

**Appendix B
Proposed Contract Terms and Conditions**

**HBE 16-003 Navigator Program Services
Pierce County Lead Organization**

Contract Number HBE-XXX

**Navigator Program Services
for the
Washington Health Benefit Exchange**

Between the

**Washington Health Benefit Exchange
And**

Contract Year through June 2017

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Exhibit B *Proposal* (Contractor's proposal will be incorporated upon contract execution)

CONTRACT NUMBER HBE-XXX

Navigator Program Services
for the
Washington Health Benefit Exchange

PARTIES

This Contract ("Contract") is entered into by and between the Washington Health Benefit Exchange, ("Exchange" or "HBE") located at 810 Jefferson St, Olympia WA 98501 (mailing address: PO Box 657 Olympia WA 98507), and _____, a <type of business>, licensed to conduct business in the state of Washington ("Contractor") and located at <address> for the purpose of providing Navigator Program Services for the Washington Health Benefit Exchange.

RECITALS

The Washington Health Benefit Exchange (HBE) issued Request for Proposal (RFP) Number HBE-16-003, June 30, 2016 (Exhibit A) for the purpose of developing and implementing Navigator Program Services in accordance with the HBE's authority under chapter 43.71 RCW, the statute that established a health benefit exchange for the State of Washington.

Contractor submitted a timely response, Contractor Proposal ("Proposal") (Exhibit B) to HBE's RFP;
HBE evaluated all properly submitted responses to the RFP and identified Contractor as an apparently successful vendor to provide Navigator Program Services as a **Lead Organization** in **<Pierce County>**;
HBE has determined that entering into a Contract with Contractor will meet HBE's needs and will be in the Exchange's best interest;
NOW THEREFORE, HBE awards to Contractor this Contract, the terms and conditions of which shall govern Contractor's furnishing to the Exchange Navigator Program Services for the purpose of developing, implementing and operating the Health Benefit Exchange (HBE) Navigator Program specifically in **<Pierce County>**. 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:

1 Definition of Terms

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

"Acceptance" means a Notice from HBE to Contractor that a Deliverable or Service has conformed to its applicable Acceptance Criteria.

"Acceptance Criteria" means the measures against which Navigator Program Services and Deliverables shall be evaluated in accordance with Section 22 and the Performance Standards, warranties and other requirements described in the Contract, or others agreed to in writing, and HBE's satisfaction for Services that are not subsumed in a Deliverable.

"Business Days and Hours" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the State of Washington.

“Certification” means HBE’s written certification that the Navigator meets training standards, requirements and conditions established by the HBE to provide application and enrollment assistance to consumers through the *Washington Healthplanfinder*.

“CMS” means the Centers for Medicare and Medicaid Services, the federal agency with oversight of the Washington Health Benefit Exchange.

“Confidential Information” means various trade secrets and information of each party that either Contractor or HBE desires to protect against unrestricted disclosure including without limitation: HBE nonpublic available Data; nonpublic Specifications; the Software, state source code or object code; state security data; System/Service or network designs, drawings, or specifications; computer programs; the Documentation; any nonpublic information or documentation concerning either party’s business or future products or plans that are learned by the other party during the performance of this Contract; and information that is designated as confidential by the disclosing party and, subject to Section 40 *Confidential Information and Proprietary Information*, that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes. In addition, the following are also designated as HBE Confidential Information: individual’s names; ages; residential addresses; email addresses; telephone numbers; driver’s license number or Washington identification card number; financial information (e.g., profiles, social security numbers, income, credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, security codes, access codes, or passwords that would permit access to an individual’s financial account); medical data/personal health information; law enforcement records; or other records concerning the state’s citizens and businesses; information concerning recipients of services from public health agencies.

“Confirmation” means Contractor’s Notice to HBE with full supporting and written Documentation (including, without limitation, assessment results) that Contractor has: implemented the Navigator Program services as a Lead Organization in full compliance with all specifications; completed development of each defined Deliverable; and confirmed the program as ready for use.

“Contract” means this document, all attachments, schedules and exhibits, and all amendments and Change Orders hereto.

“Contractor” means [*successful vendor*], its employees and agents. Contractor also includes any firm, provider, organization, individual, or other entity performing the business activities under this Contract. It shall also include any Subcontractor retained by Contractor as permitted under the terms of this Contract.

“Contractor Program Manager” means the individual chosen by Contractor and approved by HBE with management responsibilities for Contractor, as described in Section 12.

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

“Contractor Technology” means intellectual property owned by Contractor prior to the Effective Date (including modifications, enhancements or improvements to such intellectual property 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.

“Critical Event(s)” means the Navigator Program Services, events and Deliverables listed as such in Schedule 1 *Schedules and Deliverables*.

“Data” means all data in the Exchange System/Service, HBE’s records, files, forms, documents, and other information that will be processed by the Software.

“Deficiency” means any failure, omission, or defect in a Deliverable, causing it not to conform to its Specifications.

“Deliverable(s)” means Contractor’s products that result from the Services and that are prepared for HBE (either independently or in concert with HBE or third parties) during the course of Contractor’s performance under this Contract, including without limitation Deliverables that are described in Schedule 1 *Schedules and Deliverables* and in Section 5 of the RFP and Proposal, and Reports, 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 RFP, the Vendor’s proposal, this contract, and the Statement of Work for implementation of Navigator Program Services or the delivery of the Deliverables to HBE, as applicable.

“Effective Date” means the first date this Contract is in full force and effect once the date of the last signature of the parties to this Contract is obtained.

“Exchange”- see definition for “HBE”

“HBE” means the Washington Health Benefit Exchange, any division, section, office, unit or other entity thereof or any of the officers or other officials lawfully representing HBE.

“HBE Navigator Program Manager” means the person designated by HBE to be responsible for financial and contractual matters regarding the Contract, including but not limited to, the person to whom HBE signature authority has been delegated in writing. The term includes an authorized representative of the Navigator Program Manager acting within the limits of his/her authority.

“Implementation” means the process for making all stages and functions of the Navigator Program Services fully Operational in accordance with the Implementation Plan prepared by Contractor as a Deliverable.

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

“Maximum Amount” means the maximum amount payable by HBE to Contractor under this Contract as described in Section 3.1 *Pricing* and Schedule 1 *Schedules and Deliverables*.

“Operational” means the condition when the Navigator Program Services under this contract are totally functional in accordance with its Specifications and usable for its purposes.

“Operations” means those Navigator Program Services that will be performed by Contractor following the implementation and after Acceptance of the Navigator Program Service and that is described in the RFP HBE 16-003 and the Proposal.

“Performance Standard(s)” means the standards to which the Navigator Program Services operations shall perform, as described in this Contract, Schedule 2 *Performance Standards* and RFP HBE 16-003, and as otherwise agreed to by the parties in writing.

“Property” means all Equipment, Software, and other Washington Health Benefit Exchange real and personal Property.

“Proposal” means Exhibit B hereto, Contractor’s response to RFP HBE 16-003.

“Purchase Price(s)” means the price(s) for the purchase of each Deliverable, in whole or in part, as described in Schedule 1 *Schedules and Deliverables* 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 HBE regarding Program activities, events and services provided.

“RFP” means the Request for Proposal solicitation document that was used to establish this Contract, including all its Amendments, Exhibit A, hereto.

“Schedule” means the dates described in the RFP, the Vendor’s proposal, this contract, and the Statement of Work as deadlines for performance of Services and other Program events and activities.

“Service(s)” means the tasks of the Navigator Program and other services to be performed by Contractor on the Program, as described in this Contract, including without limitation Management, Implementation, Assessment, Deliverables, Training, and Operations Services.

“Specifications” means the technical, functional, and other written specifications that define the requirements and Acceptance Criteria, as set forth in the RFP, the Performance Standards, and any additional requirements set forth in the Proposal or others agreed to in writing. Such Specifications shall include and be in compliance with all applicable State and federal policies, laws, regulations, 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 and its network partner’s employees, agents and contractors.

“State” means the state of Washington, including without limitation HBE and all of the State’s agencies.

“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.

“Training” means the Training Services to be provided by HBE to the Contractor and Subcontractor staff.

“Consumers” mean individuals who will have use of and access to the Navigator Program Service to obtain help applying for healthcare insurance coverage through the *Washington Healthplanfinder*.

Contract Term

2 Term

2.1 Initial Term

The initial term of this Contract shall begin on the Effective Date or the date of final execution, and shall continue in full force and effect until June 30, 2017. The initial term will include: (i) the development and implementation phase; and (ii) Navigator Program Service operations.

2.2 Subsequent Terms

HBE may extend the Navigator Program Service Operations term of this Contract for up to two (2) additional years upon prior notice to Contractor. The subsequent terms will be primarily Operations, but may also include some additional development and implementation, as necessary, to enhance the program and increase consideration.

Pricing, Invoice and Payment

3 Pricing

3.1 The **Maximum Not-to-Exceed Compensation**, which includes any allowable expenses, payable to CONTRACTOR for satisfactory performance of the work under this contract shall not exceed ***One hundred and one thousand, one hundred and fifty dollars (\$101,150.00)***. The Payment Schedule is set forth in Schedule 1 *Schedules and Deliverables*.

SOURCE OF FUNDS: STATE: \$101,150.00
TOTAL: \$101,150.00

This funding for this Contract consists of state funds already received, as well as funds not yet awarded to the HBE. Contractor agrees to comply with applicable rules and regulations associated with these funds.

- 3.2 Any credits due HBE under this Contract may be applied against Contractor's payment authorizations with appropriate information attached, upon giving of notice required herein, if any, by HBE to Contractor.
- 3.3 Any amounts due HBE by Contractor, including but not limited damages, or claims for damages, may be deducted or set-off by HBE from any money payable to Contractor pursuant to this Contract.
- 3.4 Prices may not be increased during the initial term of the Contract.

4 Advance Payment Prohibited

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

5 Taxes

5.1 HBE will pay any sales taxes imposed on the Services and/or Deliverables if HBE 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.

- 5.2 Contractor shall maintain business registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.
- 5.3 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 Contractor Payment

- 6.1 Payments to Contractors for Navigator Program Services are contingent on the Contractor submitting properly completed, timely monthly progress reports to the HBE Navigator Program Manager. Contractor will use a report format prescribed by HBE. Upon HBE's approval of the Contractor's reports, HBE will prepare and submit a payment authorization to HBE Finance on behalf of the Contractor to initiate payments authorized under this contract. HBE Finance will generate payment to the Contractor. The Contractor will receive a copy of the payment authorization generated.
- 6.2 The first payment to the Contractor for meeting specific enrollment targets will be made at the conclusion of the open enrollment period and will be generated upon validation of the *Washington Healthplanfinder* enrollments completed by Contractor and the Contractor's subcontractors in the Contractor's service area network. The validation process will also include the Insurance Carrier confirmation that the first payment was received. After the first payment, Contractors will be paid for progress toward meeting the full target with each scheduled payment.
- 6.3 If HBE fails to make timely payment, Contractor may invoice HBE one percent (1%) per month of the amount overdue or a minimum of one dollar (\$1). HBE's payment will not be considered late if payment is deposited electronically in Contractor's bank account or if a check or warrant is postmarked within forty-five (45) calendar days of the date of the HBE payment authorization to HBE Finance.

7 Overpayments to Vendor

Vendor shall refund to HBE the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Vendor fails to make timely refund, HBE may charge Vendor one percent (1%) per month on the amount due, until paid in full.

8 Funding

- 8.1 The parties acknowledge and agree that this Program is dependent upon the availability of funding.
- 8.2 If funding to make payments in accordance with the provisions of this Contract is not forthcoming, allocated or allotted to HBE, then HBE will give Notice to Contractor to

stop performance of the Services, and the obligations of HBE to make payments will cease and terminate. HBE shall have the right to terminate the Contract as provided in Section 47 Termination for Nonallocation of Funds.

- 8.3 If funding to make payments in accordance with the provisions of this Contract is delayed or is reduced, HBE will give Notice to Contractor to stop performance of or reduce the Services (as set forth in the following sentence) and the obligations of HBE to make payments will be delayed or be reduced accordingly, or HBE shall have the right to terminate the Contract as provided in Section 47 Termination for Nonallocation of Funds. If such funding is reduced, HBE, at its sole discretion, shall determine which aspects of the Navigator Program Service shall proceed and which specific services shall be performed. Contractor's costs related to such Services and associated Deliverables is determined in accordance with Schedule 1 *Schedules and Deliverables*. In this situation, HBE shall pay Contractor for Services and Deliverables in accordance with the terms of Section 45.3. Any obligation to pay by HBE will not extend beyond the end of HBE's then-current funding period.
- 8.4 HBE 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 and will notify Contractor of any change in funding. Contractor expressly agrees, however, that no penalty or damages shall be applied to, or shall accrue to HBE or to any other agency or office of the State in the event that the necessary funding to pay under the terms of this Contract is not available, not allocated, not allotted, delayed or reduced.
- 8.5 Nonduplication of Funding: the Contractor and its subcontractors may not supplant or duplicate existing local, state, or federal funding for any activities within the scope of work of this contract. If other sources of funding are used to perform similar functions, the Lead Organization, and subcontracted network Navigator Organizations are responsible for assuring appropriate recordkeeping is in place that accounts for the work performed under each fund source.

Project Management

9 Reports

All Reports shall be produced in formats approved by HBE and delivered in accordance with the Schedule and the terms of this Contract.

10 Reporting

During the term of this Contract, Contractor shall produce the Reports and the parties shall participate in the meetings described below.

10.1 Quarterly Progress Reports.

The Contractor Program Manager will submit a Quarterly Progress Report in the format prescribed by the HBE Navigator Program which will be due and sent to the HBE Program Manager's office or their designee by the tenth working day following the end of each quarter. The quarterly schedule for purposes of reporting progress for this contract: Quarter 1 = October 1 through December 31; Quarter 2 = January 1 through March 31; Quarter 3 = April 1 through June 30.

The Report will address, at a minimum, the following:

- a. Overall evaluation of Network effectiveness
- b. Identification of organization's subcontractors with unsatisfactory performance for three or more consecutive months, if any, and the steps in place to improve performance.
- c. Key program accomplishments during the quarter
- d. Program needs, gaps, or issues that are creating barriers to service delivery and/or enrollment
- e. Rating of HBE support (communication, training and certification administration, user/technical support, health literacy and outreach)

10.2 Monthly Outreach Report.

The Contractor Program Manager will submit a monthly Outreach Report in the format prescribed by the HBE Navigator Program which will be due and sent to the HBE Program Manager's office or their designee by the tenth working day following the end of each month. The report will include but not be limited to:

- a. Highlights of community outreach events or key activities during the previous month.
 - Vulnerable/hard to reach, QHP and/or other target populations reached
 - Navigator network partners or Broker participation
 - Key accomplishments or results of the outreach
- b. Future community outreach events or key activities planned or scheduled
 - Vulnerable/hard to reach, QHP or other special populations targeted for outreach
 - Navigator network partners and/or Broker participation

10.3 The Contractor Program Manager shall also provide or produce such reports or information as are reasonably requested by the HBE Program Manager regarding the Program.

10.4 As reasonably requested by HBE, the Contractor Program Manager shall assist the HBE Navigator Program Manager in preparing and shall prepare special Reports and presentations related to the Program.

11 Contractor Program Staff

11.1 Except in the case of legally required leave or absence, sickness, death, or termination of employment, staff commitments made in the Proposal shall not be changed without prior written notification to the HBE Navigator Program Manager. Staffing will include the named Key Staff at the levels of effort proposed and a summary of the individual's qualifications for the position, including education and experience. During the term of this Contract, HBE reserves the right to approve or disapprove Contractor's 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 or Subcontractor Staff found unacceptable by HBE.

- 11.2 All Staff proposed by Contractor as replacements for other Staff shall have comparable or greater skills for performing the Program activities as performed by the Staff being replaced.
- 11.3 All Contractor, subcontractor Staff and Staff of unpaid network partners working on behalf of the Navigator Program shall execute a nondisclosure agreement in a form prescribed by HBE prior to commencing Navigator Program Services work. A sample of the Nondisclosure Agreement is attached hereto as Schedule 6 Non-Disclosure Agreement. The Contract Program Manager for the Lead Organization shall maintain the official copy of the signed Nondisclosure form for Navigators in their service areas.
- 11.4 Contractor assumes sole and full responsibility for its acts and the acts of its personnel. Contractor understands and agrees that HBE 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 HBE for any judgments rendered against Contractor, its Subcontractors or agents.
- 11.5 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 HBE. Contractor will indemnify and hold HBE harmless from any and all such claims asserted against HBE. 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 HBE including, but not limited to: tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits.

12 Contractor Program Manager

- 12.1 Contractor will assign a Contractor Program Manager. The Contractor Program Manager shall be the liaison with the HBE Navigator Program Manager.
- 12.2 Contractor agrees and represents that its Contractor Program Manager will be fully qualified to perform the tasks required of that position under this Contract. The Contractor Program Manager shall function as Contractor's authorized representative for all management and administrative matters not inconsistent with the provisions contained herein. Contractor's Program Manager shall be able to make binding decisions pursuant to this Contract for Contractor. The Contractor Program Manager shall devote sufficient efforts to the Program. The Contractor Program Manager shall be present at the Contractor's principle work location in the Contract's specified Washington geographic area on a full-time basis.
- 12.3 Contractor must provide Notice to HBE of the removal or pending replacement of the Contractor's Program Manager, and HBE must have an opportunity to review the resume of the Contractor's prospective replacement candidate prior to the offer of employment. HBE expects the prospective candidate to have comparable or greater knowledge, skills, and abilities for the position. HBE will inform the Contractor if it has concerns about the employment of the replacement Contractor Program Manager prior to his or her beginning work on the Program.

12.4 Any written commitment by Contractor Program 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

Organizations providing Navigator Program Services that involves one-on-one services to consumers under this HBE contract must have Background Check policies in place that meet the provisions for serving children and vulnerable adults as specified in RCW 43.43.830 and RCW 43.43.832 and include reasons for employment disqualification based on conviction records related to crimes against persons as specified in the policy. Also, due to the Navigator's access to applicants' personal health and personal identification information, the organizations' background check policies must also include disqualification for Navigator positions upon receipt of an individual's background check with a conviction record related to financial crimes including but not limited to: identity theft, robbery, forgery, fraud, theft, bribery, embezzlement. All Navigator background checks must be current within two (2) years of Navigator employment. Contractors will provide a copy of their Background Check policy relative to Navigator Program Services as a part of their proposal packet, and incorporated into this contract.

14 Employment of HBE Personnel

Contractor shall not knowingly hire on a full-time, part-time, or other basis without the written consent of HBE during the period of this Contract any managerial, professional or technical personnel of HBE that are or have been at any time during the term of this Contract in the employ of HBE, except regularly retired employees.

15 HBE Navigator Program Manager

HBE shall appoint an HBE Navigator Program Manager for this Contract who will provide oversight of the activities conducted hereunder. The Navigator Program Manager will be the principal contact for Contractor concerning business activities under this Contract. HBE shall notify Contractor, in writing, when there is a new Navigator Program Manager assigned to this Program. The Navigator Program Manager will be responsible for ensuring all tasks identified in the RFP and Statement of Work are completed, including without limitation the following:

- a. Coordinating the reporting, review and Contract compliance process;
- b. Facilitating the effective participation of HBE staff;
- c. Resolving questions raised by Navigator network organizations requiring clarification of HBE requirements, policies, and procedures;
- d. Monitoring the progress of all principal Program participants, including Contractor and other State entities;
- e. Administering and managing this Contract; and
- f. Facilitating the timely resolution of issues raised by program participants.

16 Accounting Requirements

Contractor shall establish and maintain an accounting system with procedures and practices in accordance with generally accepted accounting principles. The accounting system shall maintain records pertaining to the Services and all other costs and

expenditures made under this Contract, and the costs properly applicable to the Contract shall be readily ascertainable therefrom.

17 Records Retention and Access Requirements

- 17.1 Contractor shall agree to the conditions of all applicable HBE, federal and state regulations, which are incorporated herein by this reference, regarding retention and access requirements relating to all financial and programmatic records, supporting documents, statistical records, information that supports the findings, conclusions and recommendations of Contractor's reports, and other records of this Contract. In addition, Contractor shall agree to the following terms regarding retention of records and access for HBE, state and federal government officials.
- 17.2 Contractor and its Subcontractors shall maintain books, records, documents and other evidence which sufficiently and properly reflect the accuracy of amounts contract funding received by the HBE during the performance of this Contract and shall retain all such records for six 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 six (6) years from the date of expiration or termination of this Contract.
- 17.3 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 Navigator Program Manager and/or HBE, 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, access to these items will be provided within Thurston County. During the six (6) year period after the term, delivery of and access to these items will be at no cost to HBE. HBE's personnel shall 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 HBE. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.
- 17.4 Contractor shall incorporate in its subcontracts this section's records retention and review requirements.

18 Supplemental Contracts

HBE may undertake or award supplemental contracts for work related to this Contract. Contractor shall fully cooperate with any such contractors hired by HBE. Contractor shall ensure that all Subcontractors shall abide by this provision. 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.

Statement of Work and Deliverables

19 Deliverables - General

- 19.1 Contractor shall provide HBE with the Deliverables on or before the applicable Delivery Dates in the Statement of Work or as mutually agreed upon in writing, and as described in the RFP, the Response, and this Contract. Contractor shall use the Specifications, the Statement of Work, the RFP, the Proposal, any Deliverables already accepted by HBE, Contractor's expert knowledge, and this Contract as the basis for the Deliverables.
- 19.2 All Deliverables shall be subject to HBE's Acceptance Process, including without limitation, Deliverables provided pursuant to Change Orders. HBE's review of Deliverables shall be in accordance with the time frames set forth in the Statement of Work. The Acceptance Criteria for Deliverables provided pursuant to Change Orders shall be established in writing before beginning work on such Deliverables.

20 Representation

By submitting a Deliverable, or reporting the successful implementation of a Service, Contractor represents that, to the best of its knowledge, it has performed the associated tasks in a manner that will, in concert with other tasks, meet the Specifications and objectives stated or referred to in this Contract. By unconditionally giving Acceptance for a Deliverable, HBE represents only that it has reviewed the Deliverable and detected no Deficiencies of sufficient gravity to defeat or substantially threaten the attainment of those objectives and to warrant the withholding of Acceptance for the work completed.

21 Delivery

Contractor shall deliver the Navigator Program Services and Deliverables pursuant to this Agreement on or before the applicable Delivery Dates in the Statement of Work. All such deliveries made pursuant to this Agreement must be complete.

22 Acceptance Process for Deliverables

- 22.1 Upon receipt of a Deliverable and Confirmation from Contractor that the Deliverable meets its Specifications, HBE will review the Deliverable to determine whether the Deliverable conforms to its Acceptance Criteria. HBE will provide Acceptance for a Deliverable if it has no Deficiencies. If a Deficiency is found HBE will notify Contractor. Contractor shall correct Deficiencies and resubmit a corrected Deliverable to HBE and HBE will review the Deliverable to verify whether the the Deficiencies have been corrected. Contractor's time for correcting Deficiencies and HBE's review of Deliverables shall be in accordance with the timeframes set in the Statement of Work. If time periods for correcting Deficiencies by Contractor and reviewing corrected Deliverables are not in the Statement of Work, each such time period shall be ten Business Days.
- 22.2 If Contractor is unable to correct all Deficiencies within the number of days indicated in the Statement of Work following the Deliverable's scheduled Acceptance, or if no such date is in the Statement of Work, within 60 days from such scheduled Acceptance, HBE may, at its option: (a) continue review of the Deliverable and

require Contractor to continue until Deficiencies are corrected or eliminated; (b) request Contractor to provide, at its expense, a replacement or alternative Deliverable for further review; or (c) after completion of the process set forth in this Section 21 and providing Notice of Breach to Contractor, terminate this Contract as described in Section 41 Termination for Contractor's Breach.

23 Knowledge Transfer

While implementing and developing Navigator Program Services and other Deliverables, and during operation of the Navigator Program Service, Contractor shall demonstrate and provide information to staff designated by HBE about the functions and operations of all Navigator Program Services, processes, techniques, software and tools in accordance with the Specifications and the Statement of Work.

Additional Contractor Responsibilities

24 HBE Property

24.1 Ownership

Navigator Program Services generally do not require provision of HBE Property to Contractors. However, if HBE Property is provided, title to all Property furnished by HBE shall remain in HBE's name.

24.2 Use of Property

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

24.3 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 HBE 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 HBE 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 HBE Site, and shall do so without requesting contribution from HBE or assistance from HBE officers or employees.

24.4 Notice of Damage

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

24.5 Surrender of Property

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

25 Services

25.1 Performance

Contractor shall perform the Services as described in this Contract as outlined in Schedule 3 – Statement of Work and to achieve the objectives described in this Contract.

25.2 Necessary Resources

Contractor shall provide the personnel and all materials and resources necessary for the performance of the Services and require this of their paid and unpaid network partner organizations.

26 Implementation

Contractor shall complete the Implementation as described in Section 30 and Schedule 1 *Schedule and Deliverables* of this Agreement, and as described in RFP HBE 16-003, the Vendor's Proposal, and the Statement of Work.

27 Training

Navigators must complete training HBE designates as required, and that imparts the skills and expertise necessary to perform required duties. Successful completion of initial Navigator training and passing a qualifying exam is a requirement for certification of Navigators and must be completed prior to delivering services to consumers. Training will prepare Navigators to provide consumer assistance and education, complete a consumer's application and eligibility, and facilitate enrollment, renewal, and disenrollment services.

The training curriculum will be web-based and will include:

- An orientation designed to help Navigators serve consumers new to insurance to understand and use health insurance benefits, to deliver services with cultural competency, and other topics that address the needs of vulnerable groups.
- *Washington Healthplanfinder*: technical training required to efficiently use the marketplace portal. Training will also include instruction on the Eligibility and Enrollment process, including Plan presentation and selection; payment procedures, etc.
- Policies and Procedures: Health Insurance, QHPs, Outreach and Education, Ethics, Customer Service, Confidentiality, Security and Nondisclosure, etc.

Once certified, Navigators must complete ongoing training modules and examinations to maintain privileged user access to *Washington Healthplanfinder*. Modules will address system updates, policy or procedural changes important to the Navigator role.

28 Certification

28.1 Primary Objective

HBE and Contractor agree that Navigator candidates must complete all Navigator/HBE program attestations, have a background check within two years of Navigator employment that is clear of all disqualifying charges, and pass a certification examination administered by the HBE prior to performing Navigator work. Once certified, Navigators must complete modules and exams identified as

required to maintain privileged user access to *Washington Healthplanfinder*.

28.2 Contractor Obligations

Pursuant to achieving this objective, Contractor agrees:

- To ensure the Navigator candidates complete the Navigator Program and HBE required Training as described in Section 5 of the RFP;
- To ensure any Navigator Training offered by the Contractor meets other relevant State and federal requirements which may be enacted, including regulations or other guidelines, and that are incorporated by reference in the Contract or associated Change Orders;
- To provide on a timely basis, all information, data, forms, training, documentation, correspondence, consultation, and assistance needed to ensure Navigators delivering services meet all required conditions and are ready to participate in the testing required for Navigator Certification.

29 Warranties

29.1 Navigator Program Organization Services

Contractor represents and warrants that:

It shall perform all Navigator Program Organization services required pursuant to this Contract in a professional manner, with high quality;

It shall give highest priority to the performance of the Navigator Program Organization services;

Time shall be of the essence in connection with performance of the Navigator Program Organization services; and Contractor shall immediately correct any aspect of the Navigator Program Organization services which are not in compliance with such representations and warranties at no cost to HBE.

29.2 Deliverables

Contractor represents and warrants that each Deliverable, including without limitation the Navigator Program Organization services, shall meet its Specifications as provided herein following its implementation and Acceptance. Contractor shall immediately correct each of the Deliverables that does not meet its Specifications as provided herein.

29.3 Power and Authority

Contractor represents and warrants that it has the full power and authority to grant to HBE 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 and every term, condition and obligation to this Contract, and that all requirements of Contractor have been fulfilled to provide such actual authority.

29.4 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 Navigator Program Organization

services, including without limitation the provisions of RCW 19.02 regarding Business Licensing in Washington State.

29.5 OSHA/WISHA

Navigator Program Organizations, including any subcontracted organizations, must be in compliance with the federal OSHA and state WISHA laws.

29.6 Authorization

Contractor represents and warrants that:

- a. 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 in order for Contractor to enter into this Contract and perform its obligations under this Contract;
- b. 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,
- c. 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.

29.7 Ability To Perform

Contractor represents and warrants that:

- a. Contractor has the financial stability to carry out the responsibilities of a Navigator Program Lead Organization, including Operations during any period of this Contract
- b. Contractor has the financial resources to fund the capital expenditures required under the Contract without advances by HBE or assignment of any payments by HBE to a financing source;
- c. 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
- d. Contractor's methods of accounting are consistent with generally accepted accounting principles and are capable of segregating costs by budget categories and fund sources.

30 Lead Organization Services

30.1 Implementation Period

The Implementation Period shall begin upon contract execution and end prior to November 1, 2016.

30.2 Operations Period

Contractor shall provide Operations Services in accordance with RFP HBE 16-003, the Vendor's Proposal, the Statement of Work and this Contract. Lead Organization will start on November 1, 2016, or when the Lead Organization is fully operational.

Contractor shall correct any deficiencies in the Lead Organization's service and support and maintain services in accordance with RFP HBE 16-003, the Vendor's Proposal, the

Statement of Work and this Contract. Contractor's responsibilities shall include but not be limited to maintaining service in accordance with the Specifications and the terms of this Contract, and developing, on a best efforts basis, immediate correction to any aspect of the services which are not in compliance.

30.3 General Responsibilities and Statement of Work

The Contractor shall provide the Lead Organization services as described in this section.

30.3.1 Contractor agrees to serve as the designated Lead Organization for their service area. Lead Organization Contractors may partner with other organizations in the service area that, collectively, are best suited to meet the needs of the entire service area, particularly for vulnerable and hard-to-reach populations. The Contractor will be responsible for organizing all partners and services across the service area and provide a single point of responsibility for engagement with the HBE

30.3.2 The HBE will oversee the Contractor. All organizations that subcontract with the Lead Organization Contractor will be subject to the same contract terms and conditions as the Contractor and will be subject to oversight by the HBE.

30.3.3 Contractor shall perform these Services as part of the Lead Organization tasks described in the RFP and included in the fixed price for Lead Organization operations set forth in Schedule 1 *Schedule and Deliverables*. Contractor's statement of work shall include but not be limited to the following while operating as:

1. A Lead Organization will:
 - a. Maintain a physical business location and ongoing presence to manage Navigator Program services within their service area;
 - b. Identify the Navigator assistance needs of the people in the service area, including designating target populations and groups. Target populations and groups should take into consideration the presence of uninsured groups who have barriers to enrollment, such as language, income, or other factors, and that include those likely to be eligible for QHPs and Medicaid.
 - c. Plan and coordinate area-wide outreach to assure a coordinated and strategic approach and submit monthly outreach reports to HBE.
 - d. Assure that trained, certified Navigators are available and accessible to residents throughout the service area to deliver one-on-one, in-person *Washington Healthplanfinder* application and enrollment assistance.
 - e. Recruit, evaluate and select the organizations in their service area that are best suited to accomplish this work; for example, those that have existing relationships with consumers likely to need assistance obtaining health care coverage or using the *Washington Healthplanfinder* system. Best suited to provide these essential

services are organizations that interact regularly with individuals and families, have experience serving vulnerable and hard-to-reach populations, and have earned reputations for fairness and trustworthiness. The network needs to reflect organizations with relationships to groups likely to be eligible for both QHPs and WAH.

- f. Develop and administer (1) a subcontract, including the compensation approach for paid network partner organizations; or (2) a memorandum of understanding with unpaid network partner organizations. Ensure Navigator staff of the Lead Organization and network partner organizations complete required Navigator Program and HBE attestations, have a current satisfactory background check, and participate in HBE-required Navigator training and certification processes.
- g. Provide the Enhanced User Function to troubleshoot, report issues and follow up with Navigators in the service area. Enhanced Users must be certified Navigators and complete all required training and pass all pertinent exams. Enhanced Users must also pass specialized training to perform this function and meet additional security requirements. Due to the level of system access, HBE will be the custodian of record for Enhanced Users' background checks.
- h. Act as the funding agent for network partners, compensating their paid, subcontracted network Navigator Organizations according to Exchange guidelines. Lead Organizations may also include unpaid partners in their networks and must maintain a written agreement with these partners that includes pertinent Navigator service expectations, especially pertaining to security, nondisclosure, and confidentiality.
- i. Monitor network partner Navigator Program service performance and integrity. Respond quickly and report to HBE on complaints or issues reported to HBE or the Lead Organization involving a Navigator or Navigator network partner.
- j. Lead Organization Contractors with certified Navigators will deliver the full range of application, consumer education, and enrollment services in-person; at no cost to consumers; use the *Washington Healthplanfinder* to record consumer applications; provide language support and disability access without cost to the consumer.
- k. Provide periodic forums for Navigators to network and receive updates.
- l. Maintain a list of active Brokers in the service area to be shared with network partner organizations and Navigators. Ensure Navigator network organizations understand the HBE guidelines and have

referral resources or procedures for obtaining a list of HBE registered Brokers in the local area.

- m. Act as the liaison to HBE for all service area network partners and ensure network partners and Navigator staff receive timely information about HBE initiatives and changes.
- n. Establish and maintain a consumer complaint resolution process and inform consumers about their complaint resolution options beyond the consumer's Navigator.
- o. Fulfill HBE Navigator Program regular or ad hoc reporting requirements.
- p. Develop a process for immediate notification to HBE regarding security, confidentiality and nondisclosure breaches by Navigators.
- q. Maintain accurate lists of the Navigators, secure and maintain Navigator attestations and background checks, and ensure HBE is provided timely notification about new or terminating Navigator staff.
- r. Designate Lead Organization staff qualified to perform as Enhanced Users to assist network Navigators with *Washington Healthplanfinder* application errors and issues and report issues to HBE using prescribed processes.(See g. of this section)

2. Navigator Responsibilities

- a. Maintain expertise in eligibility, enrollment and program specifications.
- b. Provide information and services in a fair, accurate and impartial manner.
- c. Facilitate a consumer's selection of a QHP or enrollment in Washington Apple Health.
- d. Provide assistance applying for premium subsidies and cost-sharing.
- e. Provide referrals to appropriate agencies including: the Office of the Insurance Commissioner, the Health Care Authority, and the Department of Social and Health Services, for applicants and enrollees with grievances, complaints, or questions.
- f. Provide information to assist individuals eligible for both WAH and QHP in understanding the value and benefit of health insurance coverage, differences among health plans, how to use their insurance benefits, costs they are responsible for and costs the insurance company is responsible for, and how to access the health care system. This includes follow-up services and ongoing support to help people understand how to report changes and retain coverage over time.
- g. Contact QHP enrollees periodically throughout the plan year to share pertinent information provided by HBE, such as tax filing requirements, change reporting, important dates to remember for renewing coverage, etc.

- h. Provide all information and services in a manner that is culturally and linguistically appropriate and ensures accessibility for individuals with disabilities.
- i. Enter all consumer information related to application and enrollment in the *Washington Healthplanfinder* following security and confidentiality standards established by the Exchange.
- j. Complete an HBE data collection form to document enrollment-related services delivered to consumers.

30.4 Performance Standard Measurement

- 30.4.1 Contractor shall comply with the Performance Standards set forth in Schedule 2 Performance Standards, the RFP Section 6 Performance Monitoring, and the Vendor Response.
- 30.4.2 Multiple data collection methods will be used for tracking and reporting on key performance measures.
- 30.4.3 Navigators will report basic enrollment information using an online data collection tool provided by HBE. Results will be compiled by HBE and shared with Contractors.
- 30.4.4 HBE will provide additional reporting to track and evaluate Navigator enrollment services as data becomes available, or upon request whenever possible.
- 30.4.5 If Contractor progress toward enrollment targets is unsatisfactory or Contractor is performing below average for three consecutive months, HBE may require the Contractor to collaborate in developing strategies for improving performance.
- 30.4.6 HBE may terminate a Lead Organization contract if the organization is not progressing toward outcome targets at the close of open enrollment or at any point thereafter if performance results do not improve.
- 30.4.7 Lead Organizations will be required to meet with the HBE upon request to discuss performance of the Contractor or network Navigator Organizations. The HBE also reserves the right to perform an on-site program review with 14 days' advance notification to the Lead Organization.

30.5 Program Integrity

- 30.5.1 Program integrity shall be assured by reducing the risk of Navigator misconduct, including verifying Navigators meet established credentials and qualifications, including:
 - a. Required competencies;
 - b. Completion of required training;
 - c. Verification of language proficiencies other than English, if the Navigator is required to use the other language(s) to serve applicants;
 - d. Signing Navigator attestations regarding: Conflict of Interest; Navigator Code of Ethics, Nondisclosure of consumer PHI and PII; and HBE security requirements.

- e. Passing a bi-yearly Background check that is clear of pending or confirmed charges involving: abuse or mistreatment of children or vulnerable adults; fraud; theft; identity theft; Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty.

30.5.2 Additional measures shall include ensuring consumers have an easy and transparent way to file complaints, periodic monitoring of Contractor activities, or surveying consumers about the services received.

31 General Indemnity

Contractor shall, at its expense, indemnify, defend, and hold HBE, its employees, officers, directors, contractors and agents harmless from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation reasonable attorneys' fees, and expenses from any claim or action, including without limitation for property damage, bodily injury or death, caused by or arising from the negligent acts or omissions or willful misconduct of Contractor, its officers, employees, agents, or Subcontractors. HBE shall promptly give Contractor notice of such claim. HBE 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, the HBE 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.

32 Distribution License Indemnity

Contractor shall, at its expense, defend, indemnify, and hold HBE and its employees, officers, directors, contractors and agents harmless from and against any third-party claim or action against HBE which is based on a claim that any Service or Deliverable designed, created, developed, and distributed solely Contractor 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. HBE shall promptly give Contractor written notice of any such claim. HBE 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, the HBE 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.

33 Insurance

33.1 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 HBE 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.

- 33.2 The minimum acceptable limits shall be as indicated below for each of the following categories:
- a. 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;
 - b. Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
 - c. 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;
 - d. Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, conditioned upon Section 33.3 below, and coverage of not less than \$1 million per occurrence/\$2 million general aggregate; and
 - e. Crime Coverage with a deductible not to exceed \$100,000, conditioned upon Section 33.3, and coverage of not less than \$1 million single limit per occurrence and \$2 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty.
- 33.3 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 HBE a joint loss payee for Crime Coverage, and providing the HBE Navigator Program Manager or designee with Certificates of Insurance on an annual basis.
- 33.4 Premiums on all insurance policies shall be paid by Contractor or its Subcontractors. Such insurance policies provided for HBE pursuant to this Section shall expressly name HBE as additional insured and provide that it shall not be revoked by the insurer until 30 days Notice of intended revocation thereof shall have first been given to HBE by such insurer.
- 33.5 Contractor's insurance policies shall not be canceled or nonrenewed 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 HBE, attention HBE Navigator Program Manager, and Contractor has replacement insurance policy(ies) in place that satisfy the requirements set forth in this Section 313. Contractor's insurance policies shall not be reduced in scope without HBE's prior written consent.
- 33.6 Contractor shall notify HBE immediately if any aggregate insurance limit is exceeded. In such event, additional coverage must be purchased to meet requirements
- 33.7 Contractor agrees to waive all rights of subrogation against HBE for losses arising from services performed by Contractor under this Contract.

- 33.8 All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the HBE and shall include a severability of interests (cross-liability) provision.
- 33.9 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.
- 33.10 Contractor shall furnish to HBE a letter of self-insurance evidencing Contractor's self-insurance program.
- 33.11 By requiring insurance herein, HBE 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 HBE in this Contract.

34 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. HBE 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.

Changes

35 Changing Government Programs

- 35.1 The parties acknowledge that the government programs supported by this Contract will be subject to continuous change during the term of this Contract. Contractor has provided for or will provide for adequate resources, at no additional cost to HBE, to reasonably accommodate such changes, subject to the Change Order process of Section 36.
- 35.2 The Parties also acknowledge that Contractor was selected, in part, because of its experience, and knowledge concerning applicable federal and/or State laws, regulations, policies, or guidelines that affect the performance of the Navigator Program Services.
- 35.3 In keeping with HBE's reliance on Contractor's knowledge and experience, Contractor will be responsible for identifying changes in applicable federal or State legislative enactments and regulations and the impact of such changes on the performance of the Services or client's use of the Services. Contractor will timely notify HBE of such changes and work with HBE to identify the impact of such changes on how HBE uses and Contractor implements the Services.
- 35.4 In the ordinary course of business, if HBE becomes aware of any material changes in applicable law, regulation, policy, or guidelines affecting the Contract, HBE will promptly notify Contractor of the changes.

35.5 Changes Required by Law

If federal or state laws, rules, regulations, policies or guidelines are adopted, promulgated, judicially interpreted or changed, the effect of which is to alter the ability of either party to fulfill its obligations under this Contract, the parties will promptly and in good faith negotiate appropriate modifications or alterations to the Contract and any appropriate Change Orders.

35.6 Noncompliance

Contractor will be responsible for any fines, penalties, or disallowances imposed on the HBE or Contractor arising from any noncompliance with the laws, regulations, policies and guidelines that affect the Navigator Program Services or Deliverables that are to be provided or that have been provided by Contractor, its Subcontractors or agents.

36 Change Order Process

36.1 Change Requests

- a. HBE may request changes within the scope of the Contract at any time by a written Change Request substantially in the form of Schedule 4 Change Request Form. Such changes may include, without limitation, revisions to Lead Organization services or deliverables.
- b. Contractor shall respond in writing to a Change Request within 10 Business days of receipt.
- c. The Contractor Program Manager and the HBE Navigator Program Manager shall negotiate in good faith and in a timely manner as to the cost for change orders and the impact on the Schedule of any Change Request.
- d. Contractor may also submit a Change Request to HBE to propose changes that should be made within the scope of the Contract. Any such Change Request shall include proposed costs and Schedule impacts HBE will attempt to respond to such Change Requests from Contractor within 10 days of receipt.

36.2 Change Orders

- a. 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.
- b. If the parties are unable to reach an agreement in writing on a Change Request submitted by Contractor, the HBE Program Manager will be deemed to have rejected the requested Change Request.
- c. If the parties are unable to reach an agreement in writing on an HBE-proposed Change Request within 15 days of Contractor's response to such Change Request, the HBE Program Manager may make a determination of the revised price and Schedule and Contractor shall proceed with the work according to such price and Schedule and shall sign the resulting Change Order subject to Contractor's right to appeal the HBE Navigator Program Manager's determination of the price and/or Schedule to the dispute resolution process under Section 37. Nothing in this Section shall in any manner excuse Contractor from proceeding diligently with the Contract as changed by the Change Order.

- d. The parties will execute a formal Contract amendment for any Change Order that increases or decreases the Maximum Amount.
- e. Nonfinancial Change Orders may be approved in writing by the HBE Program Manager. All other Change Orders shall be executed by the HBE Program Manager.
- f. Contractor will incorporate all Change Orders affecting the Lead Organization Services and Deliverables into applicable Documentation as described in RFP HBE 16-003.
- g. 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 Contractor's Proposal.

36.3 Termination

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

Disputes and Remedies

37 Dispute Resolution

- 37.1 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, first through negotiations between senior management of the parties and second, through the dispute resolution process set forth below.
- 37.2 If the dispute has not been resolved by negotiations between senior management of the parties within 30 calendar days of initiating such negotiations, either party may initiate the following procedure by preparing a written description of the dispute and delivering it to the other party.
- 37.3 The responding party shall respond to the initiating party's description of the dispute in writing within five (5) Business Days of receipt thereof. The initiating party shall then have five (5) Business Days to review the response. If after this review resolution cannot be reached, both parties shall have five (5) Business Days to negotiate in good faith to resolve the dispute.
- 37.4 If the dispute cannot be resolved after five (5) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within five (5) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next five (5) Business Days.
- 37.5 The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
- 37.6 Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

- 37.7 HBE and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.
- 37.8 If the subject of the dispute is the amount due and payable by HBE for Services being provided by Contractor, Contractor shall continue providing Services pending resolution of the dispute provided HBE pays Contractor the amount HBE, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

38 Additional Rights and Remedies

38.1 Withholding Payments

If Contractor fails to deliver Deliverables or to provide Navigator Program Services that satisfy Contractor's obligations hereunder, HBE shall have the right to withhold any and all payments due hereunder, but only to the extent of the amount in dispute. HBE may withhold any such payments without penalty or work stoppage by Contractor until such failure to perform is cured.

38.2 Reductions in Payments Due

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

38.3 Cover

If, in the reasonable judgment of HBE, 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 days of receipt of Notice from HBE, and the default is capable of being cured by HBE or by another resource without unduly interfering with continued performance by Contractor, HBE 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 HBE for the reasonable cost of the Services in default. In addition, Contractor must cooperate with these resources in allowing access to the Software.

38.4 Performance Standards

If the Contractor fails to meet Performance Standards during the Implementation period and while Contractor is providing Navigator Program Services, Contractor shall revise, modify, correct, reconfigure, and upgrade the services at no additional cost to HBE in order to provide a solution that complies with such Performance Standards.

Failure to remedy shall be subject to Section 41, *Termination for Contractor's Breach*, at the option of HBE.

38.5 Suspension for Convenience

HBE 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 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 HBE 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 53 Claims, as a result of stop work orders issued under this Section.

39 Limitation of Liability

- 39.1 The parties agree that neither Contractor nor HBE shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding other conditions as are elsewhere agreed to herein between the parties. The damages specified in Section 44 Termination Remedies and Section 17 Records Retention and Access Requirements are not consequential, incidental, indirect, or special damages as those terms are used in this section.
- 39.2 Neither Contractor nor HBE shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Contractor or HBE. Such causes may include, but are not restricted to: acts of God or of the public enemy, acts of a governmental body other than HBE 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, HBE, or their respective Subcontractors.
- 39.3 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.
- 39.4 Neither party 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 or negligence.

Confidential Information and Proprietary Information

40 Confidential Information and Proprietary Information

40.1 Access and Protection

During the term of this Contract, Contractor and HBE will have access to and become acquainted with each party's Confidential Information and Proprietary Information. HBE and Contractor, and each of their officers, employees and agents, shall, subject to state laws and regulations maintain all Confidential Information of the other party and all Proprietary Information in the same manner as it protects the confidentiality of its own confidential or proprietary information of like kind, but in no event with less than reasonable care. Neither party will at any time use, publish, reproduce or disclose any Confidential or Proprietary Information, except to authorized employees, contractors, and agents under confidentiality requirements no less restrictive than this Section 40 who require such information to perform obligations under this Contract. Both parties shall take steps to safeguard the other party's Confidential Information and Proprietary Information against unauthorized disclosure, reproduction, publication or use in

accordance with applicable federal and state law and this Section 40. Except for disclosures pursuant to Section 40.2 below, each party agrees that prior to disclosing any Proprietary Information or Confidential Information of the other party to any third party; the third party will be required to execute a nondisclosure agreement in a form substantially the same Schedule 5 Non-Disclosure Agreement prior to accessing such information.

In addition to the requirements expressly stated in this Section 40, Contractor and its Subcontractors will comply with any policy, rule, or reasonable requirement of HBE that relates to the safeguarding from disclosure of information relating to personal information, Contractor's operations, or the Services performed by Contractor under this Agreement.

40.2 Public Records Act and Contractor's Proprietary Information

Contractor acknowledges that HBE is subject to chapter 42.56 RCW: Public Records Act and that this Contract shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Confidential Information or Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, HBE shall maintain the confidentiality of all such information marked Confidential or Proprietary. If a public disclosure request is made to view Contractor's Confidential or Proprietary Information, HBE 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, HBE will release the requested information on the date specified.

40.3 Security Requirements

Contractor shall comply with all applicable security standards, practices, laws and procedures related to the information processed in the HBE, including without limit Payment Card Industry Data Security Standards (PCI DSS), Section 6103 of the Internal Revenue Code. Additionally, Contractor shall comply with the HBE Data Security requirements set out in Schedule 6 WAHBE *Data Security Requirements* and with other Federal, State or HBE security standards, practices and procedures that shall have been provided to Contractor in writing. Contractor shall implement technical, administrative and physical safeguards to prevent the unauthorized disclosure of Confidential Information.

40.4 Audit

HBE reserves the right to monitor, audit or investigate Contractor's use of HBE's Confidential Information collected, used, or acquired by Contractor under this Contract. Such monitoring, auditing or investigative activities may include without limitation Salting databases.

40.5 Return

Subject to record retention laws each party on termination or expiration of this Contract shall promptly return to the disclosing party all of the disclosing party's Confidential Information and Proprietary Information, including copies thereof .

40.6 Injunctive Relief and Indemnity

- a. Contractor shall immediately report to HBE any and all unauthorized disclosures or uses of HBE'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 HBE's Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to HBE. If Contractor should publish, use or disclose such Confidential Information or Proprietary Information to others without authorization, HBE 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. Contractor shall assume complete responsibility for notification of affected parties, and be liable for all associated costs incurred by HBE or the State in responding to or recovering from the unauthorized disclosures or uses of HBE's Confidential Information or Proprietary Information. Contractor shall indemnify and hold HBE harmless from all damages, costs, liabilities and expenses (including without limitation reasonable attorneys' fees and costs of notification) caused by or arising from Contractor's failure to fulfill its obligations related to HBE's Confidential Information or Proprietary Information.
- b. HBE will immediately report to Contractor any and all unauthorized disclosures or uses of Contractor's Confidential Information or Proprietary Information of which HBE is aware or has knowledge. HBE acknowledges that any publication or disclosure of Contractor's Confidential Information to others may cause immediate and irreparable harm to Contractor. If HBE should publish or disclose such Confidential 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.

40.7 Nondisclosure of Other HBE Information

The use or disclosure by Contractor of any HBE 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 HBE.

40.8 Exceptions

The following information shall not be considered Confidential Information or Proprietary Information for the purposes of this Agreement:

- a. Information previously known when received from the disclosing party;
- b. Information freely available to the general public;
- c. Information that now is or hereafter becomes publicly known by other than a breach hereof;
- d. Information that is developed by one party independently of any disclosures made by the other party of such information; or
- e. Information that is disclosed by a party pursuant to subpoena or other legal process and as a result becomes lawfully obtainable by the general public.

Contract Termination

41 Termination for Contractor's Breach

If Contractor materially breaches this Contract, then HBE shall give Contractor written Notice of such breach. Contractor will correct the breach within 30 days of receipt of such Notice. If the breach is not corrected, this Contract may be terminated immediately, in

whole or in part, by Notice from HBE to Contractor. The option to terminate shall be at the sole discretion of HBE.

If Contractor is unable to meet Navigator Program Service Performance Standards, as described in Section 30 and Schedule 2 *Performance Standards*, or correct Deficiencies in a Deliverable, as described in Section 22, HBE shall have the right to immediately terminate this Contract, in whole or in part, without penalty or liability to HBE, with such a termination being deemed a termination due to the default of Contractor hereunder, and return the Deliverable to Contractor. If HBE terminates this Contract under this Section, Contractor shall, within 20 days, refund to HBE all payments made to Contractor for the returned Deliverable and Navigator Program Services rendered therefor and all previous Deliverables that have received Acceptance and Services rendered therefor and that are returned with the rejected Deliverable.

42 Termination for Conflict of Interest

HBE may terminate this Contract under Section 41 by Notice to Contractor if HBE determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions, procurement and performance of contracts, or delivery of Navigator Program Services.

43 Termination for HBE's Nonpayment

If HBE fails to pay Contractor undisputed Charges when due under the Contract and fails to make such payments within 90 days of receipt of Notice from Contractor of the failure to make such payments, Contractor may, by giving Notice of Termination to HBE, terminate this Contract as of a date specified in the Notice of Termination. Contractor shall not have the right to terminate the Contract for HBE's breach of the Contract except as provided in this Section.

44 Termination Remedies

- 44.1 In the event of termination of this Contract by HBE under Sections 41–42, HBE shall, in addition to its other available remedies, have the right to procure the Lead Organization and Navigator Program Services and Deliverables that are the subject of this Contract on the open market and Contractor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Contract price for Services and the replacement costs of such 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.
- 44.2 If it is determined for any reason the failure to perform is not within the Contractor's control, fault, or negligence, the termination by HBE shall be deemed to be a Termination for Convenience under Section 45.

45 Termination for Convenience

- 45.1 When, at the sole discretion of HBE, it is in the best interest of the HBE, HBE may terminate this Contract, in whole or in part for HBE's convenience, by 30 days' Notice to Contractor

- 45.2 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 HBE from such winding down and cessation of Services. If this Contract is so terminated, HBE 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.
- 45.3 In case of such termination for convenience, HBE will pay to Contractor the agreed upon Purchase Price for Deliverables for which Acceptance has been given by HBE, amounts for Navigator Program Services provided prior to the date of termination for which no separate price is stated and that are not associated with or related to a specific Deliverable for which Acceptance has been given. The amounts for such Navigator Program Services and Deliverables in development but not accepted will be costs actually and reasonably incurred by Contractor therefor, as based on the hourly rate in the Proposal, but such costs shall be no greater than the final Purchase Price for each Deliverable. In addition, HBE agrees to compensate Contractor for reasonable and necessary costs that were incurred by Contractor on this Project, as a result of HBE's termination for convenience, for undepreciated or unamortized equipment and software licenses, early termination of leases, and other reasonable and necessary Project-related expenses, subject to HBE's reasonable judgment and the availability of State and Federal funds and receipt of supporting documentation from Contractor.
- 45.4 Invocation of Section 46 Termination for Withdrawal of Authority, or Section 47 Termination for Nonallocation of Funds, shall be deemed a Termination for Convenience but will not require such 30 days' Notice.

46 Termination for Withdrawal of Authority

In the event that the authority of HBE 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, HBE may terminate this Contract under Section 45 in whole or in part. This Section shall not be construed so as to permit HBE to terminate this Contract in order to acquire similar Services from a third party.

47 Termination for Nonallocation of Funds

If funds are not allocated to continue this Contract in any future period, HBE may terminate this Contract under Section 45. HBE will not be obligated to pay any further Purchase Prices or Charges for Navigator Program Services for future periods, but HBE shall make payments for Navigator Program Services, Deliverables and Contractor's costs as provided in Section 45.3, subject to HBE's availability of funding therefor. HBE agrees to notify Contractor of such non allocation at the earliest possible time. No penalty shall accrue to HBE in the event this Section shall be exercised.

48 Termination Procedure.

- 48.1 Upon termination of this Contract, HBE, in addition to any other rights provided in this Contract, may require Contractor to deliver to HBE any Property, Deliverables and Data, for such part of this Contract as has been terminated.

- 48.2 After receipt of a Notice of Termination, and except as otherwise directed by HBE, Contractor shall:
- a. 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 HBE from such winding down and cease Services on the date, and to the extent specified, in the Notice;
 - b. 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;
 - c. As soon as practicable, but in no event longer than 30 days after termination, 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 HBE to the extent required, which approval or ratification shall be final for the purpose of this Section;
 - d. Continue performance of such part of this Contract as shall not have been terminated by HBE;
 - e. Take such action as may be necessary, or as the Navigator Program Manager may direct, for the protection and preservation of any Property related to this Contract which is in the possession of Contractor and in which HBE has an interest;
 - f. Transfer title to HBE and deliver in the manner, at the times, and to the extent directed by the HBE Navigator Program Manager, any Property that is required to be furnished to HBE and that has been accepted or requested by HBE; and
 - g. Provide written certification to HBE Navigator Program Manager that Contractor has surrendered to HBE all such property.
- 48.3 Upon expiration of the Contract or Contractor's receipt of Notice of Termination of the Contract by HBE, Contractor will provide any turnover assistance Services necessary to enable HBE 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 days of receipt of the Notice of Termination, Contractor shall provide, in machine readable form, an up-to-date, usable copy of the Data in a format as required by HBE and a copy of all documentation needed by HBE to continue the Service with another provider, and 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 HBE.

General Provisions

49 Anti-Trust Violations

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

50 Assignment

Contractor may not assign or transfer this Contract or any of its rights hereunder, or delegate any of its duties hereunder, without the prior written consent of HBE's Chief Financial 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 HBE that may arise from any breach of the provisions of this Contract or warranties made herein including but not limited to, rights of setoff. HBE may assign this Contract to any public agency, commission, or board 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. This Contract shall inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

51 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.

52 Binding Effect

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

53 Claims

Contractor must submit claims against HBE 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 HBE Navigator Program Manager or his or her designee by Contractor in the form and with the certification prescribed by the HBE Navigator Program Manager or designee. Upon failure of Contractor to submit its claim within the time allowed, all rights to seek amounts due on account of such claims shall be waived and forever barred. Submission of such claims against HBE shall be, except as provided in Sections 40.6 and 43, Contractor's sole and exclusive remedy in the event that HBE breaches this Contract.

54 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 Chapter 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 HBE under Section 41 *Termination for Contractor's Breach*, and Contractor may be declared ineligible for further contracts with HBE.

55 Compliance with HBE Standards

Contractor will comply with all appropriate HBE operations and process standards and policies (ethics, Internet / email usage, security, harassment) as published. Failure to

comply may result in Contract termination. HBE will make an electronic copy of all such policies available to Contractor.

56 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.

57 Covenant Against Contingent Fees

- 57.1 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.
- 57.2 In the event of breach of this Section by Contractor, HBE shall have the right to either annul this Contract without liability to HBE, or, in HBE's discretion, deduct from payments due to Contractor, or otherwise recover from Contractor, the full amount of such commission, percentage, brokerage, or contingent fee.

58 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.

59 Debarment and Suspension

Contractor certifies to HBE that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal or State government contracts. Contractor certifies that it shall not contract with a Subcontractor that is so debarred or suspended.

60 Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and 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.

61 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.

62 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 venturers, 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.

63 Legal and Regulatory Compliance

Contractors shall comply with all applicable federal and state laws, regulations, codes, standards and ordinances during the term. In the event that any services performed or provided by Contractor are subsequently found to be in violation of such laws, regulations, codes, standards and ordinances, it shall be the sole responsibility of Contractor to bring the Services into compliance at no additional cost to HBE.

64 Licensing Standards

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

65 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.

66 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 HBE.

67 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 HBE for breaches hereof shall not indicate a course of dealing of excusing other or subsequent breaches. Contractor agrees that HBE'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 HBE may have at law or equity for any other occurrence of the same or similar breach, nor estop HBE from pursuing such remedy.

68 Notices

- 68.1 Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as certified mail, postage prepaid, return receipt requested, or by electronic mail, to the parties at the addresses and e-mail addresses provided in this Section.
- 68.2 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.

To Contractor at:		and to:	
[Contractor Name]		[Contractor Name]	
ATTN:		ATTN:	
Mailing Address:		Mailing Address:	
Street Address:		Street Address:	
E-mail Address :		E-mail Address:	
Telephone:		Telephone:	

To HBE at:		and to:	
Washington Health Benefit Exchange		Washington Health Benefit Exchange	
ATTN: Kelly Boston, HBE Navigator Program Manager		ATTN: Erin Hamilton, HBE Contracts Administrator	
Mailing Address:	PO Box 657 Olympia, WA 98507	Mailing Address:	PO Box 657 Olympia, WA 98507
Street Address:	810 Jefferson St SE Olympia, WA 98501	Street Address:	810 Jefferson St SE Olympia, WA 98501
E-mail Address :	kelly.boston@wahbexchange.org	E-mail Address:	contracts@wahbexchange.org
Telephone:	(360) 688-7747	Telephone:	(360) 688-1576

68.3 Notices shall be effective upon receipt or six (6) Business Days after mailing, whichever is earlier.

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

69 Notice of Delay

When either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within five Business Days, give notice thereof, including all relevant information with respect thereto, to the other party. If a party delays in providing additional information, data, guidance, or approvals which are requested by the other party, or in performing its obligations, the other party may submit claims for damages that are caused by such delays and that are permitted under the Contract. The party submitting the claim shall provide Notice of such claim to the other party prior to filing the claim.

70 Publicity

The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's Services by HBE or the State of Washington, and shall not be so construed by Contractor in any advertising or publicity materials.

Contractor shall not publish or otherwise distribute for marketing or publicity purposes any of the following materials without the prior written consent of the HBE Navigator Program Director or designee: all advertising, sales promotion, informational pamphlets, notices, press releases, research reports, or similar publicity material concerning this Program or relating to this Contract wherein HBE or the State is mentioned or language used from which the connection of HBE or the State therewith may, in HBE's judgment, be inferred or implied. Material developed and made available by the Exchange that has been adapted to add Contractor logo, contact information or similar modifications does not need to be submitted for approval.

71 Remedies

Except as specifically provided herein, no remedy conferred by any of the specific provisions of the Contract is intended to be exclusive of any other remedy, and each and every 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.

72 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.

73 Section Headings, Incorporated Documents and Order of Precedence

The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.

- 73.1 Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.
- a. Change Orders
 - b. Schedule 1 Schedule and Deliverables;
 - c. Schedule 2 Performance Standards;
 - d. Schedule 3 Statement of Work
 - e. Schedule 4 HBE Change Request
 - f. Schedule 5 Non-Disclosure Agreement;
 - g. Schedule 6 WAHBE Data Security Requirements;
 - h. Exhibit A–RFP;
 - i. Exhibit B–Contractor’s submitted Proposal;
 - j. The terms and conditions contained on HBE’s purchase documents, if used; and
 - k. All Contractor or publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to HBE and used to result in or affect this procurement.
- 73.2 In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:
- a. Applicable federal and state statutes, laws, and regulations;
 - b. Sections in the body of this Contract;
 - c. Change Orders
 - d. Schedules to the Contract;
 - e. Exhibit A–RFP;
 - f. Schedule 3 Statement of Work
 - g. Exhibit B–Contractor’s submitted Proposal;
 - h. The terms and conditions contained on HBE’s purchase documents, if used; and
 - i. All Contractor publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to HBE and used to result in or affect this procurement.

74 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.

75 Sovereign Immunity

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

76 Subcontractor

76.1 A Lead Organization Contractor may enter into subcontracts with third parties for its performance of Navigator Program Services. Contractor is responsible and liable for the proper performance of and the quality of any work performed by any and all Subcontractors. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to HBE 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 HBE upon request. HBE 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 HBE harmless from and against any and 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 HBE's request, Contractor shall forward copies of subcontracts and fiscal, programmatic and other material pertaining to any and all subcontracts.

76.2 For any Subcontractor, Contractor shall:

- a. Be responsible for Subcontractor's compliance with the Contract and the subcontract terms and conditions; and
- b. Ensure that the Subcontractor follows HBE's reporting formats and procedures as specified by HBE.
- c. Include in the Subcontractor's subcontract substantially similar terms as are provided in Sections 13 Background Checks; 14 Employment of HBE Personnel; 16 Accounting Requirements; 17 Records Retention and Access Requirements; 54 Compliance with Civil Rights Laws; 57 Covenant Against Contingent Fees; 61 Governing Law; 65 Lobbying Activities; and 75 Sovereign Immunity.
- d. Upon expiration or termination of this Contract for any reason, HBE 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 HBE.

77 Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Software or Services provided pursuant to this Contract is served upon

Contractor or HBE, 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 HBE 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 HBE.

78 Survival

All Lead Organization Program Services performed and Deliverables delivered pursuant to the authority of this Contract are subject to all of the 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 *Overpayments to Vendor*; Section 16 *Accounting Requirements*; Section 17 *Records Retention and Access Requirements*; Section 31 *General Indemnity*; Section 32 *Distribution License Indemnity*; Section 34 *Insurance*; Section 37 *Dispute Resolution*; Section 38 *Additional Rights and Remedies*, Section 39 *Limitation of Liability*; Section 40 *Confidential Information and Proprietary Information*; and Sections 41–80 Contract Termination and General Provisions shall survive the termination of this Contract.

79 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.

80 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.

81 No Third Party Beneficiaries

Except for the parties to whom this Contract is assigned in compliance with the terms of this Contract, there are no third party beneficiaries to this Contract, and this Contract shall not impart any rights enforceable by any person or entity that is not a party hereto.

Schedule 1: SCHEDULE AND DELIVERABLES

82 Deliverables and Purchase Prices

The final list of Deliverables will include those from Vendor’s Proposal as negotiated by the parties. This list provides examples from the RFP.

Deliverable Name		Scheduled Submittal Date	Scheduled Acceptance Date
1. Contractor Key Staff identified		n/a	
(identified in RFP proposal; no further action needed, unless change in personnel occurs)			
2. Nondisclosure forms for all service area Navigator organizations		Due upon contract execution: for Lead Orgs; service area paid and unpaid partners	
3. Community Partners Confirmed		Initial list provided by contract execution; subsequent reports Quarterly – 10 th business day after quarter ends	
Using HBE format, provide an initial list of confirmed subcontracted and unpaid partners; all locations/address (es) where they will be providing in-person enrollment services; and contact phone number that can be published; Contractors will review the list each quarter and report any changes to the service area network (additions or deletions of partners); and the contract payments made for subcontracted partners.			
4. HBE notified of all service area Navigators qualified for certification exam		Initial list provided upon contract execution; subsequent monthly updates each 10 th business day after report month	
<ul style="list-style-type: none"> a. Initial list to be provided to HBE as soon as possible upon contract execution; include names of <u>all</u> service area Navigators, name and address of partner agency; b. Monthly – review HBE’s list of area-wide Navigators; add new Navigator staff, date added, partner name and address; terminated staff - highlight name and indicate ends date c. Note: these Navigator staff monthly updates are in addition to the Contractor’s notification to the Navigator Program Specialist managing the Navigator Learning Management System. 			
5. Navigator Organization subcontracts or Agreements Completed		Upon execution	
Provide the HBE Navigator Program with a copy of each subcontract or unpaid partner agreement as soon as executed; include a signed copy of the partner agency’s Nondisclosure Agreement (Schedule 5)			
6. Monthly Outreach Report		Due on the 10 th business day of the	

Deliverable Name		Scheduled Submittal Date	Scheduled Acceptance Date
		month following the report month	
Due dates for the previous month's reports are: 8/12/16; 9/15/16; 10/14/16; 11/15/16; 12/14/16; 1/17/17; 2/15/17; 3/15/17; 4/14/17; 5/12/17; 6/7/17*; the final report due by 7/7/17* (The due date for the May and June reports are earlier to accommodate HBE's end of fiscal year closing.			
7. Quarterly Progress Report		On the 10 th business day of the month following the report month	
Due dates for the previous quarter's reports are: Q1=10/14/16; Q2=1/17/17; Q3=4/14/17; Q4=7/7/17			
8. Complaint Resolution Process		n/a	
n/a provided as part of the RFP proposal			
9. Conflict of Interest Mitigation Plan		n/a	
n/a provided in RFP proposal			
10. Background Check Policy		n/a	
n/a provided as part of the RFP proposal			
11. Enrollment target progress: as validated through Washington Healthplanfinder		Outcome payment after OE4 concludes and data is validated	

83 Services and Payment

1. Monthly Performance Compensation: Contractor will be paid 85% of overall contract award in equal monthly installments upon receipt and acceptance of the Contractor's monthly progress reports. Upon acceptance, the HBE Navigator Program will initiate a Contractor payment authorization for HBE Finance each month. HBE Finance will use the payment authorization to release payment to the Contractor.
2. Outcome Compensation: Contractor will be paid 15% of overall contract award:
 - a. For meeting the number of published service area enrollment targets by the end of the open enrollment period. Enrollments that are counted towards the Contractor's enrollment target are: new Qualified Health Plans and renewed Qualified Health Plans.
 - b. 100% of the target payment will be made if the Contractor meets 100% of their QHP target by the end of the open enrollment period.
 - c. If the enrollment target is not met at 100%, the outcome compensation will be prorated based on the percentage of the target achieved.

84 Payment Schedule.

1. Contractor's overall award = **\$101,150.00**
2. Monthly contract performance portion of overall award is 85%; that amount is **\$85,977.50**; nine equal monthly installments = **\$9,553.05** per month. If, due to a delay in contract execution, the contract period is less than nine months, the monthly installment amount will be recalculated using the number of contract months remaining.

3. Outcome award is 15% of overall award; that amount is **\$15,172.50** The Contractor's overall enrollment target is 1,000 QHP plans selected.
4. The outcome payment will be made after Open Enrollment 4 concludes and the Contractor's enrollments are validated through *Washington Healthplanfinder*. The payment will be prorated for the percentage of the overall enrollment target met. The enrollment incentive outcome payment will not exceed 15% of the overall contract award. If the Contractor has not met the QHP outcome enrollment target by the end of the open enrollment period, HBE will authorize a pro-rated payment for the portion of the outcome that was met.

85 Key Staff

_____, **Contract Program Manager**
_____, vendor's navigator program coordinator

Schedule 2: PERFORMANCE STANDARDS

Navigator Program Contract Manager

The Contract Program Manager identified by the Contractor in its proposal is the person responsible for oversight of the Contractor's Navigator Organization network partners, paid and unpaid. This includes contract and performance monitoring and reporting. Should the individual designated as the Contract Program Manager change during the period of performance, the Contractor will notify HBE as outlined in the General Terms and Conditions.

Data Tracking

To the extent possible, the *Washington Healthplanfinder* will be the primary source for validation of the enrollment data reported by the service area Navigators. The Contractor will receive monthly enrollment data reports of the validated data and the Contractor's outcome payment will be based on this validated data. The Contractor may also use internal data tracking systems to supplement data available through the *Washington Healthplanfinder*. HBE will respond to requests for data and information from Contractors to the extent resources allow.

Performance Monitoring

The HBE Navigator Contract Manager will review performance data for all Contractors on a regular basis. Contractor's performance determined to be unsatisfactory will be informed in writing by HBE. Navigator Contractors that are determined not to be making satisfactory progress toward enrollment targets or that are performing below average on key performance indicators among other Navigator Contractors for three consecutive months may be required to collaborate with HBE to develop strategies for improving performance. HBE may terminate a Contractor's contract if the organization is not making satisfactory progress toward performance targets and/or performing below average among Navigator Contractors for six consecutive months.

Program Integrity

Program integrity is assured by taking steps to reduce the risk of misconduct among service area Navigator staff. Steps include: verifying Navigators meet established guidelines, complete required training, complete the 4-N-1 Navigator Attestations (for Confidentiality and Non-Disclosure, Code of Ethics, Conflict of Interest Standards, and Conflict of Interest Disclosure) and have qualifying background checks on file. Additional measures include ensuring consumers have an easy and transparent way to file complaints, occasional observation of Navigator activities by Contractor staff and/or surveying consumers to get feedback about the services received.

The Contractor's Navigator Program Manager is responsible for assuring steps are in place and being followed to assure program integrity and to address any issues that arise. The Program Manager will report of any substantiated instances of misconduct to HBE as soon as practical and will take whatever steps are necessary to eliminate and/or rectify the misconduct. As stated in Schedule 6 Data Security Measures, the Contractor shall have an established and documented policy to deal with the compromise or potential compromise of Data that complies with the PPACA and HITECH Act of ARRA 2009. The Contractor shall provide WAHBE staff of such policy upon request. The compromise or potential compromise of WAHBE shared Data must be reported to the WAHBE Navigator Program Manager designated on this Contract within one (1) hour of discovery.

Contractors will be required to meet with HBE upon request to discuss performance of the Contractor or Contractor's service area network partners. HBE also reserves the right to perform an on-site program review with 14 days advanced notification to the Contractor or Navigator network partner.

Corrective Action

The Contractor Program Manager is responsible to take corrective actions if a Navigator Organization's outcomes are below average for three or more consecutive months following procedures outlined in the Contractor's RFP proposal. The Contractor will summarize corrective actions being implemented in its monthly progress report to HBE.

Reporting Requirements

Consumers and Navigators are an important source of information for HBE, offering first-hand experience with system issues and barriers to enrollment. Providing input directly to HBE is important for HBE to implement program and system improvements. The Contractor will implement methods to facilitate this input.

Schedule 3: STATEMENT OF WORK

The Lead Organization will be responsible for the following:

- Serve as the designated Lead Organization, maintaining a physical business location and ongoing presence in the service area in order to manage Navigator Program outreach and enrollment services and organize partners for their designated service area.
- Provide a single point of contact and responsibility between the service area Navigators and HBE. Act as the liaison to HBE for all service area network partners and ensure network partners and Navigator staff receive timely information about HBE initiatives and changes pertinent to providing Navigator services.
- Identify the Navigator assistance needs of the people in the service area, including designating target populations and groups. The Lead Organization should take into consideration the presence of uninsured groups who have barriers to enrollment, such as language, income, or other factors, and that include those likely to be eligible for QHPs and Medicaid.
- Provide the Enhanced User Function services for service area Navigators to troubleshoot, report application/enrollment or system issues to HBE and follow up with Navigators in the service area.

Outreach:

- Plan and coordinate service area-wide outreach to assure a coordinated and strategic approach and submit monthly outreach reports to HBE using HBE's report format.

Network:

- Recruit, evaluate and select the organizations in their service area that are best suited to accomplish this work and preferably have existing relationships with consumers likely to need assistance obtaining health care coverage or using the *Washington Healthplanfinder* system. Best suited to provide these essential services are organizations that interact regularly with individuals and families, have experience serving vulnerable and hard-to-reach populations, and have earned reputations for fairness and trustworthiness. The network needs to reflect organizations with relationships to groups likely to be eligible for both QHPs and WAH.
- Act as the funding agent for network partners. Develop and administer a subcontract compensating their paid, subcontracted network Navigator Organizations according to HBE guidelines. Subcontracts will include the compensation approach for paid network partner organizations. Ensure contracts with subcontractors contain the mandatory elements required by HBE.
- If the Lead Organization includes unpaid partners in the network, the Lead Organization must maintain a written agreement with these partners that includes pertinent Navigator service expectations, especially pertaining to security, nondisclosure, and confidentiality.
- The Lead Organization must provide the Navigator Program with a copy of all executed service area Navigator partner subcontracts and unpaid partner agreements.
- Maintain a list of active Brokers in the service area to be shared with network partner organizations and Navigators. Ensure Navigator network organizations understand the HBE guidelines regarding referral to Broker resources.

Navigators:

- Ensure Navigator staff of the Lead Organization and network partner organizations complete required Navigator Program and HBE attestations, have a current satisfactory background check, and participate in HBE required Navigator training and certification processes.
- Assure Navigator services are available and accessible to service area residents by trained and certified Navigators. Assure Navigators deliver the full range of application, consumer education, and enrollment services in-person; at no cost to consumers; use the *Washington Healthplanfinder* to record consumer applications; and provide language support and disability access without cost to the consumer.
- Assure that trained, certified Navigators are available and accessible to residents throughout the service area to deliver one-on-one, in-person *Washington Healthplanfinder* application and enrollment assistance.
- Provide periodic forums for Navigators to network and receive updates.
- Establish and maintain a consumer complaint resolution process and inform consumers about their complaint resolution options beyond the consumer's Navigator.

Performance Monitoring:

- Monitor network partner Navigator Program service performance and integrity. Respond quickly and report to HBE issues or complaints involving a Navigator or Navigator network partner.

Reporting:

- Participate in all HBE Navigator Program regular or ad hoc reporting activities.
- Develop a process for immediate notification to HBE regarding security, confidentiality and nondisclosure breaches by Navigators.
- Maintain accurate lists of the Navigators, secure and maintain Navigator attestations and background checks, and ensure HBE is provided timely notification about new or terminating Navigator staff.
- Maintain accurate lists of network partners and provide HBE with timely notification about new or terminated partners.

Schedule 4: (Draft) CHANGE REQUEST FORM

Health Benefit Exchange
Health Benefit Exchange Navigator Program Service

Date Logged _____
Number _____

Change Request

1. Contact Person:	2. Change Classification:	3. Priority	4. Suggested Implementation 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:

See Attached

8a. Impact on Schedule/Deliverable/Critical Event Schedule

See Attached

9b. Estimates	Contractor		HBE		Total		Estimated Duration of Effort:
	Hrs.	Cost	Hrs.	Cost	Hrs.	Cost	
Implementation							Estimated Resources Required:
Assessment							
Implementation							
Other							
TOTAL							

10. Review/Approval Signatures

Contact Person's Supervisor	Approve	
Contractor Program Manager	Approve	
Navigator Program Manager	Approve	
Change Control Board (if there is such)	Approve	

**Schedule 5: NON-DISCLOSURE AGREEMENT
For Navigator Organizations**

Confidentiality and Non-Disclosure Agreement

This Confidentiality and Nondisclosure Agreement (“Agreement”) is entered into by and between the Washington Health Benefit Exchange, (“HBE”), and the Navigator Organization named in the signature block (“Recipient”).

This Navigator Organization is a subcontractor or agent of [Contractor Name] or the Health Benefit Exchange and as such requires access to information or material related to the Washington Health Benefit Exchange that is Confidential Information as defined herein. HBE agrees to release this information to Recipient for those purposes pursuant to the terms and conditions contained in this Agreement. Recipient agrees to the terms and conditions herein.

NOW THEREFORE, in consideration of the above premises and the promises contained herein, the parties agree as follows:

Whenever used in this Agreement, the term “Confidential Information” will mean: individual’s names; ages; residential addresses; email addresses; telephone numbers; Driver’s license number or Washington identification card number; financial information (e.g., profiles, social security numbers, income, credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, security codes, access codes, or passwords that would permit access to an individual’s financial account); medical data/personal health information; law enforcement records; or other records concerning the state’s citizens and businesses; information concerning recipients of services from public health agencies; state or system software code, source code or object code and security data; system or network designs, drawings, or specifications; computer programs; system and technical documentation; and trade secrets or proprietary information of the HBE or the HBE’s contractors.

Confidential Information may be in tangible or intangible form. HBE’s failure to expressly identify Confidential Information as such shall not in any way lessen or negate Recipient’s obligation to keep such information confidential in accordance with this Agreement.

The term “Confidential Information” shall not be construed to include information that (i) is or becomes readily available in public records or documents, other than as a result of a disclosure by Recipient or other entity acting on behalf of Recipient, or (ii) can be documented to have been known by Recipient prior to its disclosure by HBE, or (iii) is disclosed pursuant to applicable law, judicial action or government regulations, including without limitation the Washington State Public Records Act, chapter 42.56 RCW.

Recipient agrees to hold such Confidential Information in confidence and except for disclosure required by law; Recipient shall not disclose such Confidential Information.

Recipient understands that the breach of the terms of this Agreement would cause irreparable damage to HBE and that Recipient could be subject to litigation and required to indemnify, and hold HBE harmless from actual damages from losses that result from its breach.

This Agreement, its validity, construction and effect will be governed by the laws of the State of Washington. Venue for any action between the parties shall be in Thurston County, State of Washington.

This Agreement supersedes any and all prior understandings and agreements between the parties with respect to the subject matter of this Agreement. This Agreement can be modified only by a written amendment signed by authorized representatives of the parties.

Waiver of any breach of this Agreement shall not be a waiver of any subsequent breach nor shall it be a waiver of the underlying obligation.

The requirement of confidentiality shall extend for three years beyond Recipient's association with the Washington Health Benefit Exchange as a Contractor, subcontractor or agent of [Contractor's Name] or Health Benefit Exchange.

Schedule 5 – Nondisclosure Agreement, continued

Washington
Health Benefit Exchange

Recipient

Signature
Date

Signature
Date

Print or Type Name and Title

Print or Type Name and Title

Recipient Address

Recipient Address, cont'd

Individual Navigators must complete HBE Attestations as a part of their Certification Process. These attestations pertain to: Confidentiality and Non-Disclosure, Code of Ethics, Conflict of Interest Standards and Conflict of Interest Disclosure.

Schedule 6 – WAHBE Data Security Requirements

1. Definitions.

“**Authorized User(s)**” means an individual or individuals with an authorized business requirement to access WAHBE Confidential Information.

“**Hardened Password**” means a string of at least eight characters containing at least one alphabetic character, at least one number and at least one special character such as a dollar symbol, pound or hash symbol (#), caret symbol (^) or exclamation point.

“**Transmitting**” means the transferring of data electronically, such as via email.

“**Transporting**” means the physical transferring of data that has been stored on any storage media such as CD, DVDs, floppy disks, USB drive, flash media (such as SD Cards), hard disk, etc.

“**Unique User ID**” means 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.

2. Data Transmitting.

When transmitting WAHBE Personally identifiable information (PII) or any Confidential Information electronically, including via email, the Data shall be protected by:

- a. Transmitting the Data within the (State Governmental Network) SGN or Contractor’s internal network, or;
- b. Encrypting any Data that will be transmitted outside the SGN or Contractor’s internal network with 128-bit Advanced Encryption Standard (AES) encryption or better. This includes transit over the public Internet.

3. Protection of Data.

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

- a. **Hard disk drives:** Data stored on local workstation hard disks. Access to the Data will be restricted to Authorized User(s) by requiring logon to the local workstation using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards.
- b. **Network server disks:** Data stored on hard disks mounted on network servers and made available through shared folders. Access to the Data will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on disks mounted to such servers must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism. For WAHBE Confidential Information stored on these disks, 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 5. Data Disposition may be deferred until the disks are retired, replaced, or otherwise taken out of the Secured Area.
- c. **Removable Media, including Optical discs (CDs or DVDs) in local workstation optical disc drives which will not be transported out of a secure area:** Sensitive or Confidential Data obtained from 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 128-bit AES encryption or better. When not in use for the contracted purpose, such discs must be locked in a drawer, cabinet or other container to which only authorized users have the key, combination or mechanism required to access the contents of the container. Workstations which access WAHBE Data on optical discs must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

d. **Optical discs (CDs or DVDs) in drives or jukeboxes attached to servers and which will not be transported out of a secure area:** Data obtained from WAHBE on optical discs which will be attached to network servers shall be encrypted with 128-bit AES encryption or better. Access to Data on these discs will be restricted to authorized users through the use of access control lists which will grant access only after the authorized user has been authenticated to the network using a unique user ID and complex password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on discs attached to such servers must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

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

f. **Access via remote terminal/workstation over the State Governmental Network (SGN):** Data accessed and used interactively over the SGN. Access to the Data will be controlled by WAHBE staff who will issue authentication credentials (e.g. a unique user ID and complex password) to authorized contractor staff. Contractor shall have established and documented termination procedures for existing staff with access to WAHBE Data. These procedures shall be provided to WAHBE staff upon request. The Contractor will notify WAHBE staff immediately whenever an authorized person in possession of such credentials is terminated or otherwise leaves the employ of the contractor, and whenever a user's duties change such that the user no longer requires access to perform work for this Contract.

g. **Access via remote terminal/workstation over the Internet through Secure Access Washington:** Data accessed and used interactively over the Internet. Access to the Data will be controlled by WAHBE staff who will issue remote access authentication credentials (e.g. a unique user ID and complex password) to authorized contractor staff. Contractor will notify WAHBE staff immediately whenever an authorized person in possession of such credentials is terminated or otherwise leaves the employ of the contractor and whenever a user's duties change such that the user no longer requires access to perform work for this Contract.

h. **Data storage on portable devices or media.**

- (1) WAHBE Data shall not be stored by the Contractor on portable devices or media unless specifically authorized within the Special Terms and Conditions of the contract. If so authorized, the Data shall be given the following protections:
 - (a) Encrypt the Data with a key length of at least 128 bits using an industry standard algorithm (e.g., AES, *Twofish*, *RC6*, etc.)
 - (b) Control access to devices with a unique user ID and password or stronger authentication method such as a physical token or biometrics.
 - (c) 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 20 minutes.
Physically protect the portable device(s) and/or media by
 - (d) Keeping them in locked storage when not in use
 - (e) Using check-in/check-out procedures when they are shared, and
 - (f) Taking frequent inventories
- (2) 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 on the devices.
- (3) Portable devices include any small computing device that can be transported. They include, but are not limited to; handhelds/PDAs/phones, Ultramobile PCs, flash memory devices (e.g. USB flash drives, personal media players), and laptop/notebook/tablet computers.
- (4) Portable media includes any Data storage that can be detached or removed from a computer and transported. They include, but are not limited to; optical media (e.g. CDs, DVDs), magnetic media (e.g. floppy disks, tape, Zip or Jaz disks), USB drives, or flash media (e.g. CompactFlash, SD, MMC).

4. **Data Segregation.**
- a. WAHBE Data must be segregated or otherwise distinguishable from non-WAHBE Data. This is to ensure that when no longer needed by the contractor, all WAHBE Data can be identified for return or destruction. It also aids in determining whether WAHBE Data has or may have been compromised in the event of a security breach.
 - b. WAHBE Data will be kept on media (e.g. hard disk, optical disc, tape, etc.) which will contain no non-WAHBE Data. Or,
 - c. WAHBE Data will be stored in a logical container on electronic media, such as a partition or folder dedicated to WAHBE Data. Or,
 - d. WAHBE Data will be stored in a database which will contain no non-WAHBE Data. Or,
 - e. WAHBE Data will 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,
 - f. When stored as physical paper documents, WAHBE Data will be physically segregated from non-WAHBE Data in a drawer, folder, or other container.
 - g. 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.
5. **Data Disposition.** When the contracted work has been completed or when no longer needed, except as noted in 2.b above, Data shall be returned to WAHBE or securely destroyed. Media on which Data may be stored and associated acceptable methods of destruction are as follows:

Data stored on:	Will be destroyed by:
Server or workstation hard disks, or Removable media (e.g. floppies, USB flash drives, portable hard disks, Zip or similar disks)	Using a “wipe” utility which will overwrite the Data at least three (3) times using either random or single character Data, or Degaussing sufficiently to ensure that the Data cannot be reconstructed, or Physically destroying the disk
Paper documents with sensitive or confidential Data	Recycling through a contracted firm provided the contract with the recycler assures that the confidentiality of Data will be protected.
Paper documents containing confidential information requiring special handling (e.g. protected health information)	On-site shredding by a method that renders the Data unreadable, 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

6. **Notification of Compromise or Potential Compromise:** The Contractor shall have an established and documented policy to deal with the compromise or potential compromise of Data that complies with the PPACA and HITECH Act of ARRA 2009. The Contractor shall provide WAHBE staff of such policy upon request. The compromise or potential compromise of WAHBE shared Data must be reported to the WAHBE Contact designated on this Contract within one (1) hour of discovery (as required by CMS.)

7. **Data shared with Sub-contractors:** If WAHBE Data provided under this Contract is to be shared with a sub-contractor, the contract with the sub-contractor must include all of the Data security provisions within this Contract and within any amendments, attachments, or exhibits within this Contract. If the subcontractor cannot protect the Data as articulated within this Contract, then the contract with the sub-contractor must be submitted to the WAHBE Contact Services for review and approval.