



Request for Qualifications and Quotations

HBE 18-002

**Strategic Partner for
Advertising, Marketing, and Communications**

RFQQ RELEASE DATE:

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1. INTRODUCTION and OVERVIEW

1.1. Purpose and Authority

The Washington Health Benefit Exchange (hereafter called WAHBE) is initiating this Request for Quotations and Qualifications (RFQQ) to obtain one or more qualified Vendor(s) to assist WAHBE develop and implement advertising, marketing and communications strategies for both the Washington Healthplanfinder and WAPlanfinder.

WAHBE issues this RFQQ under the authority under chapter 43.71 RCW, which established the WAHBE Board, and WAHBE.

1.2. Organization Background

WAHBE was created by state statute in 2011 as a public-private partnership. WAHBE is responsible for the operation of *Washington Healthplanfinder* (HPF) – an easily accessible, online marketplace for individuals, families, and small businesses to find, compare, and enroll in Qualified Health Plans (QHP), Qualified Dental Plans (QDP), and Washington Apple Health (WAH/Medicaid).

Washington Healthplanfinder offers Washington State residents:

- Side-by-side comparisons of qualified health and dental plans
- Tax credits or financial help to pay for co-pays and premiums
- Expert customer support offered online, by phone, or in person through local organizations or insurance brokers.

As a single point of entry for both WAH and QHP customers, WAHBE serves more than 1.8 million residents. As of April 2017, more than 1.6 million were enrolled in WAH and more than 204,000 Washington residents were enrolled in QHP.

Washington's enrollment continues to have a positive fiscal impact across the state. More than 800 WAHBE-certified Navigators, 2,000 agents and brokers, and 100 tribal assisters continue to play a vital role, providing outreach and enrollment assistance statewide. These activities are supported by a strategic outreach campaign that leverages radio and digital mediums, raising awareness and encouraging people to act during the open enrollment period. WAHBE continues to make improvements to deliver the best customer experience and the positioning of advertising, marketing and communications resources is critical to the financial health of the organization.

For further information on WAHBE, please use the following link:

<https://www.wahbexchange.org/about-the-exchange/what-is-the-exchange/>

1.3. Project Information

The successful Vendor(s) shall provide marketing plan consultation, implement elements of WAHBE's strategic marketing plan, conduct market research and stakeholder analyses, and create an advertising and engagement strategy for WAHBE. The objective is to continue to build on WAHBE's existing brand, increase enrollment in the marketplace, and educate and motivate consumers to use WAHBE for their insurance enrollment needs.

Target audiences and stakeholders:

Since its inception in 2013, WAHBE has grown to now serve 1 in 4 Washingtonians seeking health insurance coverage in Qualified Health Plans or Washington Apple Health (Medicaid). WAHBE closed the most recent Open Enrollment period with more than 242,000 people

selecting health plans via *Washington Healthplanfinder*, with 67% of them receiving tax credits. It is estimated that around five (5) percent of the state's population still remain uninsured. The goal is to reach eligible individuals as well as currently insured individuals who may find better coverage options through WAHBE.

Key WAHBE stakeholders:

- WAHBE Board
- Consumers, both uninsured and those insured that may be purchasing in the outside marketplace
- Public and private partners
- Advocacy organizations
- Health insurance carriers
- Insurance agents/brokers
- Dental insurance carriers
- Navigator Organizations and Certified Application Counselors
- Health care providers (hospital and medical associations)
- Tribes
- State-elected officials

1.4. Definitions

Definitions for the purposes of this RFQQ, and any resulting Contract, include:

“ASV” means Apparent Successful Vendor, the Vendor(s) selected to do work for WAHBE pending execution of a contract.

“Broker” means a person or business who can recommend specific Qualified Health Plans and help individuals enroll in a plan through Washington Healthplanfinder.

“Certified Application Counselor” means an individual trained to help consumers apply for and enroll in coverage through Washington Healthplanfinder. These Counselors usually work in a hospital or other medical setting.

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

“Consultant” means a specific employee or Subcontractor that has been identified as a member of the project team providing services under a Contract.

“Contractor” means an individual, company, corporation, firm, or combination thereof with whom WAHBE develops a Contract for the procurement of materials, supplies, services, and/or equipment.

“HPF” means Washington Healthplanfinder, an online marketplace for individuals, families, and small businesses to find, compare, and enroll in Qualified Health and Dental Plans, as well as enroll in Washington Apple Health (Medicaid).

“Navigator” means an unbiased individual who provides free help to consumers applying for and enrolling in coverage through Washington Healthplanfinder. Also known as an “In-Person Assister.”

“**QDP**” means Qualified Dental Plan, a dental insurance plan certified by Washington Healthplanfinder.

“**QHP**” means Qualified Health Plan, a health insurance plan certified by Washington Healthplanfinder that provides essential health benefits, follows established limits on cost-sharing, and meets other requirements.

“**Scope of Work**” means the overarching work activities, deliverables and timeline within a procurement document that generally defines the requirements and desired outcomes.

“**Statement of Work**” means the part of a Contract that captures and defines the specific work activities, deliverables, and timeline a Vendor must execute in the performance of specified work.

“**Vendor**” means a person, firm, or company proposing to do work on behalf of WAHBE. Also known as a “Bidder”.

“**WAH**” means Washington Apple Health, a public health insurance program for low-income families and children, pregnant women, the elderly, people with disabilities, and low-income adults. Also known as “Medicaid”.

“[Washington Healthplanfinder](#)” means WAHBE’s online marketplace for individuals, families, and small businesses to find, compare, and enroll in Qualified Health and Dental Plans, as well as enroll in Washington Apple Health (Medicaid).

“[WAPlanfinder](#)” means WAHBE’s mobile application for iOS and Android that provides customers with secure access to plan details and messages, as well as a convenient way to upload needed documents with the snap of a photo.

1.5. Vendor Information and Eligibility

WAHBE seeks Vendor(s) with experience building successful advertising, marketing and communication strategies for similar entities, programs, products, or initiatives.

This RFQQ is open to Vendor organizations that are licensed to do business in the State of Washington, or are willing to become licensed prior to Contract execution, and satisfy all the following minimum mandatory qualifications:

- Vendor and proposed project team members have at least five (5) years’ experience developing and executing strategic marketing, advertising and communications plans for public entities, programs, or statewide initiatives; incorporating both traditional and digital communications channels.

Desirable qualifications include:

- Experience in health care, health insurance, or public health.
- An office located in Washington State.

1.6. Period of Performance

The period of performance of any Contract(s) resulting from this RFQQ begins July 1, 2018 and ends June 30, 2020. WAHBE, at its sole discretion, may extend the period of performance through June 30, 2023 in whatever time increments WAHBE deems appropriate.

1.7. Award

WAHBE intends to award the minimum number of Contract(s) necessary to accomplish the required work as a result of this RFQQ.

Under no circumstances shall the selected Vendor perform any work until a Contract has been fully executed. Any work performed before execution is at the Vendor's risk and expense. WAHBE 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.

1.8. Funding

WAHBE has budgeted an amount not to exceed Two Million and No/100ths Dollars (\$2,000,000.00) for the initial period of performance and One Million and No/100ths Dollars (\$1,000,000.00) per year for any subsequent extension(s) offered.

Any Contract awarded because of this RFQQ is contingent upon the availability of funding. WAHBE does not guarantee any minimum compensation or work to the Contractor(s) selected through this RFQQ.

1.9. RFQQ Schedule

This RFQQ is being issued under the following schedule. The response deadlines are mandatory. Failure to meet any of the required deadlines (dates and times) will result in disqualification from participation.

Item	Action	Date
1	WAHBE issues RFQQ	02/26/18
2	Optional Vendor Conference via Webinar – 2:00 p.m. PT	03/06/18
3	Vendors may submit written questions until 3:00 p.m. PT	03/08/18
4	WAHBE will issue responses in an Addendum by 3:00 p.m. PT	03/15/18
5	Vendors must submit responses to RFQQ Coordinator by 3:00 p.m. PT	03/22/18
6	WAHBE's evaluation of responses	03/26/18 – 04/12/18
7	Oral Presentations from Top Scoring Vendors	04/23/18 – 04/27/18
8	WAHBE notifies Vendors and begins negotiations with the ASV	05/04/18
9	Vendor Debriefings	05/07/18 – 05/11/18
10	Contract(s) Execution	06/01/18
11	Services Start Date	07/01/18

The Schedule outlines important dates for action. WAHBE reserves the right to revise this Schedule. Items 1-5 may be revised at any time by written addendum. Dates listed for items 6-11 are approximate and may be changed at any time without notice.

2. SCOPE OF WORK AND DELIVERABLES

Vendor shall provide services, tools, and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

The ASV will do all things necessary to develop and execute on the strategic marketing, advertising and communications plan for WAHBE.

The Contract resulting from this RFQQ will be a performance-based Contract; and must meet agreed upon criteria for deliverables. Payment will depend on the deliverables being received on-time and approved by WAHBE. Late or partial completion of the deliverables will result in partial payment.

2.1. Task 1: Develop and implement a WAHBE-approved strategy for gaining market research and stakeholder analysis (focus groups, surveys, one-on-one interviews with key stakeholders and target audiences) related to the current HPF customer base, individuals that do not secure coverage through the HPF, and the uninsured.

The development should consider the following:

- Messaging constructs and refinements for multi-segment and multi-language audiences;
- Calendaring of marketing efforts and executional deadlines;
- Using gathered research to inform the development of Task 2.

Deliverable 1: Final market research and stakeholder analysis report.

2.2. Task 2: Support the development and execution of WAHBE's strategic marketing and engagement plan to meet enrollment, retention and renewal goals; increase customer loyalty; and engage both new and existing customers. Expected activities include, but are not limited, to the following:

- Implementing existing or proposed new initiatives with the Navigators, certified application counselors, agents/brokers, agency partners and other organizations;
- Implementing a comprehensive, statewide, multi-lingual advertising campaign and media strategy (online, radio, print, other), including media buys, messaging refinement, and a marketing calendar. Vendor shall work with WAHBE on creative development, as needed;
- Securing partnerships, sponsorships, earned media and outreach events on behalf of WAHBE;
- Securing statewide paid media negotiations and purchases including, but not limited to: radio; digital; print; outdoor and non-traditional;
- Participating in two to three in-person meetings with WAHBE Communications team members, as necessary, as well as bi-weekly check-ins by phone.
- Coordinating and/or producing up to six videos including, but not limited to, testimonials.

Deliverable 2: Feedback on WAHBE's proposed strategic marketing and engagement plans.

Deliverable 3: In conjunction with WAHBE, define how WAHBE will measure the success of its outreach strategies including, but not limited to: operational plan metrics; open enrollment results; retention of customers; and utilization of health literacy content.

Deliverable 4: Secure negotiated purchases and placements of paid media during open enrollment that supports WAHBE's comprehensive, statewide, multi-lingual advertising campaign and media strategy.

3. GENERAL INFORMATION

3.1. Communication through RFQQ Coordinator

Upon release of this RFQQ, all Vendor communications concerning this RFQQ must be directed to the RFQQ Coordinator listed below. If Vendor communicates with any other employees of WAHBE concerning this RFQQ, unless such communication is otherwise required or allowed by law or written WAHBE policy, WAHBE may disqualify Vendor from responding to this RFQQ.

Erin Hamilton, CPPB
WAHBE Contracts Office
RE: RFQQ HBE 18-002
Email: contracts@wahbexchange.org

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 WAHBE. Vendors should rely only on written statements issued by the RFQQ Coordinator or her designee.

3.2. Optional Vendor Conference

WAHBE will conduct an optional Vendor conference via "Skype for Business". The Vendor conference is optional for Vendors interested in submitting a response. Vendors may ask questions including, but not limited to: the project scope; specifications; requirements; and selection criteria during the Vendor conference. However, verbal responses during the conference are considered unofficial and non-binding. Vendors shall rely only on written statements issued by the RFQQ Coordinator.

Call-In Information:

Date and Time: March 6, 2018 – 2:00 p.m. PT
Link: <https://meet.lync.com/wahbexchange/hamile/Z70YR89B>
Phone #: 1-719-955-0562
Passcode: 742508

3.3. Vendors' Questions and WAHBE Responses

Vendor questions regarding this RFQQ will be accepted until the date and time specified in Section 1.9. Early submission of questions is encouraged. Vendor questions must be submitted in writing via email to the RFQQ Coordinator at the email listed in Section 3.1.

Official responses to Vendors' written questions will be posted as a numbered addendum on Washington's Electronic Business Solution (WEBS) system at <https://fortress.wa.gov/ga/webs/home.html> and on WAHBE procurement webpage at www.wahbexchange.org/about-the-exchange/what-is-the-exchange/vendor-procurements by the date and time specified in Section 1.9. The name of Vendor that submitted the question(s) will not be identified. Only written responses posted to WEBS and WAHBE webpage 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
1				
2				
3				

3.4. Email

Email is to be used for all communications required in this RFQQ. WAHBE may also communicate with Vendor utilizing the same methods.

WAHBE does not take responsibility for any problems in the email or Internet delivery services, either within or outside WAHBE. Vendor is responsible for ensuring timely and complete delivery of any communications related to this RFQQ.

3.5. Proprietary Information/Public Disclosure

WAHBE 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.

If Vendor wants to protect any Proprietary Information that is included in its response from disclosure, the information shall be clearly designated by Vendor as Proprietary Information. "Proprietary Information" is defined as information owned by Vendor to which Vendor claims a protectable interest under law. Propriety 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, WAHBE shall maintain the confidentiality of Vendor's information marked Proprietary Information. If a public disclosure request is made to view Vendor's Proprietary Information, WAHBE 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, WAHBE will release the Proprietary Information on the specified date.

WAHBE's sole responsibility shall be limited to maintaining Vendor's identified Proprietary Information in a secure area and to notify Vendor of any request(s) for disclosure for so long as WAHBE retains Vendor's information in WAHBE 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. All requests for information should be directed to the RFQQ Coordinator.

3.6. Costs of Response Preparation

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

3.7. RFQQ Response Property of WAHBE

All materials submitted in response to this RFQQ become the property of WAHBE, unless received after the deadline in which case the response is returned to the sender. WAHBE 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.

3.8. Receipt of Insufficient Competitive Responses

If WAHBE receives insufficient responses as a result of this RFQQ, WAHBE management reserves the right to select Vendor or Vendors which best meet WAHBE's needs.

3.9. Waiver of Minor Irregularities

Read all instructions carefully. If Vendor does not comply with any part of this RFQQ, WAHBE may, at its sole option, reject Vendor's response as non-responsive. WAHBE reserves the right to waive minor irregularities contained in any response.

3.10. 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. WAHBE is not liable for any errors in responses. WAHBE 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(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 the proposed items after the deadline stated for receipt of responses.

3.11. RFQQ Amendments

WAHBE reserves the right to amend this RFQQ. Amendments will be posted to the WEBS website at <https://fortress.wa.gov/ga/webscust/> and on WAHBE procurement webpage at www.wahbexchange.org/about-the-exchange/what-is-the-exchange/vendor-procurements.

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 WAHBE's official answers are an amendment to the RFQQ.

3.12. 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 1.9. To accomplish response withdrawal, a written request signed by an authorized representative of Vendor must be submitted to the RFQQ Coordinator via email to contracts@wahbexchange.org. After withdrawing a previously submitted response, Vendor may submit another response at any time up to the response submission due date and time.

3.13. Right to Cancel

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

3.14. Right to Reject All Responses

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

3.15. Authority to Bind WAHBE

WAHBE Chief Executive Officer and WAHBE Chief Executive Officer's designees are the only persons who may legally commit WAHBE to any Contracts. The ASV shall not incur, and WAHBE shall not pay, any costs incurred before a Contract and authorizing Work Order are fully executed.

3.16. Contract Execution

The ASV will be expected to sign a Contract substantially the same as the Contract included in this RFQQ as Exhibit B – Sample Contract. 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 must be included in your Letter of Submittal. You may not substitute your Contract for the WAHBE Contract.

If the ASV fails to sign the final Contract within ten (10) calendar days of delivery, WAHBE may revoke the award and award the Contract to the next-highest-ranked Vendor.

3.17. Statement of Work

The Statement of Work is a description of the work which the Vendor will perform, including but not limited to deliverables, outcomes, schedule, price, capacity, and staff resources.

The initial Statement of Work is incorporated in the Contract. As needed, additional Statements of Work within the scope of this Contract may be added to and incorporated in the Contract by amendment. More than one Statement of Work may be active in any given period.

4. INSTRUCTIONS TO VENDORS

Vendors must follow these instructions exactly or their response may be deemed non-responsive.

4.1. Response Format

4.1.1. The Letter of Transmittal and RFQQ responses are to be submitted via email in unrestricted Word, Excel or PDF format.

4.1.2. Pages are to be formatted as standard 8.5" x 11". Font size can be no less than 10 point. Margins can be no less than ½ inch. Each page must be numbered.

4.1.3. 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.

4.1.4. 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.

- 4.1.5. Vendor must title, number and respond to each element in the order it appears below in Section 4.2.
- 4.1.6. Vendor must respond to every element, except where otherwise stated. Responses must provide complete, concise information regarding Vendor's experience and ability to provide the skill sets requested.
- 4.1.7. Some elements may have page limitations that will be enforced.

4.2. Response Contents

Responses must contain all the following elements, in the order given, to be considered responsive:

4.2.1. Letter of Transmittal (Mandatory, Pass/Fail)

A Letter of Transmittal should be prepared on Vendor letterhead and must be signed by an individual who is authorized to commit Vendor the services and requirements as stated in this RFQQ. The Letter of Transmittal must be submitted as a separate document and include, in the order given:

- 4.2.1.1. Identifying information about Vendor to include the following:
 - Vendor's business name, address, telephone number, and email
 - The legal status of the Vendor (partnership, corporation, etc.) and the year the Vendor's entity was organized as it now substantially exists.
 - The name, telephone number, and email of the person who will have primary contact with WAHBE in carrying out the responsibilities of the Contract.
 - The name(s), titles, and contact information of all persons authorized to speak on behalf of Vendor on matters related to this RFQQ.
 - The name and address of the entity that receives legal notices for Vendor.
- 4.2.1.2. Provide a statement affirming that by submitting a response to this RFQQ, Vendor and its key Subcontractors represent that they are not in arrears in the payment of any obligations due and owing the State of Washington, including the payment of taxes and employee benefits, and that it shall not become in arrears during the term of the Contract if selected for Contract award.
- 4.2.1.3. Vendor's Washington Uniform Business Identification (UBI) number. Vendor must be licensed to do business in the State of Washington before any resulting Contract is executed. Provide Vendor organization's UBI number issued by the Washington State Department of Licensing or an affirmation that the Vendor will obtain a business license before executing a Contract.
- 4.2.1.4. State Vendor's Federal Employer Tax Identification Number.
- 4.2.1.5. If the Vendor or any Subcontractor contracted with the State of Washington during the past twenty-four (24) months, indicate the name of the agency, the Contract number and project description and/or other information available to identify the Contract.
- 4.2.1.6. Conflict of Interest information:
 - If any of Vendor's or Subcontractor's employees or officers were employed by WAHBE or the State of Washington during the last two (2) years, state their positions within the organization, their proposed duties under any resulting Contract, their duties and position during their employment with WAHBE or the state, and the date of their termination from WAHBE/state employment.
 - If any owner, key officer, or key employee of Vendor is related by blood or

marriage to any employee of WAHBE or has a close personal relationship to same, identify all the parties, identify their current or proposed positions, and describe the nature of the relationship.

- Vendor must disclose if they have a business relationship with any current major WAHBE Contractor.
- If Vendor is aware of any other real or potential conflict of interest, Vendor must fully disclose the nature and circumstances of such potential conflict of interest. If, after review of the information provided and the situation, WAHBE determines that a potential conflict of interest exists, it may, at its sole option, disqualify Vendor from participating in this RFQQ. Failure to fully disclose any real or potential conflict of interest may result in the disqualification of Vendor or the Termination for Default of any Contract with Vendor resulting from this RFQQ.

- 4.2.1.7.** Vendors must indicate whether they have had a Contract terminated for default in the last five (5) years. Termination for Default is defined as a notice to stop work due to Vendor's nonperformance or poor performance, where the issue of performance was either not litigated due to inaction on the part of Vendor or litigated and determined that Vendor was in default.

If Vendor has had a Contract terminated for default in the last five (5) years, Vendor must submit full details including the other party's name, address, and telephone number. Vendor must specifically grant WAHBE permission to contact any and all involved parties and access any and all information WAHBE determines is necessary to satisfy its investigation of the termination. WAHBE will evaluate the circumstances of the termination and may at its sole discretion, bar the participation of Vendor in this RFQQ.

- 4.2.1.8.** The page numbers and names of any response elements being claimed as "Proprietary" or "Confidential" (see Section 3.5). Include an explanation for each claim of confidentiality.
- 4.2.1.9.** Any alternate Contract language Vendor wishes to propose (see section 3.16). If alternate Contract language is longer than one (1) page, attach it to your Letter of Submittal as a separate document. If none is proposed, it will be assumed that the Contract will be accepted without change.
- 4.2.1.10.** A list of all RFQQ amendments received by amendment issue date. If no RFQQ amendments were received, write a statement to that effect. Vendor questions/ WAHBE responses are considered an amendment to the RFQQ.
- 4.2.1.11.** A detailed list of all materials and enclosures being sent in the response.

4.2.2. Certifications and Assurances (Mandatory, Pass/Fail)

Certifications and Assurances (Exhibit A) signed by a person authorized to bind Vendor to a Contract.

4.2.3. References (Mandatory; Pass/Fail)

Include three (3) business references for Vendor. List names, addresses, telephone numbers, and emails of three (3) business references for which Vendor has provided professional staff services similar to those required by WAHBE. Describe the type of services provided, project duration, and primary contact person.

By submission of the references, Vendor grants permission to WAHBE to contact the references and others who may have pertinent information. Do not include current WAHBE staff as references. WAHBE may evaluate additional references at WAHBE's discretion.

Vendor references will be contacted and scored for the top-ranking response(s) only.

4.2.4. Project Understanding and Approach (Mandatory, Scored)

Vendor shall demonstrate, in less than five (5) pages, an understanding of the current WAHBE environment, considering both state and federal activity, and providing a cogent approach for both reaching new and retaining existing WAHBE customers. The approach should account for marketing and branding executed to date, be outcome based with attention given to increasing and retaining enrollment and provide innovative strategies to reaching these goals.

4.2.5. Proposed Schedule and Deliverables (Mandatory, Scored)

Vendor must propose a project schedule in its response to this RFQQ. Vendors may develop and propose alternate deliverables and a project schedule (within budget) based upon their experience and expertise which may differ from the tasks and deliverables identified in Section 2.

4.2.6. Project Team Structure/Internal Controls (Mandatory, Scored)

Provide a description of the proposed project team structure and internal controls to be used during the project, including any Subcontractors. Provide an organizational chart of your firm indicating lines of authority for personnel involved in performance of this potential Contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management. Include who within the firm will have prime responsibility and final authority for the work.

4.2.7. Qualifications of Vendor/Firm (Mandatory, Scored)

In five (5) pages or less, describe two (2) non-WAHBE-related projects the Vendor has completed within the last five (5) years that most closely resemble the work described in this RFQQ. Vendor's response must include, but is not limited, to the following:

1. Who was the customer?
2. What was the customer's objective of the project?
3. Did the results meet the expectations of the customer? Why or why not (fully describe)?
4. How did the customer use the results?
5. Provide examples of any planning documents, design collateral, research, video elements, and/or communications used for campaigns, products, or initiatives of similar size and scope.
6. Provide examples of metrics that Vendor has used for tracking project performance against desired outcomes.

4.2.8. Qualifications of Proposed Project Staff/Consultants (Mandatory, Scored)

Written Summary of Qualifications/Experience of proposed project team – Identify staff, including Subcontractors, who will be assigned to the potential Contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project. Provide resumes for the named staff, which include information on the individual’s particular skills related to this project, education, experience, and significant accomplishments. Identify any other pertinent information such as experience working with Boards or groups that have diverse membership. Vendor must commit that the staff/consultants identified in its response will actually perform the assigned work. Any staff substitution must have the prior approval of WAHBE.

4.2.9. Cost Response (Mandatory; Scored)

The cost response must be signed by a Vendor representative with authority to bind Vendor to the prices proposed.

Identify all costs to be charged for performing the tasks necessary to accomplish the objectives of the Contract. The cost response should be priced by task and deliverable (including travel and administrative expenses) and should not exceed the amount budgeted for this project. The cost response must use the format below:

Task/ Deliverable Number	Description of Task/Deliverable	Cost allocated for Task/Deliverable	Admin Cost	Travel Expenses †	Total Task/ Deliverable Cost
1					
2					
3					
4					

Add additional rows as needed

† Travel expenses shall not exceed current Washington State Office of Financial Management travel reimbursement rates, which are located at:

<https://www.ofm.wa.gov/sites/default/files/public/legacy/resources/travel/colormap1017.pdf>

4.3. Delivery of Responses

Email Response(s) to:

Erin Hamilton, CPPB
RFQQ Coordinator
WAHBE Contracts Office
RE: RFQQ HBE 18-002
Email: contracts@wahbexchange.org

The response must arrive to the WAHBE RFQQ Coordinator, no later than 3:00 p.m., PT, on the response due date stated in the in Section 1.9.

Late responses will not be accepted and will automatically be disqualified from further consideration. In addition, responses sent by facsimile will not be acceptable and will be disqualified from consideration.

WAHBE does not take responsibility for any problems in the email delivery services. The responding Vendor is responsible for ensuring delivery in accordance with the specifications in this RFQQ. Transmission of the response to any other email is not equivalent to receipt by WAHBE.

5. SCREENING, EVALUATION, AND AWARD

5.1. Administrative Screening

Administrative screening occurs with initial submission of the RFQQ response documents. The RFQQ Coordinator will review responses (including attachments) on a pass/fail basis for compliance with RFQQ Administrative requirements. WAHBE reserves the right to ask for clarification of any information contained in the submittal (including attachments and exhibits). Non-responsive RFQQ responses will be eliminated from further evaluation. Evaluation teams will only evaluate responses meeting all administrative requirements.

5.2. Evaluation Process

5.2.1. Review of Mandatory Requirements

Evaluators will score all RFQQ responses that pass the review of mandatory requirements. The evaluators will consider how well each RFQQ response communicates Vendor's experience, capacity, and ability to meet the needs of WAHBE. It is important that the RFQQ response be clear and complete. RFQQ responses that do not meet a mandatory requirement will be rejected as non-responsive.

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.

WAHBE 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, WAHBE reserves the following options: (1) cancel the RFQQ, or (2) revise the mandatory item unless WAHBE determines that it is in its best interest to eliminate that mandatory requirement for all Vendors.

5.2.2. Response Scoring

Evaluators will assign points based upon Vendor's response to scored elements of Section 4.2. Evaluators will score each element up to the maximum number of points listed below. All evaluator scores will then be averaged for the final score.

Cost will be scored based on Vendor's response to Section 4.2.9, with the lowest overall cost presented receiving the highest cost score. Vendor submitting the lowest total cost will receive a score of twenty-five (25) points.

Other Vendors will receive a score based on the following formula:
Vendor Score = (Lowest Vendor Price ÷ Vendor Price) X 25 points

SCORED ELEMENT	MAXIMUM POSSIBLE POINTS
Letter of Transmittal (Section 4.2.1)	Pass/Fail
Certifications and Assurances (Section 4.2.2)	Pass/Fail
References (Section 4.2.3)	Pass/Fail
Project Understanding & Approach (Section 4.2.4)	35
Proposed Schedule and Deliverables (Section 4.2.5)	15
Project Team Structure and Controls (Section 4.2.6)	5
Qualifications – Vendor/Firm (Section 4.2.7)	10
Qualifications – Proposed Staff/Consultants (Section 4.2.8)	10
Cost Response (Section 4.2.9)	25
Total Possible Score	100

Top scoring finalists from the written evaluation phase may be moved forward to provide in-person oral presentations.

5.2.3. Oral Presentations

Oral presentations may be used in determining the winning response(s). WAHBE will contact the top-scoring Vendors from the written evaluation phase to schedule a date, time, and location. Commitments made by Vendor at the site visit or oral interview, if any, will be considered binding.

Evaluators will independently score oral presentations. The scores from the written responses will not carry forward. If held, the results of the oral presentations shall determine the ASV.

5.3. Award

5.3.1. Selection

ASV will be Vendor who: (1) meets all the requirements of this RFQQ; (2) is one of the top scoring finalists as described in Section 5.2.2.; and (3) receives the highest score from oral presentations, as described in Section 5.2.3 (if applicable).

5.3.2. Notice of Award

WAHBE will notify all Vendors who submit a response of the selection of the ASV.

5.4. Optional Vendor Debriefing

Only Vendors who submit a response may request an optional debriefing conference to discuss the evaluation of their response. The requested debriefing conference shall occur on or before the date specified in Section 1.9. The request shall be in writing (email acceptable) addressed to the RFQQ Coordinator.

The optional debriefing will not include any comparison between Vendor's response and any other responses submitted. However, WAHBE will discuss the factors considered in the evaluation of the requesting Vendor's response and address questions and concerns about Vendor's performance regarding the RFQQ requirements. The debriefing conference may take place in-person or by telephone.

Vendor may submit a protest only after a debriefing conference has been both requested and held with that Vendor.

5.5. Protest Procedures

5.5.1. Procedure

This protest procedure is available to Vendors who submitted a response to this RFQQ and have received a debriefing conference.

Protests are made to WAHBE after WAHBE has announced the ASV. Vendor protests shall be received, in writing, by WAHBE within five (5) business days after Vendor debriefing conference.

5.5.2. Grounds for protest

Only protests based on the criteria listed below will be considered:

- Arithmetic errors were made in computing the score;
- WAHBE failed to follow procedures established in the RFQQ document, or applicable state or federal laws or regulations; or
- There was bias, discrimination or conflict of interest on the part of an evaluator.

5.5.3. Format and Content

Vendors making a protest shall include in their written protest to WAHBE all facts and arguments upon which Vendor relies; and shall be signed by a person authorized to bind Vendor to a contractual relationship. Vendors shall, at a minimum, provide:

- Information about the protesting Vendor – name of firm, mailing address, telephone number and name of individual responsible for submission of the protest;
- Information about the RFQQ – WAHBE reference number (RFQQ HBE 18-002), RFQQ Coordinator;
- Specific and complete explanation of the grounds for protest (See 5.5.2);
- Specific reference to the grounds for the protest; and
- Description of the relief or corrective action requested.

5.5.4. WAHBE Review Process

Upon receipt of Vendor's protest, WAHBE will postpone signing a Contract with the ASV until Vendor protest has been resolved.

WAHBE will perform an objective review of the protest, by individuals not involved in the RFQQ process being protested. The review shall be based on the written protest material submitted by Vendor and all other relevant facts known to WAHBE.

WAHBE will render a written decision to Vendor within five (5) business days after receipt of Vendor protest, unless more time is needed. The protesting Vendor shall be notified if additional time is necessary.

5.5.5. WAHBE Determination

The final determination shall result in one of the following:

- Find the protest lacking in merit and uphold WAHBE's action; or
- Find only technical or harmless errors in WAHBE's RFQQ process, determine WAHBE to be in substantial compliance, and reject the protest; or
- Find merit in the protest and provide WAHBE with options that may include:
 - Correct errors and reevaluate all responses; or
 - Reissue the RFQQ document; or
 - Make other findings and determine other courses of action as appropriate
- Not require WAHBE to award the Contract to the protesting party or any other Vendor, regardless of the outcome.

The resulting decision is final; no further administrative appeal is available.

6. EXHIBITS

EXHIBIT A – CERTIFICATIONS AND ASSURANCES

EXHIBIT B – SAMPLE CONTRACT

**EXHIBIT A
CERTIFICATIONS AND ASSURANCES**

**For RFQQ HBE 18-002 – Strategic Partner for Advertising, Marketing &
Communications**

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 response or bid.

The attached response is a firm offer for a period of one hundred twenty (120) days following the response due date specified in the RFQQ, and it may be accepted by WAHBE without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the one hundred twenty (120) day period. In the case of protest, our response will remain valid for one hundred eighty (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 WAHBE or the State of Washington whose duties relate (or did relate) to WAHBE's RFQQ, 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 WAHBE will not reimburse us for any costs incurred in the preparation of this response. All responses become the property of WAHBE, 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 RFQQ document.

We understand that any Contract awarded as a result of this response will incorporate all the RFQQ 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 Exhibit B, 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 Exhibit B of this RFQQ.

We (check one) **are** / **are not** submitting proposed alternate contract language or exceptions (see Section 4.2.1.9).

Authorized Vendor Representative Signature

Vendor Name

Printed Name

Date

EXHIBIT B

**SAMPLE CONTRACT
FOR STRATEGIC PARTNER FOR ADVERTISING, MARKETING & COMMUNICATIONS
BETWEEN
WASHINGTON HEALTH BENEFIT EXCHANGE
AND
[CONTRACTOR NAME]**

This Contract for Strategic Partner for Advertising, Marketing & Communications (the "Contract") is made and entered into as of the ___ day of _____, 2018 (the "Effective Date") by and between the Washington Health Benefit Exchange ("WAHBE") and _____, ("Contractor").

SPECIAL TERMS AND CONDITIONS

1. SCOPE OF WORK

- A. Exhibit A, attached hereto and incorporated by reference, contains the *General Terms and Conditions* governing the Work to be performed under this Contract, the nature of the working relationship between WAHBE and Contractor, and specific obligations of both parties.
- B. Contractor shall provide services, staff, and Deliverables as described in Exhibit C, Statement of Work (the "Deliverables"), and otherwise do all things necessary for or incidental to the performance of Work, as set forth in Exhibit C, Statement of Work, attached hereto and incorporated by reference herein and any other Statement of Work entered into by the parties under this Contract.
- C. Additional Statements of Work within the scope of this Contract may be added to and incorporated in the Contract by mutual written amendment. More than one Statement of Work may be active in any given period.
- D. Under no circumstances will Contractor perform any work until this Contract has been fully executed by both parties. Any work performed without a properly executed Contract and Statement of Work will be at the Contractor's risk. WAHBE is under no obligation to pay for work performed without properly executed authorization.

Alternate: Identify all tasks, work elements and objectives of the Contract, and timetables by which major parts of the work are to be completed. The scope of work may be included within the text of the Contract.

2. PERIOD OF PERFORMANCE

The initial period of performance under this Contract will be from July 1, 2018 or from the date of execution by both parties, whichever is later, through June 30, 2020, unless sooner terminated as provided herein. WAHBE may extend this Contract through June 30, 2023 in whatever time increments WAHBE deems appropriate.

3. PRICING AND ADJUSTMENT

Prices for work shall not be subject to increase throughout the Contract period unless agreed to in writing by WAHBE. Should WAHBE decide to extend the Contract as permitted above, rates may be negotiated for adjustments in pricing for any subsequent terms; however, rate increases may not exceed five percent (5%) for the extension.

4. **COMPENSATION**

- A. **Maximum Compensation.** The maximum compensation, which includes any allowable expenses, payable to Contractor for acceptance (as described below) of the Deliverables under this Contract shall not exceed (\$) (the "Maximum Compensation").
- B. **No Additional Compensation.** Contractor and WAHBE agree that timely completion by Contractor of all work and delivery of any Deliverables and other work products shall be critical, that time shall be of the essence for Contractor's performance of its work, and that no additional compensation shall be paid unless work is expanded under the Statement of Work (Exhibit C) by an amendment executed by authorized representatives of Contractor and WAHBE or in a subsequent Statement of Work.
- C. **Compensation.** Contractor's compensation shall be based on:
- (1) Amounts for Deliverables identified in Exhibit C, Statement of Work. These amounts may not be exceeded without prior written approval from the WAHBE Contract Manager; and
 - (2) Rates that are agreed to by WAHBE in a Statement of Work for any additional services which are performed under authority of this Contract and which are described in such Statement of Work.
- D. **Expenses.**
- (1) Except as otherwise indicated in this Section, travel or per diem to or from the Olympia, Washington area will not be authorized. Under special circumstances, Contractor may receive reimbursement for travel and other expenses as authorized in advance by WAHBE as reimbursable and stated in the Statement of Work.
 - (2) 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 WAHBE travel reimbursement rates. To receive reimbursement, Contractor must provide a detailed breakdown of authorized expenses, identifying what was expended and when.

Alternate The maximum amount to be paid to Contractor for authorized expenses shall not exceed \$ _____, which amount is included in the Contract total above.

5. **INVOICES AND BILLING PROCEDURES**

- A. **Initial Set Up.** Contractor shall complete and submit an [IRS form W-9, Request for Taxpayer Identification Number and Certification](#). Additionally, Contractors electing to receive electronic payments must complete and submit an [ACH Enrollment Form](#). Forms shall be submitted to WAHBE at finance@wahbexchange.org within five (5) business days of Contract execution by both parties.
- B. **Invoice Requirements.**
- (1) Contractor shall only submit invoices for the services or Deliverables authorized in this Contract. Invoices must fully describe and document, to WAHBE's satisfaction, all work performed, project progress, and fees incurred. Invoices shall be submitted electronically to WAHBE at finance@wahbexchange.org and copied to the WAHBE Contract Manager listed in Section 6.

- (2) Invoices must include Contract reference number **HBE-XXX**. This Contract number must appear on the first page of all invoices, bills of lading, packages, and correspondence relating to this Contract. If pre-approved expenses are invoiced, a detailed breakdown of each type must be provided. Any single expense in the amount of \$50.00 or more must be accompanied by a receipt to receive reimbursement. WAHBE will return incorrect or incomplete invoices to Contractor for correction and reissue.
- (3) Contractor shall submit invoices to WAHBE not more often than monthly. If invoices are submitted less frequently than monthly, Contractor shall provide a monthly estimate of fees incurred. Invoices and estimates, as applicable, shall be submitted to WAHBE at finance@WAHBExchange.org.

C. **Invoice Review and Acceptance.** All invoices shall be reviewed and must be approved by the WAHBE Contract Manager identified in Section 6, or his/her designee, prior to payment. In addition, the WAHBE Finance Team shall review all invoices prior to payment to ensure the Maximum Compensation is not exceeded.

D. **Payment.**

- (1) WAHBE shall make payment to Contractor within thirty (30) calendar days of receipt and acceptance of specified Deliverables and authorized services, and accompanying properly executed invoices, subject to WAHBE’s exercise of its remedies.
- (2) Upon expiration or earlier termination of the Contract, any claims for payment for amounts that are due and payable under this Contract and that are incurred prior to the expiration or termination date must be submitted by Contractor to WAHBE within sixty (60) calendar days of Contract expiration or termination. Belated claims shall be paid at the discretion of WAHBE and are contingent upon available funds.
- (3) WAHBE may, in its sole discretion, suspend this Contract or withhold payments claimed by Contractor for services rendered and Deliverables provided if Contractor fails to satisfactorily comply with any term or condition of this Contract.
- (4) Payment shall be sent to the address designated by Contractor, unless Contractor has opted to use electronic fund transfer.

6. CONTRACT MANAGEMENT

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

Contractor:	WAHBE:
Name & Title	Michael Marchand, Chief Marketing Officer
Address	810 Jefferson Street SE
City, State Zip	Olympia, WA 98501
Phone:	Phone: 360-688-7745
Email:	Email: michael.marchand@wabhexchange.org

- B. WAHBE can change its Contract Manager in its sole discretion. Contractor may change its Contract Manager only as permitted in the Contract.
- C. Contractor shall assign to the Project a Contract Manager of a management level sufficient to assure timely responses from all Contractor personnel. Contractor’s proposed Contract Manager’s resume and qualifications shall be reviewed and approved by WAHBE prior to his

or her appointment as Contract Manager. The approval process may include, at WAHBE's discretion, an interview with the proposed original or any replacement Contract Manager. The Contractor Contract Manager shall be responsible for acting as a liaison with the WAHBE Contract Manager.

- D. Contractor represents and warrants that the Contractor Contract Manager shall be fully qualified to perform the tasks required of that position under this Contract. The Contractor Contract Manager shall be able to make binding decisions pursuant to this Contract and approve Statements of Work for Contractor.
- E. The Contractor Contract Manager shall not be changed from the person proposed in the Proposal. If the Contractor Contract Manager is replaced, Contractor will promptly (but in no event more than ten calendar days) provide notice to WAHBE, submit a resume, and obtain approval of the replacement Contractor Contract Manager from WAHBE, prior to his or her beginning work on the Project. Contractor shall temporarily fill the Contractor Contract Manager within seven (7) calendar days of it being vacated and shall fill the position with a permanent fulltime replacement within forty-five (45) calendar days of the Contractor Contract Manager's removal.

7. NOTICES

- A. Any notice or other communication required to be given under this Contract shall be effective if it is in writing, properly addressed, and either delivered in person, by a recognized courier service, or deposited with the United States Postal Service as certified mail, postage prepaid, return receipt requested to the parties provided in Section 6 **and** the following parties:

Notice Contact(s) for Contractor:	Notice Contact(s) for WAHBE:
Name & Title	Director of Legal Services
Address	810 Jefferson Street SE
City, State Zip	Olympia, WA 98501
Phone:	Phone: (360) 688-7700
Name & Title	Contracts Office
Address	810 Jefferson Street SE
City, State Zip	Olympia, WA 98501
Phone:	Phone: (360) 688-7700

- B. The notice address provided herein may be changed by notice given as provided above.

8. ASSURANCES

WAHBE and 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.

9. ORDER OF PRECEDENCE

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

- Applicable Federal and State of Washington statutes and regulations
- Terms and conditions as contained in this Contract
- Exhibit A – General Terms and Conditions
- Exhibit B – Federal Certifications and Assurances

- Exhibit C – Statement(s) of Work
- Exhibit D – Data Security Requirements
- RFQQ HBE 18-002, released February 28, 2018
- Any other provision, term or material incorporated herein by reference or otherwise incorporated
- Contractor’s Proposal in Response to RFQQ HBE 18-002, dated [date]

10. ENTIRE CONTRACT

This Contract, including referenced Exhibits and other items in Section 9, represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

11. CONFORMANCE

If any provision of this Contract violates any statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law.

12. APPROVAL

This Contract shall be subject to the written approval of WAHBE’s authorized representative and shall not be binding until so approved. The Contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS CONTRACT is executed by the persons signing below who warrant that they have the authority to execute.

CONTRACTOR

WASHINGTON HEALTH BENEFIT EXCHANGE

Signature Date

Signature Date

Full Name Title

Full Name Title

Washington State UBI Number

EXHIBIT A – GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

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

- A. "Agent" means the Chief Executive Officer (CEO) of WAHBE, and/or the delegate authorized in writing to act on the CEO's behalf.
- B. "Claim" means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.
- C. "Confidential Information" means information that may be exempt from disclosure to the public or other unauthorized persons under either RCW 42.56 or other federal or state laws. Confidential Information includes, but is not limited to, Personal Information, Personally Identifiable Information (PII), and information subject to Exhibit D.
- D. "Contractor" means that firm, provider, organization, individual or other entity performing service(s) under this Contract; and shall include all employees of the Contractor.
- E. "Contractor Technology" means intellectual property owned by Contractor prior to the Effective Date or developed and owned by Contractor outside the scope of this Contract (including modifications, enhancements or improvements thereto), including Contractor's proprietary methodologies, project management and other tools, deliverable examples, procedures, processes, techniques, data models, templates, general purpose consulting and software tools, utilities, and routines.
- F. "Corrective Action Plan" means the detailed written plan required by WAHBE to correct or resolve a Defect or breach by Contractor.
- G. "Date Warranty" shall have the meaning ascribed to it in Section 42.D below.
- H. "Defect" means a failure to conform to requirements and specifications established by WAHBE.
- I. "Force majeure" means an occurrence that causes a delay that is beyond the reasonable control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of war, riots, strikes, fire, floods, windstorms, epidemics, or other similar occurrences.
- J. "Materials" means all items in any format and includes, but is not limited to, Deliverables (as defined in the Special Terms and Conditions), data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions.
- K. "Personally Identifiable Information" or "PII" means any information which can be used to distinguish or trace an individual's identity whether alone or in combination with other personal or identifying information linked or linkable to a specific individual.
- L. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, Social Security Numbers, driver license numbers, other identifying numbers, and any financial identifiers, and other information that may be exempt from disclosure under either chapter 42.56 RCW or other state and federal statutes.

- M. "Subcontractor" means one who is not in the employment of the Contractor and who is performing all or part of those services under this Contract or under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.
- N. "WAHBE" means the Washington Health Benefit Exchange, any division, section, office, unit or other entity of WAHBE, or any of the officers or other officials lawfully representing WAHBE.

2. ACCEPTANCE PROCESS

- A. Contractor shall deliver the Deliverables, which meet the requirements and specifications established by WAHBE pursuant to this Contract on or before the applicable delivery dates in the Project plan. Times to review and correct Deliverables shall be in the Project plan.
- B. WAHBE shall have the right to review the Deliverables following Contractor's delivery of each to WAHBE to determine whether the Deliverables have Defects or fail to meet WAHBE's satisfaction, and to either: reject a Deliverable if it has Defects or fails to meet WAHBE's satisfaction; or to accept each Deliverable if it has no such Defects and meets WAHBE's satisfaction. If WAHBE rejects the Deliverable, Contractor shall, promptly correct all such Defects and, thereafter, WAHBE shall again review the Deliverables.
- C. If Contractor is not able to correct all Defects in the Deliverables and have them meet WAHBE's satisfaction within 30 calendar days following their receipt by WAHBE, WAHBE shall have the right to: (a) continue reviewing the Deliverable and require Contractor to continue until Defects are corrected or eliminated; (b) request Contractor to provide, at its expense, a replacement Deliverable for further review; (c) set-off from the amounts for such Deliverable to the extent WAHBE determines the Defects for the Deliverable have not been corrected and provide Acceptance for the applicable Deliverable; or (d) after completion of the process set forth in this Section and providing notice of default to Contractor, terminate this Contract. In the event of any such termination, Contractor shall return all payments previously made to Contractor under this Contract for such Deliverable.

3. 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 WAHBE.

4. 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.

5. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990

Contractor must comply with 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; and prohibits discrimination on the basis of disability.

6. ASSIGNMENT

Contractor may not assign or transfer this Contract or any of its rights or claims hereunder, or delegate any of its duties hereunder, without the prior written consent of WAHBE, provided that any permitted assignment shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to WAHBE that may arise from any breach of the provisions of this Contract or warranties made herein including but not limited to, rights of setoff.

WAHBE may assign this Contract in whole or in part without the consent of Contractor. 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.

7. 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.

8. BACKGROUND CHECKS

A. Due to the confidential nature of the information and materials accessible to Contractor, Contractor shall conduct State and Federal criminal background checks for all Staff to be used to provide services under this Contract. Background checks must, at a minimum, include the following searches/records:

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

B. Contractor shall provide background results to both the WAHBE Contract Manager identified in Section 6 of the Special Terms and Conditions of the Contract and the WAHBE Contracts Office at contracts@wahbexchange.org for review and approval of proposed Staff at least five (5) business days prior to Contract execution and at least five business days prior to the start of any new or replacement Staff. Contractor Staff shall not access the WAHBE property prior to receiving approval from the WAHBE Contract Manager.

C. WAHBE reserves the right to conduct additional reference checks and/or background checks on Contractor staff and Subcontractors to be used to perform the Work.

D. Felony convictions involving fraud, dishonesty or breach of trust, manufacturing or selling illegal drugs, violence against persons, electronic data tampering, data theft or unauthorized access are grounds for rejection of Contractor Staff and/or Subcontractors. WAHBE reserves the right in its sole discretion to reject any proposed staff as a result of information produced by such reference checks or additional sources of information.

E. Background checks must be updated and provided to WAHBE before any Contract extensions will be considered.

F. Contractor agrees to cooperate fully with WAHBE in completion of this requirement. Results of the investigation and/or failure of Contractor to cooperate fully may be grounds for termination of this Contract. checks.

9. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

A. Contractor and its Subcontractors shall not use or disclose any WAHBE Confidential Information, including but not limited to Personal Information and PII, for any purpose not directly connected with its performance under or the administration of this Contract, except with prior written consent of WAHBE, or as may be required by law.

B. Personal Information and PII collected, used, or acquired relating to this Contract shall be protected against unauthorized use, disclosure, modification or loss. Contractor shall ensure its directors, officers, employees, Subcontractors or agents use Personal 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 Information or PII without the express written consent of WAHBE or as otherwise required by law.

10. CONFLICT OF INTEREST

- A. Notwithstanding any determination by the Executive Ethics Board or other government tribunal, WAHBE may, in its sole discretion, by written notice to the Contractor terminate this Contract if it is found after due notice and examination by 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 and Contractor fails to cure such violation within ten calendar days of receipt of notice from WAHBE.
- B. In the event this Contract is terminated as provided above, WAHBE shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor. The rights and remedies of WAHBE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. 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.

11. CORRECTIVE ACTION PLANS

- A. WAHBE may require Contractor to submit a Corrective Action Plan to correct or resolve a specific event or events causing the finding of a Defect or breach or prior to assessment of a liquidated damage.
- B. Corrective Action Plan(s) required by WAHBE under this Section must provide the following:
 - (1) Contractor's detailed explanation of the cause or reasons for the cited Defect or breach;
 - (2) Contractor's assessment or diagnosis of the cause of the cited Defect or breach; and
 - (3) Contractor's specific proposal to cure or resolve the Defect or breach.
- C. Corrective Action Plan(s) must be submitted within ten (10) business days following the request; and are subject to WAHBE's written approval.
- D. Notwithstanding Contractor's submission and WAHBE's acceptance of Corrective Action Plan(s), Contractor remains responsible for compliance with all obligations under this Contract. Further, WAHBE's acceptance of a Corrective Action Plan under this Section shall not:
 - (1) Excuse Contractor's prior performance;
 - (2) Relieve Contractor of its duty to comply with performance standards; or
 - (3) Prohibit WAHBE from assessing additional remedies or pursuing other appropriate remedies for continued substandard performance.

12. COVENANT AGAINST CONTINGENT FEES

- A. 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.
- B. WAHBE 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.

13. DAMAGES DISCLAIMERS AND LIMITATIONS

- A. WAHBE shall not be liable, regardless of the form of action, whether in Contract, tort, negligence, strict liability or by statute or otherwise, for any claim related to or arising under this Contract for consequential, incidental, indirect, or special damages.
- B. In no event shall WAHBE's aggregate liability to Contractor under this Contract, regardless of the form of action, whether in Contract, tort, negligence, strict liability or by statute or otherwise, for any claim related to or arising under this Contract, exceed the maximum compensation.
- C. Except as provided in section 13.D., Contractor shall not be liable, regardless of the form of action, whether in Contract, tort, negligence, strict liability or by statute or otherwise, for any claim related to or arising under this Contract for consequential, incidental, indirect, or special damages.
- D. The disclaimers of certain damages and the damages limitations in sections 13.B. and 13.C. shall not apply to damages, expenses, losses, fees, liabilities, costs or other amounts arising from Contractor's indemnification obligations.

14. DEBARMENT, SUSPENSION, AND INELIGIBILITY

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

15. DISALLOWED COSTS

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

16. DISPUTES

- A. 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.
- B. The request for a dispute hearing must:
 - (1) Be in writing;
 - (2) State the disputed issue(s);
 - (3) State the relative positions of the parties;
 - (4) State the Contractor's name, address, and Contract number; and
 - (5) Be mailed to the Agent and the other party's (respondent's) Contract Manager within three business days after the parties agree that they cannot resolve the dispute.
- C. The respondent shall send a written answer to the requester's statement to both the Agent and the requester within five (5) business days.
- D. The Agent shall review the written statements and reply in writing to both parties within ten (10) business days, except that the Agent may extend this period if necessary by notifying the parties.
- E. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.
- F. 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.

17. DUPLICATE PAYMENT

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

18. FORCE MAJEURE

- A. Neither party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such party's performance of this Contract is prevented by reason of force majeure.
- B. **Notification:** If either party is delayed by force majeure, said party shall provide written notification within 48 hours. The notification shall provide evidence of the force majeure to the reasonable satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the Rights Reserved below, the time of completion shall be extended by Contract amendment for a period equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract.

19. GIFTS AND GRATUITIES

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

20. GOVERNING LAW

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

21. INDEMNIFICATION

- A. To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless WAHBE, including agents and employees of WAHBE, from any: (i) Claim including without limitation for property damage, bodily injury or death, to the extent caused by or arising from the negligent acts or omissions or willful misconduct of Contractor, its officers, employees, agents, or Subcontractors; (ii) a breach or alleged breach of its obligations caused by or arising from the acts or omissions of Contractor, its officers, employees, agents, or Subcontractors; (iii) fines, penalties, sanctions, or disallowances that are imposed on the State or Contractor and that arise from or are caused by any noncompliance by Contractor with the State or federal laws, regulations, codes, policies, guidelines; and (iv) Claim that the Materials infringe upon or misappropriate the intellectual property rights of any third party.
- B. Contractor's obligations to indemnify, defend, and hold harmless includes any Claim by Contractors' agents, employees, representatives, or any Subcontractor or its employees.
- C. Contractor expressly agrees to indemnify, defend, and hold harmless WAHBE for any Claim arising out of or incident to Contractor's or any Subcontractor's performance or failure to perform its obligations under the Contract. Contractor's obligation to indemnify, defend, and hold harmless WAHBE shall be reduced to the extent of any actual concurrent negligence of WAHBE or its agents, agencies, employees and officials.
- D. Contractor waives its immunity under [Title 51 RCW](#) to the extent it is required to indemnify, defend and hold harmless WAHBE and its officials, agents or employees.

22. INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent Contractor relationship will be created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of WAHBE. Contractor will not hold itself out as or claim to be an officer or employee of WAHBE or of the State of Washington by reason hereof, nor will Contractor make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with Contractor.

23. INDUSTRIAL INSURANCE COVERAGE

Contractor shall comply with the provisions of [Title 51 RCW](#), Industrial Insurance. If 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, WAHBE may collect from Contractor the full amount payable to the Industrial Insurance accident fund. WAHBE may deduct the amount owed by Contractor to the accident fund from the amount payable to Contractor by WAHBE under this Contract and transmit the deducted amount to the Department of Labor and Industries (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from Contractor.

24. INSURANCE

- A. Upon execution of the Contract, and during the remaining term of this Contract, Contractor shall maintain in full force and effect, insurance coverage as described below:
 - B. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of Washington and having an [A.M. Best Financial Strength Rating](#) of A-, Class VII or better. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor 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.
 - C. Contractor shall submit certificates of insurance for all insurance requirements listed in Section D to contracts@wahbexchange.org within ten (10) business days of Contract execution. Copies of renewal certificates for all required insurance must be submitted at the time of the renewal. Certificates of insurance must expressly indicate compliance with each insurance requirement specified in this section. Premiums on all insurance policies shall be paid by Contractor or its Subcontractors.
 - D. 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.
 - E. The minimum acceptable limits shall be as indicated below for each of the following categories:
 - (1) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate; and
 - (2) Umbrella policy providing excess limits over the primary policies in an amount not less than \$1 million per occurrence/\$1 million aggregate; and
 - (3) Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with a limit of not less than \$500,000; and
 - (4) Business Auto Policy (BAP), with coverage against claims resulting from bodily injury, including illness, disease, and death; and property damage caused by an occurrence

arising out of or in consequence of the performance of this Contract by the Contractor, Subcontractor, or anyone employed by either.

Contractor shall maintain business auto liability with a combined single limit not less than \$1 million per occurrence. The business auto liability shall include Hired and Non-Owned coverage.

Contractor waives all rights against WAHBE for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

- (5) Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000.00, and coverage of not less than \$3 million; and
- F. WAHBE shall be named as an additional insured on all General Liability, Business Auto, and Umbrella policies.
- G. Contractor's insurance policies shall not be canceled or non-renewed 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.
- H. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by WAHBE and shall include a severability of interests (cross-liability) provision.
- I. Contractor agrees to waive all rights of subrogation against WAHBE for losses arising from services performed by Contractor under this Contract.

25. INTELLECTUAL PROPERTY RIGHTS PROVISIONS

- A. In accordance with [U.S. Copyright Act 17 U.S. Code § 101](#), unless otherwise provided, all Materials produced under this Contract, including without limitation Deliverables, shall be considered "works for hire" and shall be owned by WAHBE. WAHBE shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright Act, Contractor hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to WAHBE effective from the moment of creation of such materials. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.
- B. Contractor shall, at the expense of WAHBE, assist WAHBE or its nominees to obtain copyrights, trademarks, or patents for all such materials in the United States and any other countries. Contractor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents in and to such Materials. Contractor agrees to and hereby, to the extent permissible, waives all legal and equitable rights relating to the Materials, including without limitation all rights of identification of authorship and any and all rights of approval, restriction or limitation on use or subsequent modifications.
- C. Contractor shall retain all patent, copyright and other intellectual property rights in the Contractor Technology.
- D. For Materials that are delivered under the Contract, but that incorporate Contractor Technology not produced under the Contract or that are owned by third parties, Contractor hereby grants to WAHBE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others)

in such Materials to use, demonstrate, translate, reproduce, distribute, prepare derivative works based upon, publicly perform, and publicly display.

- E. Contractor shall exert all reasonable efforts to advise WAHBE, 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.
- F. Contractor hereby represents as of the Effective Date and warrants to WAHBE thereafter that Contractor is and shall be the owner of the Contractor Technology and Materials provided hereunder or otherwise has the right to grant to WAHBE the licensed rights to the Contractor Technology and Materials provided by Contractor through this Contract without violating any rights of any third party worldwide. Contractor represents and warrants that: (i) Contractor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Contractor Technology or Materials infringe or misappropriate any patents, copyrights, or trade secrets of any third party or WAHBE, and (ii) the Contractor Technology and Materials do not and shall not infringe upon or misappropriate any patents, copyrights, trade secrets or any other intellectual property rights of any third party. Contractor shall promptly give WAHBE prompt notice of each notice or claim of infringement or misappropriation of other intellectual property right worldwide received by Contractor with respect to the Contractor Technology or Materials delivered under this Contract.
- G. WAHBE shall have the right to modify or remove any restrictive markings placed upon the Deliverables or other Materials by Contractor.

26. LICENSING, ACCREDITATION AND REGISTRATION

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

27. 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 WAHBE.

28. LIQUIDATED DAMAGES

A. The parties agree that any delay or failure by Contractor to timely perform its obligations by the dates in the Project plan and in accordance with the Contract will interfere with the proper and timely production of the RFQQ, to the loss and damage of WAHBE. Further, WAHBE will incur major costs resulting from such delay. The parties understand and agree that the following Sections describe the liquidated damages Contractor shall pay to WAHBE due to nonperformance hereunder by Contractor.

Deliverables	Contractor must receive Acceptance of each Deliverable by the scheduled Acceptance date in the Project plan	WAHBE shall assess up to \$1,000 per calendar day from the scheduled Deliverable Acceptance date until the date each Deliverable receives Acceptance from WAHBE
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B. The assessment of liquidated damages shall not constitute a waiver or release of any other remedy WAHBE may have under this Contract for Contractor’s breach of this Contract, including without limitation, WAHBE’s right to terminate this Contract, and WAHBE shall be entitled in its discretion to recover actual damages caused by Contractor’s failure to perform its

obligations under this Contract. However, WAHBE will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages.

- C. The parties acknowledge and agree that Contractor could incur liquidated damages for more than one Critical Deliverable if Contractor fails to timely perform its obligations by each applicable date for such Deliverables.
- D. Amounts due WAHBE as liquidated damages may be deducted by WAHBE from any money payable to Contractor under this Contract, or WAHBE may bill Contractor as a separate item therefor and Contractor shall promptly pay such bills.

29. 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 Contractor may be declared ineligible for further Contracts with WAHBE. 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.

30. NONDISCRIMINATION

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

31. NON-SOLICITATION

During the term of this Contract and for 12 months after expiration or 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 WAHBE.

32. PUBLIC DISCLOSURE

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

33. PUBLICITY

Contractor shall not to publish or use WAHBE's name or likeness in advertising and publicity matters without the prior written consent of WAHBE. Contractor must submit to WAHBE all advertising and publicity matters relating to this Contract wherein WAHBE's name is mentioned, or language used from which the connection of WAHBE's name may, in WAHBE's judgment, be inferred or implied.

34. QUALITY ASSURANCE

A. Right of Inspection

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

B. Contractor Commitments, Warranties and Representations

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its bid or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its bid or used to effect the sale to purchaser.

C. Representations and Warranties for Deliverables and Work

Contractor represents and warrants that all supplies, Work, Warranties, Deliverables and other Materials, and/or equipment provided under this Contract shall be fit for the purpose(s) for which they are intended and for merchantability and shall conform to the requirements and specifications herein. Contractor shall promptly repair or replace each of the Deliverables that does not meet and conform to applicable requirements and specifications as provided herein and at no additional charge to WAHBE.

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

Acceptance of any Deliverables and other Materials, supplies, Work, and/or equipment, and inspection incidental thereto, by WAHBE shall not alter or affect the obligations of the Contractor or the rights of WAHBE.

D. Date Warranty

Contractor warrants that all Materials provided under this Contract: (i) do not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by purchaser that may deliver date records from the products, or interact with date records of the products ("Date Warranty"). In the event a Date Warranty problem is reported to Contractor by purchaser and such problem remains unresolved after three calendar days, at WAHBE's discretion, Contractor shall send, at Contractor's sole expense, at least one qualified and knowledgeable representative to WAHBE's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on WAHBE's premises. This Date Warranty shall last perpetually.

E. Cost of Remedying Defects

All defects, indirect and consequential costs of correcting, removing or replacing any defective Materials, including but not limited to Deliverables, or equipment will be charged against and paid by the Contractor.

35. RECORDS RETENTION

- A. Contractor shall retain 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.
- B. 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 WAHBE, personnel duly authorized by WAHBE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.
- C. If any litigation, claim or audit is started before the expiration of the six-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

36. REDUCTIONS IN PAYMENTS DUE

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

37. REGISTRATION WITH DEPARTMENT OF REVENUE

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.

38. REMEDIES

Except as otherwise provided for herein, no remedy conferred by any of the specific provisions of the Contract or available to a party is intended to be exclusive of any other remedy, and each remedy 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.

39. 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 expiration, WAHBE may terminate the Contract under the "Termination for Convenience" clause, without the ten-day notice requirement, subject to renegotiation of which aspects of the Contract shall proceed and which work shall be performed at WAHBE's discretion under those new funding limitations and conditions. In the event the necessary funding to pay under the terms of this Contract is not available, not allocated, not allotted, delayed or reduced, Contractor expressly agrees that no penalty or damages shall be applied to WAHBE.

40. 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.

41. SITE SECURITY

While on WAHBE premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire or other security and administrative policies or regulations.

42. SUBCONTRACTING

- A. Neither Contractor nor any Subcontractor shall enter into additional subcontracts for any work under this Contract without obtaining prior written approval of WAHBE. Any such approval may be rescinded in WAHBE's sole discretion.
- B. Contractor is responsible and liable for the proper performance of and the quality of any work performed by Subcontractors. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to WAHBE for any breach in the performance of Contractor's duties. This clause does not include Contracts of employment between Contractor and personnel assigned to work under this Contract.
- C. Additionally, Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are carried forward to any subcontracts.
- D. Upon expiration or termination of this Contract for any reason, WAHBE will have the right to enter into direct agreements with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct agreements with WAHBE.

43. SURVIVORSHIP

All license and purchase transactions executed, and services provided pursuant to the authority of this Contract shall be bound by all 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; Intellectual Property Provisions; Attorneys' Fees; Indemnification; Incorporated Documents and Order of Precedence; Publicity; Disputes; Records Retention, Non-Solicitation, Vendor's Commitments, Warranties and Representations shall survive the termination of this Contract.

44. TAXES

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

45. TERMINATION

A. Termination or Suspension for Cause

- (1) In the event WAHBE determines Contractor has failed to comply with the conditions of this Contract in a timely manner, WAHBE has the right to suspend or terminate this Contract. Before suspending or terminating the Contract, WAHBE shall notify Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days, the Contract may be terminated or suspended.
- (2) In the event of termination or suspension, 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.
- (3) WAHBE reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Contractor or a decision by

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

B. Termination for Convenience

Except as otherwise provided in this Contract, WAHBE may, by ten (10) calendar days written notice, beginning on the second (2nd) day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, WAHBE shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered satisfactorily and in accordance with applicable requirements prior to the effective date of termination.

C. 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, WAHBE may terminate this Contract without advance notice; subject to renegotiation under those new funding limitations and conditions.

D. Termination for WAHBE's Non-Payment

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

E. Termination Procedures

- (1) Upon termination of this Contract, WAHBE, in addition to any other rights provided in this Contract, may require Contractor to deliver to WAHBE any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.
- (2) Subject to WAHBE's exercise of its remedies, WAHBE shall pay to Contractor the agreed upon price, if separately stated, for completed work and services accepted by WAHBE, and the amount agreed upon by Contractor and WAHBE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by WAHBE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agent shall determine the extent of the liability of WAHBE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Contract. Notwithstanding anything to the contrary in the Contract, WAHBE may withhold payment due Contractor any amount the Agent determines necessary to protect WAHBE against potential loss or liability.
- (3) The rights and remedies of WAHBE 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.
- (4) After receipt of a notice of termination, and except as otherwise directed by the Agent, Contractor shall:
 - i. Stop work under the Contract on the date, and to the extent specified, in the notice;

- ii. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;
- iii. Assign to WAHBE, in the manner, at the times, and to the extent directed by the Agent, all the rights, title, and interest of Contractor under the orders and subcontracts so terminated, in which case WAHBE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- iv. 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;
- v. Transfer title to WAHBE 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 WAHBE;
- vi. Complete performance of such part of the work as shall not have been terminated by the Agent; and
- vii. 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 Contractor and in which WAHBE has or may acquire an interest.

46. TREATMENT OF ASSETS

- A. Title to all property furnished by WAHBE shall remain in WAHBE. Title to all property furnished by Contractor, for the cost of which Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in WAHBE upon delivery of such property by Contractor. Title to other property, the cost of which is reimbursable to Contractor under this Contract, shall pass to and vest in WAHBE upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by WAHBE in whole or in part, whichever first occurs.
- B. Any property of WAHBE furnished to Contractor shall, unless otherwise provided herein or approved by WAHBE, be used only for the performance of this Contract.
- C. Contractor shall be responsible for any loss or damage to property of WAHBE that results from the negligence of Contractor or which results from the failure on the part of Contractor to maintain and administer that property in accordance with sound management practices.
- D. If any WAHBE property is lost, destroyed or damaged, Contractor shall immediately notify WAHBE and shall take all reasonable steps to protect the property from further damage.
- E. Contractor shall surrender to WAHBE all property of WAHBE prior to settlement upon completion, termination or cancellation of this Contract.
- F. All reference to Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

46. 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.

47. U.S. DEPARTMENT OF TREASURY, OFFICE OF FOREIGN ASSETS CONTROL

- A. WAHBE 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 <https://sanctionssearch.ofac.treas.gov/>. Compliance with OFAC payment rules ensures that WAHBE 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.

- B. In the event of a positive match, WAHBE 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 Contractor in writing and terminate the Contract according to the Termination for Convenience provision without making payment. WAHBE 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.

48. 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 WAHBE.

EXHIBIT B – FEDERAL COMPLIANCE, CERTIFICATIONS, AND ASSURANCES

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

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

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

Examples of items requiring WAHBE prior written approval include, but are not limited to, the following:

- a) Deviations from the budget and Project plan.
- b) Change in scope or objective of the Contract.
- c) Change in a key person specified in the Contract.
- d) The absence for more than three (3) months or a twenty-five percent (25%) reduction in time by the Contract Manager or Department Director.
- e) Need for additional funding.
- f) Inclusion of costs that require prior approvals as outlined in the appropriate cost principles.
- g) Any changes in budget line item(s) of greater than twenty percent (20%) of the total budget in this Contract.

No changes are to be implemented by the Sub-recipient/Contractor until a written notice of approval is received from WAHBE.

Condition for Receipt of WAHBE Funds: Funds provided by WAHBE to the Sub-recipient/Contractor under this Contract may not be used by the Sub-recipient/Contractor as a match or cost-sharing provision to secure other federal monies.

Citizenship/Alien Verification/Determination: The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (PL 104-193) states that federal public benefits should be made available only to U.S. citizens and qualified aliens. Entities that offer a service defined as a “federal public benefit” shall make a citizenship/qualified alien determination/verification of applicants at the time of application as part of the eligibility criteria. Non-U.S. citizens and unqualified aliens are not eligible to receive the services. PL 104-193 also includes specific reporting requirements.

Federal Compliance: The Sub-recipient/Contractor shall comply with all applicable State and Federal statutes, laws, rules, and regulations in the performance of this Contract, whether included specifically in this Contract or not.

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

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

1. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

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

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

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

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

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

2. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

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

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

than five (5) calendar days after such conviction;

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

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

Legal Services Director
WAHBE
PO Box 657
Olympia, WA 98507

3. CERTIFICATION REGARDING LOBBYING

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

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

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

If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete

and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)

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

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

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

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

5. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

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

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

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

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

6. CERTIFICATION REGARDING CLEAN AIR ACT

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

CONTRACTOR SIGNATURE REQUIRED

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

EXHIBIT C – STATEMENT OF WORK

PLACEHOLDER

Sample

EXHIBIT D – DATA SECURITY & REPORTING REQUIREMENTS

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

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

1. Definitions:
 - a. Authorized User(s): an individual or individuals with an authorized business requirement to access WAHBE Confidential Information.
 - b. Advanced Encryption Standard (AES): a symmetric encryption algorithm.
 - c. Hardened Password: a string of at least eight (8) characters including one (1) upper case, one (1) lower case, one (1) number and one (1) special character (i.e., non-alphanumeric characters).
 - d. Transmitting: the transferring of data electronically, such as via email.
 - e. Transporting: the physical transferring of data that has been stored.
 - f. Unique User ID: a string of characters that identifies a specific user and which, in conjunction with a password, passphrase, or other mechanism, authenticates a user to an information system.
 - g. WAHBE data: use of systems, network, data and documentation that are housed or managed for WAHBE
2. Contractors connected to WAHBE network or stewards of WAHBE data shall protect data by using the appropriate administrative, physical and technical safeguards:
 - a. To prevent the use or disclosure of data other than as permitted or required by the terms and conditions of this exhibit, and
 - b. To reasonably and appropriately protect the confidentiality, integrity, and availability of data the Contractor creates, receives, maintains, or transmits on behalf of WAHBE for as long as the data is within its possession and control, even after the termination or expiration of this Contract.
 - c. Annual Awareness Training shall be conducted and documented for all Contractor's employees or Sub-Contractors that have access to WAHBE data that includes at minimum:
 - i. Social Engineering/Phishing
 - ii. Internet Hygiene
 - iii. Insider Threats
 - iv. Password creation and use
 - v. Malware
 - vi. Regulatory requirements
 - vii. Incident Reporting

- viii. Company Policies
 - ix. Advanced training for IT Professionals
3. Use and Disclosure: Contractor acknowledges that in performing the services it will have access to, or be directly or indirectly exposed to, client confidential information. Contractor shall use such information solely for performing the services. Contractor shall take all reasonable measures to protect all client information from disclosure, including measures at least as strict as those measures Contractor would use to protect its own confidential information. Contractor shall not disclose client information to any parties other than those with a need to know to perform the services on behalf of WAHBE and only to the extent such employees or Subcontractors are bound by the term executed and acknowledged by WAHBE.
4. Compliance with Applicable Law: WAHBE is governed by Washington State Regulations, IRS pub 1075, CMS minimum standards, US Privacy Act, and Washington Records Release Act. Contractor irrevocably consents to the jurisdiction and venue of any state or federal regulations and agrees to comply.
5. Protection of WAHBE Systems and data:
- a. To any extent that in providing the services, access to WAHBE systems or systems containing WAHBE Data, which includes without limitation, Contractor's transmission or storage of electronic files or there electronic data, The Contractor shall meet all standards and requirements including but not limited to industry security standards, use of computer firewalls, strong user authentication, encrypted transmissions, anti-malware programs, regular and timely software patch updates, and controlled access to the physical location of computer hardware.
 - b. Application integrity shall be validated to ensure destructive computer programming such as harmful computer instructions, viruses, Trojan horses and other harmful code is mitigated, and integrity of data is maintained. Contractor shall ensure systems are free of harmful code and backdoor access.
 - c. Contractor shall implement security baselines on all systems and applications that meet industry and federal standards. Documentation must be submitted upon request. Security baselines can be found at <https://www.cisecurity.org/> or <https://www.nist.gov>.
 - d. Contractor shall conduct periodic reviews, at minimum of annually, of any system storing WAHBE data or supporting systems to evaluate the security risks of such systems. In addition, WAHBE shall conduct periodic vulnerability scans of any network or site maintained by Contractor that houses WAHBE data. Contractor shall take all reasonable steps to facilitate such scans and shall promptly remediate any systems vulnerable of exposing WAHBE data. Contractor shall report all incidents to the WAHBE Contract Manager as soon as possible, but no later than one business day after discovery.
 - e. Physical Storage. When storing WAHBE data the Contractor shall perform the following:
 - i. Hard disk drives. Data stored on local workstation hard disks. Access to the data will be restricted to Authorized User(s) by requiring login to the local workstation using a Unique User ID and Hardened Password or other authentication mechanisms which provides equal or greater security, such as biometrics or smart cards. The data on the drive shall be encrypted and only accessible to authenticated user(s) with a need to know. Data shall be secured on the disk in such a way that other user(s) that do not need access to the data will not have the ability to access it.

- ii. Workstations with sensitive data stored on them shall be tracked and their movements documented until the sensitive data is removed from the workstation. When the data is removed the date of its removal and method of its removal shall be documented and provided to the WAHBE Contract Manager. Hard drives that have contained sensitive data shall be wiped with a method that will render the deleted information irretrievable. See Section 9 Data Disposal
- iii. Network server storage. Access to the data shall be restricted to Authorized User(s) using access control lists which will grant access only after the Authorized User(s) has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or physical token. Data on disks mounted to such servers shall be in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism. Access shall be reviewed at minimum annually.
- iv. For WAHBE data stored on network storage: Deleting unneeded data is sufficient if 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 8. Data Disposal may be deferred until the disks are retired, replaced, or otherwise taken out of the secured area.
- v. Removable Media, including Optical discs (CDs or DVDs) in local workstation optical disc drives shall not be transported out of a secure area. Sensitive or Confidential Data provided by WAHBE on removable media, such as optical discs or USB drives, which will be used in local workstation optical disc drives or USB connections shall be encrypted with two hundred sixty-five (256) bit AES encryption or better. When not in use for the Contracted purpose, such devices must be locked in a drawer, cabinet or other container to which only authorized users have the key, combination or mechanism required to access the contents of the container. Workstations which access WAHBE data on optical discs shall be in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
- vi. 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.
- vii. WAHBE data shall not be stored on portable devices or media unless specifically authorized within the Special Terms and Conditions of the Contract. Portable media includes any data storage that can be detached or removed from a computer and transported. If so authorized, the data shall be given the following protections:
 - 1. Encrypt the data with a key length of at least two hundred fifty-six (256) bit AES using an industry standard algorithm.
 - 2. Control access to devices with a Unique User ID and hardened password or stronger authentication method such as physical token or biometrics.
 - 3. Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity, if this feature is available. Maximum period of inactivity is twenty (20) minutes.
 - 4. Physically protect the portable device(s) and/or media by:

- a. Keeping them in locked storage when not in use
 - b. Using check-in/check-out procedures when they are shared, and
 - c. Taking frequent inventories
 - viii. Paper documents. All paper records shall be protected by storing the records in a secure area which is only accessible to Authorized User(s). When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only Authorized User(s) have access.
- f. Remote and Network Access. When accessing WAHBE data remotely the Contractor shall:
 - i. WAHBE data accessed and used interactively over the internet shall meet minimum standards including updated anti-malware, current security patches, and local firewall. Access to the website washingtonhealthplanfinder.org or other services managed by WAHBE will be controlled by WAHBE staff who will issue authentication credentials (e.g. a Unique User ID and hardened password) to Authorized User(s). The administrator and any privileged user password must change every 60 days and other user password once every 90 days. Previous 6 consecutive passwords cannot be reused. The passwords must not allow User ids, first Name or the last name of the user.
 - ii. Contractor shall have established and documented access termination procedures for existing Authorized User(s) with access to WAHBE data. These procedures shall be provided to WAHBE staff upon request. Contractor shall notify WAHBE staff immediately whenever an Authorized User(s) in possession of such credentials is terminated or otherwise leaves the employment of the Contractor, and whenever an Authorized User(s) duties change such that the Authorized User(s) no longer requires access to perform work for this Contract.
 - iii. Access via remote terminal/workstation over the internet shall be managed by the Contractor and permissions granted on a need basis only when access to WAHBE data is present.
 - iv. Data Transmitting. When transmitting WAHBE data electronically, including via email, the data shall be protected by:
 1. Transmitting the data within the WAHBE network or Contractor's internal network, or;
 2. Encrypting any data that will be transmitted outside the WAHBE network or Contractor internal network with two hundred fifty-six (256) bit AES encryption or better. This includes transit over the public Internet.

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

7. Data Segregation:

- a. WAHBE data shall be segregated or otherwise distinguished from non-WAHBE data to ensure proper return or destruction when no longer needed.
 - i. WAHBE data shall be stored on media (e.g. hard disk, optical disc, tape, etc.) which will exclude non-WAHBE data. Or,

- ii. WAHBE data shall be stored in a logical container on electronic media, such as a partition or folder dedicated to WAHBE data. Or,
 - iii. WAHBE data shall be stored in a database which will exclude non- WAHBE data. Or,
 - iv. WAHBE data shall be stored within a database and will be distinguishable from non-WAHBE data by the value of a specific field or fields within database records. Or,
 - v. 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.
8. Data Disposal: When the Contracted work has been completed or when no longer needed, data shall be returned to WAHBE or destroyed. Media on which WAHBE data may be stored and associated acceptable methods of destruction are as follows:

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

10. Data shared with Subcontractors: If WAHBE data provided under this Contract is to be shared with a Subcontractor; the Contract with the Subcontractor shall include all the data security provisions in this Contract and any amendments, attachments, or exhibits to this Contract.
11. Notice of Unauthorized Disclosure or Security Breach. Contractor shall immediately notify WAHBE of:
- a. Unauthorized disclosure or use of any WAHBE Data;
 - b. Any breaches of security that may compromise the WAHBE data or Contractor’s ability to safeguard WAHBE data; and
 - c. Notifications shall include at minimum, both a telephone call and email to the WAHBE

Contract Manager and an email to WAHBE Security at security@wahbechange.org.

- d. Contractor shall establish and document a policy to deal with the compromise or potential compromise of data that complies with NIST 800-61 Incident Response Guide. Contractor shall provide WAHBE with such policy upon request.
- e. A breach of security or other circumstance which causes, may have caused, or allowed access to WAHBE information by unauthorized persons or systems, whether intentional, fraudulent, or accidental, must be reported to WAHBE as soon as possible and no later than one (1) business day after discovery.

Sample