



Exhibit C

Sample Contract for Call Center Services

for the

Washington Health Benefit Exchange

Between the

Washington Health Benefit Exchange

And

[Contractor Name]

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This Contract for Call Center Services (the “Contract”) is entered into by and between the **Washington Health Benefit Exchange**, a self-sustaining public-private partnership of Washington State government (“WAHBE”) located at 810 Jefferson Street SE; Olympia, WA 98501, and [Contractor], a [corporation/sole proprietor or other business form] licensed to conduct business in the state of Washington (“Contractor”) and located at [Contractor address], for the purpose of providing Call Center Services (as defined below) to WAHBE.

RECITALS

WAHBE issued Request for Proposals Number HBE 18-004 (the “RFP”) that was dated August 17, 2018 and that is incorporated herein by this reference for the purpose of purchasing Call Center Services in support of a very broad range of telephone clientele inquiries related to the services provided by WAHBE. The provisioning of these Call Center Services is in accordance with WAHBE’s authority under chapter 43.71 RCW, the statute that establishes a health benefit exchange for the State of Washington;

Contractor submitted a proposal that was in response to the RFP and that is incorporated herein by this reference (the “Proposal” as described further below);

WAHBE evaluated all properly submitted responses to the RFP and identified Contractor as the apparently successful vendor; and

WAHBE has determined that entering into a Contract with Contractor will meet WAHBE’s needs and will be in WAHBE’s best interest.

THEREFORE, WAHBE awards to Contractor this Contract, the terms and conditions of which shall govern Contractor’s furnishing to WAHBE the Call Center Services to develop, implement and operate the WAHBE Call Center. This Contract is not for personal use.

IN CONSIDERATION of the foregoing Recitals, the mutual promises and covenants as hereinafter set forth, and other good and valuable consideration, the parties agree as follows:

DEFINITIONS

The following terms as used throughout this Contract shall have the meanings set forth below.

“Acceptance” means a Notice from WAHBE to Contractor that a Deliverable or Service has conformed to its applicable Acceptance Criteria.

“Acceptance Criteria” means the subset of Specifications against which each Service and Deliverable shall be evaluated in accordance with [Section 24](#), which shall be described in DEDS, Change Orders, and other Deliverables, and WAHBE’s satisfaction for Services that are not subsumed in a Deliverable.

“Acceptance Test(s)” means the tests or reviews that are performed by WAHBE to determine there are no Deficiencies in any of the Deliverables or Services and that must be satisfied before Acceptance can occur, including but not limited to User Acceptance Tests as described in the RFP and Proposal.

“Application Software” means Proprietary Software and Third-Party Software licensed or sublicensed to WAHBE from Contractor.

“Availability” means the time that the Services, in whole and in part, are Operational, as measured 24 hours a day, Monday through Sunday, on a monthly basis. Availability shall be as described in Schedule 2, except for mutually agreed upon scheduled Maintenance activities.

“BAFO(s)” means Contractor’s best and final offer(s) in response to the RFP, if any.

“Business Days” means Monday through Friday, except for holidays observed by the State of Washington and as otherwise agreed in writing by WAHBE.

“Business Hours” means 7:30 a.m. to 8:00 p.m. Pacific Time during WAHBE’s Open Enrollment period, and 8:00 a.m. to 6:00 p.m. PT otherwise.

“Call Center” means a location place where WAHBE customer and other telephone calls are handled by the Contractor, with some amount of computer automation. The Call Center shall have the capacity, among other tasks described in the Contract, to handle the peak volume of WAHBE calls at the same time, to screen calls and/or to forward the calls to someone qualified to handle them, and to log calls and maintain statistics.

“Contractor Call Center Manager” means the person responsible for the day-to-day operations of the Call Center including compliance with service standards, KPIs, and terms and conditions of the Contract.

“Call Center Services” means the Services that will be provided by Contractor under this Contract.

“Change Order(s)” means a response to a Change Request that is a written document that modifies, deletes or adds to the Services or Deliverables, in whole or in part, made in accordance with the terms of [Section 38](#).

“Change Request” means a written form that is substantially in the form of Schedule 3 *Change Request Form*, that is used to initiate a modification to the Services or Deliverables, in whole or in part, and that is made in accordance with the terms of [Section 38](#).

“Charges” means the amount(s) to be paid for Services authorized under this Contract, in whole or in part, as described in [Schedule 1 Services/Deliverables Payments and Key Staff](#).

“CMS” means Centers for Medicare and Medicaid Services, the Federal Agency that administers and oversees programs related to Medicare, Medicaid, the Children’s Health Insurance Program (CHIP), and the Health Insurance Marketplace.

“Confidential Information” means information that may be exempt from disclosure to the public or other unauthorized persons under either [RCW 42.56](#) or other federal or state laws. Confidential Information includes, but is not limited to, Personal Information.

“Configuration” means the setting up of the business rules and workflow of business decisions to be used to implement the specific business rules and workflow of WAHBE, without utilizing programming language or database queries and the entering of data into tables that a software “rules engine” will process to determine workflow sequences, value limitation, and other variables, all without altering the Software source code.

“Confirmation” means Contractor’s written notice to WAHBE with full supporting and written Documentation (including, without limitation, test results) that Contractor has: installed the Equipment; completed development of each Deliverable; conducted Contractor Testing to pre-test

each of them for compliance with the Call Center Specifications; and confirmed each as ready for applicable Acceptance Tests.

“Contract” means this document, all attachments, schedules and exhibits, all documents incorporated herein by reference, and all amendments and Change Orders hereto.

“Contractor” means [*Contractor Name*], its employees, Subcontractors, agents, and any firm, provider, organization, individual, or other entity performing the business activities on behalf of or for Contractor under this Contract.

“Contractor Call Center Manager” means the individual chosen by Contractor and approved by WAHBE with management responsibilities for Contractor, as described in [Section 12](#).

“Contractor Staff” means Contractor’s employees, Subcontractors and agents, or any firm, provider, organization, individual, or other entity who will provide the Services on behalf of Contractor under this Contract.

“Contractor Technology” means intellectual property owned by Contractor prior to the Effective Date or developed by Contractor outside the scope of this Contract (including modifications, enhancements or improvements to such intellectual property which is developed hereunder), including Contractor’s proprietary methodologies, project management and other tools, deliverable examples, procedures, processes, techniques, data models, templates, general purpose consulting and software tools, utilities, and routines; the Proprietary Software; and Contractor’s Proprietary Information.

“Contractor Testing” means testing that is performed on Deliverables and Services, in whole or in part, by Contractor so that Contractor can provide Confirmation of the readiness of Deliverables and Services, in whole or in part, for Acceptance Tests, including but not limited to performance and load testing.

“Control” means the ability, whether directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise.

“Converted Data” means the data which has been successfully converted by Contractor for Processing by the Software. Also referred to as migrated data in the RFP.

“Corrective Action Plan” means the detailed written plan required by WAHBE to correct or resolve a Deficiency or breach by Contractor or event causing the assessment of a liquidated damage against Contractor.

“Critical Event(s)” means the events and Deliverables listed as such in [Schedule 1 Services/Deliverables Payments and Key Staff](#).

“Custom Software” means the modifications and changes to the Application Software or Third-Party Software, or newly developed software (including without limitation Interfaces) designed, developed or produced by Contractor or Subcontractors for WAHBE under the Contract.

“Data” means all data used in performance of the WAHBE Call Center Services, WAHBE’s and State of Washington’s records, files, forms, documents, and other information that will be accessed by the Contractor Staff.

“Day(s)” or “day(s)” means a calendar day(s), unless otherwise indicated.

“DDI” means design, development, Configuration, and Implementation.

“DED(s)” means Deliverable expectation documents that describe Acceptance Criteria for each Deliverable and Service subject to Acceptance Tests. Each DED is a Deliverable.

“Deficiency” means any failure, omission, or defect in a Service or Deliverable, causing it not to conform to Specifications or a failure to conform to reasonable commercial or industry standards for appearance, quality, functionality, or format.

“Deliverable(s)” means both a service or services performed by the Call Center Contractor, and any of the Contractor’s products that result from the Contractor’s activities and that are prepared for or performed for WAHBE (either independently or in concert with WAHBE or third parties) during the course of Contractor’s performance under this Contract, including without limitation Reports, Enhancements, Custom Software, and Deliverables that are described in [Schedule 1 Services/Deliverables Payments and Key Staff](#), in the Work Plan, Proposal, Change Orders, as well as all designs, structures, and models developed in the course of rendering the Services and incorporated into such products.

“Delivery Date(s)” means the dates described in the Work Plan for the delivery of the Deliverables to WAHBE, or implementation or performance of Services, as applicable.

“Documentation” means all operations, technical and User manuals used in conjunction with the Call Center Services, in whole and in part, including without limitation manuals provided by licensors of the Software and Third-Party Software.

“Downtime” means the time during which the Services are not performing their business operations or functions in accordance with applicable Specifications, measured on a monthly basis. Downtime begins when WAHBE notifies Contractor that the Services, in whole and in part, fail to be Operational. Downtime continues until WAHBE determines the Services, in whole and in part, have been returned to Operational status in accordance with applicable Specifications.

“Effective Date” means the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of the parties to this Contract.

“Enhancements” means all updates, upgrades, additions, and changes to, and future releases for the Application Software in whole or in part.

“Equipment” means the computer hardware on which the Call Center Services will operate, including, but not limited to; machines, devices, and transmission facilities used for operating the Call Center, such as PBXs, telephones, computers, terminals, routers, networks, wireless communications system facilities, cables, and any physical facility necessary for the operation of such Equipment. Equipment specifically includes that listed in [Schedule 1 Services/Deliverables Payments and Key Staff](#).

“Go-Live” means the event, which is described in the Work Plan as such and which occurs after WAHBE gives Acceptance for the Call Center or other Deliverable or Service, as applicable, and the Call Center, Deliverable or Service, as applicable, is Operational and determined by WAHBE to be prepared to service the public.

“Holdback” means the payment amounts held back by WAHBE from each Deliverable’s Charges, as

described in [Section 3](#).

“Implementation” means the process for making all stages and functions of the WAHBE Call Center Project fully operational in accordance with the terms of this Contract, including but not limited to the Work Plan.

“Interface(s)” means telecommunication facilities or Custom Software that is developed by Contractor for connecting to, and/or exchanging Data between the Call Center Services and other systems.

“ILC” means the Irrevocable Letter of Credit securing Contractor’s performance of its Contract obligations and other potential liabilities to WAHBE, as described in [Section 41 Irrevocable Letter of Credit](#) and Schedule 4 *Irrevocable Letter of Credit*.

“Key Staff” means Contractor’s employees and Subcontractors listed as such on Schedule 1 *Services/Deliverables Payments and Key Staff*.

“Maintenance” means maintenance and support Services which will be performed by Contractor following Go-Live for the Services and which are described as such in the RFP, the Proposal, and [Section 32](#).

“Maximum Amount” means the maximum amount paid and payable by WAHBE to Contractor under this Contract as described in Section a *Pricing* and Schedule 1 *Services/Deliverables Payments and Key Staff*.

“Notice” means a written document given by a party to the other in accordance with [Section 72](#).

“Operational” means the condition when the Call Center Services is totally functional in accordance with its Specifications.

“Operations” means those Services that will be performed by Contractor following the development, implementation and Acceptance of the Call Center Services and that are described in the RFP, the Proposal, and in Section a *Pricing* and Schedule 1 *Services/Deliverables Payments and Key Staff*.

“Performance Standard(s)” means the standards to which the Call Center Services shall perform during Acceptance Tests and Operations, as described in this Contract, [Schedule 2](#), and as otherwise agreed to by the parties in writing.

“Personal Information” means information identifiable to any person, including, but not limited to, information that relates to a person’s name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, Social Security Numbers, driver license numbers, other identifying numbers, PII, and any financial identifiers, and other information that may be exempt from disclosure under either [chapter 42.56 RCW](#) or other state and federal statutes.

“Personally Identifiable Information” or **“PII”** means information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.

“Project” means the planned undertaking and the activities of all parties related to the

development, implementation and operations of the WAHBE Call Center.

“Property” means all Equipment, Data, Software, and other State of Washington real and personal Property.

“Proposal” means the proposal submitted by Contractor in response to the RFP, clarifications and information provided by Contractor at the demonstrations, amendments to the proposal, and any BAFO(s).

“Proprietary Information” means (i) with respect to Contractor, the Contractor Technology; (ii) with respect to WAHBE, the Custom Software, and (iii) information that either party clearly identifies as its proprietary information excluding, any part of the Proprietary Information which: (a) is or becomes publicly available through no act or failure of the other party unless such party’s act or failure is a breach of a confidentiality obligation applicable to the information; (b) was or is rightfully acquired by the other party from a source other than the disclosing party prior to receipt from the disclosing party; (c) becomes independently available to the other party as a matter of right; (d) was previously known and rightfully acquired at the time received from the other party; (e) is developed by one party independently of any disclosures made by the other party of such information; or (f) is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

“Proprietary Software” means all computer programs which were developed and owned by Contractor or Subcontractors prior to the Effective Date or which are developed during the term by Contractor staff in performing work that is outside the scope of the Project and any modifications thereof and derivative works based therein, and the documentation used to describe, maintain and use such Proprietary Software.

“Purchase Price(s)” means the price(s) for the purchase of each Deliverable, in whole or in part, as described in [Schedule 1 Services/Deliverables Payments and Key Staff](#), or as otherwise agreed to by the parties in writing.

“RCW” means the Revised Code of Washington.

“Report(s)” means documents provided by Contractor to WAHBE regarding Services, Project activities, and events.

“Schedule” means the dates described in the Work Plan as deadlines for performance of Services, delivery of Deliverables, and other Project events and activities.

“Service(s)” means the tasks and services to be performed by Contractor on the Project, as described in this Contract, including without limitation Call Center Operations, Project management, testing, production and delivery of the Deliverables, and Training services.

“Site” means the physical location for the Call Center, as agreed to in writing by WAHBE.

“Software” means prior, current, and future versions of the Application Software, the Custom Software, the Configuration, and all Enhancements thereto.

“Specifications” means: (a) the technical, functional, and other written specifications that define the requirements and are used for the Acceptance Criteria, as set forth in the RFP, the Performance Standards, subsequent Deliverables which have received Acceptance, Documentation, and any

additional requirements set forth in the Proposal or others mutually agreed to in writing; and (b) all applicable State and federal policies, laws, regulations, and usability standards, e.g., the American Disabilities Act (ADA), Older Americans Act, and the Rehabilitation Act Section 508 Subpart B Section 1194.21 *et. seq.*, and the Rehabilitation Act Section 508 Subpart B Section 1194.22.

“Staff” means Contractor’s employees, Subcontractors and their employees, contractors, and agents who shall provide the Services on behalf of Contractor.

“Stage(s)” means the project stages of the WAHBE Project, as defined in the RFP and the Work Plan.

“State” means the state of Washington.

“Subcontractor” means one who is not in the employment of Contractor and who is performing all or part of the business activities under this Contract under a separate contract with Contractor. The term “Subcontractor” means Subcontractor(s) of any tier.

“Third Party Software” means software and Third-Party Documentation which are: (a) developed by third parties; (b) generally distributed for commercial use; (c) not specifically designed or developed for WAHBE, including without limitation operating system software, tools, utilities, and commercial off the shelf software; and (d) supplied by Contractor for use with the Call Center pursuant to this Contract.

“Training” means the Training Services to be provided by Contractor to WAHBE, as described in [Section 29](#).

“User Acceptance Test(s)” means Acceptance Tests to be performed by WAHBE during each Stage to determine that there are no Deficiencies in Services or Deliverables and before Acceptance of any subsequent Stage of the Call Center Services can occur.

“Users” means parties who will have use of and access to the Call Center Service.

“WAHBE” means the Washington Health Benefit Exchange, sometimes referred to as the “Exchange”, established in [CH. 43.71 RCW](#).

“WAHBE Call Center Manager” means the individual chosen by WAHBE with Services oversight responsibilities for WAHBE, as described in [Section 15](#).

“Call Center Manager” means the person responsible for day to day management of resources for the Call Center and monitoring the performance under the Contract.

“Work Plan” means the complete plan of activities for the Project, and the delineation of tasks, activities and events to be performed in the delivery of Services, and other Deliverables to be produced for the Project, as described in [Section 20](#). The Work Plan and each revised Work Plan will be incorporated herein upon their Acceptance by WAHBE.

CONTRACT TERM

1. Term

- a. The initial term of this Contract will be from April 1, 2019 or from the date of execution by both parties, whichever is later, through June 30, 2022, unless sooner terminated as provided herein.
- b. Subsequent Terms. Upon notice to the Contractor WAHBE, at its sole discretion, may extend this Contract through June 30, 2027 in whatever time increments WAHBE deems appropriate.

2. Commencement of Work

No work shall commence, nor payment be made, until the first Business Day following the date the Contract is approved by CMS and is fully executed.

PRICING, INVOICE AND PAYMENT

3. Pricing

- a. The Maximum Amount, which includes any allowable expenses, payable to Contractor for the performance of all things necessary for or incidental to the completion of this Contract shall not exceed _____ dollars, per the prices established in [Schedule 1](#). Only those Charges for Services set forth in [Schedule 1 Services/Deliverables Payments and Key Staff](#) may be charged by the Contractor for Services provided in accordance with the terms of this Contract. No other prices, costs, expenses, or other amounts shall be charged by Contractor for implementing the Proposal.
- b. Subject to WAHBE's receipt of a correct invoice, to Contractor's performance of its Services in accordance with the terms of the Contract in the previous month, and to WAHBE's exercise of its rights and remedies, WAHBE shall pay the Charges for any Services that receive Acceptance and that are not included in the Charges for Services as set forth in [Schedule 1 Services/Deliverables Payments and Key Staff](#) within 30 Days of receipt of a properly prepared invoice. WAHBE shall pay Call Center Operations Services Charges monthly, in arrears, subject to performance of such Services in accordance with the terms of the Contract, to WAHBE's exercise of its remedies, and to WAHBE's receipt of a correct invoice. Payment of for Services of less than one month's duration shall be prorated at 1/30th of the monthly Charges for each Day.
- c. Subject to WAHBE's receipt of a correct invoice, to Contractor's performance of its obligations in accordance with the terms of the Contract, and to WAHBE's exercise of its rights and remedies, WAHBE shall pay Purchase Prices for Deliverables and Services which receive Acceptance within 30 Days after WAHBE's receipt of properly prepared invoices.
- d. Contractor shall not increase Purchase Prices or Charges under this Contract for any Service or Deliverable during the initial term of this Contract, except for increases resulting from Change Orders.
- e. If Contractor reduces its Charges for any of the Services during the term of this Contract, WAHBE shall have the immediate benefit of such lower Charges for new purchases. Contractor shall send Notice to the WAHBE Director of Operations with the reduced Charges within 15 Business Days of the reduction taking effect.

- f. Most Favored Customer. Contractor agrees all the prices, terms, rates, warranties, and benefits granted by Contractor are comparable to or better than the terms, prices, warranties and benefits, being offered by Contractor to any present customer meeting similar qualifications or requirements as WAHBE. Except as otherwise herein provided, if Contractor shall, during the term of this Contract, enter into arrangements with any other similar customer providing greater benefits or more favorable terms than as provided herein for provision of same or similar services as provided to WAHBE, Contractor shall be obligated to provide the same to WAHBE.
- g. Any credits due WAHBE under this Contract may be applied against Contractor's invoices with appropriate information attached, upon giving of written notice required herein, if any, by WAHBE to Contractor.
- h. Any amounts due WAHBE by Contractor, including but not limited to liquidated damages, damages, or claims for damages, may be deducted or set-off by WAHBE from any money payable to Contractor pursuant to this Contract.
- i. Contractor shall pay the costs associated with transportation, delivery and insurance for each Deliverable, if any.
- j. WAHBE shall retain a Holdback of 10% of the Purchase Prices and Charges for each Deliverable or Service which has received Acceptance and for which WAHBE has agreed to pay Charges in a Change Order. If applicable, WAHBE will pay Contractor the Holdback within 30 days following receipt by WAHBE of an invoice which is issued in accordance with the terms of this Contract following successful Go-Live for the Call Center Services.

4. Advance Payment Prohibited

No advance payment shall be made for Services or Deliverables furnished by Contractor pursuant to this Contract.

5. Taxes

- a. WAHBE will pay any sales and use taxes imposed on the Services and/or Deliverables if WAHBE receives an invoice from Contractor for such taxes within one year of the due date. Contractor shall pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. Contractor shall also be responsible for, and payment of, all taxes owed to another jurisdiction that arise under the performance of this Contract.
- b. Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.
- c. Contractor shall be solely responsible for all expenses related to salaries, payroll taxes, unemployment contributions, and other benefits for its staff, or any other taxes, insurance, and all out-of-pocket expenses incurred in connection with performance of its obligations under this Contract.

6. Invoices and Billing Procedures

- a. Initial Set Up. Contractor shall complete and submit an IRS form W-9, Request for Taxpayer Identification Number and Certification. Additionally, Contractors electing to receive electronic

payments must complete and submit an ACH Enrollment Form. Forms shall be submitted to WAHBE at finance@wahbexchange.org within five (5) business days of Contract execution by both parties.

b. Invoice Requirements.

- i. Contractor shall only submit invoices for the services or Deliverables authorized in this Contract. Invoices must fully describe and document, to WAHBE's satisfaction, all work performed, project progress, and fees incurred. Invoices shall be submitted electronically to WAHBE at finance@wahbexchange.org and copied to the WAHBE Contract Manager listed in [Section 9](#).
- ii. Invoices must include Contract reference number **HBE-XXX**. This Contract number must appear on the first page of all invoices, bills of lading, packages, and correspondence relating to this Contract. If pre-approved expenses are invoiced, a detailed breakdown of each type must be provided. WAHBE will return incorrect or incomplete invoices to Contractor for correction and reissue.
- iii. Contractor shall submit invoices to WAHBE not more often than monthly. If invoices are submitted less frequently than monthly, Contractor shall provide a monthly estimate of fees incurred. Invoices and estimates, as applicable, shall be submitted to WAHBE at finance@WAHBExchange.org.
- iv. Invoice Review and Acceptance. All invoices shall be reviewed and must be approved by the WAHBE Contract Manager identified in [Section 9](#), or his/her designee, prior to payment. In addition, the WAHBE Finance Team shall review all invoices prior to payment to ensure the Maximum Compensation is not exceeded.

7. Payments and Overpayment

WAHBE shall make payment to Contractor within thirty (30) calendar days of receipt and acceptance of specified Deliverables and authorized services, and accompanying properly executed invoices, subject to WAHBE's exercise of its remedies.

- a. Upon expiration or earlier termination of the Contract, any claims for payment for amounts that are due and payable under this Contract and that are incurred prior to the expiration or termination date must be submitted by Contractor to WAHBE within sixty (60) calendar days of Contract expiration or termination. Belated claims shall be paid at the discretion of WAHBE and are contingent upon available funds.
- b. WAHBE may, in its sole discretion, suspend this Contract or withhold payments claimed by Contractor for services rendered and Deliverables provided if Contractor fails to satisfactorily comply with any term or condition of this Contract.
- c. Payment shall be sent to the address designated by Contractor, unless Contractor has opted to use electronic fund transfer
- d. Contractor shall refund to WAHBE the full amount of any erroneous payment or overpayment under this Contract within 30 calendar days' Notice. This includes amounts found to be inaccurately billed in a previous invoice. If Contractor fails to make timely refund, WAHBE may charge Contractor one percent per month on the amount due, until paid in full.

CALL CENTER AND CONTRACT MANAGEMENT

8. Contract Manager Responsibilities

Contractor shall have responsibility for managing Contractor's Services required by the Project in accordance with the requirements of the Contract. The WAHBE Contract Manager or his or her designee or successor will manage this Contract on behalf of WAHBE and WAHBE's work required by the Project and will be the principal point of contact for the Contractor concerning Contractor's performance under this Contract.

9. Contract Manager Contact Information

Contractor Contract Manager:	WAHBE Contract Manager:
Name & Title	Name & Title
Address	Address
City, State Zip	City, State Zip
Phone:	Phone:
Email:	Email:

10. Reporting and Meetings

During the term of this Contract, Contractor shall produce the Reports and the parties shall participate in the meetings described below. All Reports shall be produced in formats approved by WAHBE and delivered in accordance with the Schedule and the terms of this Contract.

a. Weekly Reports

- i. The Contractor Call Center Director/Manager or representative who carries the authority of the Contractor Call Center Director/Manager, and other Key Staff shall attend weekly meetings with the WAHBE Director of Operations or designee and other members of WAHBE's Call Center Project team when required by WAHBE. These weekly meetings shall follow a preset agenda jointly prepared by the Contractor Call Center Manager and WAHBE Call Center Manager but will also allow both Contractor and WAHBE to discuss other issues that may concern either party.
- ii. Brief written Status Reports shall be provided by Contractor prior to these weekly meetings. Status Reports shall describe the previous week's activities, including problems encountered and their disposition, results of tests, whether deadlines were met, and any problems that may have arisen that need to be addressed before proceeding to the next activities. Contractor's proposed format and level of detail for the Status Reports shall be subject to WAHBE's approval.

b. Monthly Meetings and Reports

The Contractor Call Center Manager will attend, at a minimum, monthly steering committee meetings of WAHBE for the Call Center Project. In preparation for such monthly meetings, Contractor shall submit a status Report which will be due in the WAHBE Call Center Manager's office by the second working day following the end of each monthly meeting during the term of this Contract. The narrative portion of the Report will address, at a minimum, the following:

- i. Overall status of the Call Center

- ii. Problems and issues encountered and actual resolutions;
- iii. Problems and issues requiring attention and resolution, with proposed parties responsible for resolution;
- iv. Each month's Service activities and performance against the Performance Standards.
- v. The following items will be reported during Call Center development and implementation stages
- vi. Call Center Project status in terms of the Work Plan;
- vii. Deliverable status and next month Schedule for submittal for review and Acceptance;
- viii. Proposed changes to the Work Plan, if any; and
- ix. The Contractor Call Center Manager shall also provide or produce such Reports or information as are requested by the WAHBE Chief Executive Officer regarding the Project.
- x. As requested by WAHBE, the Contractor Call Center Manager shall assist the WAHBE Call Center Manager in preparing and shall prepare special Reports and presentations related to the Call Center management.

11. Contractor Call Center Staff

- a. During the term of the Contract, all Staff working on the Call Center Project must be fluent in spoken and written English.
- b. Identified Contractor Key Staff shall be present in the Olympia, Washington area during the development and Implementation Stages of the Call Center Project at specific times and occasions as defined in the Work Plan and as requested by WAHBE.
- c. Except in the case of legally required leave of absence, sickness, death, or termination of employment, Contractor Staff commitments made in the Proposal shall not be changed without the prior written approval of WAHBE. Staffing will include the named Key Staff at the levels of effort proposed. Contractor must receive WAHBE's approval in advance, in writing, for any permanent or temporary changes to or deletions to Key Staff.
- d. During the term of this Contract, WAHBE reserves the right to approve or disapprove Contractor Staff and any Subcontractor's Staff assigned to this Contract, to approve or disapprove any proposed changes in Staff, or to require the removal or reassignment of any Contractor Staff or Subcontractor Staff found unacceptable by WAHBE.
- e. All Staff proposed by Contractor as replacements for other Staff shall have comparable or greater skills for performing the Call Center Project activities as performed by the Staff being replaced.
- f. All Contractor Staff working on the Call Center Project shall execute a nondisclosure agreement in a form attached hereto as Schedule 5 Non-Disclosure Agreement prior to commencing work. Contractor shall maintain the signed Non-Disclosure Agreements on file and shall ensure that its employees are fully trained in the handling and protection of PII and other confidential information.

- g. Contractor assumes sole and full responsibility for its acts and the acts of its personnel. Contractor understands and agrees that WAHBE does not assume liability for the actions of Contractor's Subcontractors or agents. Contractor agrees that it has no right to indemnification or contribution from WAHBE for any judgments rendered against Contractor, its Subcontractors or agents.
- h. Contractor agrees that any claim on behalf of any person arising out of employment or alleged employment by Contractor (including, but not limited to, claims of discrimination against Contractor, its officers, or its agents) are the sole responsibility of Contractor and are not the responsibility of WAHBE. Contractor will indemnify and hold WAHBE harmless from all such claims asserted against WAHBE. Any person who alleges a claim arising out of employment or alleged employment by Contractor will not be entitled to any compensation, rights, or benefits from WAHBE (including, but not limited to, tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).

12. Contractor Call Center Manager

- a. Contractor will assign a Call Center Manager of a management level sufficient to assure timely responses from all Contractor personnel. WAHBE shall review and approve the resume and qualifications of the Contractor's proposed Call Center Manager prior to his or her appointment. The Contractor Call Center Manager shall be the liaison with the WAHBE Call Center Manager regarding day-to-day operations at the Call Center.
- b. Contractor agrees and represents that its Contractor Call Center Manager is fully qualified to perform the tasks required of that position under this Contract. The Contractor Call Center Manager shall function as Contractor's authorized representative for all management and administrative matters not inconsistent with the provisions contained herein.
- c. The Contractor Call Center Manager shall devote sufficient efforts to the Call Center Project. The Contractor Call Center Manager shall be present in the Olympia, Washington area when required in writing or an email by WAHBE during the Implementation Stages of the Call Center Project as defined in the Work Plan.
- d. Contractor must provide written notice to WAHBE of the removal or replacement of the Contractor Call Center Manager and WAHBE must approve of such removal or replacement. In such case, Contractor shall submit a resume of a candidate with comparable or greater knowledge, skills, and abilities and obtain approval of the replacement Contractor Call Center Manager from WAHBE prior to his or her beginning work on the Call Center Project.
- e. Any written commitment by Contractor Call Center Manager and persons designated by him or her in writing for this purpose, within the scope of this Contract, shall be binding upon Contractor.

13. Background Checks

- a. Due to the confidential nature of the information and materials accessible to Contractor, Contractor shall conduct State and Federal criminal background checks for all Staff to be used to provide services under this Contract. Contractor shall use an external screening agency to perform such background and reference checks and Contractor represents and warrants that such procedures are and shall be at least consistent with good industry practices. Such background checks must be fingerprint-based and, at a minimum, include the following searches/records:

- i. Social Security Number Trace (Name and Address History);
 - ii. Social Security Number Validation;
 - iii. Multi-State (National) Criminal History Search;
 - iv. National Sex Offender Search;
 - v. County Criminal Record Search;
 - vi. Federal District Court Criminal Search; and
 - vii. Watch list search – OFAC, OIG, SAM, and America’s most wanted fugitive list
- f. Contractor shall provide background results to both the WAHBE Contract Manager and the WAHBE contracts office at contracts@wahbexchange.org for review and approval of proposed Staff at least five (5) business days prior to the Effective Date and at least five (5) business days prior to the start of any new or replacement Staff. Contractor Staff shall not access the WAHBE property prior to receiving approval from the WAHBE Contract Manager.
- g. In addition to the background checks required in Section 13.A., Contractor shall conduct its own reference and background checks on Contractor Staff or their substitutes by position to be used to provide the Services, subject to Contractor providing to WAHBE the questions asked during such checks and other information about the checks as requested by WAHBE, and to those questions and this information satisfying WAHBE’s requirements.
- h. WAHBE reserves the right to conduct additional reference checks and/or background checks on Contractor staff and Subcontractors to be used to perform the Services.
- i. Felony convictions involving fraud, dishonesty or breach of trust, manufacturing or selling illegal drugs, violence against persons, electronic data tampering, data theft or unauthorized access are grounds for rejection of Contractor Staff and/or Subcontractors. WAHBE reserves the right in its sole discretion to reject any proposed staff because of information produced by such reference checks or additional sources of information.
- j. Background checks must be updated and provided to WAHBE before any Contract extensions will be considered.
- k. Contractor agrees to cooperate fully with WAHBE in completion of these requirements. Results of the checks and investigations and/or failure of Contractor to cooperate fully may be grounds for termination of this Contract. Failure of a Staff member to cooperate with WAHBE during the background checks as described above will result in WAHBE’s rejection of such person and may result, in WAHBE’s discretion, in the immediate termination of the Contract. To the extent permitted by applicable laws, rules, and regulations, Contractor shall not permit Staff who are found to have a criminal record in any state from working on the Contract.

14. Employment of WAHBE Personnel

Contractor shall not knowingly hire on a full-time, part-time, or other basis during the period of this Contract any managerial, professional or technical personnel of WAHBE that are or have been at any time during the term of this Contract in the employ of WAHBE, except regularly retired employees, without the written consent of WAHBE. Further, Contractor shall not knowingly engage on this Contract on a full-time, part-time, or other basis during the period of this Contract any retired WAHBE employee who has not been retired for at least one (1) year, without the prior written consent of WAHBE.

15. WAHBE Call Center Manager

WAHBE shall appoint a Call Center manager for this Contract who will provide oversight of the activities conducted hereunder. The WAHBE Call Center Manager will be the principal contact for Contractor concerning business activities under this Contract. WAHBE shall notify Contractor, in writing (email acceptable), when there is a new WAHBE Call Center Manager assigned to this Call Center Project. The WAHBE Call Center Manager will be responsible for all tasks identified in the RFP and Work Plan, including without limitation the following:

- a. Coordinating the reporting, review and Contract compliance process;
- b. Facilitating the effective participation of WAHBE staff;
- c. Resolving questions raised by Contractor requiring clarification of WAHBE requirements, policies, and procedures;
- d. Monitoring the progress of all principal Call Center Project participants, including Contractor and other State or WAHBE entities;
- e. Administering and managing this Contract; and
- f. Facilitating the timely resolution of issues raised by Call Center Project participants, clients, State agencies, and other stakeholders.

Contractor Call Center Manager	WAHBE Call Center Manager:
Name & Title	Randi Schaff, AD Call Center
Address	810 Jefferson Street SE
City, State Zip	Olympia, WA 98501
Phone:	Phone: 360-688-XXXX
Email:	Email: Randi.schaff@wahbexchange.org

16. WAHBE Call Center Project Staff

- a. WAHBE shall provide staff to assist Contractor for the Call Center Project as described in the Proposal. WAHBE staff shall be managed by and report to the WAHBE Call Center Manager. Contractor will submit requests for WAHBE staff assistance through the WAHBE Call Center Manager. The Contractor Call Center Manager will keep the WAHBE Call Center Manager apprised of the activities of WAHBE’s staff on the Call Center Project and promptly notify the WAHBE Call Center Manager of failures by WAHBE’s staff to perform as requested by the Contractor Call Center Manager.
- b. WAHBE may undertake or award supplemental Contracts for work related to this Contract. WAHBE may assign such other Contractors and/or WAHBE staff to work with the Contractor. The Contractor shall fully cooperate with any such Contractors hired by WAHBE and shall work collaboratively and share knowledge and expertise with WAHBE staff or Contractors to ensure a successful and timely completion. Contractor shall not supervise WAHBE employees but may be asked to direct the work of other vendors or WAHBE staff.
- c. Contractor shall ensure that all Subcontractors abide by this Section 16 of this Contract. It is understood and agreed by the parties hereto that Contractor shall not be responsible for the acts or failures to act of any such other contractors or for any delays which may be caused by any such other contractors, except that Contractor shall be responsible for delays of, or acts or

failures to act of, such other contractors to the extent such delays, or acts or failures to act are caused by or due to the fault of Contractor.

- d. Contractor must maintain good working relationships, positive attitude and a positive collaborative, helpful style while working together with WAHBE staff and other WAHBE Project contractors' staff. All participants are to help each other, learn and accomplish the Project mission. Any disputes or conflicts will be addressed in writing to the WAHBE Contract Manager.

17. Accounting Requirements

Contractor shall establish and maintain an accounting system with procedures and practices in accordance with generally accepted accounting principles, as interpreted by State and other pertinent federal and State authorities, and that conforms to any other accounting requirements required by State or other entities, or any pertinent federal and State authorities. WAHBE in its discretion may accept compliance for purposes of this section through the adoption by Contractor of and Contractor's conformance with the International Financial Reporting Standards. The accounting system shall maintain records pertaining to the Operations Services, other Services and all other costs and expenditures made under this Contract, and the costs properly applicable to the Contract shall be readily ascertainable therefrom.

18. Records Retention and Access Requirements

- a. Contractor shall agree to the conditions of all WAHBE requirements, and applicable federal and state regulations, which are incorporated herein by this reference, regarding retention and access requirements relating to all financial records, supporting documents, statistical records, information that supports the findings, conclusions and recommendations of Contractor's reports, methodology, and other records of this Contract. In addition, Contractor shall agree to the following terms regarding retention of records and access for WAHBE, state and federal government officials.
- b. Contractor and its Subcontractors shall maintain books, records, documents and other evidence which sufficiently and properly reflect the accuracy of amounts billed to WAHBE during the performance of this Contract and shall retain all such records for ten years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for one year following the termination of litigation, including all appeals if the litigation has not terminated within ten years from the date of expiration or termination of this Contract.
- c. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the WAHBE Director of Operations or designee and/or state and federal officials so authorized by law, rule, regulation or Contract, when applicable, during the term and during the ten-year period thereafter. During the term, the access to these items will be provided within Thurston County, Washington. During the ten-year period after the term, delivery of and access to these items will be at no cost to WAHBE. WAHBE's personnel shall be accompanied by Contractor personnel during any such examination, inspection, review or audit. Contractor will make no charges for services rendered in connection with an audit requested by WAHBE. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.
- d. Contractor shall incorporate in its subcontracts this section's records retention and review requirements.

- e. Contractor shall provide, upon WAHBE's request, a copy of those portions of Contractor's and its Subcontractors' internal audit reports relating to the Services provided to WAHBE under this Contract. On the Effective Date, Contractor shall provide WAHBE with a copy of its most recent SSAE 18 audit report which covers internal controls. Thereafter, Contractor shall regularly (no less than annually) undergo SSAE 18 audits (or its successor) and shall provide WAHBE with a copy of each such audit within 60 days of its completion. On an annual basis, within 90 days of the end of Contractor's fiscal year, Contractor shall transmit its annual audited financial statements to WAHBE.

19. Subcontractors

- a. Contractor may, with prior written consent from the WAHBE Director of Operations or designee, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Contractor's duties and obligations. Subject to the other provisions of this Section 19, WAHBE expressly consents to Contractor's use of the Subcontractors designated in its Proposal for the provision of the Services specified in the Proposal. Any such approval may be rescinded in WAHBE's sole discretion. Contractor is responsible and liable for the proper performance of and the quality of any work performed by all Subcontractors. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to WAHBE for any breach in the performance of Contractor's duties. Contractor's use of any Subcontractor shall not cause the loss of any warranty from Contractor. All subcontracts will be made in writing and copies provided to WAHBE upon request. WAHBE has the right to refuse reimbursement to Contractor for obligations incurred under any subcontract that do not comply with the terms and conditions of this Contract. For purposes of this Contract, Contractor agrees to indemnify, defend, and hold WAHBE harmless from and against all claims, actions, losses, liabilities, damages, costs and expenses (including reasonable attorney fees) arising out of or related to acts or omissions of Contractor's Subcontractors, their agents, or employees. At WAHBE's request, Contractor shall forward copies of subcontracts and fiscal, programmatic and other material pertaining to all subcontracts.
- b. For any Subcontractor, Contractor shall:
 - i. Be responsible for Subcontractor's compliance with the Contract and the subcontract terms and conditions; and
 - ii. Ensure that the Subcontractor follows WAHBE's reporting formats and procedures as specified by WAHBE.
 - iii. Include in the Subcontractor's subcontract substantially similar terms as are provided in Sections 3.f. Most Favored Customer, 13 Background Checks, 14 Employment of WAHBE Personnel, 17 Accounting Requirements, 18 Records Retention and Access Requirements, 26 WAHBE and Federal Government, 33 Intellectual Property Indemnification, 44 Confidential Information and Proprietary Information, 59 Compliance with Civil Rights Laws, 62 Covenant Against Contingent Fees, 66 Governing Law, 69 Lobbying Activities, and 78 Sovereign Immunity.
- c. Upon expiration or termination of this Contract for any reason, WAHBE and/or the State will have the right to enter into direct agreements with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct agreements with WAHBE.

WORK PLAN, SERVICES AND DELIVERABLES

20. Work Plan

- a. The Work Plan shall be comprised of the Work Plan in the Proposal. The Work Plan shall be updated to reflect Project changes as the initial Deliverable. Contractor shall deliver the updated Work Plan to the WAHBE Call Center Manager for WAHBE's review not later than 14 calendar days after the Effective Date. The Work Plan will identify the Services, key tasks and sub-tasks, milestones and Deliverables related to the WAHBE Call Center activities for Go-Live and Operations.
- b. In the event of failure of the parties to agree upon this Work Plan and/or of WAHBE to give its Acceptance thereof within 45 Days after the Effective Date, WAHBE may terminate this Contract.
- c. The Work Plan shall provide detailed information including tasks, Deliverables, Critical Events, Schedule, identification of resource requirements, and Payment Schedule. The Work Plan shall be inclusive of the mutual expectations of WAHBE and Contractor to complete and operate the Call Center Project successfully.
- d. The Schedule shall not change because of time required by Contractor to correct Deficiencies, unless prior approval, in writing, has been obtained from WAHBE. The Schedule shall be extended on a day-to-day basis if WAHBE's review of a Deliverable and corrections of Deficiencies in accordance with the Acceptance process is longer than described in the Schedule.
- e. Contractor shall timely update the Work Plan throughout the Call Center Project development and implementation to accurately reflect the status of activities, tasks, events, Services, and projected Schedule for such activities, tasks, events and Services. Changes must be agreed upon in writing by WAHBE prior to their final incorporation into the Work Plan. Unless otherwise specifically agreed to in writing, WAHBE's agreement to a change of the Work Plan shall not relieve Contractor of liability arising from such failures to perform its obligations as required herein under the original Work Plan.
- f. Contractor agrees each updated Work Plan will become a part of this Agreement by amendment upon Acceptance by State and agrees to execute any further documents necessary to accomplish this incorporation. Work Plan progress updates shall allow adequate time, in State's judgment, for State to review and comment on the updates, as well as any new or modified Deliverables, and revision or correction of Deliverables by Contractor.

21. Services and Deliverables – General

- a. Contractor shall provide WAHBE with Services and Deliverables on or before the applicable Delivery Dates in the Work Plan or as mutually agreed upon in writing during Implementation and Operations, and as described in the RFP, the Proposal, and this Contract. Contractor shall use the Work Plan, the RFP, the Proposal, Contractor's expert knowledge, and this Contract as the basis for the Deliverables. Contractor shall retain backup copies in writing and on electronic media of all Deliverables until 180 Business Days after expiration or termination of this Contract and shall provide WAHBE a copy thereof within five Business Days of a written request therefor and at the expiration or termination of all or part of Contractor's performance hereunder.

- b. All Services and Deliverables shall be subject to WAHBE's Acceptance process, including without limitation, Deliverables provided pursuant to Change Orders. WAHBE's review of Deliverables shall be in accordance with the time frames set forth in the Work Plan or a Change Order, as applicable.
- c. The Acceptance Criteria for all Services and Deliverables provided pursuant to Change Orders shall be established in writing in DEDs before beginning work on such Deliverables.
- d. Contractor shall provide Equipment at Contractor's Site(s) to provide Services in accordance with the Work Plan. Contractor shall provide at least 60-days' notice to WAHBE before Contractor moves its Equipment to another Site, and Contractor shall in such Notice provide WAHBE information as is requested by WAHBE to coordinate such move and avoid any negative impact from such move.
- e. In the event of a contradiction, conflict, ambiguity or inconsistency in or between Deliverables and other documents comprising this Contract, including without limitation, a Deliverable that has already received Acceptance, the RFP and the Proposal, any such contradiction, conflict, ambiguity or inconsistency shall be resolved in accordance with WAHBE's judgment and in favor of the latest WAHBE approved Deliverable, except in the case where a previous documented requirement is inadvertently omitted or not addressed directly in a subsequent Deliverable. No requirements can be omitted from the Specifications and DEDs without the written consent of the WAHBE Call Center Manager.

22. Representation

By submitting Confirmation for a Service or Deliverable, Contractor represents that, it has performed the associated tasks to complete the delivery of Services or other Deliverable so that it complies with its Specifications. By giving Acceptance for a Service or Deliverable, WAHBE represents only that it has reviewed the Service or other Deliverable and detected no Deficiencies to warrant the withholding of Acceptance for the work completed.

23. Delivery

All delivery of Services and Deliverable made pursuant to this Contract must be complete and in accordance with Contract requirements. Contractor shall deliver hard copy and electronic versions, as appropriate to the Deliverable, of the Deliverables in formats agreed to by the parties.

24. Acceptance Process for Deliverables and Services

- a. Contractor must provide Confirmation for each Deliverable and Service that is subject to the Acceptance process before WAHBE shall begin performing Acceptance Tests on such Deliverable and Service. Upon delivery of a Deliverable or performance of a Service, as applicable, and receipt of Confirmation from Contractor that the Deliverable or Service meets its Acceptance Criteria, WAHBE will, with Contractor's assistance and in accordance with the Work Plan, review or perform Acceptance Tests on the Deliverable or Service, as applicable, to determine whether it conforms to its Acceptance Criteria. WAHBE will provide Acceptance for a Deliverable or Service, as applicable, if it has no Deficiencies. If a Deficiency is found, however, WAHBE will notify Contractor in an email or other document of the Deficiencies used as the grounds for WAHBE's decision not to give Acceptance. Contractor shall correct Deficiencies and resubmit a corrected Deliverable to WAHBE or re-perform the Service, as applicable, and WAHBE will review or perform Acceptance Tests to verify whether the Deficiencies have been corrected and that the Deliverable or Service, as applicable, lacks

Deficiencies. WAHBE shall either give its Acceptance or reject the Deliverable or Service, as applicable, in writing following such review or Acceptance Tests. Contractor's time for correcting Deficiencies and WAHBE's review of the Services or Deliverables shall be in accordance with the timeframes therefor set in the Work Plan. If time periods for correcting Deficiencies by Contractor and reviewing and testing or retesting corrected Services or Deliverables are not in the Work Plan, each such time-period shall be ten Business Days.

- b. If Contractor is unable to correct all Deficiencies within the number of Business Days indicated in the Work Plan following the Deliverable or Service's scheduled Acceptance, or if no such date is in the Work Plan, within 60 Days from such scheduled Acceptance, WAHBE may, at its option: (a) continue reviewing or performing Acceptance Tests on the Deliverable or Service, as applicable, and require Contractor to continue until Deficiencies are corrected or eliminated; (b) request Contractor to provide, at its expense, a replacement Deliverable or re-perform Services for further review or Acceptance Tests; (c) set-off from the Purchase Prices or Charges as applicable to the extent WAHBE determines the Deficiencies for the Deliverable or Services have not been corrected and provide Acceptance for the applicable Deliverable or Service; or (d) after completion of the process set forth in this Section 24 and providing Notice of default to Contractor, terminate this Contract as described in [Section 46 Termination for Rejection of Services or Deliverables](#).
- c. After Acceptance of a Deliverable or Service, as applicable, WAHBE shall, with input from Contractor, determine whether the Deliverable or Service, as applicable, is ready to Go-Live. Contractor shall put the Deliverable or Service into production after WAHBE gives Contractor Notice that the Deliverable or Service is ready to Go-Live.

25. Knowledge Transfer

While constructing and developing the Services and Deliverables and during Operations of the Call Center Services, Contractor shall demonstrate and provide information to staff designated by WAHBE about the functions and operations of all Call Center Services in accordance with the applicable Specifications and the Work Plan.

SOFTWARE

26. WAHBE and Federal Government

- a. In accordance with [45 C.F.R. 95.617](#) and [45 C.F.R. 92.34](#), all appropriate federal agencies, including but not limited to CMS, will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate, or otherwise use, and to authorize others to use for federal government purposes software, modifications, and documentation designed, developed or installed with federal funds under [45 CFR subpart F](#).
- b. In accordance with [45 C.F.R. 95.617](#) and [45 C.F.R. 92.34](#), WAHBE shall own all right, title and interest in and to: (i) all software, modifications, and documentation designed, developed or installed with federal funds under [45 CFR subpart F](#), including but not limited to the Custom Software and modifications of the Custom Software, and associated Documentation designed, developed, or installed with federal funds under the Contract; (ii) the copyright in any work developed under this Contract; and (iii) any rights of copyright to which Contractor purchases ownership under this Contract.
- c. Contractor hereby grants WAHBE a nonexclusive license to use, reproduce and access the

Contractor Technology (except for the Proprietary Software), in whole or in part, for supporting the internal operations of WAHBE. The license hereunder is granted as of the date of first access to or delivery of the Contractor Technology and continue until expiration of the term or earlier termination of the Contract.

- d. If WAHBE receives federal funding for the Contract and uses such federal funding for the design, development or installation of Custom Software, Contractor shall provide WAHBE with a copy of the Custom Software source code and updated associated technical Documentation for the Custom Software: (i) upon Acceptance of the Deliverable which contains source code; (ii) when Contractor delivers an Enhancement to the Custom Software during the term; (iii) as described in the Work Plan; and (iv) at other times during the Project and Maintenance Services as requested by WAHBE. Contractor shall provide such source code and Documentation at no additional cost on magnetic media in a format acceptable to WAHBE.

ADDITIONAL CONTRACTOR RESPONSIBILITIES

27. WAHBE Property

a. Ownership

Title to all Property furnished by WAHBE shall remain in WAHBE.

b. Use of Property

Any Property furnished to Contractor shall, unless otherwise provided herein, or approved in writing by the WAHBE Call Center Manager, be used only for the performance of its obligations under and subject to the terms of this Contract.

c. Damage to Property

Contractor shall protect and be responsible for any loss, destruction, or damage to Property which results from or is caused by Contractor's willful misconduct or negligent acts or omissions or from the failure on the part of Contractor to maintain and administer that Property in accordance with sound management practices. Notwithstanding anything to the contrary herein, Contractor shall be liable to WAHBE for any damages resulting from damage to Property, which damages result from or are caused by Contractor's willful misconduct or negligence. Contractor shall ensure that the Property is returned to WAHBE in like condition to that in which it was furnished to Contractor, reasonable wear and tear excepted. Contractor shall repair or make good any such damage, destruction or loss at any WAHBE Site, and shall do so without requesting contribution from WAHBE or assistance from WAHBE officers or employees.

d. Notice of Damage

Upon the loss of, destruction of, or damage to any of the Property, Contractor shall notify the WAHBE Call Center Manager thereof and shall take all reasonable steps to protect that Property from further damage.

e. Surrender of Property

Contractor shall surrender to WAHBE all Property upon the earliest of completion, termination, or cancellation of this Contract.

28. Services

a. Performance

Contractor shall perform the Services as described in this Contract in accordance with the Work Plan and requirements in the RFP and to achieve the objectives described in this Contract. Contractor and its Subcontractors (and their Subcontractors at any tier) shall not perform any of the Services, directly or indirectly, outside of the continental United States.

b. Necessary Resources

Except as specifically provided in [Section 16](#) *WAHBE Call Center Project Staff*, Contractor shall provide the personnel and all materials and resources necessary for the performance of the Services. Charges shall be reduced to the extent that WAHBE performs obligations which are described in the Contract as being performed by Contractor in accordance with [Section 38](#), *Change Orders*.

29. Implementation and Training

a. Implementation Phases and Stages

Contractor shall complete each Stage of the Implementation as described in the RFP and Proposal, the Work Plan and this Contract.

b. Training

Contractor shall provide User and technical Training Services in accordance with the RFP and Proposal and in accordance with the Work Plan.

30. Federal Certification

a. Primary Objective

WAHBE and Contractor agree that certification for federal funding from CMS, and compliance with federal rules governing call centers ([45 C.F.R. 205](#)), is a primary objective of this Contract.

b. Contractor Obligations

Pursuant to achieving this objective, Contractor agrees:

- i. To perform Services as described in the RFP and Proposal;
- ii. To ensure the Call Center Services meet any State and federal legal and regulatory requirements which may be enacted, including but not limited to laws and regulations or other guidelines, and that are incorporated by reference in the Contract or associated Change Orders, as of the time of application for CMS Federal certification;
- iii. To provide on a timely basis, all information, data, forms, Call Center Services modifications, documentation, correspondence, consultation, and assistance in training as needed to assist WAHBE in obtaining CMS Federal certification;
- iv. To address the means of implementing program regulations which may be required following the application for CMS Federal certification. Agreement on the approach and cost, if any, of implementing these program regulations will be in the form of a Contract

amendment, or in accordance with [Section 38 Change Order Process](#); and

- v. To complete, test, and implement the changes required to bring the Call Center Services into compliance with and be eligible for Federal certification should CMS determine that the Call Center Services are not certifiable for Federal Financial Participation; at no cost to WAHBE.

31. Warranties

a. Services and Deliverables

Contractor represents and warrants that each Deliverable, including without limitation the Call Center Services, shall meet its applicable Specifications as provided herein following its Acceptance and during the term of the Contract. Contractor shall immediately repair or correct each of the Services or Deliverables that does not meet its Specifications as provided herein; at no cost to WAHBE. If a Deliverable includes any products provided by third parties, such as Equipment or Third-Party Software, Contractor shall fully cooperate with and coordinate the work with such third parties and WAHBE to repair, in accordance with times in Schedule 2, or replace the Deliverables to meet and conform to applicable Specifications at no charge. In addition, if the Services fail to meet all applicable Performance Standards, Contractor shall modify, reconfigure, upgrade or replace Equipment and/or Software to ensure that the Services comply with such Performance Standards at no cost to WAHBE.

b. Legal and Regulatory Compliance

Contractor represents and warrants that the Services and Deliverables shall comply with all applicable federal, State, and local laws, regulations, codes, Standards and ordinances, including but not limited to changes thereto during the term. Charges for such ongoing compliance are included in Contractor's Charges. If any Services performed, or any Deliverables provided by Contractor are subsequently found to be in violation of such laws, regulations, codes, Standards or ordinances, it shall be the sole responsibility of Contractor to bring the Services and Deliverables into compliance at no additional cost to WAHBE.

c. Services

Contractor represents and warrants that:

- i. Call Center Services shall meet or exceed Performance Standards or Key Performance Indicators; and
- ii. Contractor shall perform all Services required pursuant to this Contract in a professional manner, with high quality; and
- iii. Contractor shall give highest priority to the performance of the Services; and
- iv. Time shall be of the essence in connection with performance of the Services; and
- v. Contractor shall perform the Services with qualified persons with the technical skills, training, and experience to perform such Services; and
- vi. Contactor warrants that any person assigned to perform Services hereunder meets the employment eligibility requirements of all immigration laws of the United States; and

- vii. Contractor represents and warrants that Deliverables provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater; and
- viii. Contractor represents and warrants that Contractor may, only upon receipt of prior written approval by State, (a) incorporate any open source software into, or combine open source software with, the Deliverables or use open source software to provide the Deliverables; or (b) distribute open source software in conjunction with or for use with the Deliverables; and
- ix. Contractor represents and warrants that Documentation provided by Contractor under the Contract shall be in sufficient detail as to allow technical personnel of WAHBE to understand the operation of the Deliverables. Contractor shall promptly, at no additional cost to WAHBE, make corrections to any Documentation that does not conform to this warranty.

d. Power and Authority

Contractor represents and warrants that it has the full power and authority to grant to WAHBE the rights described in this Contract without violating any rights of any third party and that there is currently no actual or threatened suit by any such third party based on an alleged violation of such rights by Contractor. Contractor further represents and warrants that the person executing this Contract for Contractor has actual authority to bind Contractor to each term, condition and obligation to this Contract, and that all requirements of Contractor have been fulfilled to provide such actual authority.

e. Registration

Contractor represents and warrants that it shall comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services, including without limitation the provisions of chapter [19.02 RCW](#), the Business License Center Act.

f. OSHA/WISHA

Contractor represents and warrants that the Deliverables, when delivered to WAHBE, are designed and manufactured to meet then current federal and State safety and health regulations. Contractor agrees to indemnify, defend, and hold WAHBE harmless from all damages assessed against WAHBE because of the failure of the Deliverables furnished under this Contract to so comply. WAHBE agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations. However, if principles of governmental or public law are involved, WAHBE may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of Contractor without Contractor's written consent.

g. Written Commitments

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute a material breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Purchase Prices, Charges, discounts, and

options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Proposal or contained in any Contractor publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Proposal or used to effect the sale to WAHBE.

h. Authorization

Contractor represents and warrants that:

- i. Contractor is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation and has all requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;
- ii. The execution, delivery and performance of this Contract has been duly authorized by Contractor and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained for Contractor to enter into this Contract and perform its obligations under this Contract;
- iii. Contractor is duly authorized to conduct business in and is in good standing in each jurisdiction in which Contractor will conduct business in connection with this Contract; and
- iv. Contractor has obtained all licenses, certifications, permits, and authorizations necessary to perform the Services under this Contract and currently is in good standing with all regulatory agencies that regulate any or all aspects of Contractor's performance of the Services. Contractor will maintain all required certifications, licenses, permits, and authorizations during the term of this Contract at its own expense.

i. Ability to Perform

Contractor represents and warrants that:

- i. Contractor has the financial stability to carry out at least six months of Services, including Operations during any period of this Contract without reimbursement for the Services or expenses;
- ii. Contractor has the financial resources to fund the capital expenditures required under the Contract without advances by WAHBE or assignment of any payments by WAHBE to a financing source;
- iii. Each Subcontractor providing a substantial amount of the Services under this Contract has the financial resources to carry out its duties under this Contract; and
- iv. Contractor's methods of accounting are consistent with generally accepted accounting principles and are capable of segregating costs by phase, stage, segment, or cost objective to support Change Order accounting.

j. Intellectual Property Warranty

Contractor hereby represents as of the Effective Date and warrants to WAHBE thereafter that Contractor is and shall be the owner of the Contractor Technology and Services provided

hereunder or otherwise has the right to grant to WAHBE the licensed rights to the Contractor Technology and Services provided by Contractor through this Contract without violating any rights of any third party worldwide. Contractor represents and warrants that: (i) Contractor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Contractor Technology or Services infringe or misappropriate any patents, copyrights, or trade secrets of any third party or WAHBE, and (ii) the Contractor Technology and Services do not and shall not infringe upon or misappropriate any patents, copyrights, trade secrets or any other intellectual property rights of any third party. Contractor shall promptly give WAHBE Notice of each notice or claim of copyright infringement or infringement or misappropriation of other intellectual property right worldwide received by Contractor with respect to the Contractor Technology and Services delivered under this Contract.

k. Compatibility

Contractor warrants that, if the Software or Equipment, in whole or in part, is replaced or upgraded by Contractor with replacement or upgraded Software or Equipment components provided by Contractor, or Contractor provides Custom Software Deliverables or Enhancements, the Custom Software shall be integrated into the Software and Equipment, and the upgraded, replaced, and modified Custom Software and Enhancements shall operate with the rest of the Software, Equipment and Data used to provide the Services, including without limitation, Custom Software, Third-Party Software, Enhancements and Configurations, without loss of any functions and without any Defects. If WAHBE decides to produce Enhancements or to upgrade any Third-Party Software which is used as part of the Services with new versions or releases, Contractor shall, at no additional cost to WAHBE install and maintain the Software to operate in accordance with its Specifications and to be compatible with the Enhancements and new versions or releases of the Third-Party Software.

32. Operations Services

a. Operations Period

- i. Contractor shall provide Operations Services in accordance with the RFP and Proposal, the Work Plan and this Contract.
- ii. Contractor shall provide Maintenance to correct any Service interruption, degradation of performance, Deficiencies or other Operational failures in the Call Center and support, repair and maintain the Call Center in accordance with the RFP and Proposal, the Work Plan and this Contract, including without limitation [Schedule 2](#). Contractor's Maintenance responsibilities shall include but not be limited to maintaining the Call Center performance and availability in accordance with the Call Center Specifications and the terms of this Contract, and developing, on a best efforts basis, of a temporary solution to or an emergency alternative for serious degradation or loss of Call Center service.

b. General Responsibilities

Contractor shall provide Maintenance and Operations Services as described in the Contract and shall perform these Services as part of the Call Center Operations tasks described in the RFP and included in the Charges for on-going Call Center Operations set forth in [Schedule 1](#) *Services/Deliverables Payments and Key Staff*. Contractor's Service responsibilities shall include

but not be limited to the following while operating and maintaining the Call Center Services:

- i. Promptly repair or correct the Call Center Services, or any portion thereof, that has Deficiencies in accordance with [Schedule 2](#);
- ii. Maintain the Call Center Services in accordance with the Call Center Specifications, including but not limited to the Performance Standards, and terms of this Contract;
- iii. Provide these Services from 7:30 a.m. to 8:00 p.m. PT, Monday – Friday during Open Enrollment, from 8:00 a.m. to 6:00 p.m. PT, Monday – Friday outside of Open Enrollment, and as otherwise required by WAHBE;
- iv. Coordinate with WAHBE all tasks related to correcting problems, Service interruption, degradation of performance, and Deficiencies connected with the Call Center Services.

c. Inquiry Assistance

Contractor shall respond to WAHBE Service-related inquiries as described in [Schedule 2](#) with the following, as applicable:

- i. Responses to questions relating to the Service, including without limitation isolating problems to network, software, data, Staff or equipment;
- ii. The development, on a best efforts basis, of a temporary solution to or an emergency correction or bypass of a Service interruption, degradation of performance, or Deficiency;
- iii. Corrections and repairs of errors, problems, Service interruption, degradation of performance or Deficiencies with the Network, to the extent technically feasible; and
- iv. Clarification of Documentation.

d. Databases

Contractor shall maintain and make available online to WAHBE a database of all Change Requests, Deficiencies, performance degradations, Service interruptions, or other problems reported by WAHBE or known to Contractor in the Services. The database shall include, as a minimum, the following:

- i. Date and time Contractor was notified;
- ii. Date and time of response to inquiry;
- iii. Time spent for resolution of Deficiencies;
- iv. Description of Deficiency;
- v. Description of severity level of Deficiency, e.g., emergency;
- vi. Description of Deficiency resolution; and
- vii. Date of resolution; and
- viii. Steps taken to prevent reoccurrence of Deficiency.

e. Performance Standard Measurement

Contractor shall maintain the Call Center Services, in whole and in part, to meet the Performance Standards and Key Performance Indicators set forth in [Schedule 2](#). Contractor will regularly (at least monthly) conduct tests for measuring and certifying the achievement of the Performance Standards. Contractor must implement all testing, measurement and monitoring tools and procedures required to measure and report Contractor's performance of the Call Center Services against the applicable Performance Standards and Key Performance Indicators. Such testing, measurement and monitoring must permit reporting at a level of detail sufficient to verify compliance with the Performance Standards and Key Performance Indicators and will be subject to audit by WAHBE. Contractor will provide WAHBE with information and access to all information or work product produced by such tools and procedures upon request for purposes of verification.

f. Continuous Improvement

Contractor must on an ongoing basis, as part of its total quality management process, identify, report to WAHBE, and implement ways to improve performance of the Services and identify and apply techniques and tools from other Contractor installations that would benefit WAHBE either operationally or financially.

g. Enhancements

- i. Contractor shall use for the Services all Enhancements that are provided as general releases to the Software and Equipment, in whole or in part. Contractor shall also provide to WAHBE Documentation regarding such Enhancements which shall be adequate to inform WAHBE of the Defects and other problems resolved including any significant differences resulting from the release and which are known by Contractor. Contractor warrants that each such Enhancement general release shall be subjected to Contractor Testing and perform according to the Specifications before being used to provide the Services. Contractor agrees to correct corrupted Data that may result from any Defect introduced by the Enhancement at no cost to WAHBE.
- ii. In addition, Contractor shall produce such Enhancements which WAHBE requests or which Contractor requests and WAHBE approves at an additional charge in accordance with the Change Order process described herein. Enhancements to correct any Defect shall be provided to WAHBE at no cost and without the need for a Change Order.

33. Intellectual Property Indemnification

- a. Contractor shall, at its expense, defend, indemnify, and hold WAHBE and its employees, officers, directors, contractors and agents harmless from and against any third-party claim or action against WAHBE which is based on a claim that any Service or Deliverable or any part thereof under this Contract infringes a patent, copyright, utility model, industrial design, mask work, trademark, or other proprietary right or misappropriates a trade secret, and Contractor shall pay all losses, liabilities, damages, penalties, costs, fees (including reasonable attorneys' fees) and expenses caused by or arising from such claim. WAHBE shall promptly give Contractor written notice of any such claim. WAHBE agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations. However, if principles of governmental or public law are involved, WAHBE may participate in the defense of any such action, but no costs

or expenses shall be incurred for the account of Contractor without Contractor's written consent.

- b. In case the Deliverables, or any one or part thereof, are in such action held to constitute an infringement or misappropriation, or the exercise of WAHBE's rights thereto is enjoined or restricted, Contractor shall, at its own expense and in the following order of priorities:
 - (i) procure for WAHBE the right to continue using the Deliverables; (ii) modify the Deliverables to comply with the Call Center Specifications and to not violate any intellectual property rights; (iii) or retrieve any or all Deliverables upon receipt of written notice from WAHBE and refund the Purchase Price of each Deliverable, as applicable.
- c. Contractor shall have no liability for any claim of infringement arising solely from:
 - (i) compliance with any designs, Call Center Specifications or instructions of WAHBE which could not have been avoided through an alternative design or alternative Specifications; (ii) modification of the Deliverable by WAHBE or a third party without the prior knowledge and approval of Contractor; or (iii) Use of the Deliverable in a way not specified by Contractor; unless the claim arose independently of any of these specified actions.

34. General Indemnity & Hold Harmless Provision

- a. Contractor shall, at its expense, indemnify, defend, and hold WAHBE, its employees, officers, directors, contractors and agents harmless from and against any losses, liabilities, damages, penalties, costs, disallowances, sanctions, fees, including without limitation reasonable attorneys' fees, and expenses from any claim or action to the extent caused by or arising from the: (i) negligent acts or omissions, willful misconduct or bad faith of Contractor, its officers, employees, agents, or Subcontractors, including without limitation for real or property damage, bodily injury or death; (ii) failures to comply with laws, regulations, policies, standards or guidelines; or (iii) a breach or alleged breach of Contractor's obligations in [Section 45](#) and [Schedule 5](#) and [Schedule 7](#). WAHBE shall promptly give Contractor Notice of such claim and shall cooperate in the defense of such claims at Contractor's expense. WAHBE agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations. However, if principles of governmental or public law are involved, WAHBE may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of Contractor without Contractor's written consent.
- b. Waiver of Statutory Immunity. Contractor intentionally accepts the terms of this Section and waives all statutory immunity provided by the Washington State Industrial Insurance Act, [RCW Title 51](#), regarding all rights of the indemnities stated herein. THE TERMS OF THIS SECTION, SPECIFICALLY INCLUDING THE PRECEDING WAIVER OF IMMUNITY, SHALL BE DEEMED MUTUALLY NEGOTIATED, HAS BEEN EXPRESSLY AND SPECIFICALLY NEGOTIATED AND AGREED UPON BY THE PARTIES TO THE FULLEST EXTENT ALLOWED BY THE LAWS OF WASHINGTON APPLICABLE TO WAHBE.

35. Insurance

- a. Contractor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage

required by this Contract, Contractor shall provide written notice of such to WAHBE within one Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may result in this Contract's termination.

- b. Contractor shall submit certificates of insurance, policy documents and riders, for all insurance requirements listed below in Section 35.c. to contracts@wahbexchange.org within ten (10) business days of Contract execution. Copies of renewal certificates for all required insurance must be submitted at the time of the renewal. Certificates of insurance must expressly indicate compliance with each insurance requirement specified in this section.
- c. The minimum acceptable limits shall be as indicated below for each of the following categories:
 - i. Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
 - ii. Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
 - iii. Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;
 - iv. Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, conditioned upon Section d below, and coverage of not less than \$2 million per occurrence/\$4 million general aggregate; and
 - v. Crime Coverage with a deductible not to exceed \$1 million, conditioned upon Section d below, and coverage of not less than \$5 million single limit per occurrence and \$10 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Forgery; Money and Securities; and Employee Dishonesty.
 - vi. Cyber-security insurance, with coverage of not less than \$6 million per occurrence/\$12 million general aggregate, that includes but is not limited to coverage for first-party costs and third-party claims from: (i) failure to protect data, including unauthorized disclosure, use or access, (ii) security failure or privacy breach, (iii) failure to disclose such breaches as required by law, regulation or contract, (iv) notifications, public relations, credit monitoring, postage, advertising, and other services to assist in managing and mitigating a cyber-incident, (v) interruptions of business operations, (vi) network security failure, (vii) cyber-extortion, (viii) cyber-terrorism, (ix) communications and media liability (e.g., infringement of copyright, title, slogan, trademark, trade name, trade dress, service mark or service name in the policyholder's covered material), (x) EFT, computer, and electronic transmissions fraud and theft, and (xi) other cyber-liability and cyber-crime expenses.
- d. For Professional Liability Errors and Omissions Coverage and Crime Coverage, Contractor shall continue such coverage for six (6) years beyond the expiration or termination of this Contract, naming WAHBE as an additional insured and providing WAHBE with certificates of insurance on an annual basis.

- e. Premiums on all insurance policies shall be paid by Contractor or its Subcontractors. Such insurance policies shall name WAHBE as an additional insured on all general liability and umbrella policies. Such policies shall also reference this Contract and shall have a condition that they not be revoked by the insurer until 30 calendar days written notice of intended revocation thereof shall have first been given to WAHBE by such insurer.
- f. Contractor's insurance policies shall not be canceled or non-renewed in scope of coverage without provision for equivalent substitute insurance and such cancellation or nonrenewal shall not take place or reduced in scope of coverage until five Business Days' written notice has been given to WAHBE, attention WAHBE Director of Operations or designee, and Contractor has replacement insurance policy(ies) in place that satisfy the requirements set forth in this [Section 35](#). Contractor's insurance policies shall not be reduced in scope without WAHBE's prior written consent.
- g. Contractor shall notify WAHBE immediately if any aggregate insurance limit is exceeded. In such event, additional coverage must be purchased to meet requirements
- h. Contractor agrees to waive all rights of subrogation against WAHBE for losses arising from services performed by Contractor under this Contract.
- i. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by WAHBE and shall include a severability of interests (cross-liability) provision.
- j. Contractor shall include all Subcontractors as insured under all required insurance policies or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.
- k. Contractor shall furnish to WAHBE copies of certificates of all required insurance within 30 calendar days of this Contract's Effective Date, and copies of renewal certificates of all required insurance within 30 calendar days after the renewal date. These certificates of insurance must expressly indicate compliance with every insurance requirement specified in this section. Failure to provide evidence of coverage may, at WAHBE's sole option, result in this Contract's termination.
- l. By requiring insurance herein, WAHBE does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to WAHBE in this Contract.

36. Industrial Insurance Coverage

Prior to performing work under this Contract, Contractor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in [Title 51 RCW](#) and shall maintain full compliance with [Title 51 RCW](#) during the course of this Contract. Contractor shall purchase or provide equivalent coverage for employees of the Call Center working in a state other than Washington. WAHBE will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

37. Contractor Financial Rating

- a. Contractor shall maintain a Dunn and Bradstreet (“D&B”) financial strength rating of “good” or better throughout the term of this Contract. Within 30 calendar days after the annual anniversary of Contract Effective Date, Contractor shall provide to the WAHBE Director of Operations a copy of the firm’s most recent D&B business/credit report.
- b. If Contractor fails to provide a copy of the report or to continue to maintain a “good” or better financial strength rating this Contract may be terminated in whole or in part under [Section 45 Termination for Contractor’s Breach](#).

38. Change Order Process

- a. Change Requests
 - i. WAHBE may request changes within the scope of the Contract at any time by a written Change Request substantially in the form of [Schedule 3 Change Request Form](#). Such changes may include, without limitation, revisions to Call Center Services or Deliverables.
 - ii. Contractor shall respond in writing to a Change Request within 15 calendar days of receipt, advising WAHBE of any cost and Schedule impacts. When there is a cost impact—either increase or decrease in Charges or Purchase Prices—Contractor shall advise WAHBE in writing of the increase or decrease involved, including a breakdown of the number of Contractor Staff hours and WAHBE staff hours by level of personnel needed to effect this change. Contractor shall provide responses to Change Requests at no charge to WAHBE.
 - iii. Contractor shall perform Services on Change Requests on a fixed price basis. Contractor shall base prices for Change Requests on the reasonable number of Staff hours and fixed labor categories needed to affect the change at rates presented in Exhibit **(TBD)**.
 - iv. The Contract Managers for both parties shall negotiate in good faith and in a timely manner as to the price for change orders and the impact on the Schedule of any Change Request.
 - v. Contractor may also submit a Change Request to WAHBE to propose changes that should be made within the scope of the Contract. Any such Change Request shall include proposed costs and Schedule impacts, including a breakdown of the number of Contractor Staff hours and WAHBE Staff hours by level of personnel needed to effect this change. WAHBE will attempt to respond to such Change Requests from Contractor within 20 calendar days of receipt.
- b. Change Orders
 - i. If the parties reach agreement in writing on a Change Request and the resulting Change Order is executed by authorized representatives of the parties, the terms of this Contract shall be modified accordingly.
 - ii. If the parties are unable to reach an agreement in writing on a Change Request submitted by Contractor, the WAHBE Contract Manager will be deemed to have

rejected the requested Change Request.

- iii. If the parties are unable to reach an agreement in writing on a WAHBE-proposed Change Request within 15 calendar days of Contractor's response to such Change Request, the WAHBE Contract Manager may determine a revised price and Schedule and Contractor shall proceed with the work according to such price and Schedule and shall sign the resulting Change Order. If Contractor appeals the WAHBE Contract Manager's determination of the price and/or Schedule to the dispute resolution process under [Section 40](#), State shall pay for such work up to the price determined by the WAHBE Contract Manager until all amounts in such price are expended, after which Contractor shall continue performing such work until completion of the dispute resolution process related to this Change Order. Nothing in this Section shall in any manner excuse Contractor from proceeding with the Contract as changed by the Change Order.
- iv. The parties will execute a formal Contract amendment for any Change Order that increases or decreases the Maximum Amount.
- v. Nonfinancial Change Orders may be approved in writing by the WAHBE Contract Manager. All other Change Orders shall be executed by the WAHBE CEO or designee.
- vi. In no event shall the Charges or Purchase Prices be increased, nor shall the Schedule be extended in a Change Order to correct errors or omissions in the Proposal.

c. Termination

If Contractor fails or refuses to perform its Services pursuant to a Change Order or Section b.iii above, Contractor shall be in material breach of this Contract, and WAHBE shall have the right to terminate the Contract for such breach.

d. Changes Initiated by Contractor

- i. Contractor must provide WAHBE with Notice and a description of all Contractor-initiated changes to the Software, Equipment, or Services that might affect or impact WAHBE; the Notice must be 60 Days in advance when feasible and must include any known impacts the Changes might have to WAHBE. If the change is determined by WAHBE to have an adverse impact when tested by WAHBE, Contractor shall not implement the change in the Software, Equipment or Services without WAHBE's advance written (email acceptable) consent. If the change is determined by WAHBE to have had an adverse impact after Contractor has implemented the change, Contractor shall, at no cost to WAHBE, promptly remove the change and/or correct the change which has had an adverse impact.
- ii. Contractor shall absorb all costs associated with Contractor initiated changes to the Software, Equipment and Services.

39. Changing Government Programs

- a. The parties acknowledge that the government programs supported by this Contract will be subject to continuous change during the term of this Contract. Contractor shall provide adequate resources, at no additional cost to WAHBE, to reasonably accommodate such changes,

subject to the Change Order process of [Section 38](#).

- b. The parties also acknowledge that Contractor was selected, in part, because of its expertise, experience, and knowledge concerning applicable Federal or State laws, regulations, policies, or guidelines that affect the performance of the Services and System.
- c. Identifying Changes. In keeping with WAHBE's reliance on Contractor's knowledge, experience and expertise, and continuous improvement, Contractor shall timely notify WAHBE of technology advances and improved techniques and tools from other state's MMIS systems that could improve the WAHBE System or Services. WAHBE and Contractor will pursue the Change Order process in Section 38, to make any agreed-upon changes to the System or Services.

DISPUTES AND REMEDIES

40. Dispute Resolution

- a. Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order or other provisional remedy to preserve the status quo or prevent irreparable harm, the parties agree to attempt in good faith to promptly resolve any dispute, controversy or claim arising out of or relating to this Contract, including but not limited to payment disputes, through negotiations between senior management of the parties.
- b. If the dispute has not been resolved by negotiations between senior management of the parties within 30 calendar days of initiating such negotiations or such other time period mutually agreed to by the parties in writing (email acceptable), either party may terminate the dispute resolution negotiations.
- c. Continued Performance. Contractor and WAHBE agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract, and the parties will have the right to exercise their rights and remedies during the dispute resolution process.
- d. In the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorney fees and costs.

41. Irrevocable Letter of Credit (ILC)

- a. Within 10 days of the effective date of the Contract and throughout the entire term award, Contractor shall provide an ILC in the amount of \$4,000,000, naming WAHBE as the beneficiary, to pay all or part of the stated amount of money, until the expiration date of the letter, upon presentation by WAHBE of a written demand therefor. The ILC shall secure the performance of Contractor, including without limitation performance of the Services in accordance with the Work Plan and providing Deliverables in accordance with the Call Center Specifications, and shall secure any damages, cost or expenses resulting from Contractor's default, breach or nonperformance hereunder or liability caused by Contractor. Failure to timely provide an ILC is a material breach of the contract.
- b. In the event of nonperformance, breach or default, the ILC shall become payable to WAHBE for any outstanding damage assessments made by WAHBE against Contractor. An amount up to the full amounts of the ILC may also be applied to Contractor's liability for any administrative costs and/or excess costs incurred by WAHBE in obtaining similar Call Center Services, Deliverables, other Services or Products to replace those terminated because of Contractor's default, breach or nonperformance. WAHBE may seek other remedies in addition to this stated

liability.

- c. The ILC shall be a written commitment by a federally insured financial institution acceptable to WAHBE and rated investment grade or higher. Contractor shall provide WAHBE a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC.
- d. The ILC shall be substantially in the form of [Schedule 4 Irrevocable Letter of Credit](#) and shall require presentation of no document other than a written demand signed by WAHBE for all or a portion of the proceeds.
- e. The ILC shall have an expiration date consistent with the term of the Contract.

42. Additional Rights and Remedies

a. Liquidated Damages

- i. The parties agree that any delay or failure by Contractor to timely perform its obligations by the dates in the Work Plan and in accordance with the Performance Standards will interfere with the proper and timely Implementation of the Call Center Services, to the loss and damage of WAHBE. Further, WAHBE will incur major costs to maintain the functions that would have otherwise been performed by Contractor. The parties understand and agree that [Schedule 2](#) describes the liquidated damages Contractor shall pay to WAHBE because of nonperformance hereunder by Contractor. Contractor understands and accepts that such liquidated damages are enforceable compensatory damages and not in the nature of a penalty, and that Contractor shall not claim at any time during and after the term that such damages are unenforceable.
- ii. The parties acknowledge and agree that Contractor could incur liquidated damages for more than one Critical Event if Contractor fails to timely perform its obligations by each date.
- iii. The assessment of liquidated damages shall not constitute a waiver or release of any other remedy WAHBE may have under this Contract for Contractor's breach of this Contract, including without limitation, WAHBE's right to terminate this Contract. WAHBE shall be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Contract; however, WAHBE will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages.
- iv. Amounts due WAHBE as liquidated damages may be deducted by WAHBE from any money payable to Contractor under this Contract, or WAHBE may bill Contractor as a separate item therefor and Contractor shall promptly make payments on such bills.

b. Withholding Payments

If Contractor fails to deliver Deliverables or perform any of its obligations under this Contract, WAHBE shall have the right to withhold any payments due hereunder. WAHBE may withhold any such payments without penalty or work stoppage by Contractor until such failure to perform is cured.

c. Reductions in Payments Due

Amounts due WAHBE by Contractor, including but not limited to liquidated or other damages, or claims for damages, may be deducted by WAHBE from any money payable to Contractor pursuant to this Contract.

d. Substitute

If, in the reasonable judgment of WAHBE, a default by Contractor is not so substantial as to require termination, reasonable efforts to induce Contractor to cure the default are unavailing, Contractor fails to cure such default within ten calendar days of receipt of written notice from WAHBE, and the default is capable of being cured by WAHBE or by another resource without unduly interfering with continued performance by Contractor, WAHBE may, without prejudice to any other remedy it may have, provide or procure the Services reasonably necessary to cure the default, in which event Contractor shall reimburse WAHBE for the reasonable cost of the Services in default. In addition, Contractor must cooperate with these resources in allowing access to the Services.

e. Performance Standards

If the Call Center Services fails to meet Performance Standards at any time while Contractor is providing Operations, Contractor shall modify, reconfigure, upgrade or replace network, Software and/or Equipment at no cost to WAHBE to provide Call Center Services that comply with such Performance Standards.

f. Suspension for Convenience

WAHBE shall have the right at any time to order the Services of Contractor fully or partially stopped for its own convenience for up to 15 consecutive calendar days. Contractor will receive notice of the reasons for such an order. The Schedule shall be delayed on a day-for-day basis to the extent WAHBE has issued a stop work order to Contractor and such stop work order is causing delays in completing Services in accordance with the Schedule. Contractor shall have the right to submit claims in accordance with the terms of [Section 58 Claims](#), because of stop work orders issued under this Section.

g. Right to Assurance

If WAHBE, in good faith, has reason to believe that Contractor does not intend to, or is unable to perform or has refused to perform or continue performing all material obligations under this Contract, WAHBE may demand in writing that Contractor give a written assurance of intent to perform. Failure by Contractor to provide written assurance within the number of days specified in the demand (in no event less than five business days) may, at WAHBE's option, be the basis for terminating this Contract under the terms and conditions or other rights and remedies available by law or provided by this Contract.

h. Right to Inspect

Contractor shall make the Deliverables and Services being provided by Contractor available for inspection and review at any reasonable time by representatives of WAHBE.

i. Guaranty

- i. Submission. Within 10 Days of the Effective Date, Contractor shall provide WAHBE with a Guaranty in the form of [Schedule 8](#), which is attached hereto and incorporated by this reference, executed by the ultimate parent company of its organization, _____ . Contractor shall take all actions necessary to ensure that, if Contractor is acquired by or merges with another party or there is otherwise a change in Control of Contractor to another party, including without limitation by asset or stock sale, merger, transfer of ownership, divestiture, spin-out, spin-off, or any other way, then the ultimate parent company of that other party shall execute the Guaranty within ten Days of such acquisition, merger or change in Control.
- ii. Failure to Comply. Failure to comply with the obligations in this Section by Contractor shall entitle WAHBE to exercise its available remedies at law, in equity, and under this Contract. In addition, any such acquisition, merger, divestiture, spin-out, spin-off, or other change in Control of Contractor shall be null and void under this Contract, and WAHBE shall have the right to rescission of this Contract.

j. Corrective Action Plans

- i. WAHBE Request for Corrective Action Plan. WAHBE may require Contractor to submit to WAHBE a Corrective Action Plan to correct or resolve a specific event or events causing the finding of a Defect or breach of the Contract.
- ii. Scope of the Corrective Action Plan. The Corrective Action Plan required by WAHBE under this Section must provide:
 - a) Contractor's detailed explanation of the cause or reasons for the cited Defect or breach;
 - b) Contractor's assessment or diagnosis of the cause of the cited Defect or breach; and
 - c) Contractor's specific proposal to cure or resolve the Defect or breach.
- iii. Submission and Approval of Corrective Action Plan. The Corrective Action Plan must be submitted within ten Business Days following the request for the Corrective Action Plan by WAHBE or another date acceptable to WAHBE. The Corrective Action Plan shall be subject to the written approval by WAHBE.
- iv. Contractor Responsibility for Performance. Notwithstanding Contractor's submission and WAHBE's acceptance of a Corrective Action Plan, Contractor remains responsible for achieving all Performance Standards and compliance with all other obligations under this Contract. Further, WAHBE's acceptance of a Corrective Action Plan under this Section shall not:
 - a) Excuse Contractor's prior performance;
 - b) Relieve Contractor of its duty to comply with performance standards; or
 - c) Prohibit WAHBE from assessing additional remedies or pursuing other appropriate remedies for continued substandard performance.

43. Limitations of Liability

- a. EXCEPT AS SET FORTH IN [SECTION 42.b](#), IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, STATUTE, TORT (SUCH AS NEGLIGENCE) OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT EXCEED AN AMOUNT EQUAL TO THE MAXIMUM AMOUNT, INCLUDING BUT NOT LIMITED TO ALL CHANGE ORDER AMOUNTS, PAID AND PAYABLE BY WAHBE TO CONTRACTOR FOR THE ENTIRE TERM OF THE CONTRACT.
- b. THE LIMITATIONS OF LIABILITY SET FORTH ABOVE IN SECTION 43.a SHALL NOT APPLY TO DAMAGES, LIABILITIES, EXPENSES, COSTS, ACTIONS, OR CLAIMS ARISING FROM CONTRACTOR'S INDEMNITY OBLIGATIONS.
- c. CONTRACTOR AND WAHBE SHALL NOT BE LIABLE FOR DAMAGES ARISING FROM CAUSES BEYOND THE REASONABLE CONTROL AND WITHOUT THE FAULT OR NEGLIGENCE OF EITHER CONTRACTOR OR WAHBE, RESPECTIVELY. SUCH CAUSES MAY INCLUDE, BUT ARE NOT RESTRICTED TO, ACTS OF GOD OR OF THE PUBLIC ENEMY, ACTS OF A GOVERNMENTAL BODY OTHER THAN WAHBE ACTING IN EITHER ITS SOVEREIGN OR CONTRACTUAL CAPACITY, WAR, EXPLOSIONS, FIRES, FLOODS, EARTHQUAKES, EPIDEMICS, QUARANTINE RESTRICTIONS, STRIKES, FREIGHT EMBARGOES, AND UNUSUALLY SEVERE WEATHER; BUT IN EVERY CASE THE DELAYS MUST BE BEYOND THE REASONABLE CONTROL AND WITHOUT FAULT OR NEGLIGENCE OF CONTRACTOR, WAHBE, OR THEIR RESPECTIVE SUBCONTRACTORS.
- d. IF DELAYS ARE CAUSED BY A SUBCONTRACTOR WITHOUT ITS FAULT OR NEGLIGENCE, CONTRACTOR SHALL NOT BE LIABLE FOR DAMAGES FOR SUCH DELAYS, UNLESS THE SERVICES TO BE PERFORMED WERE OBTAINABLE ON COMPARABLE TERMS FROM OTHER SOURCES IN SUFFICIENT TIME TO PERMIT CONTRACTOR TO MEET ITS REQUIRED PERFORMANCE SCHEDULE.
- e. NEITHER CONTRACTOR NOR WAHBE SHALL BE LIABLE FOR PERSONAL INJURY TO THE OTHER PARTY OR DAMAGE TO THE OTHER PARTY'S PROPERTY EXCEPT PERSONAL INJURY OR DAMAGE TO PROPERTY PROXIMATELY CAUSED BY SUCH PARTY'S RESPECTIVE FAULT, NEGLIGENCE OR WILLFUL MISCONDUCT.

44. Confidential Information and Proprietary Information

- a. Protection Obligations
 - i. Access and Protection. During the term of the Contract, Contractor and WAHBE will have access to and become acquainted with each party's Confidential Information and Proprietary Information. For Data and Confidential Information collected, used, or acquired in connection with this Contract, the parties shall comply with the following:
 - a) All federal and State laws and regulations, as currently enacted or revised, regarding Data and Confidential Information protection, security; and
 - b) All federal and State laws and regulations, as currently enacted or revised, regarding the use, disclosure, modification or loss of Data and Confidential Information.
 - ii. Except for disclosure pursuant to Section 44.a.vii, WAHBE and Contractor, and each of their officers, employees and agents, shall, subject to State laws and regulations and in accordance with this [Section 44](#), maintain (a) all Confidential Information of the other

party in strict confidence, and (b) all Proprietary Information at least to the same extent as it protects the confidentiality of its own proprietary information of like kind, but in no event with less than reasonable care.

- iii. Neither party will at any time use, publish, reproduce or disclose any Confidential Information or Proprietary Information, except to authorized employees, contractors and agents requiring such information under confidentiality requirements no less restrictive than this [Section 44](#), as authorized in writing by the other party, as otherwise specifically permitted herein, or to perform its obligations as authorized hereunder. Both parties shall take all steps necessary, including without limitation oral and written instructions to all staff to safeguard, in accordance with applicable federal and State law and regulation and this [Section 44](#), the other party's Confidential Information and Proprietary Information against unauthorized disclosure, reproduction, publication or use, and to satisfy their obligations under this Contract.
- iv. To safeguard the confidentiality of all confidential information and in addition to the requirements contained in this [Section 44](#), Contractor must:
 - a) Ensure that the Contractor's Staff and the Subcontractors' staff use Confidential Information and Proprietary Information solely for the purposes of accomplishing the Services set forth in this Contract.
 - b) Limit access to Confidential Information and Proprietary Information to Contractor's Staff and its Subcontractors' staff requiring access for performance of their assigned duties.
 - c) Require that Contractor's Staff and its Subcontractor's staff having access to Confidential Information and Proprietary Information sign a Statement of Confidentiality and Non-Disclosure Agreement consistent with [Schedule 5](#). Confidential Information shall not be released to the Contractor's Staff person or Subcontractors' staff person until the following conditions have been met:
 - 1) WAHBE approves the Contractor's staff person, or Subcontractor's staff person, to work on this Contract; and
 - 2) WAHBE must receive the signed original Statement of Confidentiality and Non-Disclosure Agreement, signed by the Staff person, from the Contractor or Subcontractor.
 - d) Notify its Staff person(s) and ensure its Subcontractors notify the Subcontractors' staff person(s) of the requirements of this [Section 44](#).
 - e) Ensure Confidential Information or Proprietary Information is not used, released, disclosed, published, modified, transferred, sold, or otherwise made known to unauthorized persons without the prior written consent of (1) the individual named; or (2) if the named individual is a child, the written consent of their parent or guardian; or (3) or as provided by law.
 - f) Ensure that Confidential Information and Proprietary Information is protected from loss and from unauthorized physical or electronic access.

- g) When Confidential Information is stored on computers, require individual user IDs and passwords.
- h) Destroy all Confidential Information and Proprietary Information so that it cannot be accessed by unauthorized individuals and cannot be recovered, when the confidential information is no longer required by [Chapter 40.14 RCW](#) or [Section 18](#), whichever is longer. Unless the Washington State Office of the Chief Information Officer IT Standards require a different method for the destruction of Confidential Information, Confidential Information required to be destroyed under this Section 44 must be destroyed as follows:
 - 1) Paper documents with sensitive or confidential data shall be destroyed by shredding and recycling through a Contracted firm provided the Contract with the recycler assures that the confidentiality of data will be protected.
 - 2) For paper documents containing Confidential Information requiring special handling (e.g., protected health information), the documents must be destroyed on-site by a method that renders the data unreadable, crosscut shredding, pulping, or incineration.
 - 3) If Confidential Information has been contained on optical discs (e.g., CDs or DVDs), the Contractor shall destroy by incineration, shredding, or cutting/breaking into small pieces.
 - 4) If Confidential Information has been stored on magnetic tape(s), the Contractor shall destroy the Confidential Information by degaussing, incinerating or crosscut shredding.
 - 5) If Confidential Information has been stored on server or workstation data hard drives or similar media, the Contractor shall destroy the Confidential Information by using a “wipe” utility which will overwrite the Confidential Information at least three times using either random or single character data, degaussing sufficiently to ensure that the Confidential Information cannot be reconstructed, or physically destroying disk(s).
 - 6) If Confidential Information has been stored on removable media (e.g., floppies, USB flash drives, portable hard disks, or similar disks), the data recipient shall destroy the Confidential Information by using a “wipe” utility which will overwrite the data or Confidential Information at least three times using either random or single character data, degaussing sufficiently to ensure that the Confidential Information cannot be reconstructed, or physically destroying disk(s).
- v. Within 15 Days after the completion of the requirements contained in this Section, Contractor shall complete and deliver to WAHBE a signed certification that it has disposed of Confidential Information as described above.
- vi. Paper records must be protected by storing the records in a secure area which is only accessible to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.

- vii. Contractor shall immediately notify WAHBE after becoming aware of any potential, suspected, attempted, or actual breaches of security including, but not limited to, unauthorized access use or disclosure, and compromised data, or compromised login IDs or passwords. Contractor shall take all necessary steps to mitigate the harmful effects of such breach of security. Contractor agrees to defend, protect, indemnify and hold harmless WAHBE for any damages related to a breach of security by its officers, directors, employees, Subcontractors or agents. Immediately after becoming aware of a suspected, attempted, or actual breach, Contractor must contact the WAHBE Call Center Manager.
 - viii. Public Record. Notwithstanding the above, WAHBE is subject to [Chapter 42.56 RCW](#), and this Contract shall be a public record as defined in [Chapter 42.56 RCW](#). Any specific information that is claimed by Contractor to be Proprietary Information or Confidential Information must be clearly identified as such by Contractor. To the extent consistent with [Chapter 42.56 RCW](#), WAHBE will maintain the confidentiality of all such information marked Proprietary Information or Confidential Information. If a request is made to view Contractor's Proprietary Information or Confidential Information, WAHBE will notify Contractor of the request and of the date that any such records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, WAHBE will release the identified requested information on the date specified.
 - ix. Security Requirements. Each party, and its officers, employees, subcontractors and agents shall at all times comply with all security standards, practices, and procedures which are equal to or exceed those of WAHBE (which security standards, practices, and procedures of WAHBE shall have been provided to Contractor in writing on request), including but not limited to the Washington State Office of the Chief Information Officer IT Standards, with respect to information and materials which come into each party's possession and to which such party gains access under this Contract. Such information and materials include without limitation all Proprietary Information and Confidential Information. The parties agree to implement physical, electronic, and managerial policies, procedures, and safeguards to prevent unauthorized access, use, or disclosure of data and confidential information.
- b. Audit
- WAHBE reserves the right to audit or investigate Contractor's use of WAHBE Confidential Information and Proprietary Information collected, used, or acquired by Contractor under this Contract.
- c. Return
- Subject to record retention laws, each party shall promptly return to the disclosing party, on termination or expiration, all the disclosing party's Confidential Information and Proprietary Information, including copies thereof.
- d. Unauthorized Disclosures or Uses
- i. Contractor shall immediately report to WAHBE in accordance with this Contract all unauthorized disclosures or uses of WAHBE's Confidential Information or Proprietary

Information of which it or its Staff is aware or has knowledge. Contractor acknowledges that any publication or disclosure of WAHBE's Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to WAHBE, and other parties.

- ii. If Contractor should publish or disclose such Confidential Information or Proprietary Information to others without authorization or otherwise breach Section 44, in addition to all other rights and remedies available to WAHBE, WAHBE may elect to do any of the following without requiring a cure period: (1) terminate the Contract; (2) require that Contractor return all Confidential Information and Proprietary Information to WAHBE that was previously provided to the Contractor by WAHBE or the State of Washington; (3) require that Contractor destroy all Confidential Information or Proprietary Information so it cannot be accessed by unauthorized individuals and cannot be recovered; (4) suspend Contractor's on-line access to accounts and other information; and (5) immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity. Contractor shall also assume complete responsibility to notify parties affected by such publication or disclosure, including but not limited to providers and Users, and shall be liable for all associated costs incurred by WAHBE or the State in responding to or recovering from the unauthorized disclosures or uses of WAHBE's Confidential Information or Proprietary Information.
- iii. WAHBE will immediately report to Contractor all unauthorized disclosures or uses of Contractor's Confidential Information or Proprietary Information of which WAHBE is aware or has knowledge. WAHBE acknowledges that any publication or disclosure of Contractor's Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to Contractor.
- iv. If WAHBE should publish or disclose such Confidential Information or Proprietary Information to others without authorization, Contractor shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.

e. Nondisclosure of Other WAHBE Information

The use or disclosure by Contractor of any WAHBE information not necessary for, nor directly connected with, the performance of Contractor's responsibility with respect to Services is prohibited, except upon the express written consent of WAHBE.

f. Exceptions

The following information shall not be considered Confidential Information for the purposes of this Contract: information previously known when received from the other party; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach hereof; information which is developed by one party independently of any disclosures made by the other party of such information; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

g. Access to Data

Contractor shall provide access to Data generated under this Contract to WAHBE, the Joint

Legislative Audit and Review Committee, and the State Auditor at no additional cost. This obligation includes, but is not limited to, access to all information that supports the findings, conclusions and recommendations of Contractor's reports, including computer models and methodology for those models.

CONTRACT TERMINATION

45. Termination for Contractor's Breach

- a. If Contractor breaches this Contract, then WAHBE may, in addition to its rights under [Section 42.j](#) give Contractor Notice of such breach. Contractor will correct the breach within 30 calendar days of receipt of such Notice. If the breach is not corrected within this 30 calendar-day time-period, this Contract may be terminated immediately, in whole or in part, by Notice from WAHBE to Contractor. The option to terminate shall be at the sole discretion of WAHBE.
- b. In addition, Contractor's failure to meet any three Performance Standards for three consecutive months or two Performance Standards for six consecutive months shall give WAHBE the right to immediately terminate the Contract.

46. Termination for Rejection of Services or Deliverables

If Contractor is unable to correct Deficiencies in a Service or Deliverable, as described in [Section 24](#), WAHBE shall have the right to immediately terminate this Contract, in whole or in part, without penalty or liability to WAHBE, with such a termination being deemed a termination due to the default of Contractor hereunder, and return the Deliverable to Contractor and other Deliverables impacted or affected by the returned Deliverable. If WAHBE terminates this Contract under this Section, Contractor shall, within 20 calendar days, refund to WAHBE all payments made to Contractor for the returned Deliverables and Services rendered therefor and all previous Deliverables that are returned with the rejected Deliverable.

47. Termination for Conflict of Interest

- a. WAHBE may terminate this Contract under this Section 47 by Notice to Contractor if WAHBE determines, after due notice and examination, that Contractor or any Subcontractor has violated any laws regarding ethics in public acquisitions and procurement and performance of contracts.
- b. In the event this Contract is terminated as provided above, WAHBE shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor. The rights and remedies of WAHBE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

48. Termination for WAHBE's Nonpayment

Except to the extent WAHBE is exercising its remedies and subject to the application of this Section 48, if WAHBE fails to pay Contractor undisputed, material Purchase Prices and Charges when due under the Contract and fails to make such payments within 90 calendar days of receipt of written notice from Contractor of the failure to make such payments, Contractor may, by giving written notice of termination to WAHBE, terminate this Contract as of a date specified in the notice of termination. Contractor shall not have the right to terminate the Contract for WAHBE's breach of the Contract except as provided in this Section.

49. Termination Remedies

In the event of termination of this Contract by WAHBE under Sections 45–47, WAHBE shall, in addition to its other available remedies, have the right to procure the Services and Deliverables that are the subject of this Contract on the open market and Contractor shall, subject to [Section 43](#) be liable for all damages, including, but not limited to: (i) the cost difference between the original Contract price for the Software and/or Services and the replacement costs of such Software and/or Services acquired from another vendor; and (ii) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs.

50. Termination for Convenience

- a. When, at the sole discretion of WAHBE, it is in the best interest of WAHBE, WAHBE may terminate this Contract, in whole or in part for WAHBE's convenience, by 90 calendar days' Notice to Contractor.
- b. During this 30-day period, Contractor shall wind down and cease its Services as quickly and efficiently as reasonably possible, without performing unnecessary Services or activities and by minimizing negative effects on WAHBE from such winding down and cessation of Services. If this Contract is so terminated, WAHBE shall be liable only for payment in accordance with the terms of this Contract for Services satisfactorily rendered prior to the effective date of termination.
- c. Invocation of [Section 51](#) *Termination for Withdrawal of Authority* or [Section 52](#) *Termination or Reduction for Nonallocation or Reduction of Funds* shall be deemed a Termination for Convenience but will not require such 90 calendar day's written notice.
- d. If it is determined by WAHBE for any reason the failure to perform is not within the Contractor's control, fault, or negligence, the termination by WAHBE shall be deemed to be a termination for convenience under [Section 50](#), *Termination for Convenience*.

51. Termination for Withdrawal of Authority

If the authority of WAHBE to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, WAHBE may terminate this Contract under [Section 50](#), in whole or in part. This Section shall not be construed to permit WAHBE to terminate this Contract to acquire similar Services from a third party.

52. Termination or Reduction for Nonallocation or Reduction of Funds

- a. If funds are not allocated to continue this Contract in any future period, WAHBE may terminate this Contract under [Section 50](#). WAHBE will not be obligated to pay any further Purchase Prices or Charges for Services for future periods.
- b. The parties acknowledge and agree that this Project is dependent upon the availability of Federal funding. If funding, to make payments in accordance with the provisions of this Contract, is not forthcoming from the Federal or State government for the Project, or is not allocated or allotted to WAHBE for this Contract for periodic payment in the current or any future fiscal period, then the obligations of WAHBE to make payments after WAHBE's receipt of notice of non-funding will cease and terminate, but WAHBE shall make payments for Services, Deliverables and Contractor's costs as provided in Section C, subject to WAHBE's availability of funding therefor. WAHBE agrees to notify Contractor of such non-allocation at

the earliest possible time.

- c. If funding to make payments in accordance with the provisions of this Contract is delayed or is reduced from the Federal or State government or is not allocated or allotted to WAHBE for this Contract in the current or any future fiscal period, then the obligations of WAHBE to make payments will be delayed or be reduced accordingly or WAHBE shall have the right to terminate the Contract as provided in [Section 50 – Termination for Convenience](#). If such funding is reduced, WAHBE in its sole discretion shall determine which aspects of the Project shall proceed and which Services shall be performed, with Contractor's costs related to such Services and associated Deliverables determined in accordance with those in the Contractor's financial proposal. In this situation, WAHBE shall pay Contractor for Services and Deliverables in accordance with the terms of [Section 52. d](#). Any obligation to pay by WAHBE will not extend beyond the end of WAHBE's then-current funding period.
- d. WAHBE through its agents and employees will exercise all reasonable efforts to obtain the necessary funding to pay Contractor in accordance with this Contract and all its terms. Contractor expressly agrees, however, that no penalty or damages shall be applied to, or shall accrue to, WAHBE or to any other agency or office of the State if the necessary funding to pay under the terms of this Contract is not available, not allocated, not allotted, delayed or reduced.

53. Termination and Expiration Procedure

- a. Upon termination or expiration of this Contract, as applicable, WAHBE, in addition to any other rights provided in this Contract, may require Contractor to deliver to WAHBE any Property, Deliverables and Data, for such part of this Contract as has been terminated.
- b. After receipt of a Notice of termination or expiration, as applicable and except as otherwise directed by WAHBE, Contractor shall:
 - i. Wind down and cease its Services as quickly and efficiently as reasonably possible, without performing unnecessary Services or activities and by minimizing negative effects on WAHBE from such winding down and cease Services on the date, and to the extent specified, in the Notice;
 - ii. Place no further orders or subcontracts for materials, Services, or facilities except as may be necessary for completion of such portion of the work under this Contract that is not terminated;
 - iii. As soon as practicable, but in no event longer than 30 calendar days after termination or expiration, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of WAHBE to the extent required, which approval or ratification shall be final for this Section;
 - iv. Continue performance of such part of this Contract as shall not have been terminated by WAHBE;
 - v. Take such action as may be necessary, or as the WAHBE Director of Operations or designee may direct, for the protection and preservation of any Property related to this Contract which is in the possession of Contractor and in which WAHBE has an interest;

- vi. Transfer title to WAHBE and deliver in the manner, at the times, and to the extent directed by the WAHBE Director of Operations or designee, any Property that is required to be furnished to WAHBE and that has been accepted or requested by WAHBE; and
 - vii. Provide written certification to WAHBE that Contractor has surrendered to WAHBE all such property.
- c. In case of a termination for convenience, WAHBE will pay to Contractor the agreed upon Purchase Price, if separately stated, for Services and associated Deliverables for which Acceptance has been given by WAHBE, amounts for Services provided prior to the date of termination for which no separate price is stated and which are not associated with or related to a specific Deliverable for which Acceptance has been given, and amounts for Services and associated Deliverables which are in development but which have not received Acceptance. The amounts for such Services and Deliverables in development but not accepted will be costs actually and reasonably incurred by Contractor therefor, as based on the rate in [Schedule 1](#), but such costs shall be no greater than the final Purchase Prices for each Deliverable if it had received Acceptance.
- d. Upon expiration of the Contract or Contractor's receipt of written notice of termination of the Contract by WAHBE, Contractor will provide any turnover assistance Services necessary to enable WAHBE or its designee to effectively close out the Contract and move the work to another vendor or to perform the work by itself. Within ten calendar days of receipt of the written notice of termination or of expiration and on expiration or termination, as applicable, Contractor shall provide, in machine readable form, an up-to-date, usable copy of the Data in a format as required by WAHBE and a copy of all documentation needed by WAHBE to utilize the Data. Contractor will ensure that all consents or approvals to allow Contractor and Subcontractors to provide the assistance required following termination or expiration have been obtained, on a contingent basis, in advance and will be provided by the applicable third parties at no cost or delay to WAHBE.
- e. Notwithstanding anything contained herein to the contrary, in the event this Contract is terminated by WAHBE under Sections 45-47 or 50-52, WAHBE shall have the option to continue the use and operation of the System and Services for a period of not more than 365 days after the effective date of termination or expiration of this Contract in order to identify and complete the transition to alternative software products and services.
- f. If WAHBE terminates the Project or this Contract under Sections 45-47 or 50-52, WAHBE shall receive the Services at no charge. Otherwise, WAHBE shall pay for the Services at the then-existing rates.

GENERAL PROVISIONS

54. Anti-Trust Violations

Contractor and WAHBE recognize that overcharges resulting from antitrust violations are in actual economic practice usually borne by WAHBE. Therefore, Contractor hereby assigns to WAHBE any claims for such overcharges as to goods and services purchased in connection with this Contract, except as to overcharges not passed on to WAHBE resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Purchase Prices and Charges

under this Contract.

55. Assignment

Contractor may not assign or transfer this Contract or any of its rights hereunder, or delegate any of its duties hereunder, or change the Control of the Contract without the prior written consent of WAHBE's Contracting Officer, provided that any permitted assignment shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to WAHBE that may arise from any breach of the provisions of this Contract or warranties made herein including but not limited to, rights of setoff. WAHBE may assign this Contract to the WAHBE Board established by chapter [43.71 RCW](#), or any public agency, commission, board, or the like, within the political boundaries of the State of Washington. Any attempted assignment, transfer or delegation in contravention of this Section of the Contract shall be null and void. In addition, WAHBE shall have the right to exercise any of its remedies in the Contract, at law and in equity for any attempted assignment, transfer, change in Control or delegation in contravention of this Section, including but not limited to recovery of its damages resulting therefrom, and termination or rescission of the Contract.

56. Authority

Neither party shall have authority to bind, obligate or commit the other party by any representation or promise without the prior written approval of the other party.

57. Binding Effect

Each party agrees that the Contract binds it and each of its employees, agents, independent contractors, and representatives.

58. Claims

Contractor must submit claims against WAHBE within the earlier of six months of the date upon which Contractor knew of the existence of the claim or six months from expiration or termination of the Contract. No claims shall be allowed unless Notice of such claim has been given within this time period. Such claims must be submitted to the WAHBE Call Center Manager or his or her designee by Contractor in the form and with the certification prescribed by the WAHBE Call Center Manager or his or her designee. Upon failure of Contractor to submit its claim within the time allowed, all rights to seek amounts due because of such claims shall be waived and forever barred. Submission of such claims against WAHBE shall be, except as provided in [Section 48](#) Contractor's sole and exclusive remedy if WAHBE breaches this Contract.

59. Compliance With Civil Rights Laws

During the performance of this Contract, Contractor shall comply with all federal and applicable State nondiscrimination laws, including but not limited to: [Title VII of the Civil Rights Act, 42 U.S.C. § 12101](#), et seq.; the Americans with Disabilities Act (ADA); and [Title 49.60 RCW](#), Washington Law Against Discrimination. In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part by WAHBE under [Section 45 Termination for Contractor's Breach](#), and Contractor may be declared ineligible for further Contracts with WAHBE.

60. Compliance with WAHBE Standards

Contractor will comply with all appropriate WAHBE operations and process standards and policies (e.g., ethics, Internet/email usage, security, harassment). Failure to comply may result in Contract

termination. WAHBE will make an electronic copy of all such policies available to Contractor.

61. Counterparts

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

62. Covenant Against Contingent Fees

- a. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any contract or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or a bona fide established commercial or selling agency of Contractor.
- b. In the event of breach of this Section by Contractor, WAHBE shall have the right to either annul this Contract without liability to WAHBE, or, in WAHBE's discretion, deduct from payments due to Contractor, or otherwise recover from Contractor, the full amount of such commission, percentage, brokerage, or contingent fee.

63. Cooperation of Parties

The parties agree to fully cooperate with each other in connection with the performance of their respective obligations and covenants under this Contract.

64. Debarment and Suspension

WAHBE complies with [48 CFR 9.4](#) – Debarment, Suspension, and Ineligibility. Contractor shall ensure any Subcontractors providing services are not listed on General Services Administration (GSA) System for Award Management Exclusions list at any point during the term of this Contract. Contractor must notify WAHBE immediately if Contractor or any Subcontractors become debarred.

65. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in [Section 31. g. Written Commitments](#), understandings, agreements, representations, or warranties not contained in this Contract or a written Change Order or amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Purchase Prices, Charges, quality, or Specifications of this Contract will be effective without the written consent of both parties.

66. Governing Law

This Contract shall be governed in all respects by the law and statutes of the State of Washington, without reference to conflict of law principles. The exclusive jurisdiction and venue of any action hereunder shall be in the State courts of Thurston County, Washington. Contractor accepts the personal jurisdiction of such courts.

67. Independent Status of Contractor

The parties hereto, in the performance of this Contract, will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter [41.06 RCW](#) or

[Title 51 RCW.](#)

68. Licensing Standards

Contractor shall comply with all applicable WAHBE, State, and federal licensing requirements and standards necessary in the performance of this Contract.

69. Lobbying Activities

Contractor shall comply with all certification and disclosure requirements prescribed by [Section 319, Public Law 101-121 \(31 U.S.C. § 1352\)](#) and any implementing regulations.

70. Modifications and Amendments

No modification, amendment, alteration, addition or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by an authorized representative of Contractor and WAHBE.

71. Nonwaiver

Except as otherwise specifically provided herein, any failure or delay by either party to exercise or partially exercise any right, power or privilege under the Contract shall not be deemed a waiver of any such right, power, or privilege under the Contract. Any waivers granted by WAHBE for breaches hereof shall not indicate a course of dealing of excusing other or subsequent breaches. Contractor agrees that WAHBE's pursuit or non-pursuit of a remedy under this Contract for Contractor's breach of its obligations will neither constitute a waiver of any such remedies or any other remedy that WAHBE may have at law or equity for any other occurrence of the same or similar breach, nor estop WAHBE from pursuing such remedy.

72. Notices

- a. Any notice or other communication required to be given under this Contract shall be effective if it is in writing, properly addressed, and either delivered in person, by a recognized courier service, or deposited with the United States Postal Service as certified mail, postage prepaid, return receipt requested to the parties provided in [Section 9](#) and the following parties:

Notices to Contractor:	Notices to WAHBE:
Name & Title	General Counsel
Address	810 Jefferson Street SE
City, State Zip	Olympia, WA 98501-1417
Phone:	Phone: (360) 688-7785
Name & Title	Contracts Office
Address	810 Jefferson Street SE
City, State Zip	Olympia, WA 98501-1417
Phone:	Phone: (360) 688-1562

- b. In the event the individual named by a party changes or no longer serves in the capacity provided, the party making such change will provide prompt written Notice of change.
- c. Notices shall be effective upon receipt or six Business Days after mailing, whichever is earlier.

- d. The Notice address as provided herein may be changed by Notice given as provided above.

73. Publicity

- a. The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's Services by WAHBE or the State and shall not be so construed by Contractor in any advertising or publicity materials.
- b. Contractor shall not publish or otherwise distribute for marketing or publicity purposes any of the following materials without the prior written consent of the WAHBE Director of Operations or designee: all advertising, sales promotion, informational pamphlets, notices, press releases, research reports, or similar publicity material concerning this Call Center Project or relating to this Contract wherein WAHBE or the State is mentioned or language used from which the connection of WAHBE or the State therewith may, in WAHBE's judgment, be inferred or implied.

74. Remedies

Except for remedies specifically designated as exclusive, no remedy conferred by any of the specific provisions of the Contract is intended to be exclusive of any other remedy, and each remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

75. RFP Mandatory Requirements

The RFP mandatory requirements are essential substantive terms of this Contract. The Services provided under this Contract and the Products of such Services shall meet or exceed all the mandatory requirements of the RFP.

76. Section Headings, Incorporated Documents and Order of Precedence

- a. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- b. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein:
 - i. Change Orders
 - ii. The Work Plan
 - iii. [Exhibit 1](#) Federal Compliance, Certifications, and Assurances
 - iv. [Schedule 1](#) Services/Deliverables, Payments and Key Staff;
 - v. [Schedule 2](#) Key Performance Indicators and Liquidated Damages;
 - vi. [Schedule 3](#) Change Request Form;
 - vii. [Schedule 4](#) Irrevocable Letter of Credit;
 - viii. [Schedule 5](#) Agreement on Non-Disclosure of Information;
 - ix. [Schedule 7](#) WAHBE Data Security and Reporting Requirements;
 - x. [Schedule 8](#) Guaranty

- xii. [Schedule 6](#) Revisions to the Proposal;
 - xiii. The Proposal;
 - xiv. All Contractor publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to WAHBE and used to result in or affect this procurement.
- c. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:
- i. Applicable federal and state statutes, laws, and regulations;
 - ii. Sections in the body of this Contract;
 - iii. Change Orders
 - iv. [Exhibit 1](#) Federal Compliance, Certifications, and Assurances
 - v. Schedules to the Contract in descending order listed above;
 - vi. Exhibit A–RFP;
 - vii. The Work Plan
 - viii. Exhibit B–Proposal;
 - ix. The terms and conditions contained on WAHBE’s purchase documents, if used; and
 - x. All Contractor manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to WAHBE and used to result in or affect this procurement.

77. Severability

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

78. Sovereign Immunity

The parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver by WAHBE of any immunities from suit or from liability that WAHBE may have by operation of law.

79. Subpoena

If a subpoena or other legal process commenced by a third party in any way concerning the Products or Services provided pursuant to this Contract is served upon Contractor or WAHBE, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such

subpoena or other legal process. Contractor and WAHBE further agree to cooperate with the other party in any lawful effort by the such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for WAHBE.

80. Survival

All Services performed, and Deliverables delivered pursuant to the authority of this Contract are subject to all terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of Section 7.d *Overpayments to Contractor*, Section 17 *Accounting Requirements*, Section 18 *Records Retention and Access Requirements*, Section 26 *WAHBE and Federal Government*, Section f. *OSHA/WISHA*, Section 33 *Intellectual Property Indemnification*, Section 34 *General Indemnity & Hold Harmless Provision*, Section 35 *Insurance*, Section 40 *Dispute Resolution*, Section 41 *Irrevocable Letter of Credit*, Section 42 *Additional Rights and Remedies*, Section 43 *Limitation of Liability*, Section 44 *Confidential Information and Proprietary Information*, and Sections 45–82 (*Contract Termination through Waiver*) shall survive the termination of this Contract.

81. UCC Applicability

Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by the Uniform Commercial Code as set forth in [Title 62A RCW](#). To the extent this Contract entails delivery or performance of Services, such Services shall be deemed “goods” within the meaning of the Uniform Commercial Code, except when to do so would result in an absurdity. In the event of any clear inconsistency or contradiction between this Contract and the Uniform Commercial Code, the terms and conditions of this Contract shall take precedence and shall prevail unless otherwise provided by law.

82. Waiver

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified or deleted except by a written instrument signed by the parties hereto.

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each item and have thus set their hands hereunto.

Approved

Washington Health Benefit Exchange

Approved

[Contractor Name]

Signature

Signature

Print or Type Name
Date

Print or Type Name
Date

Title

Title

Approved as to Form

State of Washington

Attorney General's Office

Signature

Print or Type Name
Date

Title

EXHIBIT 1 – FEDERAL COMPLIANCE, CERTIFICATIONS, AND ASSURANCES

In the event federal funds are included in this Contract, the following sections apply: I. Federal Compliance and II. Standard Federal Assurances and Certifications. In the instance of inclusion of federal funds, the Contractor may be designated as a sub-recipient and the effective date of the amendment shall also be the date at which these requirements go into effect.

I. FEDERAL COMPLIANCE – The use of federal funds requires additional compliance and control mechanisms to be in place. The following represents the majority of compliance elements that may apply to any federal funds provided under this Contract. For clarification regarding any of these elements or details specific to the federal funds in this Contract, contact:

Chief Financial Officer
Washington Health Benefit Exchange (WAHBE)
810 Jefferson Street SE
Olympia, WA 98501-1417
Phone: (360) 688-7720
Email: Contracts@wahbexchange.org

1. Examples of items requiring WAHBE prior written approval include, but are not limited to, the following:
 - a) Deviations from the budget and Project plan.
 - b) Change in scope or objective of the Contract.
 - c) Change in a key person specified in the Contract.
 - d) The absence for more than three (3) months or a twenty-five percent (25%) reduction in time by the Contract Manager or Department Director.
 - e) Need for additional funding.
 - f) Inclusion of costs that require prior approvals as outlined in the appropriate cost principles.
 - g) Any changes in budget line item(s) of greater than twenty percent (20%) of the total budget in this Contract.
2. No changes are to be implemented by the Sub-recipient/Contractor until a written notice of approval is received from WAHBE.
3. Condition for Receipt of WAHBE Funds: Funds provided by WAHBE to the Sub-recipient/Contractor under this Contract may not be used by the Sub-recipient/Contractor as a match or cost-sharing provision to secure other federal monies.
4. Citizenship/Alien Verification/Determination: The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (PL 104-193) states that federal public benefits should be made available only to U.S. citizens and qualified aliens. Entities that offer a service defined as a “federal public benefit” shall make a citizenship/qualified alien determination/verification of applicants at the time of application as part of the eligibility criteria. Non-U.S. citizens and unqualified aliens are not eligible to receive the services. PL 104-193 also includes specific reporting requirements.

5. Federal Compliance: The Sub-recipient/Contractor shall comply with all applicable State and Federal statutes, laws, rules, and regulations in the performance of this Contract, whether included specifically in this Contract or not.
6. Civil Rights and Non-Discrimination Obligations: During the performance of this Contract, the Contractor shall comply with all current and future federal statutes relating to nondiscrimination. These include but are not limited to: Title VI of the Civil Rights Act of 1964 (PL 88-352), Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1683 and 1685-1686), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107), the Drug Abuse Office and Treatment Act of 1972 (PL 92-255), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), and the Americans with Disability Act (42 U.S.C., Section 12101 et seq.) <http://www.hhs.gov/ocr/civilrights>.

II. STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES – Following are the Assurances, Certifications, and Special Conditions that apply to all federally funded (in whole or in part) Contracts administered by WAHBE.

1. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

The undersigned (authorized official signing for the contracting organization) certifies to the best of his or her knowledge and belief, that the Contractor, defined as the primary participant and the principal(s), defined as an officer, director or owner of the organization in accordance with 45 CFR Part 76, and its principles:

- a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;
- b) have not within a three (3) year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or Contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification

or destruction of records, making false statements, or receiving stolen property;

- c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d) have not within a 3-year period preceding this Contract had one or more public transactions (Federal, State, or local) terminated for cause or default.

Should the Contractor not be able to provide this certification, an explanation as to why should be placed after the assurances page in the Contract.

The Contractor agrees by signing this Contract that it will include, without modification, the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions" in all lower tier covered transactions (i.e., transactions with sub-grantees and/or Contractors) and in all solicitations for lower tier covered transactions in accordance with 45 CFR Part 76.

2. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The undersigned (authorized official signing for the contracting organization) certifies that the Contractor will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by:

- a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee’s workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- b) Establishing an ongoing drug-free awareness program to inform employees about
 - (1) The dangers of drug abuse in the workplace;
 - (2) The Contractor’s policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c) Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (a) above;
- d) Notifying the employee in the statement required by paragraph (a), above, that, as a condition of employment under the Contract, the employee will —
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

- e) Notifying WAHBE in writing within ten (10) calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees shall provide notice, including position title, to the Contract Manager whose Contract activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- f) Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (d) (2), with respect to any employee who is so convicted —
 - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

For purposes of paragraph (e) regarding agency notification of criminal drug convictions, WAHBE has designated the following central point for receipt of such notices:

General Counsel
WAHBE
810 Jefferson Street SE
Olympia, WA 98501-1417

3. CERTIFICATION REGARDING LOBBYING

Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement shall disclose lobbying undertaken with non-Federal (non-appropriated) funds. These requirements apply to grants and cooperative agreements EXCEEDING \$100,000 in total costs (45 CFR Part 93).

The undersigned (authorized official signing for the contracting organization) certifies, to the best of his or her knowledge and belief, that:

a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

c. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a

Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)

d. The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, sub-subcontracts, and contracts under grants, loans and cooperative agreements) and that all Sub-recipient/Contractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

4. CERTIFICATION REGARDING PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA)

The undersigned (authorized official signing for the contracting organization) certifies that the statements herein are true, complete, and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious, or fraudulent statements or claims may subject him or her to criminal, civil, or administrative penalties. The undersigned agrees that the contracting organization will comply with the Public Health Service terms and conditions of award if a Contract is awarded.

5. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children’s services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children’s services provided in private residence, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole source of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000.00 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing the certification, the undersigned certifies that the contracting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The contracting organization agrees that it will require that the language of this certification be included in any subcontracts which contain provisions for children’s services and that all Sub-recipient/Contractors shall certify accordingly.

6. CERTIFICATION REGARDING CLEAN AIR ACT

By signing the certification, the undersigned certifies that the contracting organization will comply with all requirements, applicable standards, orders, and regulations contained in the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387). The undersigned also acknowledges and that any violations after Contract award shall be reported to WAHBE and the Regional Office of the Environmental Protection Agency (EPA).

CONTRACTOR SIGNATURE REQUIRED

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
Please also print or type name:	
ORGANIZATION NAME: (if applicable)	DATE

Schedule 1: Services/Deliverables Payments And Key Staff

a. Deliverables and Purchase Prices – SAMPLE

I. Program Planning (Acceptance by WAHBE of the following):				
Deliverable Name	% of Total Purchase Price	Critical Event (Y)	Scheduled Delivery Date	Purchase Price
Letter of Credit				
Kickoff meeting agenda and meeting minutes				
<p>Program Management Plan (PMP) including, but not limited to, the following components:</p> <ol style="list-style-type: none"> 1. Initial Program Schedule of deliverables, activities, and milestones 2. Organization chart with roles and responsibilities 3. Key program staff directory 4. Risk assessment and mitigation approach 5. Training Plan 6. HR Plan 7. Program communications management approach 8. Monthly Progress Report (format) 		Y		
Program Planning Total				

II. System Design (Acceptance by WAHBE of the following):				
Deliverable Name	% of Total Purchase Price	Critical Event (Y)	Scheduled Delivery Date	Purchase Price
Program Management Implementation Office Location				
Quality Assurance Plan				
Call Center Technology Design		Y		
CRM Design Documentation				
Data Security Plan		Y		
Disaster Recovery Plan		Y		
System Network Design		Y		
System to System Interface Control		Y		
System Design Total				

III. Facilities Established (Acceptance by WAHBE of the following):				
Deliverable Name	% of Total Purchase Price	Critical Event (Y)	Scheduled Delivery Date	Purchase Price
Facilities Plan				
Acquisition of Certificate of Occupancy for the following: Proposer's Program Management Office(s)				
Facilities Established Total				

IV. Operations Preparation Complete (Acceptance by WAHBE of the following):				
Deliverable Name	% of Total Purchase Price	Critical Event (Y)	Scheduled Delivery Date	Purchase Price
Updated Business Rules		Y		
CSC Requirements Tractability Matrix Document		Y		
Training Completed Training Plan Training materials		Y		
Security Management Plan		Y		
Standard Operating Procedures		Y		
CSR Scripts		Y		
IVR Scripts		Y		
Standard Customer Correspondence		Y		
Reports (Opening Ready)		Y		
Operations Preparation Total				

V. Start-up Complete (Acceptance by WAHBE of the following):				
Deliverable Name	% of Total Purchase Price	Critical Event (Y)	Scheduled Delivery Date	Purchase Price
Test Plan fully executed Integration and Commissioning Testing Procedures Acceptance Testing Procedures Commissioning Test Report		Y		

PCI Certification/Attestation		Y		
Deficiencies Log				
Acceptance of all the following: CSC phone service established in accordance with Specifications IVR established in accordance with Specifications Communication network connection established in accordance with Specifications Proposer staff recruited and trained		Y		
Start-up Complete Total				

VI. Acceptance for the Call Center System and Services Issued, Call Center Operational for 60 calendar days (Acceptance by WAHBE of the following):				
Deliverable Name	% of Total Purchase Price	Critical Event (Y)	Scheduled Delivery Date	Purchase Price
Business Continuity Plans		Y		
Acceptance Test Report		Y		
Deficiencies Log		Y		
Acceptance of Call Center Services		Y		
Achievement of the following: Priority Levels 1 & 2 deficiencies resolved All other Implementation-related Deliverables submitted		Y		

All Acceptances obtained				
Acceptance of Call Center Total				

Deliverables Total	100%			
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b. Charges for Services - TBD

c. Key Staff - TBD

1. Contractor Call Center Director/Manager
2. Contractor Training Manager
3. Contractor Call Center Quality Assurance Manager

Schedule 2: Key Performance Indicators and Liquidated Damages

1. Key Performance Indicators (KPIs)

If Contractor fails to meet any KPI listed in Section 1, Contractor shall be liable for liquidated damages in the amount of two percent (2%) of the monthly billing for Operations Services provided during the month in which the KPI was missed. These liquidated damages will apply for each KPI missed.

Metric	Description	KPI and Calculation	Reporting Standard
Response Time to all calls	Monitor the average response time to all calls	80% of all calls offered for the month must be answered within 30 seconds. Service level shall be measured for each 15-minute time interval and aggregated for the day. Calculation: Monthly calls answered in 30 seconds divided by (Total monthly calls answered + Total monthly calls abandoned)	Provide on line access for the report or email report every month to WAHBE Call Center Manager
Response Time/ Average speed to respond to emails	Monitor the response time to all emails	100% of emails received for the month must be acknowledged, assigned, and answered within 24 operating hours	Provide on line access for the report or email report every month to WAHBE Call Center Manager
Abandoned Calls	Monitor the percentage of monthly calls that are abandoned after getting connected to the Automatic Call Distributor and before reaching an agent or self-service option	The percentage of calls abandoned each month is 3% or less Calculation: Total number of abandoned calls for the month divided by Total number of calls offered for the month times 100.	Provide on line access for the report or email report every month to WAHBE Call Center Manager
Service Quality	Monitor the quality of customer service	95% of all customer satisfaction surveys received for the period must indicate a satisfaction rate of "Good" or higher as it relates to the quality of the call center and customer interaction	Customer satisfaction surveys will be created and agreed to by Contractor and WAHBE

Metric	Description	KPI and Calculation	Reporting Standard
Busy Out/Blocked Call Rate	Calls that cannot be connected because circuits are not available at the time the call arrives or the ACD is programmed to block calls from entering the queue	The percentage of monthly calls that are not allowed into the IVR must be 1% or less Provide the percent of “busies” from carrier network provider and disconnects from the Automated Call Distributor system (ACD)	Provide on line access for the report or email report every month to WAHBE Call Center Manager
Call Center Services Availability	Ensure all Call Center Services are Operational no less than 99% of monthly business hours (outside of planned Downtime)	Call Center must not experience any technical, functional, or other issues that make Call Center Services inaccessible to callers for more than 1% of the total operating hours for the month Calculation: Total monthly operating hours minus monthly hours offline divided by total monthly operating hours	Provide on line access for the report or email report every month to WAHBE Call Center Manager
Key Staff Replacement	To ensure vacated Key Staff positions are filled in accordance with Contract requirements within 30 days of vacancy	Positions must be filled within 30 days of Key Staff’s departure	Provide on line access for the report or email report every month to WAHBE Call Center Manager
Spanish-English Bilingual Staff Availability	At least ten (10%) percent of Call Center staff are bilingual in Spanish English languages	The percentage of Spanish-English bilingual staff at any given point must be at least 10% of the total Call Center staff	Provide on line access for the report or email report every month to WAHBE Call Center Manager
Other (non-Spanish) Bilingual Staff Availability	At least ten (10%) percent of Call Center staff are bilingual in other languages, as specified by WAHBE	The percentage of other bilingual staff (not including Spanish) at any given point must be at least 10% of the total Call Center staff	Provide on line access for the report or email report every month to WAHBE Call Center Manager
Reporting Deliverables	All required reports provided to WAHBE by specified due date	Reports must be accurate, complete and delivered on-time to WAHBE for review and acceptance	100% of reports due for any month are complete and on-time

2. Critical Events and Liquidated Damages

In the event the Call Center Critical Events listed below do not received Acceptance by the dates agreed upon in the Work Plan, Contractor’s liability for liquidated damages set forth below shall apply.

Categories of Critical Events	Critical Events	Deadline for WAHBE Acceptance	Liquidated Damages Amount	Application of Liquidated Damages
Facilities Ready	The following Facilities Readiness is received and accepted:	TBD	\$1,000	Per business day if facility readiness not complete
	● All Workstations are completed			
	● All Furniture has been delivered			
	● Offices and Conference Rooms completed			
	● Training facilities completed			
IT Systems	The following IT Systems Installed, Configured, Tested and Operational:	TBD	\$1,000	Per business day for any IT system not ready
	● Phone System			
	● CRM			
	● Email and Chat (if provided)			
	● Personal Computers in CSR workstations and offices			
	● All servers, printers, FAX's and TTI equipment			
	● Switches, Routers, and other data network			

Categories of Critical Events	Critical Events	Deadline for WAHBE Acceptance	Liquidated Damages Amount	Application of Liquidated Damages
	equipment			
	<ul style="list-style-type: none"> • Phone Lines 			
	<ul style="list-style-type: none"> • Data Lines 			
Processes	The following Process & Plans developed & approved by WAHBE:	TBD	\$1,000	Per business day late
	<ul style="list-style-type: none"> • All work processes, procedures and Tools have been developed 			
	<ul style="list-style-type: none"> • All Operational and Implementation Plans have been developed and approved by WAHBE 			
Staffing	The following Staff shall be completed:	TBD	\$1,000	Per business day not completed
	<ul style="list-style-type: none"> • All "Dedicated Assignment" Staff have been hired. All "dedicated staff" and "overflow" staff have been trained. 			
Call Center Acceptance	The Call Center receives Acceptance and is ready to accept the following:	TBD	\$10,000	Per business day if Call Center is not Operational by the Deadline for WAHBE Acceptance
	<ul style="list-style-type: none"> • Phone Calls 			
	<ul style="list-style-type: none"> • Chat sessions (if 			

Categories of Critical Events	Critical Events	Deadline for WAHBE Acceptance	Liquidated Damages Amount	Application of Liquidated Damages
	required)			
	<ul style="list-style-type: none"> • Email 			
	<ul style="list-style-type: none"> • Mail 			
Call Center Go-Live	The Call Center is fully operational, and all required services are provided.	July 1, 2019	\$10,000	Per business day if Call Center is not fully Operational or not all services are provided

Schedule 3: Change Request Form

Washington Health Benefit Exchange - WAHBE Call Center Services/Products

Change Request Number _____

Date Logged _____

1. Contact Person:	2. Change Classification:	3. Priority	4. Suggested Acceptance Date:
	<input type="checkbox"/> Functional	<input type="checkbox"/> Mandatory <input type="checkbox"/> Urgent <input type="checkbox"/> Desirable	
	<input type="checkbox"/> Maintenance	<input type="checkbox"/> Mandatory <input type="checkbox"/> Urgent <input type="checkbox"/> Desirable	

5. Title of Change:							
6. Description of Change:							
<input type="checkbox"/> See Attached							
7a. Configuration Items Affected:	7b. Version	7c. Configuration Item Name	8. Approved Implementation Date				
9a. Impact on Deliverable/Critical Event Schedule							
<input type="checkbox"/> See Attached							
9b. Amounts	Contractor		WAHBE		Total		Duration of Effort:
	Hrs	Cost	Hrs.	Cost	Hrs	Cost	
Design							

Construction							Resources Required:
Testing							
Implementation							
Other							
TOTAL							

10. Review/Approval Signatures

Contact Person's Supervisor	Approve	
Librarian	Receipt Acknowledged	
Contract Manager	Approve	
WAHBE Director of Operations	Approve	
Change Control Board	Approve	
Steering Committee	Approve	

Project Librarian _____ Date _____

Contract Manager _____ Date _____

WAHBE Director of Operations _____ Date _____

Change Control Board _____ Date _____

Steering Committee _____ Date _____

Schedule 4: Sample Irrevocable Letter Of Credit

Bank Name/Letterhead

_____, 2019

Irrevocable Letter of Credit

Number: _____

Amount: US \$4 Million

To whom it may concern:

At the request and for the account of the Washington Health Benefit Exchange (“WAHBE”) we hereby establish our Irrevocable Letter of Credit Number _____ in your favor, available by draft(s) at sight on [Bank Name, City and Branch] up to the aggregate sum of \$4 Million (United States Dollars), exclusive of any banking charges, effective as of today’s date and continuing until after the end of the Contract initial term as defined in Contract # HBE-XXX, dated XX/XX/20XX.

Partial drawings are permitted. Drafts drawn under this Letter of Credit must be accompanied by the following document:

A Certificate signed by the Executive Director or Deputy Director to the effect that the amount drawn represents funds due and payable to WAHBE because of the following reason:

Nonperformance, breach or default of the Contractor [] pursuant to Contract # _____ dated _____ for the development, implementation and operations of the WAHBE Call Center.

We hereby agree with the drawers, endorsers and holders in due course of any draft under this Letter of Credit that such drafts shall be duly honored on presentation provided that all terms and conditions of the Letter of Credit have been complied with.

This Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits (2007 Revision) International Chamber of Commerce Publication Number 500, as modified from time to time.

Yours faithfully,

For and on behalf of

Bank: _____

By: _____

Title: _____

Date: _____

Schedule 5: Agreement on Nondisclosure of Confidential Information

CONFIDENTIAL INFORMATION		
<p>“Confidential Information” means information that is exempt from disclosure to the public or other unauthorized persons under Chapter 42.56 RCW or other federal or state laws. Confidential Information includes, but is not limited to, protected health information as defined by the federal rules adopted to implement the Health Insurance Portability and Accountability Act of 1996, 42 USC §1320d (HIPAA), and Personal Information.</p> <p>“Personal Information” means information identifiable to any person, including, but not limited to, information that relates to a person’s name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers or as otherwise identified in RCW 42.56.230.</p>		
REGULATORY REQUIREMENTS AND PENALTIES		
<p>State laws (including RCW 74.04.060 and RCW 70.02.020) and federal regulations (including HIPAA Privacy and Security Rules; 42 CFR, Part 2; 42 CFR Part 431) prohibit unauthorized access, use, or disclosure of Confidential Information. Violation of these laws may result in criminal or civil penalties or fines. You may face civil penalties for violating HIPAA Privacy and Security Rules up to \$50,000 per violation and up to \$1,500,000 per calendar year as well as criminal penalties up to \$250,000 and ten years imprisonment.</p>		
ASSURANCE OF CONFIDENTIALITY		
<p>In consideration for the Washington Health Benefit Exchange (WAHBE) granting me access to WAHBE property, systems, and Confidential Information, I agree that I:</p> <ol style="list-style-type: none"> a) Will not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of this agreement for any purpose that is not directly connected with the performance of the contracted services except as allowed by law. b) Will protect and maintain all Confidential Information gained by reason this agreement against unauthorized use, access, disclosure, modification or loss. c) Will employ reasonable security measures, including restricting access to Confidential Information by physically securing any computers, documents, or other media containing Confidential Information. d) Have an authorized business requirement to access and use WAHBE systems or property and view its data and Confidential Information if necessary. e) Will access, use and/or disclose only the “minimum necessary” Confidential Information required to perform my assigned job duties. f) Will not share WAHBE system passwords with anyone or allow others to use the WAHBE systems logged in as me. g) Will not distribute, transfer, or otherwise share any WAHBE software with anyone. h) Understand the penalties and sanctions associated with unauthorized access or disclosure of Confidential Information. i) Will forward all requests that I may receive to disclose Confidential Information to my supervisor for resolution. j) Understand that my assurance of confidentiality and these requirements do not cease at the time I terminate my relationship with my employer or WAHBE. 		
FREQUENCY OF EXECUTION AND DISPOSITION INSTRUCTIONS		
<p>This form will be read and signed by each non-WAHBE employee who has access to Confidential information; and updated at least annually. Provide the non-WAHBE employee signor with a copy of this Agreement and retain the original of each signed form on file for a minimum of six years.</p>		
SIGNATURE		
PRINT/TYPE NAME	NON-WAHBE EMPLOYEE’S SIGNATURE	DATE

Schedule 6: Revisions To The Proposal

[Placeholder]

Schedule 7: WAHBE Data Security and Reporting Requirements

WAHBE's duty is to protect the confidentiality and security of client, proprietary, account, and all other business information. To execute these responsibilities, this exhibit sets forth the requirements for Contractors and Sub-contractors who access, obtain, repackage, and/or distribute WAHBE Information. These requirements are in addition to WAHBE policies, standards, and other contractual terms and conditions. WAHBE must approve in advance, in writing, any variance from these security requirements

WAHBE reserves the right to update or modify these security requirements as necessary to protect the citizens of Washington and data entrusted to WAHBE. If WAHBE updates or modifies these Security Requirements, Contractor shall conform its systems, applications, processes or procedures to comply with the update or modification within a reasonable time period, regarding all relevant security and legal concerns, as may be determined at the discretion of WAHBE.

7. Definitions:

- (a) Authorized User(s) means an individual or individuals with an authorized business requirement to access WAHBE Confidential Information.
- (b) Advanced Encryption Standard (AES) means a symmetric encryption algorithm.
- (c) Hardened Password means a string of at least eight (8) characters including one (1) upper case, one (1) lower case, one (1) number and one (1) special character (i.e., non-alphanumeric characters).
- (d) Security Incident means a warning that there may be or has been a threat to information or computer security including, but not limited to: unauthorized access; data or security breach; service attacks; malicious code; and unauthorized disclosure or misuse of confidential information.
- (e) Transmitting: the transferring of data electronically, such as via email.
- (f) Transporting: the physical transferring of data that has been stored.
- (g) Unique User ID: a string of characters that identifies a specific user and which, in conjunction with a password, passphrase, or other mechanism, authenticates a user to an information system.

8. Contractors connected to WAHBE network or stewards of WAHBE data shall protect data by using the appropriate administrative, physical and technical safeguards:

- (a) To prevent the use or disclosure of data other than as permitted or required by the terms and conditions of this exhibit, and
- (b) To reasonably and appropriately protect the confidentiality, integrity, and availability of data the Contractor creates, receives, maintains, or transmits on behalf of WAHBE for as long as the data is within its possession and control, even after the termination or expiration of this Contract.
- (c) Annual Awareness Training shall be conducted and documented for all Contractor's employees or Sub-Contractors that have access to WAHBE data that includes at minimum:
 - 1) Social Engineering/Phishing

- 2) Internet Hygiene
- 3) Insider Threats
- 4) Password creation and use
- 5) Malware
- 6) Regulatory requirements
- 7) Incident Reporting
- 8) Company Policies
- 9) Advanced training for IT Professionals

- 9. Use and Disclosure:** Contractor acknowledges that in performing the services it will have access to, or be directly or indirectly exposed to, client confidential information. Contractor shall use such information solely for performing the services. Contractor shall take all reasonable measures to protect all client information from disclosure, including measures at least as strict as those measures Contractor would use to protect its own confidential information. Contractor shall not disclose client information to any parties other than those with a need to know to perform the services on behalf of WAHBE and only to the extent such employees or Subcontractors are bound by the term executed and acknowledged by WAHBE.
- 10.** The terms of this Exhibit shall apply to Contractor and any Subcontractors who use systems, network, data and/or documentation that is housed or managed by Contractors on behalf of, or in the performance of services, for WAHBE. For purposes of this Exhibit, they shall be collectively referred to as "Exchange Data".
- 11. Compliance with Applicable Law:** WAHBE is governed by Washington State Regulations, IRS pub 1075, CMS minimum standards, US Privacy Act, and Washington Records Release Act. Contractor irrevocably consents to the jurisdiction and venue of any state or federal regulations and agrees to comply.
- 12. Protection of WAHBE Systems and data:**
- (a) In all events where Contractor has access to WAHBE data, Contractor shall meet all standards and requirements including, but not limited to: industry security standards, use of computer firewalls, strong user authentication, encrypted transmissions, anti-malware programs, regular and timely software patch updates, and controlled access to the physical location of computer hardware. This includes, without limitation, Contractor's transmission or storage of electronic files or electronic data.
 - (b) Application integrity shall be validated to ensure destructive computer programming such as harmful computer instructions, viruses, Trojan horses and other harmful code is mitigated; and integrity of data is maintained.
 - (c) Contractor shall implement security baselines on all systems and applications that meet industry and federal standards. Documentation must be submitted upon request. Security baselines can be found at <https://www.cisecurity.org/> or <https://www.nist.gov>.
 - (d) Contractor shall conduct periodic reviews, at minimum of annually, of any system storing WAHBE data or supporting systems to evaluate the security risks of such systems. Reviews shall be conducted in accordance with the US Department of Commerce National Institute

of Standards and Technology (NIST) Technical Guide to Information Security Testing and Assessment ([Special Publication \(SP\) 800-115](#)). In addition, WAHBE shall conduct periodic vulnerability scans of any network or site maintained by Contractor that houses WAHBE data. Contractor shall take all reasonable steps to facilitate such scans and shall promptly remediate any systems vulnerable of exposing WAHBE data. Contractor shall report all security incidents to the WAHBE Contract Manager as soon as possible, but no later than one business day after discovery.

- (e) Inactive accounts shall be disabled by WAHBE within 60 days of inactivity or when no longer necessary to perform daily tasks. The vendor shall notify WAHBE of a change in responsibilities where access is no longer necessary for employees or contractors.
- (f) Physical Storage. When storing WAHBE data the Contractor shall perform the following:
 - 1) Hard disk drives. Data stored on local workstation hard disks. Access to the data will be restricted to Authorized User(s) by requiring login to the local workstation using a Unique User ID and Hardened Password or other authentication mechanisms which provides equal or greater security, such as biometrics or smart cards. The data on the drive shall be encrypted and only accessible to authenticated user(s) with a need to know. Data shall be secured on the disk in such a way that other user(s) that do not need access to the data will not have the ability to access it.
 - 2) Workstations with sensitive data stored on them shall be tracked and their movements documented until the sensitive data is removed from the workstation. When the data is removed the date of its removal and method of its removal shall be documented and provided to the WAHBE Contract Manager. Hard drives that have contained sensitive data shall be wiped with a method that will render the deleted information irretrievable (See Section 9 Data Disposal).
 - 3) Network server storage. Access to the data shall be restricted to Authorized User(s) by access control lists which will grant access only after the Authorized User(s) has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or physical token. Data on disks mounted to such servers shall be in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism. Access shall be reviewed at minimum annually.
 - 4) For WAHBE data stored on network storage: Deleting unneeded data is sufficient as long as the disks remain in a secured area and otherwise meet the requirements listed in the above paragraph. Destruction of the data as outlined in Section 9. Data Disposal may be deferred until the disks are retired, replaced, or otherwise taken out of the secured area.
 - 5) Removable Media, including Optical discs (CDs or DVDs) in local workstation optical disc drives shall not be transported out of a secure area. Sensitive or Confidential Data provided by WAHBE on removable media, such as optical discs or USB drives, which will be used in local workstation optical disc drives or USB connections shall be encrypted with two hundred sixty-five (256) bit AES encryption or better. When not in use for the Contractured purpose, such devices must be locked in a drawer, cabinet or other container to which only authorized users have the key, combination or mechanism required to access the contents of

the container. Workstations which access WAHBE data on optical discs shall be in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

- 6) When being transported outside of a secure area, portable devices and media with confidential WAHBE data must be under the physical control of Contractor staff with authorization to access the data.
- 7) WAHBE data shall not be stored on portable devices or media unless specifically authorized within the Special Terms and Conditions of the Contract. Portable media includes any data storage that can be detached or removed from a computer and transported. If so authorized, the data shall be given the following protections:
 1. Encrypt the data with a key length of at least two hundred fifty-six (256) bit AES using an industry standard algorithm.
 2. Control access to devices with a Unique User ID and hardened password or stronger authentication method such as physical token or biometrics.
 3. Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity, if this feature is available. Maximum period of inactivity is twenty (20) minutes.
 4. Physically protect the portable device(s) and/or media by:
 - a. Keeping them in locked storage when not in use
 - b. Using check-in/check-out procedures when they are shared, and
 - c. Taking frequent inventories
- 8) Paper documents. All paper records shall be protected by storing the records in a secure area which is only accessible to Authorized User(s). When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only Authorized User(s) have access.

(g) Remote and Network Access. When accessing WAHBE data remotely the Contractor shall:

- 1) WAHBE data accessed and used interactively over the internet shall meet minimum standards including updated anti-malware, current security patches, and local firewall. Access to the website washingtonhealthplanfinder.org or other services managed by WAHBE will be controlled by WAHBE staff who will issue authentication credentials (e.g. a Unique User ID and hardened password) to Authorized User(s). The administrator and any privileged user password must change every 60 days and other user password once every 90 days. Previous 6 consecutive passwords cannot be reused. The passwords must not allow User ids, first Name or the last name of the user.
- 2) Contractor shall have established and documented access termination procedures for existing Authorized User(s) with access to WAHBE data. These procedures shall be provided to WAHBE staff upon request. Contractor shall notify WAHBE staff immediately whenever an Authorized User(s) in possession of such credentials is terminated or otherwise leaves the employment of the Contractor,

and whenever an Authorized User's duties change such that the Authorized User(s) no longer requires access to perform work for this Contract.

- 3) Access via remote terminal/workstation over the internet shall be managed by the Contractor and permissions granted on a need basis only when access to WAHBE data is present.
- 4) Data Transmitting. When transmitting WAHBE data electronically, including via email, the data shall be protected by:
 1. Transmitting the data within the WAHBE network or Contractor's internal network, or;
 2. Encrypting any data that will be transmitted outside the WAHBE network or Contractor internal network with two hundred fifty-six (256) bit AES encryption or better. This includes transit over the public Internet.

13. Contractor shall maintain audit logs for all systems containing WAHBE data.

14. Data Segregation:

- (a) WAHBE data shall be segregated or otherwise distinguished from non-WAHBE data to ensure proper return or destruction when no longer needed.
 - 1) WAHBE data shall be stored on media (e.g. hard disk, optical disc, tape, etc.) which will exclude non-WAHBE data. Or,
 - 2) WAHBE data shall be stored in a logical container on electronic media, such as a partition or folder dedicated to WAHBE data. Or,
 - 3) WAHBE data shall be stored in a database which will exclude non- WAHBE data. Or,
 - 4) WAHBE data shall be stored within a database and will be distinguishable from non-WAHBE data by the value of a specific field or fields within database records. Or,
 - 5) When it is not feasible or practical to segregate WAHBE data from non- WAHBE data, then both the WAHBE data and the non-WAHBE data with which it is commingled must be protected as described in this exhibit.

15. Data Disposal: When the Contracted work has been completed or when no longer needed, data shall be returned to WAHBE or destroyed. Media on which WAHBE data may be stored and associated acceptable methods of destruction are as follows:

Data stored on:	Shall be destroyed by:
Server or workstation hard disks, or Removable media (e.g. floppies, USB flash drives, portable hard disks, Zip or similar disks)	Using a “wipe” utility which will overwrite the data at least three (3) times using either random or single character data, or Degaussing sufficiently to ensure that the data cannot be reconstructed, or Physically destroying the disk
Paper documents with sensitive or confidential data	Shredded and recycled through a Contracted firm provided the Contract with the recycler assures that the confidentiality of data will be protected
Paper documents containing confidential information requiring special handling (e.g. protected health information)	On-site shredding by a method that renders the data unreadable, crosscut shredding, pulping, or incineration
Optical discs (e.g. CDs or DVDs)	Incineration, shredding, or cutting/breaking into small pieces
Magnetic tape	Degaussing, incinerating or crosscut shredding

- e) Data shared with Subcontractors: If WAHBE data provided under this Contract is to be shared with a Subcontractor; the Contract with the Subcontractor shall include all the data security provisions in this Contract and any amendments, attachments, or exhibits to this Contract.
- f) Notice of Unauthorized Disclosure or Security Breach. Contractor shall immediately notify WAHBE of:
- a. Unauthorized disclosure or use of any WAHBE Data;
 - b. Any breaches of security that may compromise the WAHBE data or Contractor’s ability to safeguard WAHBE data;
 - c. Notifications shall include at minimum, both a telephone call and email to the WAHBE Contract Manager and an email to WAHBE Security at security@wahbexchange.org.
 - d. Contractor shall establish and document a policy to deal with the compromise or potential compromise of data that complies with NIST 800-61 Incident Response Guide. Contractor shall provide WAHBE with such policy upon request.
 - e. A breach of security or other circumstance which causes, may have caused, or allowed access to WAHBE information by unauthorized persons or systems, whether intentional, fraudulent, or accidental, must be reported to WAHBE as soon as possible and no later than one (1) business day after discovery.

Schedule 8: Guaranty

In consideration of the execution by the State of Washington Health Benefit Exchange (the "WAHBE") of the Agreement dated _____, 2019 (the "Agreement") with _____, Inc. ("Contractor"), _____, Inc. Contractor unconditionally and irrevocably guarantees to WAHBE, on the terms and conditions herein, the full and faithful performance by all Subcontractors of all of the obligations undertaken by Subcontractor pursuant to the Agreement and as it may hereafter be amended, modified, or extended from time to time, by change orders or otherwise.

If Subcontractor fails or refuses to complete any of its obligations, Contractor shall complete, or cause to be completed, the obligation that Subcontractor failed or refused to complete, or be considered to be in breach of the Agreement to the same extent as Subcontractor, pursuant to the terms and conditions of the Agreement.

Contractor agrees that it shall not be necessary for WAHBE, or their successors or assigns to exercise their rights against Subcontractor, before proceeding to enforce their rights under this Guaranty. Contractor waives: (a) notice of acceptance of this guaranty; (b) notice of any amendments, change orders, extensions of time for performance, changes in the work, or other acts by WAHBE affecting Subcontractor's rights or obligations under the Agreement; (c) notice of any breach or claim of breach by Subcontractor; and (d) the benefit of suretyship defenses generally.

Contractor represents and warrants that the execution and delivery of, and performance of the obligations contained in this Guaranty have been authorized by all appropriate action and will not constitute a breach of or contravene any agreement or instrument to which Contractor is a party, and that this Guaranty is a valid and binding obligation of Contractor enforceable against Contractor in accordance with its terms.

Notices to Contractor shall be sent to the address set forth below.

_____, INC.

By: _____

Printed Name: _____

Title: _____

Address: _____

Date: _____