



Washington Health Benefit Exchange (WAHBE)
Request for Qualifications and Quotations (RFQQ)

HBE 18-006

Presiding Officer Services

RFQQ RELEASE DATE:

August 1, 2018

1. INTRODUCTION and OVERVIEW

1.1 INTRODUCTION

The Washington Health Benefit Exchange (WAHBE) is initiating this Request for Qualifications and Quotations (RFQQ) to secure Vendors to 1) provide WAHBE with Presiding Officer(s) for appeals for the Washington Healthplanfinder's health insurance coverage and cost-sharing eligibility determinations as provided under 45 CFR 155; and 2) to adjudicate dispute hearings not otherwise authorized under 45 CFR 155. WAHBE will award up to three (3) optional use Contracts to respondents most capable of satisfying the required levels of experience and expertise. The actual number of Contract awards is at the sole discretion of WAHBE. Because these will be optional use Contracts, if awarded a Contract, there is no guarantee of any payment or work. The successful Respondent(s) may be required to perform a variety of WAHBE responsibilities, as defined in Statements of Work (SOW), throughout the term of the resulting Contract.

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

1.2 PROJECT BACKGROUND

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

1.3 PURPOSE

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

Vendors must have *strong empathetic relational skills in dealing with appellants with diverse cultural and socio-economic background and language skills*. Vendors must be able to demonstrate a willingness to accommodate cultural, language, mental health, medical, and physical needs of appellants. Vendor must have a level of professional and technical competence about law, applying facts to law, and caseload management. Vendor must be available to adjudicate cases with little advance notice, meet deadlines, and meet or exceed performance expectations. Vendors must be available to do this work no less than 10 hours a week.

1.4 SCOPE OF WORK

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

1. Preside at telephonic or rare in-person hearings in cases that are not adversarial, but where the appellant may or may not be represented by counsel.
2. Render oral rulings and issue written decisions.
3. Conduct telephonic pre-hearing conferences to simplify issues and help parties achieve informal resolution or settlement.

4. Receive and rule on admissibility and credibility of evidence, create a complete and full hearing record, resolve disputed issues of fact, and examine witnesses as necessary.
5. Consider all arguments with impartiality and without bias.
6. Compose decisions (written to professional standards) that define the issues, make findings of fact and conclusions of law.
7. Skillfully apply relevant federal laws, regulations, and procedural rules.
8. Maintain proper judicial temperament and demeanor in communicating and cooperating with appellants, interpreters, WAHBE staff, personal representatives, legal counsel, and other parties.
9. Successfully use a computer with a high level of proficiency to communicate, write decisions, manage caseload, track time, and perform research.
10. Use WAHBE Appeal Program standardized templates and edit or modify as necessary.
11. Attend annual training webinar when requested or required.
12. Respond within five (5) business days to communications from WAHBE regarding appeals.

1.5 DELIVERABLES

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

1.6 PERIOD OF PERFORMANCE

The initial period of performance of the Contract resulting from this RFQQ is tentatively scheduled to begin on or about November 1, 2018 and continue through June 30, 2019. WAHBE, at its sole discretion, may extend the period of performance through June 30, 2021 in whatever time increments WAHBE deems appropriate.

1.7 COMPENSATION

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

1.8 FUNDING

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

1.9 AWARD

WAHBE intends to award up to three (3) Contracts as a result of this RFQQ.

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

1.10 DEFINITIONS

Definitions for the purposes of this RFQQ include:

“Agency” means the Washington Health Benefit Exchange

“Contractor” means individual or company whose RFQQ response has been accepted by WAHBE and is awarded a fully executed, written Contract

“WAHBE” means the Washington Health Benefit Exchange

“RFQQ Response” means a formal offer submitted by a Vendor in response to this solicitation

“Purchaser” means the Washington Health Benefit Exchange

“RCW” means Revised Code of Washington

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

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

“Vendor” means individual or financial firm submitting a RFQQ response in order to attain a Contract with WAHBE

“WAC” means Washington Administrative Code

“WEBS” means Washington Electronic Business Solution and is used for announcements, information and addenda about this procurement, reference WEBS website at <https://fortress.wa.gov/ga/webscust/>

2. INSTRUCTIONS FOR COMMUNICATIONS, QUESTIONS AND VENDOR RESPONSE

2.1 RFQQ SCHEDULE

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

Item	Action	Date
1	WAHBE issues RFQQ	August 1, 2018
2	Optional Vendor Conference: 3:00 p.m. PT	August 16
3	Vendors may submit written questions until 3:00 p.m. PT	August 22
4	WAHBE will issue responses in an Addendum by 3:00 p.m. PT	August 29
5	Vendors must submit Responses to RFQQ by 3:00 p.m. PT	September 10
6	WAHBE evaluation of Responses	September 13
7	WAHBE notifies ASV and begins contract negotiations. Non-ASV's may request a debriefing	October 5
8	Vendor Optional Debriefings	Week of October 15 th
9	Contract Execution	October 26
10	Services Start Date	November 1, 2018

2.2 RFQQ COORDINATOR AND SUBMISSION OF RESPONSE

Coordinator: Erin Hamilton, CPPB

Delivery Method: Emailed to contracts@WAHBExchange.org

Please provide the response in unrestricted Microsoft Word or Excel software. The email title should clearly indicate the response is for RFQQ HBE 18-006.

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 2.1.

Late responses will not be accepted and will automatically be disqualified from further 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.

2.3 COMMUNICATION THROUGH RFQQ COORDINATOR

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

2.4 OPTIONAL VENDOR CONFERENCE

WAHBE will conduct an optional Vendor conference webinar on the date outlined in Section 2.1, RFQQ Schedule. The Vendor conference is optional for entities interested in submitting a proposal. Individuals may submit written questions to the RFQQ Coordinator only prior to and following the Vendor conference until the questions cut-off date established in Section 2.1, RFQQ Schedule. Individuals may also ask questions during the Vendor conference.

Vendor Conference Call-In Information:

Date: Thursday, August 16, 2018
Time: 3:00 p.m. PT
Link: <https://meet.lync.com/wahbexchange/hamile/YB505H14?sl=1>
Phone #: 1-719-457-3306
Passcode: 680549

Verbal responses to questions provided during the Vendor conference will be considered unofficial and non-binding. Written responses to Vendor questions will be posted as a numbered addendum on Washington’s Electronic Business Solution (WEBS) system and on the WAHBE procurement website by the date listed in Section 2.1 – RFQQ Schedule. The name of the Vendor that submitted the question(s) will not be identified. Only written responses posted to the WEBS and WAHBE website will be considered official and binding.

No further questions regarding the RFQQ or proposal requirements will be accepted or responded to after the established question cut-off in Section 2.1 – RFQQ Schedule.

2.5 VENDORS’ QUESTIONS AND WAHBE ANSWERS

Vendor questions regarding this RFQQ will be accepted until the dates and times specified in RFQQ Section 2.1: RFQQ *Schedule*. Early submission of questions is encouraged. Vendor questions must be submitted in writing via email to the RFQQ Coordinator at contracts@WAHBExchange.org.

WAHBE’s official written answers to the Vendor’s questions will be posted to WEBS website at <https://fortress.wa.gov/ga/webscust/> and on the WAHBE website at <https://www.wahbexchange.org/about-the-exchange/what-is-the-exchange/vendor-procurements/>. The Vendor that submitted the questions will not be identified. Please check the websites for RFQQ announcements, updates, amendments, etc.

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

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

2.6 EMAIL

Email is to be used for all communications required in this RFQQ. WAHBE may also communicate with you utilizing the same methods. WAHBE will also post any formal communications to WEBS website at <https://fortress.wa.gov/ga/webscust/>

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

2.7 RESPONSES FOR MULTIPLE CANDIDATES

Respondent may propose up to three (3) qualified candidates. For each candidate, Respondent must provide information for each candidate in the order and manner described below in section 2.8. Respondents must provide complete, concise responses for each candidate regarding their experience and ability to provide the services required.

2.8 RFQQ MANDATORY RESPONSE FORMAT

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

- a. The Letter of Transmittal and RFQQ responses are to be submitted via email in unrestricted Word, Excel or "Pdf" format.
- b. State your organization's name on the first page of all RFQQ responses.
- c. Pages are to be formatted as standard 8.5" x 11" white paper. Font size can be no less than 11 point. Margins can be no less than 1 inch. Each page must be numbered.
- d. Figures and tables must be numbered and referenced in the text of the response by that number. Foldouts containing charts, spreadsheets, and oversize exhibits are permissible.
- e. The response, as well as any reference materials presented by Vendor, must be written in English and Vendor must provide all rates in United States dollars.
- f. Write your RFQQ response in the order given below in RFQQ Section 2.9. Title and number each item in the same way it appears instructions. You must respond to every element, except where otherwise stated.
- g. Some elements have page limitations that will be enforced.

2.9 MANDATORY RFQQ RESPONSE COMPONENTS

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

2.9.1 LETTER OF SUBMITTAL (PASS/FAIL)

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

2.9.1.1 Identifying information about Vendor to include the following:

- Vendor 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.

2.9.1.2 Provide a statement affirming that by submitting a response to this RFQQ, Vendor and its key Subcontractors (if applicable) 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.

2.9.1.3 Vendor's Washington Uniform Business Identification (UBI) number, if applicable. 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.

2.9.1.4 State Vendor's Federal Employer Tax Identification Number or Social Security Number.

2.9.1.5 Washington State Bar Association Number.

2.9.1.6 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.

2.9.1.7 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.

2.9.1.8 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.

2.9.1.9 The page numbers and names of any response elements being claimed as “Proprietary” or “Confidential” (see Section 3.1). Include an explanation for each claim of confidentiality.

2.9.1.10 Any alternate Contract language Vendor wishes to propose (see section 3.12). 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.

2.9.1.11 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.

2.9.1.12 A detailed list of all materials and enclosures being sent in the response.

2.9.2 CERTIFICATIONS AND ASSURANCES (PASS/FAIL)

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

2.9.3 PROFESSIONAL REFERENCES (PASS/FAIL)

Include three (3) professional references for Vendor. List names, addresses, telephone numbers, and emails of three (3) professional 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.

2.9.4 STATEMENT OF REQUIRED SKILLS, QUALIFICATIONS AND EXPERIENCE (SCORED)

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

- a. Name, Title, Education, Degrees, Certificates
- b. Description of specific or unique judicial or adjudicative skills
- c. A minimum of five (5) years of experience with general litigation and administrative law principles that included participating in hearings, negotiating settlements, or conducting mediation to resolve public benefit complaints.
- d. A minimum of five (5) years of experience working with a variety of appellants (race, nationality, income level, disabilities, limited English speaking).
- e. Member in good standing in the Washington State Bar Association.
- f. Availability: Describe capacity to respond to and render decisions immediately for expedited hearing requests. (Pursuant to the ACA, decisions for expedited appeals must be rendered in 3 working days from the date of the appeals request. All other responses are due in 5 working days or less, unless agreed to by the WAHBE Associate Director.
- g. Possesses internet access and a computer with, at minimum, Office 365, Microsoft Word, Excel, and Outlook, and Adobe Acrobat Reader.
- h. Proficient knowledge and working use of Office 365 Microsoft Word, Excel, and Outlook and Adobe Acrobat Reader.

2.9.5 STATEMENT OF DESIRED SKILLS, QUALIFICATIONS AND EXPERIENCE (SCORED)

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

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

2.9.6 PROPOSED STAFF AND COST (SCORED)

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

In the event a Vendor proposes a dollar amount range, the high end of the range will be used for evaluation purposes.

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

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

3. GENERAL INFORMATION

3.1 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 and may require the Vendor to resubmit the response or subject the Vendor to disqualification.

If the Vendor wants to protect any Proprietary Information that is included in its response from disclosure, the information shall be clearly designated by the Vendor as Proprietary Information. “Proprietary Information” is defined as information owned by Vendor to which Vendor claims a protectable interest under law. 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 the 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.

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

3.2 COSTS OF RFQQ RESPONSE PREPARATION

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

3.3 PROPOSAL PROPERTY OF WAHBE

All materials submitted in response to this solicitation 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.

3.4 RECEIPT OF INSUFFICIENT COMPETITIVE RESPONSES

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

3.5 WAIVER OF MINOR IRREGULARITIES

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

3.6 ERRORS IN RESPONSE

Vendors are liable for all errors or omissions contained in their responses. Vendors will not be allowed to alter response documents after the deadline for response submission. 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 may, at their discretion and acting through the RFQQ Coordinator, contact a Vendor to clarify specific points in the submitted response. However, under no circumstances will the responding Vendor be allowed to make changes to the proposed items after the deadline stated for receipt of responses.

3.7 RFQQ AMENDMENTS

WAHBE reserves the right to amend this RFQQ.

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

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

3.8 WITHDRAWAL OF RESPONSE

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

3.9 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.

3.10 RIGHT TO REJECT ALL RFQQ RESPONSES

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

3.11 AUTHORITY TO BIND WAHBE

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

3.12 CONTRACT EXECUTION

The ASV will be expected to sign a Contract which is substantially the same as the Contract included in this RFQQ as Exhibit B. The Contract will also incorporate this RFQQ and the successful response.

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

If the ASV refuses 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.

4. SCREENING, EVALUATION, AND AWARD

4.1 ADMINISTRATIVE SCREENING

Administrative Screening occurs with initial submission of the RFQQ response documents. The RFQQ Coordinator shall review responses (including attachments) on a pass/fail basis for compliance with RFQQ Administrative requirements. Non-responsive RFQQ responses will be eliminated from further evaluation. Evaluation teams will only evaluate Proposals meeting all administrative requirements.

In those cases where it is unclear to the extent a requirement has been addressed, the RFQQ Coordinator may contact a Vendor to clarify specific points in the submitted response. However, accept as permitted in a BAFO, under no circumstances will the responding Vendor be allowed to make changes to its proposal after the deadline stated for receipt of responses.

4.2 EVALUATION PROCESS

4.3.1. 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, accept as permitted in a BAFO, 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.

4.3.2. Proposal Scoring

Evaluators will assign points based upon Vendor's response to scored elements of Section 4.2.4. 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 2.9.6, with the lowest overall cost presented receiving the highest cost score. Vendor submitting the lowest total cost will receive a score of 20 points.

Other Vendors will receive a score based on the following formula:

Operational Vendor Score = (Lowest Vendor Price ÷ Vendor Price) X 20

SCORED ELEMENT	MAXIMUM POSSIBLE POINTS
Letter of Submittal (Section 2.9.1)	Pass/Fail
Exhibit A – Certifications and Assurances (Section 2.9.2)	PASS/FAIL
Professional References (Section 2.9.3)	PASS/FAIL

Statement of Required Skills, Qualifications and Experience (Sections 2.9.4)	60
Statement of Desired Skills, Qualifications, and Experience (Section 2.9.5)	20
Proposed Staff and Cost (Section 2.9.6)	20
Total Possible Score	100

At the discretion of WAHBE, top-scoring finalists from the written evaluation phase may be moved forward to provide in-person oral presentations and/or site visits and/or a BAFO.

4.3 ORAL PRESENTATIONS AND/OR SITE VISITS (Optional)

A visit to Vendor's business location(s) and/or 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 site visits and/or oral presentations. The scores from the written responses will not carry forward. If held, the results of the site visits and/or oral presentations shall determine the ASV.

4.4 AWARD SELECTION

The ASV will be the responsive and responsible Vendor that:

- 1) meets all the requirements of this RFQQ; and
- 2) is the top scoring or one of the top scoring finalists as described in Section 4.4.; and
- 3) receives the highest score from oral presentations and, if requested, a BAFO as described in Section 4.6.

4.5 NOTICE OF AWARD

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

4.6 ACTION ON EQUIVALENT SCORES

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

4.7 OPTIONAL 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 2.1. 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 with regard to the RFQQ requirements. The debriefing conference may take place via Skype for Business or by telephone.

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

4.8 PROTEST PROCEDURES

4.8.1 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.

4.11.2. Ground 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.

4.11.3. 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 (HBE 18-006), RFQQ Coordinator;
- Specific and complete explanation of the grounds for protest (See 4.11.2);
- Specific reference to the grounds for the protest; and
- Description of the relief or corrective action requested.

4.11.4. 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.

4.11.5. 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.

4.9 WAHBE'S RIGHT TO CANCEL

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

EXHIBIT A
CERTIFICATIONS AND ASSURANCES
For RFQQ HBE 18-006 – Presiding Officer Services
Issued by the Washington Health Benefit Exchange

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

The prices in this response have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offer or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered. The prices in this response have not been and will not be knowingly disclosed by the offer, directly or indirectly, to any other offer or competitor before Contract award unless otherwise required by law. No attempt has been made or will be made by the offer to induce any other concern to submit or not to submit an offer for the purpose of restricting competition. However, we may freely join with other persons or organizations for the purpose of presenting a single 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 2.9.1.10).

Authorized Vendor Representative Signature

Vendor Name

Printed Name

Date

EXHIBIT B
SAMPLE CONTRACT
FOR PRESIDING OFFICER SERVICES
BETWEEN
WASHINGTON HEALTH BENEFIT EXCHANGE
AND
[CONTRACTOR NAME]

This Contract is made and entered into by and between the Washington Health Benefit Exchange, hereinafter referred to as "WAHBE", and **[CONTRACTOR NAME]**, hereinafter referred to as "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.

2. PERIOD OF PERFORMANCE

The initial period of performance under this Contract will be from November 1, 2018 or from the date of execution by both parties, whichever is later, through June 30, 2019, unless sooner terminated as provided herein. WAHBE may extend this Contract through June 30, 2021, 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.

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 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 monthly invoices for services rendered to WAHBE on or before the 3rd of each month. Invoices shall be submitted to WAHBE at finance@WAHBExchange.org, with a copy to the WAHBE Contract Manager listed in Section 6.

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	Margaret Eby, Associate Director Eligibility, Appeals & Review
Address	810 Jefferson Street SE
City, State Zip	Olympia, WA 98501-1417
Phone:	Phone: (360) 688-7807
Email:	Email: margaret.eby@wahbexchange.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:

B.

Notice Contact(s) for Contractor:	Notice Contact(s) for WAHBE:
Name & Title	General Counsel
Address	810 Jefferson Street SE
City, State Zip	Olympia, WA 98501-1417
Phone:	Phone: (360) 688-7700
<hr/>	
Name & Title	Contracts Office
Address	810 Jefferson Street SE
City, State Zip	Olympia, WA 98501-1417
Phone:	Phone: (360) 688-7700

- C. 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 18-006, released August 1, 2018
- Any other provision, term or material incorporated herein by reference or otherwise incorporated
- Contractor’s Proposal in Response to RFQQ HBE 18-006, 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

- 2.1. 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.
- 2.2. 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.
- 2.3. 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. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

8.1. 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.

8.2. 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.

9. CONFLICT OF INTEREST

9.1. Notwithstanding any determination by the Executive Ethics Board or other government tribunal, WAHBE may, in its sole discretion, by written notice to the Contractor terminate this Contract if it is found after due notice and examination by 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.

9.2. 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.

10. CORRECTIVE ACTION PLANS

10.1. 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.

10.2. 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.

10.3. Corrective Action Plan(s) must be submitted within ten (10) business days following the request; and are subject to WAHBE's written approval.

10.4. 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:

- 10.4.1.1. Excuse Contractor's prior performance;
- 10.4.1.2. Relieve Contractor of its duty to comply with performance standards; or
- 10.4.1.3. Prohibit WAHBE from assessing additional remedies or pursuing other appropriate remedies for continued substandard performance.

11. COVENANT AGAINST CONTINGENT FEES

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

11.2. 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.

12. DAMAGES DISCLAIMERS AND LIMITATIONS

12.1. 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.

12.2. 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.

12.3. 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.

12.4. 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.

13. 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.

14. DISALLOWED COSTS

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

15. 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.

16. 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.

17. FORCE MAJEURE

- 17.1.** 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.
- 17.2. 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.

18. 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.

19. 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.

20. INDEMNIFICATION

- 20.1.** 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.
- 20.2.** Contractor's obligations to indemnify, defend, and hold harmless includes any Claim by Contractors' agents, employees, representatives, or any Subcontractor or its employees.
- 20.3.** 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.
- 20.4.** 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.

21. 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.

22. 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.

23. INSURANCE

- 23.1.** 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:
- 23.2.** 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.
- 23.3.** Contractor shall submit certificates of insurance, policy documents, and applicable riders 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.
- 23.4.** 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.
- 23.5.** The minimum acceptable limits shall be as indicated below for each of the following categories:
- Auto Policy (Business or Personal), 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.
- 23.6.** WAHBE shall be named as an additional insured on Business Auto policies.
- 23.7.** 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.
- 23.8.** 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.
- 23.9.** Contractor agrees to waive all rights of subrogation against WAHBE for losses arising from services performed by Contractor under this Contract.

24. INTELLECTUAL PROPERTY RIGHTS PROVISIONS

- 24.1.** 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.
- 24.2.** 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.
- 24.3.** Contractor shall retain all patent, copyright and other intellectual property rights in the Contractor Technology.
- 24.4.** 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.
- 24.5.** 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.
- 24.6.** 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.

24.7. WAHBE shall have the right to modify or remove any restrictive markings placed upon the Deliverables or other Materials by Contractor.

25. 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.

26. 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.

27. 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.

28. NONDISCRIMINATION

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

29. 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.

30. 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.

31. 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.

32. RECORDS RETENTION

32.1. 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.

32.2. 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.

32.3. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. SUBCONTRACTING

39.1. 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.

39.2. 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.

39.3. Additionally, Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are carried forward to any subcontracts.

39.4. Upon expiration or termination of this Contract for any reason, WAHBE will have the right to enter into direct agreements with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct agreements with WAHBE.

40. 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.

41. 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.

42. TERMINATION

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

43. 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.

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

44.1. 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.

44.2. 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.

45. 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:

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

3. CERTIFICATION REGARDING LOBBYING

Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or

receives a Federal grant or cooperative agreement shall disclose lobbying undertaken with non-Federal (non-appropriated) funds. These requirements apply to grants and cooperative agreements EXCEEDING \$100,000 in total costs (45 CFR Part 93).

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

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

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

1. PURPOSE

This Statement of Work (SOW) is made and entered by and between Washington Health Benefit Exchange (“WAHBE”), and [contractor name] (“Contractor”), to provide... WAHBE is seeking professional services to...

2. SCOPE OF WORK AND DELIVERABLES

Contractor must provide services and deliverables, and otherwise do all things necessary for or incidental to the performance of work as set forth under this SOW for all services as provided below.

-
-
-

A. Performance Deliverables (if applicable):

B. Contractor Assumptions (if applicable):

3. COMPENSATION AND PAYMENT

Task	Deliverable	Target Due Date	Not to Exceed Amount
1			
2			

Target dates can only be changed by mutual written agreement by the WAHBE Contract Manager and Contractor Contract Manager.

Additional hours cannot be invoiced without the WAHBE Contract Manager written approval. The Maximum Compensation under this Contract cannot be exceeded without a prior approved Contract amendment.

4. PERIOD OF PERFORMANCE

The period of performance for this project shall commence upon the Effective Date and continue through [DATE]. WAHBE has the right to extend or terminate this SOW at its sole discretion.

5. CONTRACTOR STAFF, ROLES AND RESPONSIBILITIES

A. Assignment of Staff

The Contractor staff identified for this project will work for at least the approximate number of hours described. WAHBE may at their sole discretion, without cause, and at any time during the term of the Contract, require immediate replacement of a Contractor employee(s). Unless authorized in writing in advance by the WAHBE Contract Manager, subcontracting or substituting proposed Contractor staff/employees with other staff/employees will not be allowed. The WAHBE Contract Manager shall have the sole discretion to accept or reject such proposal. As a condition to accepting Contractor's proposal for personnel changes, WAHBE may require Contractor to compensate WAHBE for any training and administrative costs incurred by WAHBE in association with such replacement. Such compensation will be in the form of a credit against Contractor's monthly invoice charges to WAHBE by Contractor not billing WAHBE for hours worked during the first five (5) business days replacement personnel begin work. If WAHBE does not accept Contractor's proposed change and Contractor is

unable to provide acceptable personnel or an acceptable alternative to WAHBE within ten (10) business days after the originally assigned personnel have left, then WAHBE may terminate the Contract.

WAHBE may assign other Contractors/Vendors and/or WAHBE staff to work with the Contractor. The Contractor shall work collaboratively and share knowledge and expertise with WAHBE staff or Contractors/Vendors to ensure a successful and timely completion. Contractor shall not supervise WAHBE employees but may be asked to direct the work of other Contractors/Vendors or WAHBE staff. The SOW is not intended to completely describe all work the Contractor will need to accomplish during the period of performance.

B. Contractor’s Rates, Project Hours, and roles are listed in the following table.

Period of Performance	Contractor Role	Hourly Rate	Project Hours (Est.)

C. Communications

The Contractor is to provide timely, accurate and informed communications, demonstrating the ability to communicate on all aspects of the Project.

D. Plan and coordinate Work Products

During the creation and documentation of work products, the Contractor is responsible for (a) Understanding each work product to be developed, (b) Understanding the content and organization of WAHBE’s documents, and (c) Applying their own knowledge and experience, to determine what needs to be included in each deliverable while also meeting the needs of the WAHBE Contract Manager.

E. Contractor Contract Manager

Contractor Contract Manager is the primary contact for all aspects of the project, resourcing, scheduling, planning and project implementation. In addition, the Contractor Contract Manager prepares periodic status reports for WAHBE review. Contractor Contract Manager information is provided below:

Name: [name]
 Address: [address]
 [city, state, zip]
 Phone: [phone number]
 Email: [email address]

6. WAHBE STAFF, ROLE AND RESPONSIBILITIES

- A. Assign a Contract Manager to this project (which may be the <HBE DIVISION NAME> Director or the <HBE DIVISION NAME> Manager). The Contract Manager will act as the single point of contact for the Contractor and have the authority to make project related decisions.

- B. Review and accept the Contractor project plan and other Contractor work products and artifacts.
- C. Review and accept or reject change requests related to this scope of work.
- D. Participation in working sessions with the Contractor
- E. Review and provide comment on each draft and final deliverables within ten (10) business days.
- F. Respond to Contractor requests for information, clarification, and make project related decisions within five (5) working days (unless there is another agreed upon timeframe).
- G. Provide for security clearance to buildings and equipment after normal business hours and holidays when required.
- H. Provide a project office consisting of a safe working environment space and facilities for Contractor Contract Manager and other personnel on-site.
- I. WAHBE Contract Manager is the primary contact for all aspects of the project, resourcing, scheduling, planning and project implementation. WAHBE Contract Manager contact information is provided below:

Name: [name]
Address: 810 Jefferson Street SE
Olympia, WA 98501-1417
Phone: (360) 688-
Email: XXXXX@wahbexchange.org

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 time period, with regard to all relevant security and legal concerns, as may be determined at the discretion of WAHBE.

1. Definitions:
 - a. Authorized User(s) means an individual or individuals with an authorized business requirement to access WAHBE Confidential Information.
 - b. Advanced Encryption Standard (AES) means a symmetric encryption algorithm.
 - c. Hardened Password means a string of at least eight (8) characters including one (1) upper case, one (1) lower case, one (1) number and one (1) special character (i.e., non-alphanumeric characters).
 - d. Security Incident means a warning that there may be or has been a threat to information or computer security including, but not limited to: unauthorized access; data or security breach; service attacks; malicious code; and unauthorized disclosure or misuse of confidential information.
 - e. Transmitting: the transferring of data electronically, such as via email.
 - f. Transporting: the physical transferring of data that has been stored.
 - g. Unique User ID: a string of characters that identifies a specific user and which, in conjunction with a password, passphrase, or other mechanism, authenticates a user to an information system.
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. The terms of this Exhibit shall apply to Contractor and any Subcontractors who use systems, network, data and/or documentation that is housed or managed by Contractors on behalf of, or in the performance of services, for WAHBE. For purposes of this Exhibit, they shall be collectively referred to as "Exchange Data".
5. 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.
6. Protection of WAHBE Systems and data:
 - a. In all events where Contractor has access to WAHBE data, Contractor shall meet all standards and requirements including, but not limited to: industry security standards, use of computer firewalls, strong user authentication, encrypted transmissions, anti-malware programs, regular and timely software patch updates, and controlled access to the physical location of computer hardware. This includes, without limitation, Contractor's transmission or storage of electronic files or electronic data.
 - b. Application integrity shall be validated to ensure destructive computer programming such as harmful computer instructions, viruses, Trojan horses and other harmful code is mitigated; and integrity of data is maintained.
 - c. Contractor shall implement security baselines on all systems and applications that meet industry and federal standards. Documentation must be submitted upon request. Security baselines can be found at <https://www.cisecurity.org/> or <https://www.nist.gov>.
 - d. Contractor shall conduct periodic reviews, at minimum of annually, of any system storing WAHBE data or supporting systems to evaluate the security risks of such systems. Reviews shall be conducted in accordance with the US Department of Commerce National Institute of Standards and Technology (NIST) Technical Guide to Information Security Testing and Assessment ([Special Publication \(SP\) 800-115](#)). In addition, WAHBE shall conduct periodic vulnerability scans of any network or site maintained by Contractor that houses WAHBE data. Contractor shall take all reasonable steps to facilitate such scans and shall promptly remediate any systems vulnerable of exposing WAHBE data. Contractor shall report all security incidents to the WAHBE Contract Manager as soon as possible, but no later than one business day after discovery.
 - e. Inactive accounts shall be disabled by HBE within 60 days of inactivity or when no longer necessary to perform daily tasks. The vendor shall notify HBE of a change in responsibilities where access is no longer necessary for employees or contractors.
 - f. Physical Storage. When storing WAHBE data the Contractor shall perform the following:
 - 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) through the use of 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 as long as the disks remain in a secured area and otherwise meet the requirements listed in the above paragraph. Destruction of the data as outlined in Section 9. Data Disposal may be deferred until the disks are retired, replaced, or otherwise taken out of the secured area.
 - 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 Contract 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.
- g. 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.

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

8. 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.

9. 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	Using a "wipe" utility which will overwrite the data at least three (3) times using either random or single character data, or

drives, portable hard disks, Zip or similar disks)	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;
 - c. Notifications shall include at minimum, both a telephone call and email to the WAHBE Contract Manager and an email to WAHBE Security at security@wahbexchange.org.
 - d. Contractor shall establish and document a policy to deal with the compromise or potential compromise of data that complies with NIST 800-61 Incident Response Guide. Contractor shall provide WAHBE with such policy upon request.
 - e. A breach of security or other circumstance which causes, may have caused, or allowed access to WAHBE information by unauthorized persons or systems, whether intentional, fraudulent, or accidental, must be reported to WAHBE as soon as possible and no later than one (1) business day after discovery.