and conservatorship operations will be referred to as “public guardianship services” and shall include public guardianship services, or public conservatorship, or both, as applicable.**

In addition, unless otherwise specifically defined herein, or the context or use indicates another or different meaning and intent, the following words and phrases shall have the following meanings.

“Agreement”: The Agreement shall include this Virginia Public Guardian & Conservator Program Service Contract, **Attachments** **A-E** hereto, the Summary of Obligations, §51.5-151 of the *Code of Virginia*, and the Virginia Public Guardian & Conservator Regulations.

“Designated Service Area”: The service area in which the PGP Contractor shall operate its Local PGP as further described in Section 3.3 below and in **Attachment A** hereto.

“Equipment”: Any tangible, nonexpendable item of personal property having a useful life of more than one (1) year purchased by the PGP Contractor with monies received under this Agreement or any prior contract with the State Agency for the operation of a Local PGP.

“Guardian Representative”: A paid employee of the PGP Contractor assigned to manage the case of one or more Public Client and whose job responsibilities are more particularly described in Section 3.5 below.

“Guardianship Quarterly Report”: A report prepared by the PGP Contractor for each quarter of the Performance Period, which shall be in a format specified by the State Agency.

“Guardianship Care Plan”: A plan prepared by Local PGP staff at least annually for each Public Client in a format specified by the State Agency that identifies client needs and the Local PGP staff’s plan for addressing such needs.

“Local PGP”: The public guardian and conservator program operated by the PGP Contractor pursuant to this Agreement.

“Performance Period”: The initial Performance Period of July 1, 2021 through June 30, 2022, and any subsequent Performance Period specified in any Renewal Contract.

“Program Director”: An employee of the PGP Contractor responsible for overseeing the operation of the Local PGP as described in the Virginia Public Guardian & Conservator Program Regulations.

“Public Client”: Any individual receiving public guardianship services, public conservatorship services, or both, pursuant to an order of a Virginia circuit court order appointing the PGP Contractor to serve as a public guardian and/or public conservator pursuant to Virginia Code §64.2-2010.

“MDP”: The multidisciplinary panel established by the PGP Contractor pursuant to the Virginia Public Guardian & Conservator Program Regulations.

“Renewal Contract”: A contract between the PGP Contractor and the State Agency entered into pursuant to Section 6.1 of this Agreement extending the obligations of the parties for an additional period, as specified in the Renewal Contract.

“SCC”: The Virginia State Corporation Commission.

“Summary of Expenditures”: A report submitted by the PGP Contractor to the State Agency for each Performance Period summarizing the expenditures made by the PGP Contractor for the operation of the Local PGP, which shall be in the form specified by the State Agency.

“Summary of Obligations”: The document attached to this Agreement and each Renewal Contract specifying the number of Public Clients to be served and the compensation to be paid by the State Agency to the PGP Contractor for the provision of such services during the applicable Performance Period.

“Values History Survey”: A document prepared by the PGP Contractor for each Public Client, updated as needed, describing the preferences, values, and wishes of the Public Client with respect to specified topics, which shall be in a format specified by the State Agency.

“Virginia Public Guardian & Conservator Program Regulations”: The regulations at Title 22, Section 30, Chapter 70 of the *Virginia Administrative Code* (*i.e.*, 22VAC30-70 *et seq*.), as the same shall be amended from time to time. For the convenience of the Parties, the Virginia Public Guardian & Conservator Program Regulations in effect as July 1, 2021 are attached hereto as **Attachment B**. Any amendments made to Title 22, Section30, Chapter 70 of the Virginia Administrative Code during the term of this Agreement shall be deemed to be incorporated into **Attachment B**.

**ARTICLE II**

**REPRESENTATIONS AND WARRANTIES OF PGP CONTRACTOR**

2.1. PGP Contractor Representations and Warranties. The PGP Contractor represents and warrants to the State Agency as of the date of this Agreement, and the date of each Renewal Contract:

1. The PGP Contractor, if a corporation is a corporation duly organized, validly existing, and in good standing under the laws of the state of its incorporation, with corporate power and authority to conduct its business as it is currently being conducted, or if a partnership, the PGP Contractor is a partnership duly organized under the laws of the state of its formation, with power and authority to conduct its business as it is currently being conducted. The PGP Contractor is authorized to conduct business in the Commonwealth of Virginia and, if required to do so by the *Code of Virginia*, has properly registered with the SCC. The PGP Contractor has delivered to the State Agency a true and correct copy of a certificate of good standing, or if applicable, a certificate of fact of its existence, issued by the SCC, or a statement of why such registration with the SCC is not required.
2. The execution, delivery, and performance of this Agreement by the PGP Contractor have been duly authorized by necessary corporate or partnership action of the PGP Contractor and this Agreement constitutes the valid, legal, and binding agreements of the PGP Contractor.
3. The PGP Contractor has delivered to the State Agency a true and correct copy of audited financial statements or a financial review prepared by a certified public accountant for its most recently completed fiscal year. The PGP Contractor represents that there has been no change in the business or financial condition of the PGP Contractor that materially adversely affects its ability to perform its obligations under this Agreement.

**ARTICLE III**

**PROGRAM OPERATIONS**

Section 3.1. Operate a Local PGP.

3.1.1. During the Performance Period, the PGP Contractor shall operate a Local PGP in accordance with the terms of this Agreement, § 51.5-151 of the *Code of Virginia,* the Virginia Public Guardian & Conservator Program Regulations, and any policies of the State Agency related thereto, all of which shall be deemed to be incorporated into and made a part of this Agreement.

3.1.2. The PGP Contractor shall use its reasonable best efforts to, at all times, serve the number of Public Clients identified in the Summary of Obligations and acknowledges that if during any Performance Period the Local PGP has had unfilled openings for a period of time that the State Agency in its sole discretion deems to be unacceptable, whichshall not be less than six (6) consecutive months, the number of client slots allocated to the PGP Contractor by the State Agency may be reduced by a number not to exceed the number of unfilled openings as of the date the State Agency provides written notice to the PGP Contractor of such reduction. Additionally, if the number of allocated slots is reduced during the Performance Period, the funding specified in the Summary of Obligations related to such slots shall be de-obligated as of the date such notice is provided to the PGP Contractor through the remainder of the Performance Period.

3.1.3. The PGP Contractor shall ensure that staffing and procedures are in place at all times to respond to the needs of Public Clients (*i.e*., 24 hours per day for 365 days a year).

3.1.4. The PGP Contractor shall not under any circumstances represent that any individual being served by the PGP Contactor in any capacity is receiving public guardianship services pursuant to §§ 51.5-149 through 51.5-151 of the *Code of Virginia* unless such individual is a Public Client.

Section 3.2. Register and Use a Trade Name.

The PGP Contractor shall establish a trade name (referred to in the Virginia Code and the SCC’s website as a fictitious name) for its Local PGP which includes both: (i) the phrase “Public Guardian Program” or “Public Guardian & Conservator Program,” and (ii) a portion of the PGP Contractor’s legal name that is easily recognizable and identifiable. Such trade name shall be registered with the SCC pursuant to § 59.1 – 69 of the *Code of Virginia*, and the PGP Contractor shall maintain such registration throughout the Performance Period. In all Virginia circuit court proceedings for the establishment of a public guardianship occurring on or after the date of this Agreement, the PGP Contractor shall request that the court order use or include such trade name when identifying the guardian. Additionally, the PGP Contractor shall sign all documents related to any Public Client, regardless of when the order of guardianship was entered, with such trade name. The PGP Contractor shall not use the public guardian trade name in connection with any guardianship services provided to an individual who is not a Public Client.

Section 3.3. Designated Service Area.

The PGP Contractor shall operate its Local PGP in its Designated Service Area and shall consider referrals for individuals who reside within its Designated Service Area, who are the subject of a discharge or transition plan from a residential or treatment facility that has identified a residential placement for the referred individual located within the Local PGP’s Designated Service Area, or who are otherwise expected to reside within the PGP Contractor’s Designated Service Area at the time the order of guardianship is entered by a Virginia circuit court.

The PGP Contractor shall not, without the written consent of the State Agency, consider a referral for any prospective Public Client who resides, or is expected to reside, outside of its Designated Service Area at the time the order of guardianship is entered. The State Agency and the PGP Contractor recognize that during the course of a guardianship, a Public Client may move to a residential setting that is outside of the PGP Contractor’s Designated Service Area, and in all such cases, the PGP Contractor shall continue to serve the Public Client in accordance with the terms of this Agreement until such time as it is removed from its role as guardian by a Virginia circuit court.

Notwithstanding the foregoing, if the PGP Contractor receives funding to serve Public Clients in DBHDS-MH slots, as specified on the Summary of Obligations, the PGP Contractor shall not be restricted from accepting referrals for prospective Public Clients for DBHDS-MH slots residing outside of, or who are expected to reside outside of, the PGP Contractor’s Designated Service Area.

Section 3.4. Comply with Court Order; Powers of Guardian.

The PGP Contractor shall perform its duties for each Public Client as set forth in the Virginia circuit court order pursuant to which it is appointed and in accordance with the requirements of Title 64.2, Subtitle IV, Part D, Chapter 20 of the *Code of Virginia* (*i.e*., §§ 64.2-2000 *et seq*.). Any failure by the PGP Contractor to perform its obligations under any such order, or any finding by a Virginia circuit court that the PGP Contractor has breached its fiduciary duty to any Public Client, shall be deemed to be a material breach of this Agreement. No employee of a PGP Contractor shall be authorized to serve as the court appointed guardian for any Public Client.

3.5. Guardian Representatives; Visits with Public Clients.

3.5.1. Each Public Client shall be assigned a Guardian Representative, whose responsibilities shall include, without limitation:

* Having regular in-person, face-to-face visits with the Public Client;
* Overseeing the benefits and services provided to such Public Client;
* Consulting with third-party service providers, and staff at the PGP Contractor (both supervisory and support, as necessary), to ensure that needs of such Public Client are met; and
* Serving as the agent of the PGP Contractor with respect to legal decision-making on behalf of such Public Client.

3.5.2. No employee of the PGP Contractor who participates in providing guardianship services to any client of the PGP Contractor who is not Public Client may serve as a Guardian Representative without prior written consent from the State Agency.

3.5.3. If the PGP Contractor is obligated pursuant to this Agreement to provide guardianship services to forty (40) or more Public Clients, the Program Director may not also serve as the primary Guardian Representative for more than fifteen (15) Public Clients, although in the discretion of the PGP Contractor, the Program Director may serve in such role for fewer than fifteen (15) Public Clients.

3.5.4. The PGP Contractor shall have at least one in-person, face-to-face visit with each Public Client every calendar month. The PGP Contractor shall uses its best efforts to ensure that such visits are made by the client’s primary Guardian Representative. If it is impossible or not feasible to conduct an in-person, face-to-face visit in any month due to circumstances beyond the PGP Contractor’s control (*e.g.*, the Public Client is in a coma or is in such an agitated or aggressive state that a face-to-face visit with the client is likely to result in harm or injury to the Public Client or an employee of the PGP Contractor), the PGP Contractor will document the reason in the client’s file. The State Agency acknowledges that in the event of certain community circumstances, including, for example, a public health emergency, it may be beneficial to waive strict compliance with this paragraph. In such circumstances, the State Agency will inform the PGP Contractor of what, if any, alternative forms of visits may be substituted for in-person, face-to-face visits.

3.6. Client-to-Staff Ratio.

The client-to-staff ratio for the Local PGP and the ideal ratio established by the PGP Regulations shall be calculated in accordance with **Attachment C** and the PGP Contractor shall comply with the provisions of such Attachment in calculating the ratios.

3.7. Client Records.

The PGP Contractor shall maintain an accurate and complete client record for each Public Client in accordance with the Virginia Public Guardian & Conservator Program Regulations.

In addition to the documents required to be maintained in each client record by 22VAC30-70-50, the client record for each Public Client also shall include:

1. Progress notes documenting: (i) the date of each client visit and summarizing the details of such visit, and (ii) all material telephone calls made to, or on behalf of the Public Client, or with respect to the Public Client’s care;
2. A copy of the MDP records/minutes related to its initial determination of the Public Client’s eligibility for public guardianship services through the Local PGP and each MDP annual review with respect to the Public Client’s continued eligibility for such services; and
3. Such other records as may be necessary or proper to perform public guardianship services, including but not limited to third-party care plans, end-of-life decisional documents, accounting reports, advance directives, Do Not Resuscitate Orders (DNRs), living wills, residential leases and housing agreements, and correspondence, including emails, related to the Public Client’s care.

Within sixty (60) days of the date a Virginia circuit court has appointed the PGP Contractor as the guardian for any Public Client, the PGP Contractor will establish a client record that includes the following completed documents: (i) a Virginia Uniform Assessment Instrument(“UAI”) or a similar comprehensive assessment instrument that has been approved by the State Agency and that has been completed not more than twelve (12) months before the PGP Contractor’s qualification date as guardian; (ii) a Guardianship Care Plan; (iii) a Values History Survey; (iv) all court petitions, court orders, and guardian qualification documents related to the incapacity and guardianship proceeding for the Public Client; and (v) such other documents required to be included in client records pursuant to the Virginia Public Guardian & Conservator Program Regulations or this Agreement to the extent such documents are reasonably available to the PGP Contractor within such sixty (60) day period.

3.8. The MDP.

The MDP established by the PGP Contractor shall operate in accordance with written policies, guidelines or by-laws, which shall be developed collaboratively between the MDP and the PGP Contractor, and which shall include provisions specifically outlining:

1. The minimum number of face-to-face meetings (in-person or electronic) of the MDP to be held each year;
2. A procedure for decision-making between regularly scheduled meetings of the MDP, which shall include a requirement that all members of the MDP receive written notice of the action to be taken;
3. Affirmation that the quorum for an MDP meeting shall be a majority of the MDP members;
4. Affirmation that the affirmative vote of not less than a majority of the MDP’s members present at a meeting at which a quorum is present, or in the case of any action taken electronically without an actual meeting, the affirmative vote of not less than a majority of all MDP members, shall be required for any action or decision by the MDP;
5. Affirmation that no employee of the PGP Contractor shall serve as a voting member of the MDP, although employees of the PGP Contractor may participate in MDP meetings in an advisory role; and
6. Such other operational guidelines as the MDP and the PGP Contractor deem to be appropriate.

Such policies, guidelines, or by-laws shall be made available to the State Agency upon request.

The PGP Contractor shall keep a record of all MDP proceedings, conclusions, and recommendations, and all material communications between the MDP and the Local PGP. Such records shall be maintained for five (5) years.

3.9. Waitlists and the Consideration of Referred Individuals for Open Slots.

The (i) PGP Contractor shall manage referrals received for public guardianship services in accordance with the procedures set forth on **Attachment D** hereto, and (ii) the procedures set forth on **Attachment D** hereto, shall govern the process for the MDP’s consideration of referred individuals for open public guardianship slots and the actions the PGP Contractor may take following the MDP’s assessment of the individual’s eligibility for public guardianship through the Local PGP.

3.10. Local PGP Policies.

3.10.1. The PGP Contractor shall develop written policies governing the operations of its Local PGP which include, without limitation, the following:

1. A policy prohibiting any employee or agent of the PGP Contractor from consenting to, or otherwise authorizing, a sterilization procedure for any Public Client, unless a Virginia circuit court shall have directed the PGP Contractor to authorize such a procedure. (See the fourth paragraph of § 51.5-151 of the *Code of Virginia.*)
2. A policy explaining that (i) unless prohibited by court order, a PGP Contractor may authorize mental health treatment, including the administration of psychotropic medication to any Public Client, and (ii) such authority does not extend to the right to authorize the admission of any Public Client to a mental health facility pursuant to
§ 37.2-805.1.B of the *Code of Virginia*) unless the court order establishing the guardianship specifically grants such authority to the PGP Contractor. (See the fourth paragraph of § 51.5-151 and § 64.2-2009.C of the *Code of Virginia.*)
3. A policy prohibiting conflicts of interests in any situation in which it appears that the PGP Contractor or an employee of the PGP Contractor has in interest that may appear to be self-serving relative to a Public Client or adverse to the interests of a Public Client, and a procedure for addressing any such conflicts of interests that may arise. (See 22VAC30-70-30.F.8).
4. A policy outlining expectations for how Local PGP staff shall implement the person-centered principals and guidelines set forth in 22VAC30-70-30.F.3-F.5.
5. A policy describing when, if ever, the PGP Contractor will accept responsibility for making funeral arrangements for and disposing of the body of a deceased Public Client, and procedures for assuring that prior to undertaking any such responsibility the requirements included in the third paragraph of § 51.5-151 of the *Code of Virginia* are satisfied.
6. A policy that includes standards and procedures for making end-of-life decisions and other medical interventions on behalf of Public Clients that comply with the requirements of 22VAC30-70-30.F.7.
7. A policy describing the PGP Contractor’s standards for monthly visits with Public Clients which outline (i) where such visitation is to take place, with the goal of insuring that for Public Clients who are active in the community, the visits occur in a variety of locations, (ii) expectations as to whether such visits will be announced or unannounced, and (iii) what due diligence the Local PGP staff is expected to undertake during such visits.

3.10.2. The PGP Contractor shall provide training to all Local PGP staff on the policies set forth in 3.10.1 above. The PGP Contractor shall make such policies available to all Local PGP staff during normal business hours and shall ensure that all such Local PGP staff members are aware of where such policies are stored.

3.11. Surety Bond and Insurance.

The PGP Contractor shall fully comply with all bond requirements set forth in the court order establishing pursuant to which it is acting as a public guardian. Additional requirements regarding insurance coverage which the PGP Contractor must maintain appear in Article VII, paragraph 7.1.M below.

3.12. Submissions to State Agency.

The PGP Contractor shall provide the following to the State Agency:

(a) On or before the twentieth (20th) day of each October, January, April, and July, a completed Guardianship Quarterly Report for the preceding state fiscal year quarter. The Guardianship Quarterly Report shall be delivered to the State Agency’s Public Guardian Program Specialist. The PGP Contractor shall maintain records necessary to accurately and timely complete each Guardianship Quarterly Report.

(b) If the PGP Contractor intends to renew the Agreement pursuant to Section 6.1 below, on or before the first (1st) day of April preceding the anticipated commencement date of the Renewal Contract:

(1) Agency-wide audited financial statements or an agency-wide financial review for the PGP Contractor prepared by a certified public accountant covering the PGP Contractor’s most recently ended fiscal year. Such financial statements and financial reviews shall be submitted to the State Agency at darsreports@dars.virginia.gov, with notice of such delivery provided in writing to the State Agency’s Public Guardian Program Coordinator. Financial statements or reviews meeting the requirements of this paragraph provided to the State Agency in fulfillment of the PGP Contractor’s obligations under some other contract with the State Agency, shall be deemed to be delivered under this Agreement as well, as long as the PGP Contractor notifies the PGP Coordinator of such delivery.\*

(2) A budget for Local PGP expenditures for the upcoming Performance Period on the form specified in **Attachment E,** which the State Agency shall review, and may, if necessary, negotiate with the PGP Contractor*;*

(3) A certificate of good standing, or a certificate of fact of its existence, as applicable, issued by the SCC.

(4) Certificates of insurance evidencing that the insurance policies required by this Agreement are in effect and specifying the amount and period of coverage and the insured or beneficiary of each policy.

(c) Within sixty (60) days following the end of the Performance Period, an expenditure report prepared on a modified accrual basis identifying how the moneys paid to the PGP Contractor pursuant to this Agreement during the Performance Period were spent, using the form specified in **Attachment E**.

(d) The PGP Contractor shall in a timely manner, as requested, provide all data and information required to complete any study of public guardianship services conducted pursuant to § 51.5-150.B.9 of the *Code of Virginia*, as well as such other information and reports regarding Local PGP operations requested by the State Agency.

3.13. Fiscal Accountability for Client Funds; Equipment Purchases.

3.13.1. The PGP Contractor shall have a mechanism in place to monitor each Public Client’s financial status, and, if the PGP Contract is serving as a public conservator or otherwise managing funds for any PGP Client, the staff and fiscal policies necessary to safeguard and ensure that each such Public Client’s funds are properly expended. The PGP Contractor shall be bonded and insured against losses related to managing the money and assets for any Public Client for which it assumes such responsibility.

3.13.2. The PGP Contractor shall obtain written consent from the State Agency before purchasing any piece of Equipment having an acquisition cost of Five Thousand Dollars ($5,000.00) or more with funds paid to the PGP Contractor under this Agreement. The PGP

- - - - - - - - - - - - - - - - - - - - - - - - - -

\* If a PGP Contractor also serves as an Area Agency on Aging (an “AAA”) pursuant to a contract with the State Agency, the AAA contract may require the delivery of these same financial statement/financial reviews on a date that comes before the April 1 deadline specified in this Agreement. Any entity that is both an AAA and a PGP Contractor, should comply with the requirements of its AAA contract and deliver the financial statements/financial reviews by the date specified in the AAA contract. If such date precedes the delivery date required by this Agreement, the State Agency will deem that earlier delivery to be a delivery under this Agreement, too, as long as the AAA/PGP Contractor notifies the State Agency’s PGP Coordinator of such delivery.

Contractor shall maintain an up-to-date inventory of all Equipment purchased with moneys paid to the PGP Contractor for the operation of its local PGP under this Agreement, as well as any prior contract with the State Agency. The PGP Contractor shall maintain all such Equipment in good condition. Equipment purchased with funds paid to the PGP Contractor
by the State Agency under this Agreement or any prior contract for the operation of a local PGP shall revert to the Commonwealth of Virginia when the PGP Contractor’s local PGP shall cease operation.

3.14. Records and Reports.

The PGP Contractor shall maintain accounts and documents that shall permit prompt determination of the status of funds and the level of services provided under this Agreement, including the disposition of all monies received from the State Agency and the nature and amount of all charges claimed against such funds. The PGP Contractor shall keep records and make reports required by this Agreement in the form required by the State Agency.

Unless otherwise specifically provided herein, the PGP Contractor shall retain all books, records, and other documents relative to this contract for five (5) years after the date the PGP Contractor ends it Local PGP operations, or until audited by the Commonwealth of Virginia, whichever is sooner. The State Agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

**ARTICLE IV**

**PAYMENT**

Section 4.1. Payment for Services Provided by PGP Contractor.

4.1.1. For support of work described in this Agreement, subject to availability of funds and to Section 3.2.1 above, the State Agency obligates the amount specified in the Summary of Obligations included herein as part of the Agreement for the Performance Period. The “Aggregate Total Obligation” shall be designated on the Summary of Obligations and shall consist of the full amount the State Agency has contracted to pay to the PGP Contractor for the provision of services under this Agreement across all applicable funding categories (*e.g.*, Unrestricted, MI/ID, DHBDS-ID/DD, and DBHDS-MH) for the Performance Period. Such Aggregate Total obligation shall be paid to the PGP Contractor by the State Agency in twelve (12) equal installments by the tenth (10th) day of each calendar month, or if not a business day, the next succeeding business day. The PGP Contractor agrees that all payments received from the State Agency pursuant to this Agreement shall be allocated to, and used for, the operation of the Local PGP.

4.1.2. The State Agency reserves the right to withhold or delay payment if the PGP Contractor fails to comply with statutes, regulations, policies, procedures, or other directives applicable to this Agreement. The State Agency also may withhold or delay payment if the PGP Contractor is delinquent in submitting any of reports, certificates, data, or information required to be delivered to the State Agency by the PGP Contractor.

4.1.3. The State Agency reserves the right to modify or add payment procedures and policies, as appropriate, to assure compliance with statutes, regulations, policies, procedures, or other directives applicable to this Agreement.

**ARTICLE V**

**AUDITS AND REVIEW OF PGP CONTRACTOR RECORDS**

5.1. Monitoring Performance. The State Agency reserves the right to periodically monitor all administrative, programmatic, personnel, and financial activities of the PGP Contractor to ensure compliance with the terms and conditions of this Agreement. At the discretion of the State Agency, monitoring may be accomplished through ongoing review of data submitted to the State Agency by the PGP Contractor and through periodic onsite and/or remote desk reviews of the PGP Contractor’s records and offices and interviews with the PGP Contractor’s administrative/financial/program staff, third-party service providers, and Public Clients. Access to financial records shall include records of program income and cost allocation plans. Records, offices, and staff shall be available for monitoring during business hours to authorized representatives of the State Agency or the Commonwealth of Virginia.

The PGP Contractor shall cooperate and assist in any State Agency efforts to evaluate the PGP Contractor’s performance under this Agreement. The PGP Contractor shall respond to any request by the State Agency’s for additional information to evaluate performance or to address any findings. If the State Agency identifies ways in which the PGP Contractor is out of compliance with the provisions of this Agreement, it may notify the PGP Contractor of such deficiencies and request that the PGP Contractor prepare a written plan detailing the corrective action the PGP Contractor will take to address the deficient. The PGP Contractor will submit such plan to the State Agency by the due date specified by the State Agency, which shall not be less than fourteen (14) calendar days from the date of the State Agency’s request for a corrective action plan.

**ARTICLE VI**

**Special Terms**

6.1. Renewal of Agreement. This Agreement may be renewed for one (1) additional one (1) year Performance Period by the State Agency upon the execution of a Renewal Contract by both the parties, at a reasonable time (approximately ninety (90) days prior to the expiration of the then current Performance Period). Prior to entering into a Renewal Contract with the PGP Contractor, the State Agency shall have received from the PGP Contractor the documents required in Section 3.12.b of this Agreement.

6.2. Notice. All notices, reports, and requests for consent or waivers shall in writing and shall be deemed to be given when sent by electronic mail, fax, or a standard physical mail delivery service to:

***The State Agency*** at the following address, or at such other address specifically stated herein:

Virginia Public Guardian & Conservator Program

Virginia Department for Aging and Rehabilitative Services

1610 Forest Avenue, Suite 100

Henrico, Virginia 23229

Attention: Program Coordinator

Fax: 804-662-9354*/*Email: patti.meire@dars.virginia.gov

Or if to the Program Specialist

Attention: Program Specialist

Fax: 804-662-9354/Email: betty.vines@dars.virginia.gov

***The PGP Contractor*** at the address specified for Notice on the signature page of this Agreement.

Either party may change its address for notice purposes by advising the other party of the change in writing.

6.3. Personnel Changes. The PGP Contractor shall notify the State Agency of changes in program name, key personnel, addresses, telephone numbers, e-mail addresses, web site URLs and other significant administrative changes within fourteen (14) days of the change. The PGP Contractor will notify the State Agency by submitting a new “Area Agency and Contractor Information Form” to the attention of Tanya Brinkley (Email: tanya.brinkley@dars.virginia.gov; Street Address: 1610 Forest Ave., Suite 100, Henrico, VA 23229) with a copy to the Program Coordinator.

6.4. Ownership of Intellectual Property**.** The PGP Contractor is prohibited from copyrighting any documents, reports, forms, databases, programs, web sites/pages or other materials created in the course of performing this Agreement, and from obtaining any patent on these or any invention or other discovery resulting from its performance under the terms and conditions of this Agreement.

The Commonwealth of Virginia shall retain all rights, title and interest in any and all intellectual property generated, created, or developed as a result of this Agreement.

On all publications and materials designed for public distribution, the PGP Contractor shall include the express acknowledgement, “This publication has been created or produced by
[PGP Contractor Name] with financial assistance, in whole or in part, from the Department for Aging and Rehabilitative Services.”

6.5. Continuity of Operations Plan**.** The PGP Contractor shall develop and maintain a Continuity of Operations Plan detailing how the PGP Contractor plans to maintain its operations during an emergency or other situation that would disrupt normal operations.

6.6. Indemnification**.** The PGP Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from work performed under this Agreement. No person performing work pursuant to this Agreement shall be deemed an employee of the Commonwealth. Nothing contained herein shall be deemed an expressed or implied waiver of the sovereign immunity of the Commonwealth of Virginia.

6.7. Subcontracting. No portion of the PGP Contractor’s work described in this Agreement shall be subcontracted without prior written consent of the State Agency. The PGP Contractor shall provide the State Agency with a copy of any proposed subcontract as a condition of obtaining consent. In the event that the PGP Contractor desires to subcontract some part of the work specified herein, the PGP Contractor shall furnish the State Agency the names, qualifications and experience of their proposed subcontractors. The PGP Contractor shall remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the Agreement.

The PGP Contractor shall be responsible for completely supervising and directing the work under this Agreement and all subcontractors that it may utilize, using its best skill and attention. Subcontractors who perform work under this Agreement shall be responsible to the PGP Contractor as the prime contractor. The PGP Contractor agrees that it is as fully responsible for the acts and omissions of its subcontractors and of persons employed by them as it is for the acts and omissions of its own employees.

6.8. Severability. Each paragraph and provision of this Agreement is severable from the entire Agreement and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

6.9. Supplemental Funds. In addition to funds received from the State Agency pursuant to this Agreement, the PGP Contractor may accept private funds for Local PGP operations but such funds shall be used solely for the purposes of providing public education and supplemental services for Public Clients pursuant to Virginia Code §51.5-151. Supplemental funds shall *not* include any funds or fees paid or collected from Public Client’s estate.

6.10. Contract Administrator.The State Agency has assigned Contract Administrator Kathy Miller, Director of Programs, Division for Community Living, Aging Services, Kathy.Miller@dars.virginia.gov or 804-662-9341 to be the “Contract Administrator.” The Contract Administrator will be the PGP Contractor’s point of contact for daily operational matters. The Contract Administrator may NOT make changes to this Agreement. Any changes to this Agreement shall be processed by the State Agency’s Contract Officer subject to negotiation by the parties to the Agreement.

**ARTICLE VII**

**GENERAL TERMS AND CONDITIONS**

7.1. The following general terms and conditions are agreed to by the parties hereto:

1. Vendors Manual. This Agreement is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* (the “*Vendors Manual*”) and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at [www.eva.virginia.gov](http://www.eva.virginia.gov) under “I Sell To Virginia; Purchasing Rules – Vendors Manual”.
2. Applicable Laws and Courts**.** This Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The State Agency and the PGP Contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual.* The PGP Contractor shall comply with all applicable federal, state and local laws, rules and regulations.
3. Anti-Discrimination. The PGP Contractor agrees that during the Performance Period it will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act.* If the PGP Contractor is a faith-based organization, the PGP Contractor shall not discriminate against any recipient of goods, services, or disbursements made pursuant to this Agreement on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender sexual orientation, gender identity, or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).
4. The PGP Contractor further agrees that during the Performance Period:

(a) The PGP 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 any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the PGP Contractor. The PGP Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) The PGP Contractor, in all solicitations or advertisements for employees placed by or on behalf of the PGP Contractor, will state that such PGP Contractor is an equal opportunity employer.

(c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

(d) If the PGP Contractor employs more than five (5) employees, the PGP Contractor shall (i) provide annual training on the PGP Contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, which in the case of supervisors and employees specified by the Virginia Department of Human Resource Management, shall be the sexual harassment training provided by the Virginia Department of Human Resource Management (see, <https://www.dhrm.virginia.gov/public-interest/contractor-sexual-harassment-training>), and (ii) post the PGP Contractor's sexual harassment policy in (A) a conspicuous public place in each building located in the Commonwealth that the PGP Contractor owns or leases for business purposes, and (B) the PGP Contractor's employee handbook.

(e) All of the provisions and requirements included in this Section 7.1.C of the Agreement are a material part of this Agreement. If the PGP Contractor violates one of these provisions, the State Agency may terminate the affected part of this Agreement for breach, or at its option, the whole Agreement. Violation of one of these provisions or requirements also may result in debarment from contracting with the Commonwealth of Virginia regardless of whether this Agreement, or any part of this Agreement, is terminated.

(f) In accordance with Virginia Executive Order 61 (2017), a prohibition on discrimination by the PGP Contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this Agreement.

1. The PGP Contractor will include the provisions of subsection 7.1.C(1) of this Agreement in every subcontract or purchase order over $10,000, so that the provisions will be binding upon each subcontractor or vendor.
2. Ethics in Public Contracting**.** The PGP Contractor certifies that it has not engaged in collusion or fraud and has not offered or received any kickbacks or inducements from any other person or entity as part of the process of contracting with the State Agency to become a PGP Contractor, and that it has not conferred on any public employee having official responsibility for this procurement transaction 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.
3. Immigration Reform and Control Act of 1986. The PGP Contractor certifies that it does not, and shall not during the performance of this contract for services in the Commonwealth of Virginia, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
4. Debarment Status. The PGP Contractor certifies that it is not currently debarred by the Commonwealth of Virginia from contracting with the Commonwealth of Virginia to provide the services covered by this Agreement. The PGP Contractor further certifies that it is not an agent of any person or entity currently debarred by the Commonwealth of Virginia. (If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the non-debarred vendor will be debarred for the same time period as the debarred vendor.)
5. Antitrust. The PGP Contractor hereby conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to services purchased or acquired by the Commonwealth of Virginia under the Agreement.
6. Precedence of Terms. The following General Terms and Conditions *VENDORS MANUAL,* APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, and PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions included in this Article VII and any other specific provision of this Agreement, such other specific provision shall govern.
7. Inspection**.** In addition any other right of the State Agency set forth in this Agreement to audit, monitor, or review the operations of the PGP Contractor, the State Agency reserves the right to conduct any test/inspection it may deem advisable to assure the services provided under this Agreement conform to the specifications.
8. Assignment of the Agreement**.** This Agreement shall not be assignable by the PGP Contractor in whole or in part without the written consent of the State Agency.
9. Changes to the Agreement**.** Changes can be made to this Agreement in any of the following ways:

(1) The parties may agree in writing to modify the terms, conditions, or scope of the contract.  Any additional services to be provided shall be of a sort that is ancillary to the contract services.  Any increase or decrease in the price of the services resulting from a modification shall be agreed to by the parties as a part of their written agreement to modify the scope of this Agreement; or

(2) The State Agency may order changes within the general scope of the Agreement at any time by written notice to the PGP Contractor. Changes within the scope of the contract include, but are not limited to, the services to be performed. The PGP Contractor shall comply with the notice upon receipt, unless the PGP Contractor intends to claim an adjustment to compensation, its scheduled performance of its obligations under this Agreement, or other contractual impact that would be caused by complying with such notice, in which case the PGP Contractor shall, in writing, promptly notify the State Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the State Agency's written decision affirming, modifying, or revoking the prior written notice.  If the State Agency decides to issue a notice that requires an adjustment to compensation, the PGP Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the State Agency a credit for any savings. Said compensation shall be determined by one of the following methods:

(a) By mutual agreement between the parties in writing; or

(b) By agreeing upon a unit price or using a unit price set forth in this Agreement, if the work to be done can be expressed in units, and the PGP Contractor accounts for the number of units of work performed, subject to the State Agency’s right to audit the PGP Contractor’s records and/or to determine the correct number of units independently; or

(c) By ordering the PGP Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the Agreement. The same markup shall be used for determining a decrease in price as the result of savings realized. The PGP Contractor shall present the State Agency with all vouchers and records of expenses incurred and savings realized. The State Agency shall have the right to audit the records of the PGP Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the State Agency within thirty (30) days from the date of receipt of the written order from the State Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this Agreement or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this Agreement shall excuse the PGP Contractor from promptly complying with the changes ordered by the State Agency or with the performance of the Agreement generally.

1. Default. In case of failure to perform the services required under this Agreement in accordance with the terms and conditions hereof, the State Agency, after due oral or written notice, may procure them from other sources and hold the PGP Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the State Agency may have.
2. Insurance. The PGP Contractor represents that it has and agrees that it shall maintain during the entire term of this Agreement the insurance coverage described herein, which insurance shall be provided by insurance companies authorized to sell insurance in Virginia by the SCC.

MINIMUM INSURANCE COVERAGES AND LIMITS:

1. Workers’ Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. If, during the course of this Agreement, the PGP Contractor fails to notify the Commonwealth of Virginia of increases in the number of employees that change their workers’ compensation requirements under the *Code of Virginia* then the PGP Contractor shall be in noncompliance with the Agreement.
2. Employer’s Liability - $100,000.
3. Commercial General Liability - $1,000,000 per occurrence and $2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia shall be added as an additional insured to the policy by an endorsement.
4. Directors’ and Officers’ Liability Insurance – $1,000,000. The Contractor shall maintain Directors’ and Officers’ Liability Insurance that protects members of the governing board, the Contractor’s Executive Director, other Officers of the Corporation, and legal counsel against claims brought by employees, consumers, clients, or businesses because of wrongful acts committed in the course of their executive duties.
5. Automobile Liability - $1,000,000 combined single limit.
6. Drug-Free Workplace. During the performance of this Agreement, the PGP Contractor shall (1) provide a drug-free workplace for the PGP Contractor's employees; (2) 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 PGP Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (3) state in all solicitations or advertisements for employees placed by or on behalf of the PGP Contractor that the PGP Contractor maintains a drug-free workplace; and (4) include the provisions of the foregoing clauses in every subcontract over $10,000 entered into by the PGP Contractor related to services to be provided under this Agreement, so that the provisions will be binding upon each subcontractor of the PGP Contractor.

For the purposes of this section, “*drug-free workplace”* means a site provided by the PGP Contractor for the performance of work done in connection with this Agreement at which the PGP Contractor’s employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Agreement.

1. Nondiscrimination of Contractors. The PGP Contractor has not been, and shall not be, discriminated against in the solicitation or award of this contract because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the PGP Contractor employs ex-offenders, subject to the limitations set for in the PGP Public Guardian & Conservator Regulations and such other written determinations made by the State Agency, department or that employing ex-offenders on the specific contract is not in its best interest. If the PGP Contractor is a faith-based organization and an individual who applies for or receives services provided pursuant to this Agreement objects to the religious character of the faith-based organization from which the individual receives or would receive such services, the State Agency shall refer the individual to other providers contracted with the State Agency to provide public guardianship services who serve the Designated Service Area or a geographic region contiguous to the Designated Service Area of the faith-based provider which has been declined by the individual applying for or in need of the services provided pursuant to this Agreement. If, in these circumstance, a public guardian program contracted with the State Agency to provide public guardianship services, offers to serve as the public guardian for a referred individual who resides outside of the provider’s Designated Service Area, the State Agency will consent to the provision of such services.
2. eVABusiness-to-Government Vendor Registration, Contracts, and Orders**.** The eVA Internet electronic procurement solution, web site portal [www.eVA.virginia.gov](http://www.eVA.virginia.gov), streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. The PGP Contractor shall throughout the term of this Agreement participate in the eVA Internet e-procurement solution and maintain its eVA Vendor Registration. The PGP Contractor shall pay the “Vendor Transaction Fees” specified below:

Vendor Transaction Fees are determined by the date the original purchase order is issued and the current fees are as follows:

1. For orders issued July 1, 2014, and after, the Vendor Transaction Fee is:
	1. DSBSD-certified Small Businesses: 1%, capped at $500 per order.
	2. Businesses that are not DSBSD-certified Small Businesses: 1%, capped at $1,500 per order.
2. Refer to Special Term and Condition “eVA Orders and Contracts” to identify the number of purchase orders that will be issued as a result of Agreement with the eVA Vendor Transaction Fee specified above assessed for each order.
3. For orders issued prior to July 1, 2014, the vendor transaction fees can be found at [www.eVA.virginia.gov](file:///C%3A/Users/gmf87213/AppData/Local/Microsoft/Windows/Temporary%20Internet%20Files/Content.Outlook/3CSQTVCA/www.eVA.virginia.gov).

The specified Vendor Transaction Fee will be invoiced, by the Commonwealth of Virginia Department of General Services, typically within sixty (60) days of the order issue date. Any adjustments (increases/decreases) will be handled through purchase order changes.

1. eVA Orders and Contracts**.** This Agreement will result in none or multiple purchase order(s) with the applicable eVA transaction fee assessed for each order.
2. Authorization to Conduct Business in the Commonwealth**.** The PGP Contractor, if organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall at all times be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. The PGP Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth of Virginia, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the Agreement. The State Agency may void this Agreement with the PGP Contractor if the business entity fails to remain in compliance with the provisions of this section.
3. Civility in State Workplaces**.** The PGP Contractor shall take all reasonable steps to ensure that no individual, while performing work on behalf of the PGP Contractor or any subcontractor in connection with this Agreement (each, a “Contract Worker”), shall engage in (1) harassment (including sexual harassment), bullying, cyber-bullying, or threatening or violent conduct, or (2) discriminatory behavior on the basis of race, sex, color, national origin, religious belief, sexual orientation, gender identity or expression, age, political affiliation, veteran status, or disability.

The PGP Contractor shall provide each Contract Worker with a copy of this Section of the Agreement and will require Contract Workers to participate in training on civility in the State Workplace if the PGP Contractor’s (or any subcontractor’s, as applicable) regular mandatory training programs do not already encompass equivalent or greater expectations. Upon request, the PGP Contractor shall provide to the State Agency documentation that each Contract Worker has received such training. (See “Civility in the Workplace” [at https://www.dhrm.virginia.gov/hrpolicies](file://dars-vda-nas1/shared/Programs/Guardianship/Contracting%20with%20PGP%20Providers/Base%20Contract%20Revision%20Project%20for%20FY2022/at%20https%3A/www.dhrm.virginia.gov/hrpolicies).)

For purposes of this Section, “State Workplace” includes any location, permanent or temporary, where a Commonwealth of Virginia employee performs any work-related duty or is representing his or her agency, as well as surrounding perimeters, parking lots, outside meeting locations, and means of travel to and from these locations. Communications are deemed to occur in a State Workplace if the Contract Worker reasonably should know that the phone number, email, or other method of communication is associated with a State Workplace or is associated with a person who is a State employee.

The Commonwealth of Virginia may require, at its sole discretion, the removal and replacement of any Contract Worker who the Commonwealth reasonably believes to have violated this Section.

This Section creates obligations solely on the part of the PGP Contractor. Employees or other third parties may benefit incidentally from this Section and from training materials or other communications distributed on this topic , but the parties to this Agreement intend this Section to be enforceable solely by the Commonwealth of Virginia and not by employees or other third parties.

1. Audit**.** See Section 3.14 and Article V above.
2. Cancellation of Agreement**.** The State Agency reserves the right to cancel and terminate this Agreement, in part or in whole, without penalty, upon thirty (30) days written notice to the PGP Contractor. Any contract cancellation notice shall not relieve the PGP Contractor of the obligation to perform all obligations under this Agreement through the effective date of cancellation and those set forth in Section 7.1.V below. In the event of cancellation and termination, the PGP Contractor shall be entitled to compensation for any unreimbursed expenses reasonably and necessarily incurred in the satisfactory performance of this Agreement as determined by the State Agency. The PGP Contractor, however, shall return all unspent funds to the State Agency, as instructed by the State Agency. The State Agency further reserves the right to immediately cancel and terminate this Agreement for cause as determined by the State Agency. For the purposes of this Agreement “for cause” shall be defined as willful or gross misconduct, moral turpitude, or failure to perform duties; and any act or omission that causes or risks harm to the State Agency or any Public Client, or violates state or federal law.
3. Continuity of Services.

(1) The PGP Contractor recognizes that the services under this contract are vital to the State Agency and must be continued without interruption and that, upon contract expiration or upon cancellation and termination, a successor selected by the State Agency, may continue them. The PGP Contractor agrees:

To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;

To make all information related to Public Clients whose guardianship is to be transferred to the successor, including electronic records and physical files, available such successor at a reasonable time to the expiration of the contract to facilitate transition to successor; and

That the Agency Contracting Officer shall have final authority to resolve disputes related to the transition of the contract from the PGP Contractor to its successor.

* + - 1. In the event this Agreement expires, is cancelled or is terminated, the PGP Contractor shall, upon written notice from the Contract Officer, continue to perform all obligations under the Agreement until guardianship over its then current Public Clients have been transferred to a new contractor selected by the State Agency. In addition, the PGP Contractor will continue to provide phase-in/phase-out services for up to ninety (90) days following such transfer of guardianship to a new contractor, and shall negotiate in good faith a plan with the successor to provide such phase-in/phase-out services. This plan shall be subject to the Contract Officer’s approval.
			2. The PGP Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (*i.e.,* costs incurred within the agreed period after expiration, cancellation or termination of the Agreement that result from phase-in, phase-out operations). All phase-in/phase-out work fees must be approved by the Contract Officer in writing prior to commencement of said work.

**The Remainder of this Page is Intentionally Left Blank.**

**Signatures Appear on Next Page.**

**IN WITNESS WHEREOF,** the parties have caused this Agreement to be duly executed, intending to be bound thereby.

**DEPARTMENT FOR AGING AND [INSERT NAME OF PGP CONTRACTOR]**

**REHABILITATIVE SERVICES:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Kathryn A. Hayfield Signature of Authorized Official**

**Commissioner**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Title of Authorized Official**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Date Signed Date Signed**

 **Contact Information for PGP Contractor**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Print Mailing Address

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Title of Person(s) who should Receive Notices

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Email address(es) for Notices

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Fax Number

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, §2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

**ATTACHMENT A**

**DESIGNATED SERVICE AREAS**

**Content not Included Here.**

**ATTACHMENT B**

**PGP Regulations**

**Content not Included Here.**

**The always current PGP Regulations can be found at** [**https://law.lis.virginia.gov/admincodefull/title22/agency30/chapter70**](https://law.lis.virginia.gov/admincodefull/title22/agency30/chapter70)

**ATTACHMENT C**

**Client-to-Staff Ratio**

1. **Definitions**.

Capitalized terms used in this Attachment have the meanings assigned in the main body of the PGP Contract. In addition:

*“****DARS****”* is the Virginia Department for Aging and Rehabilitative Services.

“***Direct Services***” are services that require the employee to be engaged directly with Public Clients and their third-party service providers (*e.g.*, medical providers, residential providers, and CSB support coordinators). If the PGP Contractor is appointed as the public conservator, direct services include management over, and decision-making regarding, the financial assets of the Public Client.

*“****Direct Service Staff Members****”* are employees of the PGP Contractor assigned to provide Direct Services to its Public Clients, and shall include, without limitation, the Program Director for the Local PGP.

“***Guardian Representatives***” are paid employees of the PGP Contractor assigned to manage the case of one or more Public Clients and whose job responsibilities with respect to those clients include:

* Making monthly face-to-face, in-person visits;
* Overseeing the benefits and services provided;
* Consulting with third-party service providers, and staff at the PGP Contractor, (both supervisory and support, as necessary), to ensure that needs of those Public Clients are met; and
* Serving as an agent of the PGP Contractor with respect to legal decision-making on behalf of those Public Clients.

“***Ideal Ratio***” has the meaning given in Item 2 below.

1. **The Ideal Ratio**.

PGP Regulations require the PGP Contractor to maintain a client-to-staff ratio for its Local PGP operations that does not exceed 20 Public Clients to every one paid full-time Local PGP staff member providing Direct Services to Public Clients. This is referred to as the “Ideal Ratio.” (22VAC30-70-30.C.2.a.)

If the PGP Contractor is not in compliance with the Ideal Ratio, it should promptly notify DARS of the situation, using the procedures described in Item 5 below.

1. **Calculating the Client-to-Staff Ratio**.

To determine whether the client-to-staff ratio meets the Ideal Ratio, divide the number of Public Clients by the number of employees working as full-time Direct Service Staff Members of the Local PGP. The result of this calculation should then be **rounded up** to the nearest whole number.

* ***EXAMPLE***: A Local PGP that has eighty (80) Public Clients and four (4) full-time Direct Service Staff Members will have a client-to-staff ratio of 20:1 (80/4 = 20 or 20:1). If that Local PGP has only three (3) full-time Direct Services Staff Members, the client-to-staff ratio will be 27:1 (80/3 = 26.66 or 27:1).

When calculating the client-to-staff ratio, please note:

* Subject to specific exceptions discussed in Item 4 below, the calculation only includes full-time employees of the PGP Contractor who are assigned exclusively to its Local PGP as Direct Service Staff Members. The PGP Contractor likely will have other staff, who provide some level of supervision to the Program Director, or provide support services to the Local PGP (some of whom may be assigned to work exclusively in the PGP Contractor’s Local PGP operations). DARS understands that these employees are important to Local PGPs, but the client-to-staff ratio is concerned **only** with those employees who provide Direct Services to Public Clients.
* DARS expects, in most cases, that the Direct Service Staff Members counted toward the ratio will be limited to the Program Director and the Guardian Representatives working for the Local PGP. If a PGP Contractor believes that an employee in any other position should be considered to be a Direct Service Staff Member and counted toward the client-to-staff ratio, the PGP Contractor should explain its position to DARS in writing so that DARS may consider whether including that employee as a Direct Service Staff Member is appropriate.
* The PGP Contract prohibits the Program Director for any Local PGP contracted to serve forty (40) or more Public Clients from acting as a Guardian Representative to more than fifteen (15) Public Clients. (See Section 3.5 of the PGP Contract.)
	+ Notwithstanding this limitation, the Program Director should be counted as one full-time Direct Service Staff Member when calculating the client-to-staff ratio. This is because (i) PGP Regulations require Program Directors to work full-time for the Local PGP, and (ii) the work done by the Local PGP’s Program Director contributes significantly to the services provided to all Public Clients.
* ***EXCEPTION*.**  In the limited case of Program Directors who have been in that position since before January 1, 2009 and who perform duties for the PGP Contractor other than as the Program Director of the Local PGP, the Program Director may be counted toward the ratio, but as a part-time Direct Service Staff Member, not a full-time Direct Service Staff Member. The Program Director and DARS will work collaboratively to determine how the calculation should be made.
1. **Including Direct Service Staff Members who are Part-time to the Local PGP in the Calculation**.
2. ***Using a Part-time Direct Service Staff Member to Cover the Remainder***.
3. In any situation in which the number of Public Clients is not evenly divisible by twenty (20), the PGP Contractor may, **in its discretion**, utilize **one** (1) part-time employee of the PGP Contractor, to serve as the Guardian Representative for the Public Clients representing the remainder. This person may be a standalone part-time employee of the PGP Contractor, or a full-time employee of the PGP Contractor assigned on a less than full-time basis to the Local PGP. This part-time staff member may be counted toward the client-to-staff ratio based on the number of hours spent working as a Direct Services Staff Member for the Local PGP.
* ***EXAMPLE***. A Local PGP with thirty-five (35) Public Clients will be in compliance with the Ideal Ratio if it has a Program Director and one (1) full-time Guardian Representative; in fact it will exceed the Ideal Ratio (35/2 = 17.5 or 18:1). DARS has agreed, however, that the Local PGP also will be in compliance if it has a Program Director and a part-time Guardian Representative, as long as the part-time staff member is working a sufficient number of hours to cover the remainder. The Program Director is sufficient to cover twenty (20) Public Clients when calculating the client-to-staff ratio. A part-time employee may utilized to cover the remainder (15). To cover the remainder, this part-time Guardian Representative would be expected to work seventy-five percent (75%) of a full-time schedule for the Local PGP. The client-to-staff ratio would be calculated as follows: 35/1.75 = 20 or 20:1.
1. For Local PGPs contracted to serve forty (40) or more Public Clients, if after deducting the number of Public Clients for whom the Program Director acts as a Guardian Representative, the number of Public Clients is not evenly divisible for twenty (20), the PGP Contractor may, **in its discretion**, utilize **one** (1) part-time employee of the PGP Contractor to serve as the Guardian Representative for the Public Clients representing the remainder. This person may be a standalone part-time employee of the PGP Contractor, or a full-time employee of the PGP Contractor assigned on a less than full-time basis to the Local PGP. This part-time staff member may be counted toward the client-to-staff ratio based on the number of hours the part-time staff member spends working as a Direct Services Staff Member for the Local PGP.
* ***EXAMPLE #1***. A Local PGP contracted to serve sixty (60) Public Clients and operating at full-capacity will be in compliance with the Ideal Ratio if it has a Program Director and two (2) full-time Guardian Representatives, even though the Program Director is serving as the Guardian Representative to only fifteen (15) (or fewer) Public Clients. This is because DARS has agreed that any Program Director who is full-time staff of the Local PGP may counted as one (1) Direct Service Staff Member. A PGP Contractor, **may** choose, however, in its own discretion, to assign one of its employees to supplement the Local Program and serve for twenty (20) hours a week as Guardian Representative. In that case, the client-to-staff ratio would be based on 3.5 Direct Service Staff Members resulting in a client-to staff-ratio of 18:1 (*i.e.*, 60/3.5 = 17.14 rounded up to 18).
* ***EXAMPLE #2***. A Local PGP with seventy-three (73) Public Clients will be in compliance with the Ideal Ratio if it has a Program Director and three (3) full-time Guardian Representatives; in fact it will exceed the Ideal Ratio. (This is true regardless of the number of Public Clients for whom the Program Director is acting as the Guardian Representative. See the preceding example.) DARS has agreed, however, that the Local PGP will also be in compliance if it has a Program Director, two (2) full-time Guardian Representatives, and a third part-time Guardian Representative, provided the part-time staff member works a sufficient number of hours to cover the remainder. The Program Director and the two (2) full-time Guardian Representatives would be sufficient to cover sixty (60) Public Clients. A part-time employee could be utilized to cover the remainder (13). To cover the remainder, this part-time Guardian Representative would be expected to work sixty-five (65%) of a full-time schedule for the Local PGP. The client-to-staff ratio would be calculated as follows: 73/3.65 = 20 or 20:1.

B. ***Using Part-time Direct Service Staff Members in Other Situations.***

For the sake of simplicity and as a best practice, DARS **recommends** that only full-time employees of the PGP Contractor who are assigned full-time to the Local PGP as Direct Service Staff Members be counted toward the client-to-staff ratio. However, in situations other than those described in Item 4.A. above, with DARS’ consent, a PGP Contractor may utilize one or more part-time employees, or full-time employees of the PGP Contractor assigned on a less than full-time basis to the PGP Contractor’s Local PGP operations, to serve as Direct Services Staff Members for Public Clients counted toward the client-to-staff. Generally, DARS will consider this to be a transition plan designed to move the PGP Contractor toward compliance with DARS’ best practice.

The PGP Contractor may use this option only pursuant to a written staffing plan prepared by the PGP Contractor and approved by DARS outlining:

1. How such part-time Direct Service Staff Members will be utilized in the Local PGP;
2. Why it is necessary for the PGP Contractor to utilize part-time Direct Service Staff Members, rather than full-time Direct Service Staff Members;
3. The methodology the PGP Contractor proposes to use in determining how any part-time staff member will be counted toward the client-to-staff ratio and the Ideal Ratio, and
4. The PGP Contractor’s plan for bringing its staffing arrangement into compliance with DARS stated best practice.
5. **Exceeding the Ideal Ratio.**

A PGP Contractor must notify DARS in writing within five (5) business days after its Local PGP’s client-to-staff ratio exceeds the Ideal Ratio on the “Notice of Non-Compliance with Ratio form provided by DARS:

1. Explain the circumstances causing the Local PGP to be out of compliance with the Ideal Ratio;
2. The PGP Contractor’s plan for resolving the compliance issue, and
3. A calculation of the then current client-to-staff ratio.

If a PGP Contractor is out of compliance with the client-to-staff ratio and the situation worsens, the PGP Contractor will notify DARS of the subsequent adverse change with five (5) business days on a new “Notice of Non-Compliance with Ratio form.

When a PGP Contractor which has reported to DARS that it is out of compliance with the client-to-staff ratio returns to compliance, the PGP Contract will notify DARS of its return to compliance within five (5) business days.

**ATTACHMENT D**

**Waitlist and MDP Review Procedures for Referrals**

**SECTION I**

**DEFINITIONS**

Where “guardian” or “guardianship” is used in these procedures, the word shall encompass the statutory role of guardian, or of conservator, or of both guardian and conservator, as appropriate. In addition, unless otherwise specifically defined herein, or the context or use indicates another or different meaning and intent, the following words and phrases shall have the following meanings:

“CSB”: A Community Services Board or Behavioral Health Authority established pursuant to Va. Code § 37.2-500 *et seq*. or 37.2-600 *et seq*., as applicable.

“DARS”: The Virginia Department for Aging and Rehabilitative Services.

“LDSS”: A local department of social services.

“Local PGP”: The public guardian program operated by a PGP Contractor pursuant to a contract with DARS.

“MDP”: The multidisciplinary panel established pursuant to the PGP Regulations to, among other things, assess individuals referred to the Local PGP for eligibility for public guardianship services through the Local PGP.

“PGP Contractor”: The legal entity that has entered into a contract with DARS for the operation of a Local PGP, and any affiliate or subsidiary thereof.

“PGP Regulations”: The regulations governing the operation of Local PGPs set forth at
22VAC30-70.

“Private Guardianship Services”: Guardianship services that are provided to an incapacitated individual pursuant to a Virginia circuit court order issued under Va. Code § 64.2-2000 *et seq*. for which the guardian is receiving compensation from a source other than DARS under a contract for the provision of public guardianship services as a part of the Virginia Public Guardian & Conservator Program, or on a pro bono basis.

“Program Director”: The individual designated by the PGP Contractor as the director of the contractor’s Local PGP operations, as required by the PGP Regulations.

“Public Guardian Referral Form”: A referral form approved by DARS for services through the Virginia Public Guardian & Conservator Program, or if completed prior to July 1, 2021, the referral form then in use by the Local PGP.

“Slot”: An opening available to serve a guardianship client as a part of the Virginia Public Guardian & Conservator Program. When used in these Procedures the term may be modified by a designation of the particular funding category to which a Slot relates, as specified on the Summary of Obligations included in the contract between DARS and the PGP Contractor, which funding categories include: Unrestricted; MH/ID; DBHDS-ID/DD; and DBHDS-MH.

“Top Priority Position”: With respect to the Unrestricted Waitlist and the MI/ID Waitlist, shall have the meaning set forth in Section II.C.1 below.

“Waitlist”: A list of individuals seeking to obtain public guardianship services through the Local PGP. When used in these Procedures the term may be modified by a designation of the particular funding category through which the referred individual may be served, as specified on the Summary of Obligations included in the contract between DARS and the PGP Contractor, which funding categories include: Unrestricted; MH/ID; DBHDS-ID/DD; and DBHDS-MH.

**SECTION II**

**THE WAITLIST FOR UNRESTRISTRICTED SLOTS**

1. Pre-Screening Referrals. Upon receipt of a substantially completed Public Guardian Referral Form for an individual who has not been designated by DARS for a DBHDS-ID/DD Slot or a DBHDS-MH Slot with the Local PGP, the Program Director shall review the referral to determine whether the individual is likely to meet the statutory and regulatory criteria for public guardianship services. The Program Director may make supplemental inquiries and conduct pre-screening interviews with the referred individual as needed to properly assess the referral.
	1. If the Program Director has a reasonable indication that the referred individual (i) cannot adequately care for himself, (ii) is indigent, and (iii) does not have another proper or suitable person or entity that is willing to serve as a guardian, the Program Director shall add a referred individual to the Unrestricted Waitlist. However, with regard to clause (iii) above:
		1. A referred indigent individual may be added to the Unrestricted Waitlist if the referred individual has an existing guardian who no longer wishes to serve as guardian and who is providing such guardianship services without compensation or is receiving compensation for such services solely from the income or assets of a referred individual.
		2. A referred indigent individual shall not be excluded from the Unrestricted Waitlist solely because the individual has an existing guardian if the existing guardian is (i) a LDSS or a LDSS employee or if the existing guardian is being paid to provide such services by a LDSS, or (ii) the PGP Contractor.
	2. To the extent the status of the referred individual is ambiguous under the criteria of paragraph II.A.1 above, the Program Director shall err on the side of including the referred individual on the Unrestricted Waitlist.
	3. In the case of any referral pre-screened by the Program Director and determined to be ineligible for the Unrestricted Waitlist:
		1. The Program Director will notify, in writing, the person or entity that made the referral that referred individual is ineligible for a public guardianship Slot with the Local PGP; and
		2. The Local PGP shall keep a copy of the referral, together with a written explanation of why the referred individual was deemed to be ineligible for the Unrestricted Waitlist, for five (5) years following the date of the Local PGP’s receipt of the substantially completed Public Guardian Referral Form.
	4. A determination by the Program Director that a referred individual is not eligible for the Unrestricted Waitlist shall not preclude consideration of any subsequent referral received by the Local PGP for the same individual.
2. Adding a Referred Individual to the Unrestricted Waitlist.
	1. Subject to the following paragraph (*i.e.*, II.B.2), the Unrestricted Waitlist for individuals referred for an Unrestricted Slot with a Local PGP shall be organized and maintained in chronological order based on the date a substantially completed Public Guardian Referral Form is received by the Local PGP.
	2. An individual who is receiving Private Guardianship Services through the PGP Contractor may be added to the Unrestricted Waitlist in accordance with the following:
		1. If the PGP Contractor agreed to provide such services without compensation, or is receiving a fee which is being paid (i) from the referred individual’s income or assets, or (ii) by a LDSS, then the referred individual may be added to the Unrestricted Waitlist as of the date the PGP Contractor was appointed by a Virginia circuit court as the referred individual’s guardian.
		2. If the PGP Contractor is receiving compensation for the provision of Private Guardianship Services from any other source, the referred individual shall not be added to the Unrestricted Waitlist until the date on which the PGP Contractor is no longer receiving compensation for the provision of Private Guardianship Services. The date on which such compensation ends shall be treated as the date on which the Local PGP received a substantially completed Public Guardian Referral Form for the referred individual.
	3. Promptly following the addition of any referred individual to the Unrestricted Waitlist, the Program Director shall notify the person or entity who made the referral that the referred individual has been added to the Waitlist for future consideration for public guardianship services through the Local PGP**.**
3. The Order in which Individuals on the Unrestricted Waitlist shall be Considered for Open Unrestricted Slots**.** Individuals on the Unrestricted Waitlist may be considered for and offered open Unrestricted Slots in any order, **subject to the following restrictions:**
	1. The individual on the Unrestricted Waitlist who has been on the Unrestricted Waitlist for the longest time based the dating procedure described in Section II.B above shall be deemed to be in the “Top Priority Position” on the Unrestricted Waitlist. No person in the Top Priority Position may be passed-over for an open Unrestricted Slot more than three (3) consecutive times. If an open Unrestricted Slot has been offered to another individual from the Unrestricted Waitlist when the same individual remains in the Top Priority Position three (3) consecutive times, the individual in the Top Priority Position must be considered by the MDP the next time an open Unrestricted Slot becomes available and a decision must be made either to offer such individual the open Unrestricted Slot or remove the individual form the Unrestricted Waitlist in accordance with the procedures set forth in Section V.B.3.and Section V.C below.
	2. An individual on the Unrestricted Waitlist whom the PGP Contractor is providing Private Guardianship Services **cannot** be offered an open Unrestricted Slot as long as there is **any** individual on the Unrestricted Waitlist who was added to the Unrestricted Waitlist before the individual for whom the PGP Contractor is providing Private Guardianship Services using the dating procedure described in Section II.B.2 above.

**SECTION III**

**THE WAITLIST FOR DBHDS-ID/DD SLOTS AND DBHDS-MH SLOTS**

1. No Locally Maintained DBHDS-ID/DD or DBHDS-MH Waitlists. The Waitlists for DBHDS-ID/DD Slots and DBHDS-MH Slots are maintained by DBHDS. No Local PGP shall maintain a Waitlist for DBHDS-ID/DD Slots or DBHDS-MH Slots. When a Local PGP has an open DBHDS-ID/DD Slot or DBHDS-MH Slot, it shall notify DARS and DARS will provide the Local PGP with a referral for such Slot from the Waitlists maintained by DBDHS. Such referral will include a substantially completed Public Guardian Program Referral Form for the referred individual.
2. Pre-Screening Referrals. Upon receipt of a substantially completed Public Guardian Referral Form for an individual designated by DARS and DBHDS for a DBHDS-ID/DD Slot or a DBHDS-MH Slot with the Local PGP, the Program Director shall review the referral to determine whether the individual is likely to meet the statutory and regulatory criteria for public guardianship services. The Program Director may make supplemental inquiries and conduct pre-screening interviews with the referred individual as needed to properly assess the referral.
	* + 1. If the Program Director has a reasonable indication that the referred individual (a) cannot adequately care for himself, (b) is indigent, and (c) does not have another proper or suitable person or entity that is willing to serve as a guardian, the Program Director shall schedule a meeting with the MDP to review the referral in preparation for offering the referred individual the open DBHDS-ID/DD or DBHDS-MH Slot, as applicable.
			2. To the extent the status of the individual referred for a DBHDS-ID/DD Slot or a DBHDS-MH Slot is ambiguous under the criteria of paragraph III.B.1 above, the Program Director shall present the referral to the MDP in preparation for offering the referred individual the open DBHDS-ID/DD or DBHDS-MH Slot, as applicable.
			3. If a referral is determined by the Program Director through the pre-screening process described paragraph III.B.1 above to be ineligible for public guardianship services through the Local PGP:

a. The Program Director will not submit the referred individual to the MDP;

b. The Program Director shall promptly notify in writing (i) DARS, (ii) the CSB providing services to the referred individual, and, (iii) in the case of DBHDS-MH Slots, the Director of Social Work at the applicable state mental health institute, of the individual’s ineligibility for a public guardianship services with the Local PGP; and

c. The Local PGP shall keep a copy of the referral, together with a written explanation of why the referred individual was deemed to be ineligible for public guardianship services through the Local PGP, for five (5) years following the date of the Local PGP’s receipt of the substantially completed Public Guardian Referral Form.

* + - 1. A determination by the Program Director that a referred individual is ineligible for public guardianship through the Local PGP shall not preclude consideration of any subsequent referral received by the Local PGP for the same individual.

**SECTION IV**

**THE WAITLIST FOR MI/ID SLOTS**

1. A Separate MI/ID Waitlist. Any Local PGP that has MI/ID Slots through a contract with DARS shall maintain a separate MI/ID Waitlist for those Slots.
2. Management of the MI/ID Waitlist. Any individual referred to the Local PGP who has a diagnosis of serious chronic or recurring mental illness, or an intellectual disability, or both, may be placed on the MI/ID Waitlist. The Local PGP shall operate the MI/ID Waitlist in accordance with the same procedures that apply to Unrestricted Slots as described in Section II above.

**SECTION V**

**MDP REVIEW OF REFERRALS FOR OPEN SLOTS**

1. Meetings of MDP.
2. The MDP shall periodically be required to review referrals for open Slots with the Local PGP. It is preferable that the MDP’s review of pending referrals for open Slots be conducted as part of a formal meeting, which may be held electronically, so that members may engage in a face-to-face discussion of the referrals among themselves, the Program Director, and, if appropriate, other Local PGP staff. However, to facilitate the prompt review of pending referrals, the MDP may review, discuss, and vote on recommendations regarding pending referrals via secure (*i.e*., encrypted) electronic mail.
3. A record shall be kept of all MDP proceedings, conclusions, and recommendations, and all communications between the MDP and the Local PGP. Such records shall be maintained for five (5) years.
4. MDP Actions with Respect to Pending Referrals.

1. When the MDP is scheduled to consider new referrals for eligibility for open Slots, the Program Director shall provide the MDP with the substantially completed Public Guardian Referral Form and any other available and relevant materials about the referred individuals, which may, if appropriate, include updates made to the Public Guardian Referral Form. It is recommended that such materials be provided to MDP members at least two (2) working days in advance of the date the MDP is scheduled or requested to make recommendations with respect to such referrals.

2. The MDP shall review the materials presented by the Program Director in accordance with 22VAC30-70-30.E.1. As a part of its review, the MDP, in consultation with the Program Director, shall consider whether the Local PGP has the resources necessary to provide public guardianship services to the referred individual. If a referred individual has an existing guardian who is providing guardianship services as described in II.A.1 above, the presence of an existing guardian shall not necessarily preclude the referred individual from receiving an offer of acceptance for a public guardianship Slot with the Local PGP, provided the MDP concludes that the existing guardian, if a person or entity other than the PGP Contractor, is no longer willing and able to serve as the referred individual’s guardian, or is not otherwise proper and suitable.

3. Based upon its review, the MDP may either:

a. Conclude that the referred individual does not satisfy the criteria for public guardianship services with the Local PGP and inform the Local PGP that the open Slot cannot be offered to the referred individual, in which case the MDP shall indicate with specificity the reason for its decision and such reason shall be included in the records of the MDP. In this case, the Local PGP shall follow the procedures set forth in subsection V.C.1 below; or

b. Conclude that the referred individual satisfies the criteria for public guardianship services with the Local PGP and recommend that the Local PGP offer an open Slot to the referred individual. In this case, the Local PGP shall follow the procedures set forth in subsection V.C.2 below; or

c. Conclude that it is unable to reach a decision as to whether the referred individual satisfies the criteria for public guardianship services with the Local PGP and that even with reasonably obtainable additional information regarding the referred individual, it will not be able to determine whether the referred individual satisfies such criteria, and recommend to the Local PGP that it make a “conditional offer” to the referred individual, deferring the determination of eligibility to a Virginia circuit court as part of a incapacity/guardianship proceeding pursuant to § 64.2-2000 *et seq*. of the *Code of Virginia*. The MDP shall explain with specificity the reason why it is unable to make a definitive recommendation on the referred individual’s eligibility for public guardianship services with the Local PGP, and such explanation shall be maintained the records of the MDP. In this case, the Local PGP shall follow the procedures set forth in subsection V.C.3 below.

1. Actions by Local PGP following MDP Review of Open Slot Referrals**.** Once the MDP has completed its consideration of a referred individual for an open Slot, the Local PGP shall follow the procedures outlined below:

1. *Referred Individual Does Not Meet Criteria*. No individual who has been found to be ineligible for services by the MDP pursuant to paragraph V.B.3.a above may be offered a Slot with the Local PGP. If the MDP has determined that a referred individual does not meet the criteria to receive public guardianship services through the Local PGP, the Local PGP shall:

1. If the referred individual is an Unrestricted referral or a MI/ID referral, promptly notify, in writing, the person or entity that made the referral of the MDP’s conclusion and remove the referred individual from the appropriate waitlist; or
2. If the referred individual is a DBHDS-ID/DD referral or a DBHDS-MH referral, promptly notify, in writing, the following entities of the MDP’s decision (i) DARS, (ii) the CSB providing services to the referred individual, and, (iii) in the case of DBHDS-MH Slots, the Director of Social Work at the applicable state mental institute.

2. *Referred Individual Meets Criteria and Is Recommended by MDP for an Open Slot*. If the MDP has concluded that a referred individual meets the criteria for public guardianship services with the Local PGP and, pursuant to paragraph V.B.3.b above, recommends that the Local PGP offer an open Slot to the referred individual, the Local PGP shall either:

a. Agree with the MDP’s recommendation and promptly notify, in writing, the person or entity that made the referral (which in the case of the DBHDS-ID/DD or DBHDS-MH referrals shall be the CSB providing services to the referred individual) of the referred individual’s acceptance for public guardianship services and explain the steps that must be taken to obtain a court order naming the Local PGP provider as the guardian; or

b. If the Local PGP for good cause disagrees with MDP’s recommendation that the Local PGP offer the referred individual an open Slot, the Local PGP may decline to make the offer. If the Local PGP declines to extend an offer to the
MDP-recommended referred individual, the Local PGP shall:

i. Promptly notify the MDP of its decision and provide a written explanation to the MDP for why it has decided not to follow the recommendation of the MDP. The Local PGP shall allow the MDP ten (10) business days to respond to the Local PGP’s decision, during which period the Local PGP shall in good faith engage in a discussion with the MPD regarding the issues affecting the referral; and

ii. If, at the end of such 10-day period, the Local PGP continues to believe that it has good cause not to offer the open Slot to the referred individual, the Program Director shall notify, in writing, the MDP of its decision. Additionally, the Program Director shall promptly notify, in writing, the following persons or entities that the Local PGP has determined that it is not able to provide public guardianship services to the referred individual: (A) if the referred individual is an Unrestricted referral or an MI/ID referral, the person or entity that made the referral that the Local PGP; and (B) if the referred individual is a DBHDS-ID/DD referral or a DBHDS-MH referral, (1) DARS, (2) the CSB providing services to the referred individual, and (3) in the case of DBHDS-MH referrals, the Director of Social Work at the applicable state mental institute. If the referred individual is on the Unrestricted or MI/ID Waitlist maintained by the Local PGP, the Program Director shall remove the referred individual from the appropriate waitlist.

3. *MDP Recommends Conditional Offer of Open Slot*. If the MDP has been unable to determine whether a referred individual meets the criteria for public guardianship services with the Local PGP Provider and recommends the Local PGP Provider make a “conditional offer” to the referred individual pursuant to paragraph V.B.3.c above, the Local PGP Provider shall either:

a. Agree with the MDP’s recommendation and promptly notify, in writing, the person or entity that made the referral (which in the case of the DBHDS-ID/DD or DBHDS-MH referrals shall be the CSB providing services to the referred individual) of the referred individual’s conditional offer and explain the steps that must be taken to obtain a court order naming the Local PGP as the guardian. The Program Director also shall notify, in writing, the attorneys to the parties in the incapacity/guardianship court proceeding brought pursuant to Virginia Code § 64.2-2000 *et seq*. (which at a minimum shall include the petitioner’s attorney and the referred individual’s guardian *ad litem*) of the issue which led the MDP to be unable to conclude that the referred individual clearly meets the criteria for public guardianship services with the Local PGP and request that the court specifically consider the issue when it evaluates the referred individual’s statutory qualification for public guardianship services under Virginia Code § 64.2-2010; or

b. If the Local PGP for good cause disagrees with the recommendation of the MDP, the Local PGP may decline to offer an open Slot to the referred individual, in which case the Local PGP shall follow the procedures set forth in paragraph V.C.2.b above.

1. Subsequent Consideration for Referred Individuals Declined for Services. Neither (i) a determination by the MDP that an individual is ineligible for public guardianship services through the Local PGP, nor (ii) a decision by a Local PGP that it will not, for good cause, offer an open slot to a referred individual found to be eligible for services by the MDP, pursuant to this Section V shall preclude consideration of any subsequent referral received by the Local PGP for the same individual that is materially different from the referral already considered by the MDP and the Local PGP.

**SECTION VI**

**IMPLEMENTATION OF WAITLIST PROCEDURES**

A. Effective Date. As of July 1, 2021, the Local PGP’s Unrestricted Waitlist and MI/ID Waitlist shall conform to the procedures outlined in this Attachment D. All individuals referred to the Local PGP for public guardianship services on or after July 1, 2021 shall be handled in accordance with this Attachment D.

B. Conforming Any Existing Waitlists.

1. Individuals already on the Local PGP’s Unrestricted Waitlist or MI/ID Waitlist on July 1, 2021, other than those to whom the PGP Contractor is providing Private Guardianship Services (which is covered below in VI.B.2), shall carry-forward the Waitlist date corresponding to the date on which such individuals were originally placed on the applicable Waitlist by the Local PGP. The Local PGP may, but is not required to, obtain a Public Guardian Referral Form for these individuals.

2. Individuals already on the Local PGP’s Unrestricted Waitlist or MI/ID Waitlist on July 1, 2021 to whom the PGP Contractor is providing Private Guardianship Services shall be assigned a new Waitlist Date that is: (a) the date of the court order pursuant to which the PGP Contractor was appointed as guardian if the PGP Contractor agreed to provide such services without compensation, or is receiving, or has received, a fee paid: (i) from the referred individual’s income or assets, or (ii) by a LDSS; or (b) if the PGP Contractor is providing Private Guardianship Services and is, or has, received compensation for such services from any other source, the date on which such compensation ended or is scheduled to end.

**SECTION VII**

**RECORDS MANANGEMENT**

1. The Local PGP shall maintain all waitlist records in accordance with the timeframes outlined in this policy. Records may be maintained as hard copies or electronically in a secure network or cloud storage system. Records stored electronically must be clearly discernable and allow for hard-copy retrieval and access by DARS staff in accordance with 22VAC30-70-60.
2. The Local PGP shall take steps to prevent unnecessary or unauthorized access to waitlist records. All waitlist records, personal identifying information (PII), or personal health information (PHI) transmitted between DARS, DBHDS, the PGP, and the MDP shall be done in secure manner that safeguards unnecessary or unauthorized access.

**ATTACHMENT E**

**Budget and Summary of Expenditures.**

**Instructions**:

Fill in all applicable blanks.

This form is used to report how amounts paid under the PGP Contract are budgeted and expended by the PGP Contractor. “Budgeted Expenses” for each Performance Period should be submitted to the State Agency by April 1 of the calendar year in which the new Performance Period will begin and should specify the amounts that the PGP Contractor expects to spend operating its local PGP for the Performance Period. “Actual Expenditures” of funds received under the PGP Contract incurred in operating the local PGP during such Performance Period should be reported to the State Agency within sixty (60) days of the end of the Performance Period.

“**Direct Expenses**” include expenses that be accurately traced to your PGP. “**Indirect Expenses**” are those that cannot be accurately attributed to your PGP, but are assessed to the PGP based upon some type of estimate or allocation. For the purposes of this report, agency expenses that are shared by and allocated among different programs or departments within your agency would be considered “Indirect Expenses.” For example, the salary of any employee of who spends 100% of their employment hours assigned to the PGP would be direct expenditures. For employees who spend less than 100% of their employment hours, any hours that are documented through contemporaneous time-records as being spent on the PGP would be direct expenses, otherwise, the portion of an employee’s salary attributable to the PGP should be considered an indirect expense. Similarly, if all photocopies made in connection with PGP operations are made at a copier that only the PGP uses, or employees are required to enter a code every time they make a copy that identifies that the copy is being made for the PGP, the copy expense should be would be a direct expenditure. If, however, the PGP is simply allocated a portion of the agencies photocopy expenses, the expense should be considered an indirect expense.

Please attach a narrative explanation of the allocation method or formula used for each indirect expense category applicable for the Performance Period.

Expenditures should be reported on a modified accrual basis. All expenses should be rounded to the nearest dollar amount.

**[Remainder of this page intentionally blank. See Budget and Summary of Expenditures Form on next page.]**

**Va. Dept. for Aging and Rehabilitative Services**

**Va. Public Guardian & Conservator Program**

**Budget and Summary of PGP Operation Expenditures for July 1, 20\_\_ - June 30, 20\_\_\_ (“Reporting Period”)**

**Name of PGP Contractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Aggregate sum to be paid by DARS under the PGP Contract for the reporting period: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Aggregate sum carried forward from PGP Contract payments received prior to the reporting period: $\_\_\_\_\_\_\_\_\_\_\_\_\_.**

**DIRECT EXPENDITURES**

|  |  |  |
| --- | --- | --- |
| **Description of Expenses** | **Budgeted Expenses** | **Actual Expenditures** |
| Salary/Wages |  |  |
| Employee Benefits |  |  |
| Payroll Taxes |  |  |
| Office Rent  |  |  |
| Tenant Services (e.g., custodial, maintenance) |  |  |
| Utilities |  |  |
| Office Supplies and Equipment |  |  |
| Communications (e.g., telephones, internet services) |  |  |
| Staff Travel (not training related) |  |  |
| Staff Development/Training |  |  |
| Insurance |  |  |
| Taxes, Licenses & Fees |  |  |
| Professional Fees |  |  |
| Other (please specify): |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
| Subtotal For Budgeted & Actual Direct Expenditures |  |  |

**INDIRECT EXPENDITURES**

|  |  |  |
| --- | --- | --- |
| **Description of Expenses** | **Budgeted Expenses** | **Actual Expenditures** |
| Salary/Wages |  |  |
| Employee Benefits |  |  |
| Payroll Taxes |  |  |
| Office Rent  |  |  |
| Tenant Services (e.g., custodial, maintenance) |  |  |
| Utilities |  |  |
| Office Supplies and Equipment |  |  |
| Communications (e.g., telephones, internet services) |  |  |
| Staff Travel (not training related) |  |  |
| Staff Development/Training |  |  |
| Insurance |  |  |
| Taxes, Licenses & Fees |  |  |
| Professional Fees |  |  |
| Other (please specify): |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
| Subtotal Budgeted & Actual Direct Expenditures Indirect Expenditures |  |  |

Total **Budgeted** Direct & Indirect Expenses: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Total **Actual** Direct & Indirect Expenditures: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**SUMMARY OF OBLIGATIONS**

**[COPY TO COME]**