

CONTRACT # HBE-
FOR [PROCUREMENT TITLE]
BETWEEN
WASHINGTON HEALTH BENEFIT EXCHANGE
AND
[CONTRACTOR NAME]

Recitals

Washington Health Benefit Exchange (WAHBE) is entering this Contract as a result of Request for Proposals/Qualifications and Quotation/Request for Responses (RFP, RFQQ, or RFR) # , dated [date].

WAHBE issued RFx, # for the purpose of purchasing [describe services being purchased] in accordance with its authority under chapter 43.71 RCW.

[Contractor Name] (Contractor) submitted a timely Response to WAHBE's RFx # .

WAHBE evaluated all properly submitted responses to the above-referenced RFx and has identified Contractor as the Apparent Successful Vendor.

WAHBE awards Contractor this Contract, in accordance with all terms and conditions herein.

- OR -

Washington Health Benefit Exchange (WAHBE) is entering this sole source, for the purpose of purchasing [describe services being purchased] in accordance with its authority under chapter 43.71 RCW.

WAHBE has determined that entering into a Contract with [Contractor Name] (Contractor) will meet WAHBE's needs and is its best interest.

WAHBE awards Contractor this Contract, in accordance with all terms and conditions herein.

TABLE OF CONTENTS

1 STATEMENT OF WORK (SOW) 4

2 DEFINITIONS 4

3 PERIOD OF PERFORMANCE..... 5

4 COMPENSATION 6

5 PRICING AND ADJUSTMENT 7

6 INVOICES AND BILLING PROCEDURES 7

7 CONTRACT MANAGEMENT 8

8 NOTICES 9

9 KEY STAFF 10

10 INSURANCE..... 10

11 BACKGROUND CHECKS 12

12 PENALTY FOR NON-DELIVERY 13

13 ACCEPTANCE PROCESS 13

14 ADVANCE PAYMENTS PROHIBITED 14

15 AMENDMENTS 14

16 ASSIGNMENT 15

17 ATTORNEYS' FEES..... 15

18 CLAIMS 15

19 CONFIDENTIAL INFORMATION 15

20 CONFIDENTIAL INFORMATION BREACH – REQUIRED NOTIFICATION 16

21 CONFLICT OF INTEREST 16

22 COOPERATION OF PARTIES 16

23 COOPERATIVE PURCHASING 17

24 CORRECTIVE ACTION PLANS 17

25 COVENANT AGAINST CONTINGENT FEES 18

26 DEBARMENT, SUSPENSION, AND INELIGIBILITY..... 18

27 DISCLAIMERS AND LIMITATIONS 18

28 DISALLOWED COSTS..... 18

29 DISPUTES 19

30 ENTIRE CONTRACT 19

31 ERRONEOUS PAYMENT OR OVERPAYMENT 19

32 FORCE MAJEURE 20

33 GIFTS AND GRATUITIES 20

34 GOVERNING LAW 20

35 INDEMNIFICATION 20

36 INDEPENDENT CAPACITY OF THE CONTRACTOR 20

37 LEGAL AND REGULATORY COMPLIANCE..... 21

38 LIMITATION OF AUTHORITY 22

39 ORDER OF PRECEDENCE..... 22

40 OWNERSHIP RIGHTS..... 22

41 PUBLIC DISCLOSURE 24

42 PUBLICITY 24

43 QUALITY ASSURANCE..... 24

44 RECORDS RETENTION AND ACCESS 25

45 REMEDIES 26

46 SECURITY and Privacy TRAINING 26

47 SEVERABILITY 26

48 SITE SECURITY 26

49 SOLICITATION..... 26

50 SUBCONTRACTING 27

51 SURVIVAL..... 27

52 TAXES 28

53 TERMINATION 28

54 TRANSITION OBLIGATIONS..... 30

55 TREATMENT OF ASSETS..... 30

56 WAIVER 31

57 APPROVAL 32

1 STATEMENT OF WORK (SOW)

- 1.1.1 Contractor must provide Services, staff, and Deliverables (the “Deliverables”), and otherwise do all things necessary for the performance of work set forth in Exhibit A, Statement of Work, and any other Statement of Work entered by the parties under this Contract.
- 1.1.2 Additional Statements of Work/Work Orders within the scope of this Contract may be added by written Amendment. More than one Statement of Work may be active in any given period.
- 1.1.3 If Contract is eligible for Work Orders, WAHBE will develop and issue Work Orders detailing the Deliverables, tasks, budget as needed for the Services outlined in this Contract. The Work Order must be signed by an authorized representative of each party prior to commencing work and the term of the Work Order may not exceed the term of this Contract.
- 1.1.4 Under no circumstances will Contractor perform any work, and WAHBE is under no obligation to pay for any work, until this Contract has been fully executed by both parties.

2 DEFINITIONS

As used throughout this Contract, the following terms have the meaning set forth below:

“Acceptance” means the designated WAHBE representative received the Deliverable(s) within the SOW and approved the Deliverable(s) for payment.

“Amendment” means a mutually agreed change made to the Contract that will not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

“Breach” means the unauthorized acquisition, access, use, or disclosure of Confidential Information that compromises the security, confidentiality, or integrity of the Confidential Information.

“Business Days and Hours” means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by WAHBE.

“Centers for Medicare and Medicaid Services” or “CMS” means the federal office under the Secretary of the United States Department of Health and Human Services, responsible for the Medicare and Medicaid programs.

“CFR” means the Code of Federal Regulations. All references in this Contract to CFR chapters or sections include any successor, amended, or replacement regulation. The CFR may be accessed at <https://www.ecfr.gov/>.

“Claim” means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney’s fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

“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 including, but not limited to, Personal Information and Personally Identifiable Information (PII).

“Contract” means this Contract document and all exhibits, attachments, incorporated documents,

and Amendments.

"Contractor" means that firm, provider, organization, individual or other entity performing Deliverables under this Contract, including all employees of the Contractor.

"Contractor Technology" means intellectual property owned by Contractor prior to the Effective Date of this Contract or developed and owned by Contractor outside the scope of this Contract (including modifications, enhancements, or improvements thereto), 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.

"Corrective Action Plan" means the detailed written plan required by WAHBE to correct or resolve an issue or breach by Contractor.

"Damages" means a concession or monetary payment agreed by the parties which are due by the party who breaches all or part of the Contract.

"Deliverable" means any tangible or intangible good or service produced as a result of this Contract. Also referred to as "Work Products", "Materials", or "Services".

"Effective Date" means the date this Contract takes effect or becomes operative and enforceable.

"Statement of Work" or "SOW" means a detailed description of work activities Contractor is required to perform under the terms and conditions of this Contract, including the Deliverables and timeline.

"Subcontractor" means one who is not in the employment of the Contractor and who is performing all or part of those services under this Contract or under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.

"WAHBE" means the Washington Health Benefit Exchange, any division, section, office, unit, or other entity of WAHBE, or any of the officers or other officials lawfully representing WAHBE.

"WAHBE Technology" means materials, data and intellectual property owned by WAHBE prior to the Effective Date of this Contract or developed and owned by WAHBE outside the scope of this Contract (including modifications, enhancements, or improvements thereto), including WAHBE's methodologies, project management, documentation, data and analysis, and other tools, procedures, processes, techniques, data models, templates, and software tools, utilities, and routines.

3 PERIOD OF PERFORMANCE

The initial period of performance under this Contract will be from [month, day, year] or from the date of execution by both parties (Effective Date), whichever is later, through [month, day, year], unless sooner terminated.

WAHBE may extend this Contract through [month, day, year], in time increments WAHBE deems appropriate.

4 COMPENSATION

4.1 **Maximum Compensation.** The maximum compensation, which includes any allowable expenses, payable to Contractor for Acceptance (as described below) of the Deliverables under this Contract must not exceed \$ _____ (the “Maximum Compensation”).

Contractor’s compensation is based on:

4.1.1 A fixed amount for Deliverables established in the Contract and authorized in a Statement of Work.

Or

4.1.2 An hourly rate for services rendered, per the rates established below, as authorized in a Statement of Work.

4.1.3 Any additional Deliverables or services performed under authority of this Contract, as described in subsequent Statements of Work, at the following fixed costs (or Maximum hourly rates):

Key Staff or Deliverable Name	Fixed Cost or Maximum Hourly Rate

4.2 **No Additional Compensation.** Contractor and WAHBE agree that timely completion by Contractor of all work and delivery of any Deliverables and other Work Products is critical, that time is of the essence for Contractor’s performance of its work, and that no additional compensation will be paid unless work is expanded under the Statement(s) of Work (Exhibit A) by an Amendment or Statement of Work/Work Order executed by authorized representatives of Contractor and WAHBE.

4.3 **Expenses.** Expenses for Contractor to provide WAHBE with estimates or quotes for additional activities or Statement(s) of Work will not be authorized.

Day-to-day expenses related to performance under the Contract, including but not limited to travel, lodging, meals, and incidentals, will not be reimbursed to Contractor.

Or

Contractor may receive reimbursement for travel and other expenses as authorized in writing in advance by WAHBE as reimbursable and stated in the Statement of Work.

- 4.3.1 Such expenses may include airfare (economy or coach class only), ground transportation, and lodging and subsistence necessary during periods of required travel. Contractor must receive compensation for travel expenses in accordance with U.S. General Services Administration (GSA) travel reimbursement rates and requirements. To receive reimbursement, Contractor must provide a detailed breakdown of authorized expenses, identifying what was expended and when.
- 4.3.2 Air travel must be booked in accordance with the Fly America Act, which requires organizations that receive federal funding to the use a “U.S. flag air carrier” (visit <https://www.gsa.gov/policy-regulations/policy/travel-management-policy/fly-america-act> for further information on requirements).

5 PRICING AND ADJUSTMENT

Prices for work are not subject to increase throughout the Contract period. Should WAHBE decide to extend the Contract as permitted in Section 3, *Period of Performance*, rates may be negotiated for adjustments in pricing for any subsequent terms; however, rate increases may not exceed the current Consumer Price Index at the time of the request or up to a maximum 5% increase on the current pricing, whichever is lower.

For purposes of this Section, “Consumer Price Index” means The Consumer Price Index for All Urban Consumers (CPI-U); U.S. City Average; All items, not seasonally adjusted, 1982–1984=100 reference base.

6 INVOICES AND BILLING PROCEDURES

- 6.1 **Initial Set Up.** Contractor must complete and submit both an [IRS form W-9, Request for Taxpayer Identification Number and Certification](#) and an [ACH Enrollment Form](#) to WAHBE at finance@wahbexchange.org within five (5) Business Days of Contract execution.

If unable to receive electronic payment (ACH), Contractor must email WAHBE at finance@wahbexchange.org to request other payment options.

6.2 Invoice Requirements

- 6.2.1 Contractor must only submit invoices for the services or Deliverables authorized in this Contract. Invoices must fully describe, and document work performed, project progress, and fees incurred. Invoices and estimates must be submitted electronically to WAHBE at finance@wahbexchange.org.

- 6.2.2 Contractor must submit properly itemized invoices to include the following

information, as applicable. WAHBE will return incorrect or incomplete invoices to Contractor for correction and reissue.

- Description of Deliverable(s);
- Contractor name, address, phone number, and email address;
- Contract reference number HBE- ;
 - This Contract number must also appear on the first page of all invoices, bills of lading, packages, and correspondence relating to this Contract.
- Date(s) of delivery;
- Net invoice price for each item;
- Applicable taxes;
- Total invoice price; and
- Payment terms and any available prompt payment discount.

6.2.3 Contractor must submit invoices to WAHBE not more often than monthly. At the end of the month, Contractor must provide a monthly estimate of fees incurred.

6.2.4 If pre-approved expenses are invoiced, a detailed breakdown of each type must be provided. Any single expense in the amount of \$50.00 or more must be accompanied by a receipt to receive reimbursement.

6.3 Payment

6.3.1 The WAHBE Contract Manager, or their designee, will review and approve each invoice prior to payment.

6.3.2 WAHBE will pay Contractor within thirty (30) calendar days of Acceptance of specified Deliverables or authorized hourly services, provided Contractor provides accompanying properly executed invoices and subject to WAHBE's exercise of its remedies.

6.3.3 Within sixty (60) calendar days of expiration or termination of the Contract, Contractor must submit a final invoice to WAHBE for any claims for payment due under this Contract and that are incurred prior to the expiration or termination date.

7 **CONTRACT MANAGEMENT**

7.1 Contractor must assign a Contract Manager with authority to bind Contractor, approve Statements of Work, to work collaboratively with WAHBE and be able to assure timely and appropriate responses. Contractor's proposed Contract Manager is subject to WAHBE review and approval. Contractor must provide advance notice (at least ten (10) calendar days) for any proposed change to Contractor's Contract Manager and any change is subject to WAHBE review and approval. If an unanticipated change is necessary, Contractor must temporarily assign a Contract Manager to serve no more than thirty (30) calendar days while an approved permanent

Contract Manager is identified.

- 7.2 Contractor's Contract Manager is responsible for the Deliverables and is the point of contact for the WAHBE Contract Manager for all business matters, performance matters, and administrative activities.
- 7.3 WAHBE's Contract Manager is responsible for monitoring the Contractor's performance and is the contact person for all communications regarding contract performance and Deliverables. The WAHBE Contract Manager has the authority to accept or reject the Deliverables provided and must approve Contractor's invoices prior to payment. WAHBE can change its Contract Manager and will notify the Contractor within ten (10) Business Days.
- 7.4 Contract Manager contact information:

Contractor Contract Manager:	WAHBE Contract Manager:
Name & Title	Name & Title
Address	810 Jefferson Street SE
City, State Zip	Olympia, WA 98501-1417
Phone:	Phone:
Email:	Email:

8 NOTICES

- 8.1 Any notice or other communication required or permitted to be given under this Contract or applicable law will be effective if and only if it is in writing, properly addressed, and either delivered in person, by electronic mail, or 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 7, Contract Management and the following parties:

Notice Contact(s) for Contractor:	Notice Contact(s) for WAHBE:
Name & Title	General Counsel
Address	810 Jefferson Street SE
City, State Zip	Olympia, WA 98501-1417
Phone:	Phone: (360) 688-7700
Email:	Email: leah.hole-marshall@wahbexchange.org
Name & Title	Contracts Office

Address	810 Jefferson Street SE
City, State Zip	Olympia, WA 98501-1417
Phone:	Phone: (360) 688-7700
Email:	Email: contracts@wahbexchange.org

8.2 Notices are effective upon receipt or four (4) Business Days after mailing, whichever is earlier.

9 KEY STAFF

9.1 WAHBE reserves the right to approve or disapprove Contractor’s Key Staff assigned to this Contract and to approve or disapprove any proposed changes in Contractor’s Key Staff. Contractor must provide a resume to WAHBE for any replacement Key Staff and all staff proposed by Contractor as replacements for other staff must have comparable or greater skills for performing the activities as performed by the staff being replaced.

9.2 Except in the case of a legally required leave of absence, sickness, death, termination of employment or unpaid leave of absence, Contractor Key Staff may not be changed without the prior written approval of WAHBE.

10 INSURANCE

Upon execution of the Contract, and during the remaining term of this Contract, Contractor must maintain in full force and effect, insurance coverage as described below:

10.1 Contractor must acquire such insurance from an insurance carrier(s) licensed to conduct business in the State of Washington and having an A.M. Best Financial Strength Rating of A-, Class VII or better. In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Contractor must provide written notice of such to WAHBE within one (1) Business Day of Contractor’s receipt of such notice. Failure to buy and maintain the required insurance may result in this Contract’s termination.

10.2 Upon request, Contractor must submit a copy of the Contractor’s certificate of insurance for all insurance requirements listed in Section 10.5, Insurance to contracts@wahbexchange.org. If a certificate of insurance is requested, Contractor must also submit renewal certificates as appropriate during the term of the Contract.

10.3 WAHBE reserves the right to audit Contractor’s full insurance policy documents for Contract compliance. Contractor must provide documentation for all insurance listed below, including any endorsements or riders, to WAHBE within ten (10) Business Days written notice. Failure to comply may result in Contract termination.

10.4 Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor’s liability or responsibility.

- 10.5 The minimum acceptable limits must be as indicated below for each of the following categories:
- 10.5.1 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;
 - 10.5.2 Umbrella policy providing excess limits over the primary policies in an amount not less than \$1 million per occurrence;
 - 10.5.3 Professional Liability Errors and Omissions (PLEO), with a deductible not to exceed \$25,000, and coverage of not less than \$1 million;
 - 10.5.4 Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with a limit of not less than \$500,000;
 - 10.5.5 Business Automobile Liability. If services delivered pursuant to this Contract involve the use of vehicles, either owned, hired, or non-owned by the Contractor, automobile liability insurance is required covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability. The minimum limit for automobile liability is \$1 million per occurrence, using a Combined Single Limit for bodily injury and property damage;
 - 10.5.6 Crime Coverage with a deductible not to exceed \$25,000, and coverage of not less than \$1 million single limit per occurrence which must, at a minimum, cover occurrences falling in the following categories: Computer Fraud; Forgery; and Employee Dishonesty; and
 - 10.5.7 Cyber Security Liability, with coverage against Claims resulting from Security Events, Network Security and Privacy, and Employee Privacy; with a deductible not to exceed \$25,000 and coverage of not less than \$500,000 per occurrence.
- 10.6 WAHBE must be named as an additional insured on all Commercial General Liability policies and any applicable Umbrella, Business Auto Liability, Cyber Security Liability, and PLEO policies.
- 10.7 Policies must include Contract reference number HBE- .
- 10.8 Contractor must continue PLEO, Crime, and Cyber Security Liability policies (as applicable), for three (3) years beyond the expiration or termination of this Contract.
- 10.9 Contractor's insurance policies must not be canceled or non-renewed in scope of coverage without provision for equivalent substitute insurance. Contractor's insurance policies must not be reduced in scope without WAHBE's prior written consent.
- 10.10 All insurance provided by Contractor must be primary as to any other insurance or self-insurance programs afforded to or maintained by WAHBE and must include a severability of interests (cross-liability) provision.
- 10.11 Contractor agrees to waive all rights of subrogation against WAHBE for losses arising from services performed by Contractor under this Contract.

10.12 By requiring insurance herein, WAHBE does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits must not limit Contractor's liability under the indemnities and reimbursements granted to WAHBE under this Contract. This provision does not waive any rights to collect from Contractor.

10.13 Contractor must comply with the provisions of <https://apps.leg.wa.gov/RCW/default.aspx?cite=51> Industrial Insurance. If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as required by law, WAHBE may collect from Contractor the full amount payable to the Industrial Insurance accident fund. WAHBE may deduct the amount owed by Contractor to the accident fund from the amount payable to Contractor by WAHBE under this Contract and transmit the deducted amount to the Department of Labor and Industries (L&I) Division of Insurance.

11 BACKGROUND CHECKS

11.1 Due to the confidential nature of the information and materials accessible to Contractor, Contractor must conduct State and Federal criminal background checks for all employees and Subcontractors to be used to provide services under this Contract who will have access to WAHBE systems. At minimum, background checks must include the previous 5-years of history. Contractor is responsible for the cost of the State and Federal criminal background checks. Background checks must, at a minimum, include the following searches/records:

- Social Security Number Trace (Name and Address History);
- Social Security Number Validation;
- Multi-State (National) Criminal History Search;
- National Sex Offender Search;
- County Criminal Record Search;
- Federal District Court Criminal Search; and
- Watch list search – OFAC, OIG, SAM, and America's most wanted fugitive list.

11.2 Contractor must provide written (email acceptable) confirmation of completed Staff background checks to the WAHBE Contracts Office at contracts@wahbexchange.org prior to the start of any work. Contractor must not provide proposed Staff's full background check report(s).

11.3 WAHBE reserves the right to conduct additional reference checks on Contractor staff and Subcontractors to be used to perform the work.

11.4 Felony convictions directly related to the Deliverables being provided by the Contractor under this Contract may be grounds for rejection of Contractor staff and/or Subcontractors if the time elapsed since the conviction is less than five years. Convictions considered directly related to Contractors' Deliverables include convictions involving fraud, breach of a fiduciary duty, electronic data tampering, data theft, or unauthorized access. For additional information on considering an individual's criminal record when making contracting or other employment decisions please see the U.S. Equal Employment Opportunity Commission's guidance at <https://www.eeoc.gov/employers/small-business/criminal-records>.

11.5 WAHBE reserves the right in its sole discretion to audit background check results for compliance.

11.6 Contractor, and/or any Contractor Staff who access WAHBE's Federal Tax Information (FTI) data must also meet background check requirements defined in IRS Publication 1075.

12 **PENALTY FOR NON-DELIVERY**

12.1 The parties agree that any delay or failure by Contractor to timely perform its obligations by the dates in the Project plan and in accordance with the Contract will interfere with the proper and timely production of required Deliverables to the loss and damage of WAHBE. Further, WAHBE will incur major costs resulting from such delay. The parties understand and agree that Table 1, below, describes the penalty(ies) Contractor will pay to WAHBE due to nonperformance hereunder by Contractor.

Table 1

Critical Deliverable	WAHBE Acceptance of each Deliverable by the scheduled Acceptance date in the Project plan	WAHBE may assess \$ [Amount] per calendar day from the scheduled Deliverable Acceptance date until the date each Deliverable receives Acceptance from WAHBE
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12.2 The assessment of Damages does 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, and WAHBE is 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 Damages received for the same events causing the actual Damages.

12.3 The parties acknowledge and agree that Contractor could incur Damages for more than one Critical Deliverable if Contractor fails to timely perform its obligations by each applicable date for such Deliverables.

12.4 Amounts due to WAHBE by Contractor, including but not limited to Damages, or Claims for Damages, may be deducted or set-off by WAHBE from any money payable to Contractor pursuant to this Contract.

13 **ACCEPTANCE PROCESS**

13.1 Unless otherwise mutually agreed in writing, WAHBE will review Contractor's Deliverables within fifteen (15) Business Days receipt, to determine if the Deliverables meet the requirements to WAHBE's satisfaction.

13.2 If WAHBE rejects a Deliverable, Contractor must promptly correct and resubmit the Deliverable for WAHBE review and Acceptance.

13.3 If Contractor is unable to correct the Deliverable to WAHBE's satisfaction within 30 Business Days' notice, WAHBE has the right to: (a) continue reviewing the Deliverable and require

Contractor to continue work; (b) request Contractor to provide, at its expense, a replacement Deliverable for further review; (c) set-off from the amounts for such Deliverable to the extent WAHBE determines the Deliverable was not corrected and provide Acceptance for the applicable Deliverable; or (d) after completion of the process set forth in this Section and providing notice of default to Contractor, terminate this Contract. In the event of any such termination, Contractor must return all payments previously made under this Contract for such Deliverable.

- 13.4 Any indirect and consequential costs of correcting, removing, or replacing Deliverables to WAHBE's satisfaction will be charged against and paid by the Contractor.

14 ADVANCE PAYMENTS PROHIBITED

No payments will be made by WAHBE in advance of, or in anticipation of services or Deliverables to be provided under this Contract.

15 AMENDMENTS

This Contract may be amended, or modified, by mutual agreement of the parties. Such Amendments are not binding unless they are in writing and signed by personnel authorized to bind each of the parties.

15.1 Request Process

- 15.1.1 WAHBE may request changes within the scope of the Contract at any time. Such changes may include, without limitation, revisions to Deliverables or additional Statements of Work.
- 15.1.2 Contractor must respond in writing within fifteen (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 must advise WAHBE in writing of the increase or decrease involved, including a breakdown of the number of Contractor hours and WAHBE hours by level of personnel needed to effect this change.
- 15.1.3 The Contractor Contract Manager and the WAHBE Contract Manager must negotiate in good faith and in a timely manner as to the price for changes and the impact on the Schedule.
- 15.1.4 Contractor may also submit a request to WAHBE to propose changes that should be made within the scope of the Contract. Any such request must include proposed costs and Schedule impacts, including a breakdown of the number of Contractor hours and WAHBE hours by level of personnel needed to effect this change. WAHBE will respond to such requests from Contractor within fifteen (15) calendar days of receipt.

15.2 Amendment Process

- 15.2.1 If the parties reach agreement, an Amendment will be executed by authorized representatives and the terms of this Contract will be modified accordingly.
- 15.2.2 If the parties are unable to reach an agreement, WAHBE will be deemed to have

rejected the request.

15.2.3 Nonfinancial changes, within the term and scope of the Contract, may be approved in writing by mutual agreement (email acceptable) the WAHBE Contract Manager and the Contractor's Contract Manager.

15.2.4 In no event may the charges or prices increase, nor may the schedule be extended to correct errors or omissions in a Contractor's proposal.

16 ASSIGNMENT

Contractor may not assign or transfer this Contract or any of its rights or Claims hereunder, or delegate any of its duties hereunder, without the prior written consent of WAHBE, provided that any permitted assignment does not operate to relieve Contractor of any of its duties and obligations hereunder, nor may 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 in whole or in part without the consent of Contractor. Any attempted assignment, transfer, or delegation in contravention of this Section of the Contract is null and void. This Contract will inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

This provision does not apply to Contractor's Subcontractors, whose approval is subject to Section 50, *Subcontracting*.

17 ATTORNEYS' FEES

In the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorney fees and costs.

18 CLAIMS

Any Claims, other than claims for payment of services rendered, must be submitted to WAHBE within the earlier of twelve (12) months of the date upon which Contractor knew of the existence of the Claim or twelve (12) months from expiration or termination of the Contract. No Claims are allowed unless Notice (as described in Section 8, *Notices*) of such Claim has been given within this time period. Failure of Contractor to submit its Claim within the time allowed will result in such Claims being waived and forever barred.

19 CONFIDENTIAL INFORMATION

19.1 Contractor shall ensure its directors, officers, employees, Subcontractors, or agents use Confidential Information solely for the purposes of accomplishing the services set forth herein. Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell, or otherwise make known to unauthorized persons information without the express written consent of WAHBE or as otherwise required by law.

19.2 WAHBE reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. The monitoring, auditing, or

investigating may include, but is not limited to, salting databases.

- 19.3 Violation of this Section by Contractor or its Subcontractor(s) may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.
- 19.4 Immediately upon expiration or termination of this Contract, Contractor shall, at WAHBE's option: (i) certify to WAHBE that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to WAHBE; or (iii) take whatever other steps WAHBE requires of Contractor to protect WAHBE's Confidential Information.

20 CONFIDENTIAL INFORMATION BREACH – REQUIRED NOTIFICATION

- 20.1 Contractor must notify the WAHBE Compliance Officer (compliance@wahbexchange.org) within five (5) Business Days of discovery of any Breach or suspected Breach of Confidential Information.
- 20.2 Contractor will take steps necessary to mitigate any known harmful effects of such unauthorized access including, but not limited to, sanctioning employees and Subcontractors and taking steps necessary to stop further unauthorized access.
- 20.3 Any breach of this clause may result in termination of the Contract and the demand for return or disposition of all Confidential Information.
- 20.4 Contractor's obligations regarding Breach notification survive the termination of this Contract and continue for as long as Contractor maintains the Confidential Information and for any Breach or possible Breach at any time.

21 CONFLICT OF INTEREST

- 21.1 Notwithstanding any determination by the Executive Ethics Board or other government tribunal, WAHBE may, in its sole discretion, by written notice to the Contractor terminate this Contract if it is found after due notice and examination by WAHBE's CEO that there is a violation of the Ethics in Public Service Act, Chapter [42.52 RCW](#); or any similar statute involving the Contractor in the procurement of, or performance under this Contract and Contractor fails to cure such violation within ten (10) calendar days of receipt of notice from WAHBE.
- 21.2 In the event this Contract is terminated as provided above, WAHBE is 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 are not exclusive and are in addition to any other rights and remedies provided by law.

22 COOPERATION OF PARTIES

Contractor and WAHBE agree to fully cooperate with each other in connection with the performance of their respective obligations under this Contract. WAHBE may undertake or award supplemental Contracts for work related to this Contract. Contractor must fully cooperate with any such supplemental contractors hired by WAHBE including, but not limited to: Auditors; Quality Assurance

personnel; and Independent Validation and Verification vendors. Full cooperation includes Contractor providing access to personnel, Deliverables, and other information reasonably available.

23 COOPERATIVE PURCHASING

In accordance with 2 CFR 200.318 (e), other governmental entities may purchase services in accordance with the prices, terms, and conditions of this Contract. Each entity must establish its own contract with Contractor, be invoiced, and make its own payments to Contractor in accordance background with the terms of the contract established between the governmental entity and Contractor. WAHBE is not a legally bound party to any contractual agreement made between Contractor and any entity other than WAHBE.

24 CORRECTIVE ACTION PLANS

- 24.1 WAHBE may require Contractor to submit a Corrective Action Plan to correct or resolve a specific issue or breach.
- 24.2 Corrective Action Plan(s) required by WAHBE under this Section must provide the following:
- 24.3 Contractor's detailed explanation of the cause or reasons for the issue or breach;
- 24.4 Contractor's assessment or diagnosis of the cause of the cited issue or breach; and
- 24.5 Contractor's specific proposal to cure or resolve the issue or breach.
- 24.6 Corrective Action Plan(s) must be submitted within ten (10) Business Days following the request; and are subject to WAHBE's written approval.
- 24.7 If a requested Corrective Action Plan is not approved by WAHBE, or Contractor's compliance with the Corrective Action Plan is insufficient, WAHBE in its sole discretion, may withhold up to 25 percent of the next monthly payment. WAHBE may increase withholdings by up to 10 percent in each successive month during which the remedial situation has not been resolved. WAHBE, in its sole discretion, may return a portion of or all payments withheld once satisfactory resolution has been achieved.
- 24.8 Notwithstanding Contractor's submission and WAHBE's approval of Corrective Action Plan(s), Contractor remains responsible for compliance with all obligations under this Contract. Further, WAHBE's approval of a Corrective Action Plan under this Section does not:
- 24.8.1 Excuse Contractor's prior performance; or
 - 24.8.2 Relieve Contractor of its duty to comply with performance standards; or
 - 24.8.3 Prohibit WAHBE from assessing additional remedies or pursuing other appropriate remedies for continued substandard performance.

25 COVENANT AGAINST CONTINGENT FEES

- 25.1 Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for securing business.
- 25.2 WAHBE has the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage, or contingent fee.

26 DEBARMENT, SUSPENSION, AND INELIGIBILITY

- 26.1 In accordance with the OMB guidelines ([2 CFR part 180](#)) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), Contractor may not be debarred, suspended, or otherwise declared ineligible under statutory or regulatory authority on the government-wide exclusions in the System for Award Management (SAM).
- 26.2 Contractor must include, without modification, the clause above certification in all lower tier covered transactions (i.e., transactions with Subcontractors) and in all solicitations for lower tier covered transactions.
- 26.3 Contractor will immediately notify WAHBE if Contractor or any Subcontractor becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded in SAM from participating in transactions.
- 26.4 Failure to comply with any provisions of this Section may result in Contract termination.

27 DISCLAIMERS AND LIMITATIONS

- 27.1 Neither party will be liable, regardless of the form of action, whether in Contract, tort, negligence, strict liability or by statute or otherwise, for any Claim related to or arising under this Contract for consequential, incidental, indirect, or special Damages.
- 27.2 In no event must WAHBE's aggregate liability to Contractor under this Contract, regardless of the form of action, whether in Contract, tort, negligence, strict liability or by statute or otherwise, for any Claim related to or arising under this Contract, exceed the maximum compensation.
- 27.3 The disclaimers of certain damages and the damages limitations in Sections 27.1. and 27.2 do not apply to Damages, expenses, losses, fees, liabilities, costs, or other amounts arising from Contractor's indemnification obligations.

28 DISALLOWED COSTS

- 28.1 WAHBE will not pay the Contractor for the same services or expenses Contractor has charged to

WAHBE or any other party under any other contract or agreement.

28.2 Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

29 DISPUTES

The parties will use their best, good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Contract. Both parties will continue without delay to carry out their respective responsibilities under this Contract while attempting to resolve any dispute.

If a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with WAHBE's CEO, as follows:

29.1 The request for a dispute hearing must:

29.1.1 Be in writing;

29.1.2 State the disputed issue(s);

29.1.3 State the relative positions of the parties;

29.1.4 State the Contractor's name, address, and Contract number; and

29.1.5 Be delivered to WAHBE's CEO and the other party's (respondent's) Contract Manager within three (3) Business Days after the parties agree that they cannot resolve the dispute.

29.2 The respondent must send a written answer to the requester's statement to both WAHBE's CEO and the requester within five (5) Business Days.

29.3 WAHBE's CEO will review the written statements and reply in writing to both parties within ten (10) Business Days. The CEO may extend this period, if necessary, by notifying the parties.

29.4 The parties agree that this dispute process must precede any action in a judicial or quasi-judicial tribunal.

29.5 Nothing in this Contract must be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution method in addition to the dispute resolution procedure outlined above.

30 ENTIRE CONTRACT

This Contract, including referenced Sections, Exhibits, documents, and other items in Section 39, *Order of Precedence*, represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Contract must be deemed to exist or to bind any of the parties.

31 ERRONEOUS PAYMENT OR OVERPAYMENT

Contractor must refund to WAHBE the full amount of any erroneous payment or overpayment under this Contract within thirty (30) calendar days' written notice.

32 FORCE MAJEURE

32.1 Neither party is liable for any failure of or delay in the performance of this Contract for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, riots, strikes or labor disputes, embargoes, government orders, fire, floods, windstorms, epidemics, or any other force majeure event.

32.2 **Notification:** If either party is delayed by force majeure, said party must provide written notification within 48 hours. The notification must provide evidence of the force majeure to the reasonable satisfaction of the other party. Such delay must cease as soon as practicable and written notification of same must likewise be provided. At WAHBE's discretion, the time of completion may be extended by Contract Amendment for a period equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract.

33 GIFTS AND GRATUITIES

Contractor must not directly or indirectly offer, give, or accept significant gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with WAHBE business or Contract activities. A significant gift is defined as any tangible item, any service, any favor, any monies, credits, or discounts not available to others, of a value of \$50.00 or more, as a single gift or in annual aggregate.

34 GOVERNING LAW

This Contract is construed and interpreted in accordance with the laws of the State of Washington, and the exclusive venue of any action brought hereunder is the Superior Court for Thurston County.

35 INDEMNIFICATION

Contractor must defend, indemnify, and hold WAHBE harmless from and against all Claims, including reasonable attorneys' fees resulting from such Claims, for any or all; (a) injuries to persons or damage to property, (b) Breach of its confidentiality and notification obligations under Section 19, *Confidential Information*, and Section 20 *Confidentiality Information Breach – Required Notification*, (c) any claim that the Services, Deliverables, Materials or Work Product infringes or violates applicable law or the intellectual property right of any third-party, or (d) claims arising from intentional or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents, in the performance of this Contract.

36 INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of WAHBE. Contractor will not hold itself out as or claim to be an officer or employee of

WAHBE by reason hereof, nor will Contractor make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with Contractor.

37 LEGAL AND REGULATORY COMPLIANCE

- 37.1 **General.** During the term of this Contract, Contractor must comply with all applicable local, State and federal laws, rules, regulations, and codes; and licensing, accreditation, and registration requirements/standards, necessary for the performance of this Contract. Contractor must also comply with all WAHBE policies and standards applicable to the Contracted staff or Contractor's performance of the Services. If either party becomes aware of changes in any applicable federal or State laws, regulations, or codes that have an impact on the performance of the Deliverables or WAHBE's use of the Deliverables, that party will timely notify the other of such changes and the parties will work together to identify the impact of such changes on how WAHBE uses the Deliverables.
- 37.2 **Nondiscrimination.** Contractor must comply with all federal and State nondiscrimination laws, regulations, and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Contract may be rescinded, canceled, or terminated in whole or in part, and Contractor may be declared ineligible for further Contracts with WAHBE. Contractor must, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.
- 37.3 **Clean Air Act.** Contractor must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387) and agrees to report any violations to WAHBE and the Regional Office of the Environmental Protection Agency (EPA).
- 37.4 **Limited English Proficiency and Disability Standards.** Contractor must provide work under this Contract in accordance with federal regulations including, but not limited to the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, Section 1557 of the ACA, and 45 CFR 155.205, 155.210.
- 37.5 **Accessibility Requirements.** Contractor shall comply with the following:
- Section 508 of the Rehabilitation Act of 1973;
 - World Wide Web Consortium Web Content Accessibility Guidelines (WCAG), Version 2.2 AA <https://www.w3.org/WAI/WCAG22/quickref/> and any subsequent versions;
 - [Washington Technology Solution's \(WaTech's\) Policy USER-01](#) accessibility standards for state agencies; and
 - The Authoring Tool Accessibility Guidelines (ATAG) 2.0 guidelines, Parts A and B.
- The Vendor shall verify their capability to deliver accessible products and services within the scope of this Contract by submitting a Digital Service Provider Accessibility Conformance Report (Exhibit X) for each product or service provided.

- 37.6 **Lobbying.** Contractor may not use funds provided under this Contract to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
- 37.7 Contractor must include, without modification, the clauses above in any subcontracts (i.e., transactions with Subcontractors) and in all Subcontractor solicitations.

38 LIMITATION OF AUTHORITY

Only the WAHBE CEO, or delegate by writing (delegation to be made prior to action) has the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, Amendment, modification, or waiver or any clause or condition of this Contract is not effective or binding unless made in writing and signed by WAHBE CEO or pre-authorized delegate.

39 ORDER OF PRECEDENCE

Each of the Sections, Exhibits, and documents listed below is by this reference hereby incorporated into this Contract. In the event of an inconsistency in this Contract, the inconsistency must be resolved by giving precedence in the following order:

- Applicable Federal and State of Washington statutes and regulations;
- Terms and Conditions as contained in this Contract;
- Exhibit A – Statement(s) of Work;
- Exhibit B – WAHBE Data Security & Reporting Requirements (if applicable);
- Exhibit C – IRS 1075 Regulations (if applicable);
- RF HBE [number], released [month, day, year], and any addenda;
- Contractor’s Proposal in Response to RF HBE [number], dated [month, day, year];
and
- Any other provision, term or material incorporated herein by reference or otherwise incorporated.

40 OWNERSHIP RIGHTS

- 40.1 WAHBE and Contractor agree that all data and Work Products (collectively “Work Product”) produced pursuant to this Contract will be considered a work for hire under the U.S. Copyright Act, 17 U.S.C. §101 et seq, and will be owned by WAHBE. Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films,

tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

- 40.2 If for any reason the Work Product would not be considered a work for hire under applicable law, Contractor assigns and transfers to WAHBE, the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- 40.3 Contractor will execute all documents and perform such other proper acts necessary to secure for WAHBE the rights pursuant to this Section. As applicable, these rights include but are not limited to licensed artwork, software, and any onther other third-party Materials provided under this Contract.
- 40.4 Contractor will not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership of any Work Product, without the prior written permission of WAHBE. Contractor will take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors will not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.
- 40.5 Contractor will not use or in any manner disseminate any WAHBE Technology other than for purposes necessary to complete obligations under this Contract. Contractor shall not disclose to any third party, or represent in any way ownership of any WAHBE Technology, without WAHBE's prior written permission. Contractor will take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors will not copy or disclose, transmit WAHBE Technology, or any portion thereof, in any form, to any third party. Material that is delivered under this Contract that does not originate from Contractor Technology, must be transferred to WAHBE with a perpetual, nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such material, and to authorize others to do so. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Contractor Technology. WAHBE will have the right to modify or remove any restrictive markings placed upon the Material by Contractor.
- 40.6 Contractor must identify all Contractor Technology when it is delivered under this Contract and must advise WAHBE of any and all known or potential infringements of publicity, privacy or of intellectual property affecting any Contractor Technology at the time of delivery. Contractor must provide WAHBE with prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Contractor Technology delivered under this Contract.
- 40.7 In accordance with 45 C.F.R. 95.617, all appropriate state and federal agencies, including but not limited to the Centers for Medicare and Medicaid Services (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: (i) software, modifications, and documentation designed, developed or installed with Federal Financial Participation (FFP) under 45 CFR Part 95, subpart F; (ii) the Custom Software and modifications of the Custom Software, and associated Documentation designed, developed, or installed with FFP under this Contract; (iii) the copyright in any work developed under this Contract; and (iv) any rights of copyright to which Contractor purchases ownership under this Contract.

41 PUBLIC DISCLOSURE

Contractor acknowledges that WAHBE is subject to chapter [42.56 RCW](#) and that this Contract is a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be its proprietary 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. If a public disclosure request is made to view Contractor's proprietary information, WAHBE will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, WAHBE will release the requested information on the date specified.

42 PUBLICITY

- 42.1 The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's services by WAHBE and must not be so construed by Contractor in any advertising or other publicity materials.
- 42.2 Contractor agrees to submit to WAHBE, all advertising, sales promotion, and other publicity materials relating to this Contract or any Deliverable furnished by Contractor in which WAHBE's name is mentioned, language is used, or internet links are provided from which the connection of WAHBE's name with Contractor's Deliverables may, in WAHBE's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, marketing, sales promotion materials, publicity or the like through print, voice, the Web, and other communication media in existence or hereinafter developed without the express written consent of WAHBE prior to such use.

43 QUALITY ASSURANCE

43.1 Performance Expectations

Expected performance under this Contract includes, but is not limited to, the following:

- Knowledge of applicable state and federal laws and regulations pertaining to subject of contract;
- Use of professional judgment;
- Collaboration with WAHBE staff in Contractor's conduct of the Services;
- Conformance with WAHBE directions regarding the delivery of the Services;
- Timely, accurate and informed communications;
- Regular completion and updating of project plans, reports, documentation and communications;
- Regular, punctual attendance at all meetings; and
- Provision of high-quality Services.

43.2 Right of Inspection

Contractor must provide right of access to its records and facilities to WAHBE, or any of WAHBE's officers, or to any other authorized agent or official of the federal government, at all reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

43.3 Contractor Commitments

Any written commitment by Contractor within the scope of this Contract will be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and will render Contractor liable for Damages under the terms of this Contract. For purposes of this Section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor to WAHBE or contained in any Contractor publications, or descriptions of services in written or other communication medium, used to influence WAHBE to enter into this Contract.

43.4 Representations and Warranties

Contractor represents and warrants that all supplies, work, Deliverables, and/or equipment provided under this Contract conform to the requirements and specifications herein.

Contractor represents and warrants that: (1) it must perform all work required pursuant to this Contract in a professional manner, with high quality; and (2) time is of the essence in connection with performance of the work. Contractor must re-perform work that is not in compliance with such representations and warranties and at no additional cost to WAHBE.

Acceptance of any Deliverables, supplies, work, and/or equipment, and inspection incidental thereto, by WAHBE will not alter or affect the obligations of the Contractor or the rights of WAHBE.

44 RECORDS RETENTION AND ACCESS

Contractor must comply with all applicable WAHBE, federal and State regulations regarding retention and access requirements relating to all financial and programmatic records, supporting documents, statistical records, and other records of this Contract. In addition, Contractor must agree to the following terms regarding retention of records and access for WAHBE, state and federal government officials.

44.1 Contractor and its Subcontractors must 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 must retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract must be kept for one (1) year following the termination of litigation, including all appeals if the litigation has not terminated within six (6) years from the date of expiration or termination of this Contract.

44.2 All such records must be subject at reasonable times and upon prior written notice to Contractor to examination, inspection, copying, or audit by personnel so authorized by WAHBE, the State

and federal officials so authorized by law, rule, regulation, or contract, when applicable, during the term and during the six (6) year period thereafter. During the term, the access to these items will be provided within Thurston County, Washington. During the six (6) year period after the term, delivery of and access to these items will be at no cost to WAHBE. WAHBE's personnel will be accompanied by Contractor personnel at all times during any such examination, inspection, review, or audit. Contractor will make no charges for services rendered in connection with an audit requested by WAHBE.

- 44.3 If any litigation, Claim, or audit is started before the expiration of the six (6) year period, the records must be retained until all litigation, Claims, or audit findings involving the records have been resolved.

45 REMEDIES

Except as otherwise provided for herein, no remedy conferred by any of the specific provisions of the Contract or available to a party is intended to be exclusive of any other remedy, and each remedy are cumulative and 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 does not constitute a waiver of the right to pursue other available remedies. The remedies provided in this Contract are not exclusive but are in addition to all other remedies available under law.

46 SECURITY AND PRIVACY TRAINING

Prior to conducting any work on behalf of WAHBE, Contractor employees and supervisory personnel may be required to attend security and privacy training, provided by WAHBE staff, or a WAHBE pre-approved equivalent security and privacy training provided by the Contractor. Any time, travel, or other expenses required to send Contractor or Contractor's employees to this training is sole responsibility of the Contractor.

47 SEVERABILITY

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity does 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.

48 SITE SECURITY

While on WAHBE premises, Contractor, its agents, employees, or Subcontractors must conform in all respects with physical, fire, or other security policies or regulations. Failure to comply with these regulations may be grounds for revoking or suspending security access to these facilities. WAHBE reserves the right and authority to immediately revoke security access to Contractor staff for any real or suspected breach of this provision. Upon reassignment or termination of any Contractor staff, Contractor agrees to promptly notify WAHBE, and in alignment with Section 7, *Contract Management*.

49 SOLICITATION

During this term of this Contract, Contractor must not knowingly hire on a full-time, part-time, or other basis any executive, managerial, professional, or technical personnel of WAHBE that are or have been employed by WAHBE at any time during the term of this Contract, except regularly retired employees, to provide Services under this Contract without WAHBE's prior written consent.

50 SUBCONTRACTING

Contractor may not execute Subcontracts for any work under this Contract without obtaining the prior written approval of WAHBE. If approved, Contractor must take all listed affirmative steps provided in 2 CFR 200.321(b)(6) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Additionally, Contractor must ensure all relevant terms, conditions, assurances, and certifications set forth in this Contract are included in subcontracts.

Any Subcontractor approval may be rescinded by WAHBE's sole discretion. In no event will the existence of a subcontract release or reduce the liability of Contractor for any breach in the performance of Contractor's duties.

- 50.1 The rejection or approval by WAHBE of any Subcontractor or the termination of a Subcontractor will not relieve Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to WAHBE.
- 50.2 WAHBE has no contractual obligations to any Subcontractor or vendor under contract to the Contractor. Contractor is fully responsible for all contractual obligations, financial or otherwise, to its Subcontractors.
- 50.3 Contractor is responsible and liable for the proper performance of, and the quality of any work performed by Subcontractors.
- 50.4 Upon expiration or termination of this Contract for any reason, WAHBE 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.
- 50.5 Within fifteen (15) Business Days of receiving payment from WAHBE, Contractor must make payment to Subcontractors for any work completed in accordance with this Contract. In the event of any Claim or demand made against WAHBE hereunder, WAHBE may reserve, retain, or apply any monies due to the Contractor for the purpose of resolving such Claims.

51 SURVIVAL

The terms and conditions contained in this Contract that, by their sense and context, are intended to survive the completion, cancellation, termination, or expiration of the Contract will survive including the following sections within Section 10, *Insurance*; Section 18, *Claims*; Section 19, *Confidential Information*; Section 20, *Confidential Information Breach – Required Notification*; Section 29, *Disputes*; Section 31, *Erroneous Payment or Overpayment*; Section 34, *Governing Law*; Section 35, *Indemnification*; Section 39, *Order of Precedence*; Section 40, *Ownership Rights*;

Section 41, *Public Disclosure*; Section 42, *Publicity*; Section 43, *Quality Assurance*; Section 44, *Records Retention and Access*; and Section 47, *Severability*.

52 TAXES

WAHBE will pay any sales taxes imposed on the Services and/or Deliverables provided. Contractor must include any applicable taxes on invoices submitted to WAHBE for payment.

Contractor must 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. WAHBE, as a quasi-governmental organization, is exempt from property tax.

Contractor must complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

Contractor is 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.

53 TERMINATION

53.1 Termination or Suspension for Cause

53.1.1 In the event WAHBE determines Contractor has failed to comply with the conditions of this Contract in a timely manner, WAHBE has the right to suspend or terminate this Contract. Before suspending or terminating the Contract, WAHBE will notify Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days, the Contract may be terminated or suspended.

53.1.2 In the event of termination or suspension, Contractor is liable for Damages as authorized by law including, but not limited to, any cost difference between the original Contract and the cost for WAHBE to replace or cover Contract Deliverables and all administrative costs directly related to the replacement of Contract Deliverables, e.g., cost of the competitive bidding, mailing, advertising, and staff time.

53.1.3 WAHBE reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Contractor or a decision by WAHBE to terminate the Contract.

53.2 Termination for Convenience

A termination is deemed "Termination for Convenience" if it is determined that Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault, or negligence.

Except as otherwise provided in this Contract, WAHBE may, by ten (10) calendar days written notice, terminate this Contract, in whole or in part. If this Contract is so

terminated, WAHBE is liable only for payment required under the terms of this Contract for Deliverables received satisfactorily in accordance with applicable requirements prior to the effective date of termination and Accepted by WAHBE.

53.3 Termination for Loss of Funding or Authority

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the Effective Date of this Contract and prior to normal completion, WAHBE may terminate this Contract without advance notice; subject to renegotiation under those new funding limitations and conditions.

In the event that 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 immediately terminate this Contract by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. WAHBE will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. WAHBE agrees to notify Contractor of such withdrawal of authority at the earliest possible time.

No penalty will accrue to WAHBE in the event the termination is exercised under this Section.

53.4 Termination for Conflict of Interest

WAHBE may terminate this Contract by written notice to the Contractor if WAHBE determines, after due notice and examination, that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, WAHBE will be entitled to pursue the same remedies against the Contractor as it could pursue in the event Contractor breaches the Contract.

53.5 Termination Procedures

53.5.1 Upon termination of this Contract, WAHBE, in addition to any other rights provided in this Contract, may require Contractor to deliver to WAHBE any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of the "Treatment of Assets" clause will apply in such property transfer.

53.5.2 WAHBE will pay Contractor the agreed-upon price, if separately stated, for completed work and Deliverables Accepted by WAHBE and the amount agreed upon by the Contractor and WAHBE for (i) completed work and Services for which no separate price is stated; (ii) partially completed work and Services; (iii) other property or Services that are Accepted by WAHBE; and (iv) the protection and preservation of property, unless the termination is for default, in which case WAHBE will determine the extent of the liability. Failure to agree with such determination will be a dispute within the meaning of Section 29, Disputes. WAHBE may withhold from any amounts due the Contractor such sum as

WAHBE determines to be necessary to protect WAHBE against potential loss or liability.

53.5.3 After receipt of a notice of termination, and except as otherwise directed by WAHBE, Contractor must:

- Stop work under the Contract on the date, and to the extent specified, in the notice;
- 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 the Contract that is not terminated;
- Assign to WAHBE, in the manner, at the times, and to the extent directed by WAHBE, all the rights, title, and interest of Contractor under the orders and subcontracts so terminated, in which case WAHBE has the right, at its discretion, to settle or pay any or all Claims arising out of the termination of such orders and subcontracts;
- 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 WAHBE may require;
- Transfer title to WAHBE and deliver in the manner, at the times, and to the extent directed by WAHBE any property which, if the Contract had been completed, would have been required to be furnished to WAHBE;
- Complete performance of any part of the work not been terminated by WAHBE; and
- Take such action as may be necessary, or as WAHBE may direct, for the protection and preservation of the property related to this Contract, which is in the possession of Contractor and in which WAHBE has or may acquire an interest.

54 TRANSITION OBLIGATIONS

Contractor must provide for reasonable transition assistance requested by WAHBE to allow for the expired or terminated Contract, in whole or in part, to continue without interruption or adverse effect and to facilitate the orderly transfer of such services to WAHBE or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, except for those terms and conditions that do not reasonably apply to such transition assistance.

55 TREATMENT OF ASSETS

- 55.1 Title to all property furnished by WAHBE will remain WAHBE's. Title to all property furnished by Contractor, for the cost of which Contractor is entitled to be reimbursed as a direct item of cost under this Contract, must pass to and vest in WAHBE upon delivery of such property by Contractor. Title to other property, the cost of which is reimbursable to Contractor under this Contract, must pass to and vest in WAHBE upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by WAHBE in whole or in part, whichever first occurs. Contractor must surrender to WAHBE all property of WAHBE's in like condition to that in which it was furnished to Contractor with reasonable wear and tear expected, prior to settlement upon completion, termination, or cancellation of this Contract.
- 55.2 Any property of WAHBE furnished to Contractor must, unless otherwise provided herein or approved by WAHBE, be used only for the performance of and subject to the terms of this Contract. Contractor's use of the equipment shall be subject to WAHBE's security, administrative, and other requirements.
- 55.3 Contractor is responsible for any loss or damage to property of WAHBE that results from the negligence of Contractor, or which results from the failure on the part of Contractor to maintain and administer that property in accordance with sound management practices.
- 55.4 If any WAHBE property is lost, destroyed, or damaged, Contractor must immediately notify WAHBE and take all reasonable steps to protect the property from further damage.

56 WAIVER

Waiver of any breach of any term or condition of this Contract is not deemed a waiver of any prior or subsequent breach. No term or condition of this Contract may be waived, modified, or deleted except by a written Amendment signed by the parties.

57 APPROVAL

THIS CONTRACT is signed by the persons below who warrant that they have the authority to execute. The Contract may be altered, amended, or waived only by a written Amendment executed by both parties identified below:

Contractor Authorized Representative:	WAHBE Authorized Representative:
Name & Title	Name & Title
Address	810 Jefferson Street SE
City, State Zip	Olympia, WA 98501-1417
Phone:	Phone:
Email:	Email:
Washington State UBI No:	

Signature _____ Date _____ Signature _____ Date _____