



**Request for Qualifications and Quotation**  
Presiding Officer Services for Washington  
Health Benefit Exchange Appeals  
HBE 16-005



Released by  
**Washington Health Benefit Exchange**  
810 Jefferson Street SE  
P.O. Box 657  
Olympia, Washington 98507



**RFQQ RELEASE DATE:**  
August 15, 2016



**ELECTRONIC  
RESPONSES DUE:**  
September 7, 2016, 3:00 p.m.

## **1. INTRODUCTION and OVERVIEW**

### **1.1 INTRODUCTION**

The Washington Health Benefit Exchange (HBE) is initiating this Request for Qualifications and Quotations (RFQQ) to secure Vendors to preside at administrative hearings as part of the implementation of the Affordable Care Act (ACA). The HBE will award three (3) optional use contracts to respondents most capable of satisfying the required levels of experience and expertise. The actual number of contract awards is at the sole discretion of HBE. Because these will be optional use contracts, if awarded a Contract, there is no guarantee of any payment or work. The successful Respondent(s) may be required to perform a variety of HBE responsibilities, as defined in Statements of Work (SOW), throughout the term of the resulting Contract.

### **1.2 PROJECT BACKGROUND**

The WA Health Benefit Exchange, in accordance with 45 CFR 155, must provide customers who disagree with certain exchange decisions the opportunity to dispute certain decisions regarding their eligibility for tax credits and special enrollment periods. Inherent in the customer's right to appeal certain decisions, is the requirement to provide both the customer and the Exchange a fair and impartial Presiding Officer to adjudicate the administrative hearing, hear the dispute, and rule appropriately on the matter.

### **1.3 PURPOSE**

The successful Vendor(s) will serve as the Presiding Officer(s) for appeals of the Washington Healthplanfinder's health insurance tax credit and cost-sharing eligibility determinations. The Vendor provides this service in coordination with the HBE Legal Services Director and Appeals Program staff.

Vendors must have *strong empathetic relational skills in dealing with appellants with diverse cultural and socio-economic background and language skills*. Vendors must be able to demonstrate a willingness to accommodate cultural, language, mental health, medical, and physical needs of appellants. Vendor must have a level of professional and technical competence about law, applying facts to law, and caseload management. Vendor must be available to adjudicate cases with little advance notice, meet deadlines, and meet or exceed performance expectations.

### **1.4 SCOPE OF WORK**

Under the initial SOW, the Vendor will provide services, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

1. Preside at telephonic or in-person hearings in cases that are not adversarial, but where the appellant may or may not be represented by counsel.
2. Render oral rulings and issue written decisions.
3. Conduct telephonic pre-hearing conferences to simplify issues and help parties achieve informal resolution or settlement.
4. Receive and rule on admissibility and credibility of evidence, create a complete and full hearing record, resolve disputed issues of fact, and examine witnesses as necessary.
5. Consider all arguments with impartiality and without bias.

6. Compose decisions (written to professional standards) that define the issues, make findings of fact and conclusions of law.
7. Skillfully apply relevant federal laws, regulations, and administrative procedures.
8. Maintain proper judicial temperament and demeanor in communicating and cooperating with appellants, interpreters, HBE staff, personal representatives, legal counsel, and other parties.
9. Successfully use a computer with a high level of proficiency to communicate, write decisions, manage caseload, track time, and perform research.
10. Use WA State Health Benefit Exchange Appeal Program standardized templates.
11. Attend training courses at HBE as necessary and required.
12. Respond within 5 business days to communications from HBE regarding appeals.

### **1.5 DELIVERABLES**

1. Render legally sound and well-reasoned decisions.
2. Meet or exceed federal timelines and agreed upon performance expectations.
3. Submit timely, clear, concise, and complete written hearing decisions and orders.
4. Keep accurate documentation of hours worked by case.

### **1.6 PERIOD OF PERFORMANCE**

The initial period of performance of the Contract resulting from this RFQQ is tentatively scheduled to begin on or about October 17, 2016 and continue through December 31, 2017. At HBE's sole discretion. Contract may be amended and extended for up to one (1) additional year.

### **1.7 COMPENSATION**

Compensation shall be based on an agreed upon hourly rate. Depending on caseload, Vendor can expect to work up to 40 hours per month. Vendors will be compensated for time spent in hearings and pre-hearing conferences, attending relevant training, preparing for hearings, and drafting written decisions.

### **1.8 FUNDING**

Any contract awarded as a result of this procurement is contingent upon the availability of funding. HBE does not guarantee any minimum compensation or work to the contractors selected through this RFQQ.

### **1.9 AWARD**

Up to three (3) Apparently Successful Vendors (ASVs) will be identified via this RFQQ. HBE intends to award up to three (3) Contracts.

Under no circumstances shall contractor perform any work until a Contract has been fully executed. Any work performed before execution is at the contractors' risk and expense. HBE is under no obligation to pay, and may be legally prohibited from paying, for any work performed prior to the start date of the contract and Statement of Work.

## 1.10 DEFINITIONS

Definitions for the purposes of this RFQQ include:

**Agency** – The Washington Health Benefit Exchange

**Contractor** – Individual or company whose RFQQ response has been accepted by HBE and is awarded a fully executed, written contract

**HBE** – The Washington Health Benefit Exchange

**RFQQ Response** – A formal offer submitted by a Vendor in response to this solicitation

**Purchaser** – The Washington Health Benefit Exchange

**RCW** – Revised Code of Washington

**Request for Qualifications and Quotations (RFQQ)** – Formal procurement document in which a service or need is identified and a specific, detailed plan regarding the work to be done is identified. The purpose of an RFQQ is to permit the target community to provide qualifications to do the work and to quote the lowest price for which the work can be done.

**Statement of Work (SOW)** – A detail specification of the work which the Contractor will perform, including but not limited to deliverables, schedule, and price, capacity, and staff resources. The SOW is incorporated in the Contract by reference.

**Vendor** – Individual or financial firm submitting a RFQQ response in order to attain a contract with HBE

**WAC** – Washington Administrative Code

**WEBS** – For announcements, information and addenda about this procurement, reference Washington Electronic Business Solution website at <https://fortress.wa.gov/ga/webscust/>

## 2. INSTRUCTIONS FOR COMMUNICATIONS, QUESTIONS AND VENDOR RESPONSE

### 2.1 RFQQ SCHEDULE

HBE reserves the right to revise this schedule at any time.

Item	Action	Date
1	HBE issues RFQQ	August 15, 2016
2	Vendors may submit written questions until 3:00 p.m.	August 23, 2016
3	HBE will issue responses in an Addendum by 3:00pm	August 30, 2016
4	Vendors must submit Responses to RFQQ by 3:00 p.m.	September 7, 2016
5	HBE evaluation of Responses	September 8 – 22
7	HBE notifies Apparent Successful Vendors (ASV) and begins contract negotiations. Non-ASV's may request a debriefing	September 26, 2016
8	Vendor Optional Debriefings	September 27 - 30
9	Contract Execution	October 17, 2016

### 2.2 RFQQ COORDINATOR AND SUBMISSION OF RESPONSE

Coordinator: Erin Hamilton, CPPB

Responses Due: Wednesday, September 7, 2016 - 4:00 p.m. PT (**electronically received**)

Delivery Method: E-mailed to [contracts@WAHBExchange.org](mailto:contracts@WAHBExchange.org)

Please provide the response in unrestricted Microsoft Word or Excel software. The email title should clearly indicate the response is for RFQQ HBE 16-005.

### 2.3 COMMUNICATION THROUGH RFQQ COORDINATOR

Unauthorized contact regarding this solicitation with any other Washington Health Benefit Exchange involved with the solicitation may result in disqualification. Proposals should be based on the material contained in the RFQQ, any related amendments/addenda, and any questions and written answers directed through the RFQQ Coordinator. All oral communications will be considered unofficial and non-binding on the HBE. Vendors should rely only on written statements issued by the RFQQ Coordinator.

Responses should be based on the material contained in the RFQQ, any related amendments/addenda, and any questions and written answers directed through the RFQQ Coordinator. All oral communications will be considered unofficial and non-binding on the HBE. Vendors should rely only on written statements issued by the RFQQ Coordinator or his designee.

### 2.4 VENDORS' QUESTIONS AND HBE ANSWERS

Vendor questions regarding this RFQQ will be accepted until the dates and times specified in RFQQ Section 2: *Schedule*. Early submission of questions is encouraged. Vendor questions must be submitted in writing via e-mail to the RFQQ Coordinator at [contracts@WAHBExchange.org](mailto:contracts@WAHBExchange.org).

HBE's official written answers to the Vendor's questions will be posted to Washington Electronic Business Solution (WEBS) website at <https://fortress.wa.gov/ga/webscust/> Please check this website for RFQQ announcements, updates, amendments, etc.

The Vendor that submitted the questions will not be identified. Verbal responses to questions will be non-binding on the HBE. Only written responses posted to WEBS will be considered official and binding.

Vendors are requested to use the following format when submitting their written questions

Question #	Document Name	Section # and Title	Page or Paragraph#	Question

**2.5 E-MAIL**

E-mail is to be used for all communications required in this RFQQ. HBE may also communicate with you utilizing the same methods. HBE will also post any formal communications to Washington Electronic Business Solution (WEBS) website at <https://fortress.wa.gov/ga/webscust/>

HBE does not take responsibility for any problems in the e-mail or Internet delivery services, either within or outside HBE. You are responsible for ensuring timely and complete delivery of any communications related to this RFQQ.

**2.6 RESPONSES FOR MULTIPLE CANDIDATES**

Respondent may propose up to three qualified candidates. For each candidate, Respondent must provide information for each candidate in the order and manner described below in section 2.7. Respondents must provide complete, concise responses for each candidate regarding their experience and ability to provide the services required.

**2.7 RFQQ MANDATORY RESPONSE FORMAT**

Respondents must follow these instructions exactly or their RFQQ response may be deemed non-responsive:

- a. The Letter of Transmittal and RFQQ responses are to be submitted via email in unrestricted Word, Excel or "Pdf" format.
- b. State your organization's name on the first page of all RFQQ responses.
- c. Pages are to be formatted as standard 8.5" x 11" white paper. Font size can be no less than 11 point. Margins can be no less than 1 inch. Each page must be numbered.
- d. Figures and tables must be numbered and referenced in the text of the Response by that number. Foldouts containing charts, spreadsheets, and oversize exhibits are permissible.
- e. The Response, as well as any reference materials presented by Vendor, must be written in English and Vendor must provide all rates in United States dollars.
- f. Write your RFQQ response in the order given below in RFQQ Section 2.8. Title and number each item in the same way it appears instructions. You must respond to every element, except where otherwise stated.
- g. Some elements have page limitations that will be enforced.

## **2.8 MANDATORY RFQQ RESPONSE COMPONENTS**

### **2.8.1 LETTER OF SUBMITTAL**

- a. Name of Vendor (Legal name)
- b. Address, including City and State
- c. Federal Identification Number/Social Security Number
- d. Washington State Bar Association Number
- e. Washington State UBI Number (if appropriate)
- f. Contact Email
- g. Contact Telephone Number
- h. Signed and dated by a person authorized to legally bind the Vendor to a contractual relationship

### **2.8.2 APPENDIX A – CERTIFICATIONS AND ASSURANCES**

Signed and dated by a person authorized to legally bind the Vendor to a contractual relationship.

### **2.8.3 STATEMENT OF REQUIRED SKILLS, QUALIFICATIONS AND EXPERIENCE**

In two pages or less, demonstrate your qualifications and experience with the following:

- a. A minimum of five (5) years of experience with general litigation and administrative law principles that included participating in hearings, negotiating settlements, or conducting mediation to resolve public benefit complaints.
- b. A minimum of five (5) years of experience working with a variety of appellants (race, nationality, income level, disabilities, limited English speaking).
- c. Proven record of meeting or exceeding deadlines.
- d. Member in good standing in the Washington State Bar Association.
- e. Possesses internet access and a computer with, at minimum, Microsoft Word, Excel, and Outlook, and Adobe Acrobat Reader.
- f. Proficient knowledge and working use of Microsoft Word, Excel, and Outlook and Adobe Acrobat Reader.

### **2.8.4 RESUME**

In three pages or less, include a Résumé which addresses the following knowledge, skills, abilities, and experience required in this RFQQ.

- a. Name, Title
- b. Education, Degrees, Certificates.
- c. Description of specific or unique judicial or adjudicative skills
- d. The résumé should provide a summary of the Vendor's overall background and specific skills as they relate to providing services specified in this RFQQ. This narrative should demonstrate the specific skills and abilities that make the Vendor a qualified candidate.
- e. Experience: Describe past experience with adjudicative, administrative, or judicial proceedings.
- f. To include but not limited to a chronological list of experiences, contracts, or positions held that directly relate to the Vendor's ability to provide the services required under this RFQQ.
- g. Availability: Describe capacity to respond to and render decisions immediately for expedited hearing requests. (Pursuant to the ACA, decisions for expedited appeals must be rendered in 3 days from the date of the appeals request.)

- h. Include a list of experiences, contracts, or positions the Vendor has had during the last five years that directly relate to the Vendor's ability to provide the services required under this RFQQ. Briefly describe these.
- i. At least three (3) professional references with current contact information and a brief description of their knowledge of the Vendor's skills and abilities. By submission of the résumés the Vendor grants permission to HBE to contact who may have pertinent information. Include both a telephone number and email address through which the reference may be contacted.

**2.8.5 STATEMENT OF DESIRED SKILLS, QUALIFICATIONS AND EXPERIENCE**

In two pages or less, demonstrate your qualifications and experience in the following desirable areas:

- a. Experience rendering decisions in the area of public benefit appeals.
- b. Five (5) years of experience as a Hearings Examiner, Presiding Officer or serving in a judicial capacity that involved negotiating settlements or conducting mediation to resolve public benefit complaints.
- c. Knowledge and experience with health care laws and regulations regarding health care, Medicaid, and the Affordable Care Act.

**2.8.6 PROPOSED STAFF AND COST**

Response should use the same format as shown below. Compensation will be based on the hourly rate(s) for work actually performed. The respondent is to include in its hourly rate all costs that it would charge, including administrative and any non-labor expenses and overhead necessary to accomplish the tasks and to produce the services and deliverables.

Hourly Rate Quotation		
Job Title	Level	Hourly Rate
Adjudicative Procedures Officer	Expert	\$

Respondent may propose up to three qualified candidates. Vendor may rotate cases among no more than three candidates. The respondent should list the hourly rate of each candidate proposed who may provide services under the contract.



### **3. GENERAL INFORMATION**

#### **3.1 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE**

The HBE is subject to Washington State's Public Records Act (Chapter 42.56 RCW). Vendor's Response can be disclosed through the process set forth in this section. Portions of a Vendor's Response may be protected from disclosure through the process set forth in this section.

A Vendor cannot restrict its entire Response or entire sections of the Response from disclosure. A Vendor also cannot restrict its pricing from disclosure. Attempts to restrict disclosure using footer on every page to restrict disclosure will not be honored and may require the Vendor to resubmit the Response or subject the Vendor to disqualification.

If the Vendor wants to protect any Proprietary Information that is included in its Response from disclosure, the information shall be clearly designated by the Vendor as Proprietary Information. "Proprietary Information" is defined as information owned by Vendor to which Vendor claims a protectable interest under law. Proprietary Information may include, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

To the extent consistent with Chapter 42.56 RCW, the Public Records Act, the HBE shall maintain the confidentiality of Vendor's information marked Proprietary Information. If a public disclosure request is made to view Vendor's Proprietary Information, the HBE shall notify Vendor of the request and of the date that the Proprietary Information shall be released to the requester unless Vendor obtains a court order enjoining that disclosure. If Vendor fails to obtain a court order enjoining disclosure, the HBE will release the Proprietary Information on the specified date.

The HBE's sole responsibility shall be limited to maintaining the Vendor's identified Proprietary Information in a secure area and to notify Vendor of any request(s) for disclosure for so long as the HBE retains Vendor's information in the HBE records. Failure to label materials as Proprietary Information or failure to timely respond after notice of a public disclosure request has been given shall be deemed a waiver by Vendor of any claim that such materials are exempt from disclosure.

A charge will be made for copying and shipping, as outlined in Chapter 42.56 RCW. No fee shall be charged for inspection of contract files, but twenty-four (24) hour notice to the RFQQ Coordinator is required. All requests for information should be directed to the RFQQ Coordinator.

#### **3.2 COSTS OF RFQQ RESPONSE PREPARATION**

HBE will not pay any Vendor costs associated with preparing or presenting any response to this RFQQ.

#### **3.3 PROPOSAL PROPERTY OF THE HBE**

All materials submitted in response to this solicitation become the property of the HBE, unless received after the deadline in which case the Response is returned to the sender. The HBE has the right to use any of the ideas presented in any material offered. Selection or rejection of a Response does not affect this right.

### **3.4 RECEIPT OF INSUFFICIENT COMPETITIVE RESPONSES**

If HBE receives insufficient responses as a result of this RFQQ, HBE management reserves the right to select the contractor which best meets HBE's needs.

### **3.5 WAIVER OF MINOR IRREGULARITIES**

Read all instructions carefully. If you do not comply with any part of this RFQQ, HBE may, at its sole option, reject your RFQQ response as non-responsive. HBE reserves the right to waive minor irregularities contained in any RFQQ response.

### **3.6 ERRORS IN RESPONSE**

Vendors are liable for all errors or omissions contained in their Responses. Vendors will not be allowed to alter Response documents after the deadline for Response submission. The HBE is not liable for any errors in Responses. The HBE reserves the right to contact Vendor for clarification of Response contents.

In those cases where it is unclear to what extent a requirement or price has been addressed, the evaluation team may, at their discretion and acting through the RFQQ Coordinator, contact a Vendor to clarify specific points in the submitted Response. However, under no circumstances will the responding Vendor be allowed to make changes to the proposed items after the deadline stated for receipt of Responses.

### **3.7 RFQQ AMENDMENTS**

HBE reserves the right to amend this RFQQ.

Amendments and all communications regarding this RFQQ will be posted to Washington Electronic Business Solution (WEBS) website at <https://fortress.wa.gov/ga/webscust/> Please check this website for RFQQ announcements, updates, amendments, etc.

If a conflict exists between amendments, or between an amendment and the RFQQ, the document issued last shall take precedence. The published Vendors' questions and HBE's official answers are an amendment to the RFQQ.

### **3.8 WITHDRAWAL OF RESPONSE**

Vendors may withdraw a Response that has been submitted at any time up to the Response due date and time (identified in Section 2: Schedule). To accomplish Response withdrawal, a written request signed by an authorized representative of Vendor must be submitted to the RFQQ Coordinator. After withdrawing a previously submitted Response, Vendor may submit another Response at any time up to the Response submission due date and time.

### **3.9 RIGHT TO CANCEL**

With respect to all or part of this RFQQ, the HBE reserves the right to cancel or reissue at any time without obligation or liability.

### **3.10 RIGHT TO REJECT ALL RFQQ RESPONSES**

HBE may, at any time and at its sole discretion and without penalty, reject any and all RFQQ responses and issue no contract as a result of this RFQQ.

### **3.11 AUTHORITY TO BIND HBE**

The HBE Chief Executive Officer and the HBE Chief Executive Officer's designees are the only persons who may legally commit HBE to any contracts. The contractor shall not incur, and HBE shall not pay, any costs incurred before a contract and/or Statement of Work are fully executed.

### **3.12 CONTRACT EXECUTION**

The Apparently Successful Vendor will be expected to sign a contract which is substantially the same as the contract included in this RFQQ as Attachment B. The contract will also incorporate this RFQQ and the successful response.

Either party may propose additional contract terms and conditions during negotiation of the final contract. However, proposed language alternate to the attached Sample Contract (see Attachment 1) must be included in your Letter of Submittal. You may not substitute your contract for the HBE contract.

If the Apparently Successful Vendor refuses to sign the final contract within ten (10) calendar days of delivery, HBE may revoke the award and award the contract to the next-highest-ranked Vendor.

## **4. EVALUATION AND AWARD**

### **4.1 ADMINISTRATIVE SCREENING**

Administrative Screening occurs with initial submission of the RFQQ response documents. The RFQQ Coordinator shall review responses (including attachments) for compliance with RFQQ Administrative requirements. HBE reserves the right to ask for clarification of any information contained in the submittal (including attachments). Non-responsive RFQQ responses will be eliminated from further evaluation. Evaluation teams will only evaluate Proposals meeting all administrative requirements.

### **4.2 INFORMATION USED FOR EVALUATION**

Evaluators will use the information in the Vendors' RFQQ responses and information gathered from Vendor references. No other information will be supplied to or used by the evaluation teams.

In those cases where it is unclear to what extent a requirement has been addressed, the evaluation team(s) may, at their discretion and acting through the RFQQ Coordinator, contact a Vendor to clarify specific points in the submitted Response. However, under no circumstances will the responding Vendor be allowed to make changes to their submittal after the deadline stated for receipt of Responses.

### **4.3 PROCESS**

#### **A. REVIEW OF MANDATORY REQUIREMENTS**

Evaluators will determine whether responses to the mandatory requirements are adequate. (All sections requiring a response are mandatory.) RFQQ responses that do not meet a mandatory requirement will be rejected as non-responsive.

The HBE reserves the right to determine at its sole discretion whether Vendor's response to Mandatory requirements is sufficient to pass. If, however, all responding Vendors fail to meet any single Mandatory item, the HBE reserves the following options: (1) cancel the procurement, or (2) revise the Mandatory item unless HBE determines that it is in its best interest to eliminate that mandatory requirement for all Vendors.

#### **B. QUALITATIVE REVIEW AND SCORING**

Evaluators will score all RFQQ responses that pass the review of mandatory requirements. The evaluators will consider how well each RFQQ response communicates the Vendor's experience, capacity, and ability to meet the needs of HBE. It is important that the RFQQ response be clear and complete.

### **4.4 EVALUATION PHASE I**

HBE will evaluate responses. References may be contacted for the top scoring Vendors only. HBE reserves the right to check all references who may have knowledge of the Vendor's experience, skills, and abilities. HBE will assign points based upon the Experience and Qualifications and the Vendor's response to Section 2.8.

The Cost will be scored based upon the proposed hourly rate, with the lowest hourly rates receiving the highest cost score. HBE may select the ASVs based on these scores.

HBE, at its sole discretion, may select the top scoring finalist(s) for an in-person oral presentation. Evaluators will independently score the oral presentations(s), if any, and reach a consensus score. This would be the final determination of contract award.

<b>SCORE</b>	
<b>REQUIREMENTS/CRITERIA</b>	
Submission of all Mandatory Requirements	<i>Pass/Fail</i>
	<b>WEIGHT ASSIGNED</b>
Required Qualifications/experience of Candidate(s) – Sections 2.7.3 and 2.7.4	50
Desirable Experience and Qualifications of Candidate(s) – Section 2.7.5	20
Cost for Services – Section 2.7.6	30
<b>TOTAL</b>	<b>100</b>

**4.5 EVALUATION PHASE II (Optional)**

HBE, at its sole discretion, may select the top scoring finalist(s) from Phase 1 for an in-person oral presentation.

Phase II will consist of an interview with the HBE Legal Services Team. The scores from Phase I will not carry forward to Phase II. Evaluators will independently score the oral presentations(s), if any, and reach a consensus score. The results of the interview shall determine the ASV(s).

**4.6 ACTION ON EQUIVALENT SCORES**

If two or more Vendors receive equivalent scores, HBE may, at its sole discretion, select as apparently successful the Vendors whose RFQQ response is in HBE’s best interest.

**4.7 OPTIONAL DEBRIEFING**

Vendors who submit a response will be given the opportunity for a telephone debriefing conference, if requested. The request must be made in writing (email acceptable) and received by the RFQQ Coordinator within two business days after notification of the Apparent Successful Vendor. A debriefing will be scheduled within two business days of the request.

**4.8 PROTEST PROCEDURES**

A copy of the Health Benefit Exchange Protest Procedures will be provided upon request.

**4.9 THE HBE’S RIGHT TO CANCEL**

The HBE reserves the right to cancel this RFQQ at any time, reject any and all responses received, or not to execute a Contract from this RFQQ without penalty. The release of this RFQQ does not obligate the HBE to contract for the services specified in this RFQQ. The HBE shall not be liable for any costs incurred by a Vendor in preparation of a proposal submitted in response to this RFQQ, or any activity related to responding to this RFQQ.

**4.10 PROPRIETARY INFORMATION**

Any information contained in the response that is proprietary must be clearly designated. Marking of the entire response as proprietary will neither be accepted nor honored. HBE will not accept responses where pricing is marked proprietary. If a request is made to view a Vendor's response, the HBE will comply according to the Open Public Records Act.

**APPENDIX A**

**CERTIFICATIONS AND ASSURANCES**

**RFQQ 16-005 Presiding Officer Services**

**Issued by the Washington Health Benefit Exchange**

We make the following certifications and assurances as a required element of the Response, to which it is attached, affirming the truthfulness of the facts declared here and acknowledging that the continuing compliance with these statements and all requirements of the RFQQ are conditions precedent to the award or continuation of the resulting Contract.

The prices in this Response have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offer or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered. The prices in this Response have not been and will not be knowingly disclosed by the offer, directly or indirectly, to any other offer or competitor before Contract award unless otherwise required by law. No attempt has been made or will be made by the offer to induce any other concern to submit or not to submit an offer for the purpose of restricting competition. However, we may freely join with other persons or organizations for the purpose of presenting a single proposal or bid.

The attached Response is a firm offer for a period of 120 days following the Response Due Date specified in the RFP, and it may be accepted by HBE without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 120-day period. In the case of protest, your Response will remain valid for 180 days or until the protest is resolved, whichever is later.

In preparing this Response, we have not been assisted by any current or former employee of the Health Benefit Exchange or the state of Washington whose duties relate (or did relate) to the HBE's solicitation, or prospective Contract, and who was assisting in other than his or her official, public capacity. Neither does such a person nor any member of his or her immediate family have any financial interest in the outcome of this Response. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)

We understand that the HBE will not reimburse us for any costs incurred in the preparation of this Response. All Responses become the property of the HBE, and we claim no proprietary right to the ideas, writings, items or samples unless so stated in the Response. Submission of the attached Response constitutes an acceptance of the evaluation criteria and an agreement to abide by the procedures and all other administrative requirements described in the solicitation document.

We understand that any Contract awarded, as a result of this Response will incorporate all the solicitation requirements. Submission of a Response and execution of this Certifications and Assurances document certify our willingness to comply with the Contract terms and conditions appearing in Appendix C, or substantially similar terms, if selected as a contractor. It is further understood that our standard contract will not be considered as a replacement for the terms and conditions appearing in Appendix B of this RFQQ.

We (circle one) **are / are not** submitting proposed Contract exceptions (see Section 4: *Contract Requirements*).

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Contractor Company Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**SAMPLE CONTRACT FOR PRESIDING OFFICER SERVICES  
BETWEEN  
WASHINGTON HEALTH BENEFIT EXCHANGE  
AND**

---

This Contract is made and entered into by and between the Washington Health Benefit Exchange hereinafter referred to as the "WAHBE" or "Exchange", and the below named firm, hereinafter referred to as "Contractor,"

**Contractor Name:**

**Address:**

**City, State & Zip Code:**

**Phone:**

**E-mail Address:**

**Washington State UBI No.:**

**1. IT IS MUTUALLY AGREED THAT:**

The purpose of this contract is to provide the Washington Health Benefit Exchange with Presiding Officer(s) for appeals of the Washington Healthplanfinder's health insurance coverage and cost-sharing eligibility determinations. The CONTRACTOR shall provide this service in coordination with the HBE Legal Services Director and Appeals Program staff. This Contract establishes qualified and competitively priced source of professionals, which can be used to meet this service.

**2. SPECIAL TERMS AND CONDITIONS**

Multiple contract awards were made as a result of competitive procurement RFQQ 16-005. CONTRACTORS selected were awarded an HBE "Presiding Officer Services for Health Benefit Exchange Appeals" Convenience Contract. HBE may use the contracts as the need for services arise. Services will be initiated via a Work Order.

There is no stated or implied guarantee that Work Orders will be issued to the CONTRACTOR.

To initiate work, HBE may select a specific CONTRACTOR, or may prepare a brief Work Request with supporting Statement of Work (SOW) describing the service to be completed, the expected duration, the HBE manager responsible, and, if known, the dollar limit for that specific scope of work. This Work Request/SOW may be distributed to one, or to more than one of those CONTRACTORS awarded an HBE "Presiding Officer Services for Health Benefit Exchange Appeals" Convenience Contract, to elicit their response. HBE will select the CONTRACTOR based on evaluation of the response(s). Work Orders must be approved by the HBE Legal Services Director or designee, to assure that the dollar limit established by this procurement will not be exceeded by the sum of all Work Orders executed.

**APPENDIX B**

Under no circumstances are contractors to perform any work until the contract and/or any subsequent Work Order has been fully executed. Any work performed without a properly executed contract, Work Order, or amendment will be at the contractor’s risk. The HBE is under no obligation to pay for work performed without properly executed authorization.

**3. SCOPE OF WORK**

The Contractor shall provide the services as described in the Work Order/SOW, this contract, and all its incorporations.

The following documents are incorporated into this Contract:

- RFQQ HBE 16-005
- The Contractor’s Response in response to RFQQ HBE 16-005

**4. PERIOD OF PERFORMANCE**

Subject to its other provisions, the period of performance under this contract shall be from on or about October 17, 2016 through December 31, 2017 unless sooner terminated as provided herein. No billable activity may take place until this contract has been signed by both parties. Per RFQQ HBE 16-005, the HBE may extend this contract through December 31, 2018, in whatever time increments the HBE deems appropriate.

**5. PRICING AND ADJUSTMENT**

Unless otherwise stipulated prices quoted shall not be subject to increase throughout the initial contract period. Should the WAHBE decide to extend the Contract for an additional year(s) rates will be negotiated for adjustments in pricing for any subsequent terms, however, rate increases may not exceed 5 percent.

**6. COMPENSATION**

Total compensation payable to CONTRACTOR for satisfactory performance of the work under this contract shall not exceed [specific dollar amount] Dollars (\$0.00). CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

**AUTHORIZED HOURLY PRICE LIST**

	Title/Position <i>(use titles appropriate to your firm)</i>	Hourly Rate
a	Candidate # 3	\$
b	Candidate # 3	\$
c	Candidate # 3	\$
<i>Add additional rows as required</i>		

**7. EXPENSES**

Travel or per diem to or from the Olympia Washington area will not be authorized. Contractor may receive reimbursement for travel on other expenses as authorized in advance by the HBE as



## APPENDIX B

reimbursable and stated in the Work Order. Such expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. CONTRACTOR shall receive compensation for travel expenses at current Washington Health Benefit Exchange travel reimbursement rates.

To receive reimbursement, Contractor must provide a detailed breakdown of authorized expenses, identifying what was expended and when.

This Contract consists of federal funds already received, as well as funds not yet awarded to the State of Washington through OMB Catalogue of Federal Domestic Assistance Number: 93.525. Contractor agrees to comply with applicable rules and regulations associated with these federal funds. Note: HBE has designated this Contractor as a "Vendor

Contractor and HBE agree that timely completion by Contractor of all work and delivery of any work products is critical, and no additional payment shall be made unless the Work Order/SOW under the contract is expanded by written amendment executed by authorized representatives of the Contractor and HBE. HBE shall make payment to the Contractor upon receipt and acceptance of specified deliverables and accompanying properly executed invoices.

### 8. **INVOICES AND BILLING PROCEDURES**

HBE will pay Contractor upon receipt of properly completed invoices, which shall be submitted to the Project Manager not more often than monthly. If invoices are submitted less frequently than monthly, EXCHANGE may request monthly estimate of fees incurred. The invoices shall describe and document to the HBE's satisfaction a description of work performed, the progress of the project, and fees. If pre-approved expenses are invoiced, provide a detailed breakdown of each type. Any single expense in the amount of \$50.00 or more must be accompanied by a receipt in order to receive reimbursement.

All invoices submitted must meet with the approval of the Project Manager or his/her designee prior to payment, which approval shall not be unreasonably withheld. Contractor shall only submit invoices for services or deliverables as permitted by this section of the contract. HBE will return incorrect or incomplete invoices to the Contractor for correction and reissue. The contract number and Work Order number must appear on all invoices, bills of lading, packages, and correspondence relating to this contract. Invoices must reference this contract number and provide detailed information as requested by HBE. If the Work Order specifies multiple deliverables, description of work shall specify the applicable deliverable number, and completion date.

Payment shall be considered timely if made by the HBE within thirty (30) days after receipt of properly executed invoices. Upon expiration of the contract, any claims for payment for costs due and payable under this contract that are incurred prior to the expiration date must be submitted by the Contractor to HBE within 60 days after the contract/agreement expiration date. Belated claims shall be paid at the discretion of HBE and are contingent upon the availability of funds.

## APPENDIX B

Payment shall be sent to the address designated by the CONTRACTOR, unless WAHBE has opted to utilize electronic fund transfer;

The HBE may, in its sole discretion, terminate the contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the HBE.

### 9. **CONTRACT MANAGEMENT**

The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this Contract.

#### **Contract Manager for Contractor is:**

Contractor Name:

Address:

City, State, Zip Code:

Phone: ( )

E-mail address:

#### **Contract Manager for EXCHANGE is:**

Margaret Eby

WA Health Benefit Exchange

810 Jefferson Street (mailing address-Post Office Box 657, Olympia, WA 98507)

Olympia, WA 98504

Phone: (360) 688-7607

E-mail address: [margaret.eby@wahbexchange.org](mailto:margaret.eby@wahbexchange.org)

### 10. **NOTICES**

Any notice or other communication required to be given under this Contract shall be effective if it is in writing, properly addressed, and either delivered in person, 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 (email), to the parties at the addresses and e-mail addresses provided in this Section.

### 11. **ASSURANCES**

The EXCHANGE and the Contractor agree that all activity pursuant to this Contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.



## APPENDIX B

### CONTRACT

#### GENERAL TERMS AND CONDITIONS

##### 1. DEFINITIONS

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

- A. "AGENT" shall mean the Chief Executive Officer (CEO) of the EXCHANGE, and/or the delegate authorized in writing to act on the CEO's behalf.
- B. "CONTRACTOR" shall mean that firm, provider, organization, individual or other entity performing service(s) under this Contract, and shall include all employees of the CONTRACTOR.
- C. "EXCHANGE" shall mean the Washington Health Benefit Exchange, any division, section, office, unit or other entity of the EXCHANGE, or any of the officers or other officials lawfully representing the EXCHANGE.
- D. "SUBCONTRACTOR" shall mean one not in the employment of the CONTRACTOR, who is performing all or part of those services under this Contract or under a separate contract with the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" means SUBCONTRACTOR(s) in any tier.

##### 2. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this Contract shall be made by the EXCHANGE.

##### 3. AMENDMENTS

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

##### 4. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The CONTRACTOR must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

##### 5. ASSIGNMENT

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the CONTRACTOR without prior written consent of the EXCHANGE. WAHBE may assign this Contract to the Exchange Board established by chapter 43.71 RCW, or any public agency, commission, board, or the like, within the political boundaries of the State of Washington.

##### 6. ATTORNEYS' FEES

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

## APPENDIX B

### 7. BACKGROUND AND REFERENCE CHECKS

Due to the confidential nature of the information and materials which will be accessible to Contractor, WAHBE will require the Contractor to conduct a state and/or federal criminal background check, SAM/EPLS check and/or reference check on Contractor Staff to be used to provide the Services. WAHBE reserves the right in its sole discretion to reject any propose Contractor Staff as a result of information produced by such reference or background checks.

### 8. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

The CONTRACTOR shall not use or disclose any information concerning the EXCHANGE, or information that is considered personally identifiable information (P.I.I.), for any purpose not directly connected with its performance under or the administration of this contract, except with prior written consent of the EXCHANGE, or as may be required by law. For the purposes of this section, "Personally Identifiable Information" or "P.I.I." means information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, or mother's maiden name, etc.

### 9. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other government tribunal, the EXCHANGE may, in its sole discretion, by written notice to the CONTRACTOR terminate this Contract if it is found after due notice and examination by the AGENT that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this contract.

In the event this Contract is terminated as provided above, the EXCHANGE shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the Contract by the CONTRACTOR. The rights and remedies of the EXCHANGE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the AGENT makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

### 10. COPYRIGHT PROVISIONS

Unless otherwise provided, all materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the EXCHANGE. The EXCHANGE shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, CONTRACTOR hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the EXCHANGE effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

## APPENDIX B

CONTRACTOR shall retain all patent, copyright and other intellectual property rights in the methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience (collectively, "Intellectual Property") owned or possessed by CONTRACTOR before the commencement of, or acquired by CONTRACTOR during or after, the performance of the services.

For materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, CONTRACTOR hereby grants to the EXCHANGE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The CONTRACTOR warrants and represents that CONTRACTOR has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the EXCHANGE.

The CONTRACTOR shall exert all reasonable effort to advise the EXCHANGE, at the time of delivery of materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract.

The EXCHANGE shall receive prompt written notice of each notice or claim of infringement received by the CONTRACTOR with respect to any data delivered under this contract. The EXCHANGE shall have the right to modify or remove any restrictive markings placed upon the data by the CONTRACTOR.

### **11. COVENANT AGAINST CONTINGENT FEES**

The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the CONTRACTOR for securing business.

The EXCHANGE shall have the right, in the event of breach of this clause by the CONTRACTOR, to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

### **12. DISALLOWED COSTS**

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

### **13. DISPUTES**

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with AGENT.

1. The request for a dispute hearing must:
  - Be in writing;
  - State the disputed issue(s);
  - State the relative positions of the parties;

## APPENDIX B

- State the CONTRACTOR'S name, address, and Contract number; and
  - Be mailed to the AGENT and the other party's (respondent's) Contract Manager within 3 working calendar days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working calendar days.
  3. The AGENT shall review the written statements and reply in writing to both parties within 10 working days. The AGENT may extend this period if necessary by notifying the parties.
  4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

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

### 14. DUPLICATE PAYMENT

The EXCHANGE shall not pay the CONTRACTOR, if the CONTRACTOR has charged or will charge the EXCHANGE or any other party under any other contract or agreement, for the same services or expenses.

### 15. GOVERNING LAW

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

### 16. INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless the EXCHANGE, the State, agencies of State and all officials, agents and employees of the EXCHANGE, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

CONTRACTOR'S obligations to indemnify, defend, and hold harmless includes any claim by CONTRACTORS' agents, employees, representatives, or any subcontractor or its employees.

CONTRACTOR expressly agrees to indemnify, defend, and hold harmless the EXCHANGE for any claim arising out of or incident to CONTRACTOR'S or any subcontractor's performance or failure to perform the contract. CONTRACTOR'S obligation to indemnify, defend, and hold harmless the EXCHANGE shall not be eliminated or reduced by any actual or alleged concurrent negligence of EXCHANGE or its agents, agencies, employees and officials.

CONTRACTOR waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the EXCHANGE and its officials, agents or employees.

## APPENDIX B

### 17. INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this contract. The CONTRACTOR and his or her employees or agents performing under this Contract are not employees or agents of the EXCHANGE. The CONTRACTOR will not hold himself/herself out as or claim to be an officer or employee of the EXCHANGE or of the State of Washington by reason hereof, nor will the CONTRACTOR make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the CONTRACTOR.

### 18. INDUSTRIAL INSURANCE COVERAGE

The CONTRACTOR shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the CONTRACTOR fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, EXCHANGE may collect from the CONTRACTOR the full amount payable to the Industrial Insurance accident fund. The EXCHANGE may deduct the amount owed by the CONTRACTOR to the accident fund from the amount payable to the CONTRACTOR by the EXCHANGE under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the CONTRACTOR.

### 19. INSURANCE

- 19.1. Upon execution of the Contract, and during the remaining term of this Contract, Contractor shall maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor shall provide written notice of such to WAHBE within one Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may result in this Contract's termination.
- 19.2. 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;
    - ii. Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
  - b. Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million; and
  - c. Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, and coverage of not less than \$2 million per occurrence/\$4 million general aggregate.
- 19.3. Premiums on all insurance policies shall be paid by Contractor or its Subcontractors. Such insurance policies shall name WAHBE as an additional insured on all general liability and umbrella policies.
- 19.4. Contractor's insurance policies shall not be canceled or nonrenewed in scope of coverage without provision for equivalent substitute insurance. Contractor's insurance policies shall not be reduced in scope without WAHBE's prior written consent.



## APPENDIX B

- 19.5. Contractor agrees to waive all rights of subrogation against WAHBE for losses arising from services performed by Contractor under this Contract.
- 19.6. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the WAHBE and shall include a severability of interests (cross-liability) provision.
- 19.7. 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.
- 19.8. Contractor shall furnish to WAHBE copies of certificates of all required insurance within 30 calendar days of this Contract's Effective Date, and copies of renewal certificates of all required insurance within 30 calendar days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section.

### **20. LICENSING, ACCREDITATION AND REGISTRATION**

The CONTRACTOR shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

### **21. LIMITATION OF AUTHORITY**

Only the AGENT or AGENT'S delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this Contract is not effective or binding unless made in writing and signed by the AGENT.

### **22. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

In the event of the CONTRACTOR'S non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and the CONTRACTOR may be declared ineligible for further contracts with the EXCHANGE. The CONTRACTOR shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

### **23. NONDISCRIMINATION**

During the performance of this contract, the CONTRACTOR shall comply with all federal and state nondiscrimination laws, regulations and policies.

### **24. NON-SOLICITATION**

During the term of this Contract and for 12 months after any termination of this Contract, CONTRACTOR will not, without the prior written consent of the AGENT, either directly or indirectly, on CONTRACTOR'S own behalf or in the service or on behalf of others], solicit or attempt to solicit, divert or hire away any person employed by the EXCHANGE.

## APPENDIX B

### 25. PRIVACY

Personal Identifiable Information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this Contract shall be protected against unauthorized use, disclosure, modification or loss. CONTRACTOR shall ensure its directors, officers, employees, subcontractors or agents use Personal Identifiable Information solely for the purposes of accomplishing the services set forth herein. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons Personal Identifiable Information without the express written consent of the Exchange or as otherwise required by law.

Any breach of this provision may result in termination of the Contract and the demand for return of all personal information. The CONTRACTOR agrees to indemnify and hold harmless the EXCHANGE for any damages related to the CONTRACTOR'S unauthorized use of personal information.

### 26. PUBLICITY

The CONTRACTOR agrees to submit to the EXCHANGE all advertising and publicity matters relating to this Contract wherein the EXCHANGE'S name is mentioned or language used from which the connection of the EXCHANGE'S name may, in the EXCHANGE'S judgment, be inferred or implied. The CONTRACTOR agrees not to publish or use such advertising and publicity matters without the prior written consent of the EXCHANGE.

### 27. RECORDS MAINTENANCE

The CONTRACTOR shall maintain books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

CONTRACTOR shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by the EXCHANGE, personnel duly authorized by the EXCHANGE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

### 28. REGISTRATION WITH DEPARTMENT OF REVENUE

The CONTRACTOR shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

### 29. RIGHT OF INSPECTION

The CONTRACTOR shall provide right of access to its facilities to the EXCHANGE, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

## APPENDIX B

### 30. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, the EXCHANGE may terminate the Contract under the "Termination for Convenience" clause, without the ten-day notice requirement, subject to renegotiation at the EXCHANGE'S discretion under those new funding limitations and conditions.

### 31. SEVERABILITY

The provisions of this Contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

### 32. SITE SECURITY

While on EXCHANGE premises, CONTRACTOR, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

### 33. SUBCONTRACTING

Neither the CONTRACTOR nor any SUBCONTRACTOR shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of the EXCHANGE. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to the Washington Health Benefit Exchange for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the CONTRACTOR is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons Personally Identifiable Information without the express written consent of the Exchange or as provided by law.

### 34. SURVIVORSHIP

All license and purchase transactions executed and services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, prices and price discounts 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 the sections titled; Confidentiality/Safeguarding Of Information; Copyright Provisions; Incorporated Documents and Order of Precedence; Limitation of Liability; Publicity; Disputes; Records Maintenance, Vendor's Commitments; Vendor's Proprietary Information; and Warranties and Representations shall survive the termination of this Contract.

### 35. TAXES

All payments accrued because of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the CONTRACTOR or its staff shall be the sole responsibility of the CONTRACTOR.

## APPENDIX B

### 36. TERMINATION FOR CAUSE

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

In the event of termination or suspension, the CONTRACTOR shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

The EXCHANGE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the CONTRACTOR from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the CONTRACTOR or a decision by the EXCHANGE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the CONTRACTOR: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of the EXCHANGE provided in this Contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

### 37. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this contract, the EXCHANGE may, by 10 calendar days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this Contract is so terminated, the EXCHANGE shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

### 38. TERMINATION FOR FUNDING CONTINGENCY

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

### 39. TERMINATION PROCEDURES

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

The EXCHANGE shall pay to the CONTRACTOR the agreed upon price, if separately stated, for completed work and services accepted by the EXCHANGE, and the amount agreed upon by the CONTRACTOR and the EXCHANGE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by the EXCHANGE, and (iv) the protection and preservation of property, unless the termination is for default, in

## APPENDIX B

which case the AGENT shall determine the extent of the liability of the EXCHANGE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The EXCHANGE may withhold from any amounts due the CONTRACTOR such sum as the AGENT determines to be necessary to protect the EXCHANGE against potential loss or liability.

The rights and remedies of the EXCHANGE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the AGENT, the CONTRACTOR shall:

- A. Stop work under the Contract 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 the Contract that is not terminated;
- C. Assign to the EXCHANGE, in the manner, at the times, and to the extent directed by the AGENT, all of the rights, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, in which case the EXCHANGE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the AGENT to the extent AGENT may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to the EXCHANGE and deliver in the manner, at the times, and to the extent directed by the AGENT any property which, if the Contract had been completed, would have been required to be furnished to the EXCHANGE;
- F. Complete performance of such part of the work as shall not have been terminated by the AGENT; and
- G. Take such action as may be necessary, or as the AGENT may direct, for the protection and preservation of the property related to this contract, which is in the possession of the CONTRACTOR and in which the EXCHANGE has or may acquire an interest.

### 40. TREATMENT OF ASSETS

- 40.1 Title to all property furnished by the EXCHANGE shall remain in the EXCHANGE. Title to all property furnished by the CONTRACTOR, for the cost of which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the EXCHANGE upon delivery of such property by the CONTRACTOR. Title to other property, the cost of which is reimbursable to the CONTRACTOR under this contract, shall pass to and vest in the EXCHANGE upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the EXCHANGE in whole or in part, whichever first occurs.
- 40.2 Any property of the EXCHANGE furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by the EXCHANGE, be used only for the performance of this contract.

## APPENDIX B

- 40.3 The CONTRACTOR shall be responsible for any loss or damage to property of the EXCHANGE that results from the negligence of the CONTRACTOR or which results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.
- 40.4 If any EXCHANGE property is lost, destroyed or damaged, the CONTRACTOR shall immediately notify the EXCHANGE and shall take all reasonable steps to protect the property from further damage.
- 40.5 The CONTRACTOR shall surrender to the EXCHANGE all property of the EXCHANGE prior to settlement upon completion, termination or cancellation of this contract.
- 40.6 All reference to the CONTRACTOR under this clause shall also include CONTRACTOR'S employees, agents or SUBCONTRACTORS.

### **41. U.S. DEPARTMENT OF TREASURY, OFFICE OF FOREIGN ASSETS CONTROL**

The Exchange complies with U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) payment rules. OFAC prohibits financial transactions with individuals or organizations, which have been placed on the OFAC Specially Designated Nationals (SDN) and Blocked Persons sanctions list located at <http://www.treas.gov/offices/enforcement/ofac/index.html>. Compliance with OFAC payment rules ensures that the Exchange does not conduct business with individuals or organizations that have been determined to be supporters of terrorism and international drug dealing or that pose other dangers to the United States.

Prior to making payment to individuals or organizations, the Exchange will download the current OFAC SDN file and compare it to Exchange and statewide vendor files. In the event of a positive match, the Exchange reserves the right to: (1) make a determination of "reasonability" before taking the positive match to a higher authority, (2) seek assistance from the Washington State Office of the State Treasurer (OST) for advanced assistance in resolving the positive match, (3) comply with an OFAC investigation, if required, and/or (4) if the positive match is substantiated, notify the contractor in writing and terminate the Contract according to the Termination for Convenience provision without making payment. The Exchange will not be liable for any late payment fees or missed discounts that are the result of time required to address the issue of an OFAC match.

### **42. CONTRACTOR'S PROPRIETARY INFORMATION**

Contractor acknowledges that the Exchange is subject to chapter 42.56 RCW 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 Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, the Exchange shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, the Exchange will notify the Contractor of the request and of the date that such records will be released to the requester unless the Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If the Contractor fails to obtain the court order enjoining disclosure, the Exchange will release the requested information on the date specified.

## APPENDIX B

### **43. WAIVER**

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by authorized representative of the EXCHANGE.