

**FOR [PROCUREMENT TITLE]
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 B, Statement of Work (the "Deliverables"), and otherwise do all things necessary for or incidental to the performance of Work, as set forth in Exhibit B, 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 [month, day, year] or from the date of execution by both parties, whichever is later, through [month, day, year], unless sooner terminated as provided herein. WAHBE may extend this Contract through [month, day, year], 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 the current Consumer Price Index at the time of the request or up to a maximum 5% increase on the current pricing, whichever is lower.

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

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").

Contractor's compensation shall be based on:

- (1) Amounts for Deliverables identified in Exhibit B, 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.

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 B) by an Amendment executed by authorized representatives of Contractor and WAHBE or in a subsequent Statement of Work.

C. Expenses.

- (1) Except as otherwise indicated in this Section, expenses for Contractor to provide WAHBE with estimates or quotes for additional activities or services will not be authorized. Under special circumstances, Contractor may receive payment for such expenses as authorized in advance by WAHBE and provided in a Statement of Work.
- (2) 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.
 - Such expenses may include airfare (economy or coach class only), ground transportation, and lodging and subsistence necessary during periods of required travel. Contractor shall receive compensation for travel expenses in accordance with GSA travel reimbursement rates and requirements. To receive reimbursement, Contractor must provide a detailed breakdown of authorized expenses, identifying what was expended and when.
 - Air travel must be booked in accordance with the Fly America Act, which requires organizations that receive federal funding to the use a "U.S. flag air carrier" (visit <https://www.gsa.gov/policy-regulations/policy/travel-management-policy/fly-america-act> for further information on requirements).

5. **INVOICES AND BILLING PROCEDURES**

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

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

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

C. Invoice Review and Acceptance. All invoices shall be reviewed and must be approved by the WAHBE Contract Manager identified in Section 6, or their 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.

6. CONTRACT MANAGEMENT

- A.** Contractor shall assign to the Contract 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.
- B.** 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.

- C. WAHBE can change its Contract Manager in its sole discretion. 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.
- D. 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 Contract Manager:	WAHBE Contract Manager:
Name & Title	Name & Title
Address	810 Jefferson Street SE
City, State Zip	Olympia, WA 98501-1417
Phone:	Phone:
Email:	Email:

7. NOTICES

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

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

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

8. INSURANCE (AMENDED AS APPROPRIATE)

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:

- A. 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.

- B.** Contractor shall submit a copy of the Contractor's certificate of insurance for all insurance requirements listed in Section D to contracts@wahbexchange.org within ten (10) business days of Contract execution. A renewal certificate for all required insurance must be submitted at the time of the policy renewals. Insurance must expressly indicate compliance with each requirement specified in this section. Premiums on all insurance policies shall be paid by Contractor or its Subcontractors.
- C. Right to Audit.** WAHBE reserves the right to audit Contractor's full insurance policy documents for Contract compliance. Contractor must provide documentation for all insurance listed below, including any endorsements or riders, to WAHBE within ten (10) business days' written notice. Failure to comply may result in Contract termination.
- D.** Contractor shall include all Subcontractors as insured under all required insurance policies or shall furnish separate insurance documents for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.
- E.** The minimum acceptable limits shall be as indicated below for each of the following categories:
- (1) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$1 million general aggregate; and
 - (2) Umbrella policy providing excess limits over the primary policies in an amount not less than \$1 million per occurrence; and
 - (3) Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with a limit of not less than \$500,000; and
 - (4) Business Auto Policy (BAP), with coverage against claims resulting from bodily injury, including illness, disease, and death; and property damage caused by an occurrence arising out of or in consequence of the performance of this Contract by the Contractor, Subcontractor, or anyone employed by either.

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

Contractor waives all rights against WAHBE for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.
- (5) Professional Liability Errors and Omissions (PLEO), with a deductible not to exceed \$25,000.00, and coverage of not less than \$1 million; and
 - (6) Crime Coverage with a deductible not to exceed \$25,000, and coverage of not less than \$1 million single limit per occurrence which shall, at a minimum, cover occurrences falling in the following categories: Computer Fraud; Forgery; and Employee Dishonesty; and
 - (7) Cyber Security Liability, with coverage against claims resulting from Security Events, Network Security and Privacy, and Employee Privacy; with a deductible not to exceed \$25,000.00 and coverage of not less than \$500,000 per occurrence.
- F.** WAHBE shall be named as an additional insured on all Commercial General Liability, Umbrella, BAP (if applicable), Cyber Security Liability (if applicable), and PLEO (if applicable) policies.
- G.** Policies must include Contract reference number **HBE-** .
- H.** For PLEO Coverage, Crime Coverage, and Cyber Security Liability Coverage (as applicable), Contractor shall continue such coverage for three (3) years beyond the expiration or termination

of this Contract, naming WAHBE as an additional insured and providing WAHBE with a copy of the certificate of insurance on an annual basis.

- I. 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.
- J. 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.
- K. Contractor agrees to waive all rights of subrogation against WAHBE for losses arising from services performed by Contractor under this Contract.
- L. By requiring insurance herein, WAHBE does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to WAHBE under this Contract. Services. This provision does not waive any of L&I's rights to collect from Contractor.

9. BACKGROUND CHECKS (DELETE "G" IF NOT APPLICABLE)

- A. Due to the confidential nature of the information and materials accessible to Contractor, Contractor shall conduct State and Federal criminal background checks for all Staff to be used to provide services under this Contract. At minimum, background checks must include the previous 5-years of history. Contractor is responsible for the cost of the State and Federal criminal background checks. Background checks must, at a minimum, include the following searches/records:
 - (1) Social Security Number Trace (Name and Address History);
 - (2) Social Security Number Validation;
 - (3) Multi-State (National) Criminal History Search;
 - (4) National Sex Offender Search;
 - (5) County Criminal Record Search;
 - (6) Federal District Court Criminal Search; and
 - (7) Watch list search – OFAC, OIG, SAM, and America's most wanted fugitive list
- B. Contractor shall provide written (email acceptable) confirmation of completed background checks to the WAHBE Contracts Office at contracts@wahbexchange.org for review and approval of proposed Staff at least five (5) business days prior to Contract execution and at least five business days prior to the start of any new or replacement Staff. **Contractor shall not provide proposed Staff's full background check report(s).**
- C. WAHBE reserves the right to conduct additional reference checks and/or background checks on Contractor staff and Subcontractors to be used to perform the work.
- D. Convictions involving fraud, dishonesty or breach of trust, manufacturing or selling illegal drugs, violence against persons, electronic data tampering, data theft or unauthorized access are grounds for rejection of Contractor Staff and/or Subcontractors. WAHBE reserves the right in its sole discretion to audit background check results for compliance and to reject any proposed staff as a result of information produced by such background checks or additional sources of information.
- E. Initial staff background checks provided by the Contractor must be current (no more than 180 days old). Background checks must be updated and provided to WAHBE before any Contract extensions will be considered.
- F. Contractor agrees to cooperate fully with WAHBE in completion of this requirement. Results of the investigation and/or failure of Contractor to cooperate fully may be grounds for termination of this Contract.

- G.** Contractor, and/or any Contractor Staff, with access to WAHBE's FTI data shall complete a Federal Fingerprint background check in addition to the background check requirements provided in Section 8.A.

10. LEGAL AND REGULATORY COMPLIANCE

During the term of this Contract, Contractor shall comply with all applicable State and Federal laws, rules, regulations and codes. Contractor shall also comply with all WAHBE policies and standards applicable to the Contracted staff or Contractor's performance of the Services. During the term of the Contract if either party becomes aware of changes in any applicable federal or State laws, regulations, or codes that have an impact on the performance of the Services or Deliverables or WAHBE's use of the Services or Deliverables, that party will timely notify the other of such changes and the parties will work together to identify the impact of such changes on how WAHBE uses the Services or Deliverables.

11. 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.

12. 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
- Special terms and conditions as contained in this Contract
- Exhibit A – General Terms and Conditions
- Exhibit B – Statement(s) of Work
- Exhibit C – Federal Certifications and Assurances (if applicable)
- Exhibit D – Data Security & Reporting Requirements (if applicable)
- Exhibit E – Subcontractor Utilization Statement
- Exhibit X – Non-Disclosure Agreement (if applicable)
- RF HBE [number], released [month, day, year], and any addenda
- Contractor's Proposal in Response to RF HBE [number], dated [date]
- Contractor's clarifications received via email by WAHBE on [date] at [time] PT
- Contractor's oral presentation presented to WAHBE on [date] at [time] PT
- Any other provision, term or material incorporated herein by reference or otherwise incorporated

13. ENTIRE CONTRACT

This Contract, including referenced Exhibits and other items in Section 10, 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.

14. 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.

15. APPROVAL

This Contract shall be subject to the written approval of Contractor's and WAHBE's authorized representatives; 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.

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

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

EXHIBIT A – GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

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

- A.** “Amendment” means a mutually-agreed, formal change made to the Contract. A Modification may also be referred to as a “modification”.
- B.** “Change Order(s)” means a response to a Change Request that is a written, signed agreement that modifies, deletes or adds to the Deliverables or Services, in whole or in part, made in accordance with the terms of Section 10.B.
- C.** “Change Request” means a written form substantially in the form of Schedule 4 Change Request Form, used to initiate a modification to the Deliverables or Services, in whole or in part, made in accordance with the terms of Section 10.A.
- D.** “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.
- E.** “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.
- F.** “Contractor” means that firm, provider, organization, individual or other entity performing service(s) under this Contract; and shall include all employees of the Contractor.
- G.** “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.
- H.** “Corrective Action Plan” means the detailed written plan required by WAHBE to correct or resolve a Defect or breach by Contractor.
- I.** “Date Warranty” shall have the meaning ascribed to it in [Section 37.D](#).
- J.** “Defect” means a failure to conform to requirements and specifications established by WAHBE.
- K.** “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.
- L.** “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.
- M.** “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.
- N.** “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.

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

2. ACCEPTANCE PROCESS

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

3. ADVANCE PAYMENTS PROHIBITED

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

4. AMENDMENTS

This Contract may be amended, or modified, 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. CLAIMS

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

9. CHANGE ORDER PROCESS

A. Change Requests

- (1) WAHBE may request changes within the scope of the Contract at any time by a written Change Request. Such changes may include, without limitation, revisions to Deliverables or Services.
- (2) Contractor shall respond in writing to a Change Request within 15 calendar days of receipt, advising WAHBE of any cost and Schedule impacts. When there is a cost impact—either increase or decrease in Charges or Purchase Prices—Contractor shall advise WAHBE in writing of the increase or decrease involved, including a breakdown of the number of Contractor Staff hours and WAHBE Staff hours by level of personnel needed to effect this change.
- (3) The Contractor Contract Manager and the WAHBE Contract Manager shall negotiate in good faith and in a timely manner as to the price for change orders and the impact on the Schedule of any Change Request.
- (4) Contractor may also submit a Change Request to WAHBE to propose changes that should be made within the scope of the Contract. Any such Change Request shall include proposed costs and Schedule impacts, including a breakdown of the number of Contractor Staff hours and WAHBE Staff hours by level of personnel needed to effect this change. WAHBE will respond to such Change Requests from Contractor within 20 calendar days of receipt.

B. Change Orders

- (1) If the parties reach agreement in writing on a Change Request and the resulting Change Order is executed by authorized representatives of the parties, the terms of this Contract shall be modified accordingly.
- (2) If the parties are unable to reach an agreement in writing on a Change Request submitted by Contractor, the WAHBE Contract Manager will be deemed to have rejected the requested Change Request.
- (3) The parties must execute a formal Contract Amendment for any Change Order that increases or decreases the Maximum Amount.
- (4) Nonfinancial Change Orders may be approved in writing by the WAHBE Contract Manager. A fully-executed copy of the Change Order must be provided to WAHBE Contracts at contracts@wahbexchange.org.
- (5) In no event shall the Charges or Purchase Prices increase, nor shall the Schedule be extended in a Change Order, to correct errors or omissions in the Proposal.

C. Termination

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

10. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A.** Contractor and its Subcontractors shall not use or disclose any WAHBE Confidential Information, including but not limited to Personal Information and PII, for any purpose not directly connected with its performance under or the administration of this Contract, except with prior written consent of WAHBE, or as may be required by law.
- B.** Personal Information and PII collected, used, or acquired relating to this Contract shall be protected against unauthorized use, disclosure, modification or loss. Contractor shall ensure its directors, officers, employees, Subcontractors or agents use Personal Information solely for the purposes of accomplishing the services set forth herein. Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons Personal Information or PII without the express written consent of WAHBE or as otherwise required by law.

11. CONFLICT OF INTEREST

- A.** Notwithstanding any determination by the Executive Ethics Board or other government tribunal, WAHBE may, in its sole discretion, by written notice to the Contractor terminate this Contract if it is found after due notice and examination by WAHBE's CEO that there is a violation of the Ethics in Public Service Act, Chapter [42.52 RCW](#); or any similar statute involving the Contractor in the procurement of, or performance under this Contract and Contractor fails to cure such violation within ten calendar days of receipt of notice from WAHBE.
- B.** In the event this Contract is terminated as provided above, WAHBE shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor. The rights and remedies of WAHBE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the CEO makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Contract.

12. COOPERATION OF PARTIES

Contractor and WAHBE agree to fully cooperate with each other in connection with the performance of their respective obligations under this Contract. WAHBE may undertake or award supplemental Contracts for work related to this Contract. Contractor shall fully cooperate with any such supplemental contractors hired by WAHBE including, but not limited to: Auditors; Quality Assurance personnel; and Independent Validation and Verification vendors. Full cooperation includes Contractor providing access to personnel, project materials and other information reasonably available.

13. CORRECTIVE ACTION PLANS (USE/AMEND/DELETE)

- A.** WAHBE may require Contractor to submit a Corrective Action Plan to correct or resolve a specific event or events causing the finding of a Defect or breach or prior to assessment of a liquidated damage.
- B.** Corrective Action Plan(s) required by WAHBE under this Section must provide the following:
 - (1) Contractor's detailed explanation of the cause or reasons for the cited Defect or breach;
 - (2) Contractor's assessment or diagnosis of the cause of the cited Defect or breach; and
 - (3) Contractor's specific proposal to cure or resolve the Defect or breach.

- C. Corrective Action Plan(s) must be submitted within ten (10) business days following the request; and are subject to WAHBE's written approval.
- D. If a requested Corrective Action Plan is not approved by WAHBE, or Contractor's compliance with the Corrective Action Plan is insufficient, WAHBE in its sole discretion, may withhold up to 25 percent of the next monthly payment. WAHBE may increase withholdings by up to 10 percent in each successive month during which the remedial situation has not been resolved. WAHBE, in its sole discretion, may return a portion of or all payments withheld once satisfactory resolution has been achieved.
- E. Notwithstanding Contractor's submission and WAHBE's acceptance of Corrective Action Plan(s), Contractor remains responsible for compliance with all obligations under this Contract. Further, WAHBE's acceptance of a Corrective Action Plan under this Section shall not:
 - (1) Excuse Contractor's prior performance; or
 - (2) Relieve Contractor of its duty to comply with performance standards; or
 - (3) Prohibit WAHBE from assessing additional remedies or pursuing other appropriate remedies for continued substandard performance.

14. COVENANT AGAINST CONTINGENT FEES

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

15. DAMAGES DISCLAIMERS AND LIMITATIONS

- A. WAHBE shall not be liable, regardless of the form of action, whether in Contract, tort, negligence, strict liability or by statute or otherwise, for any claim related to or arising under this Contract for consequential, incidental, indirect, or special damages.
- B. In no event shall WAHBE's aggregate liability to Contractor under this Contract, regardless of the form of action, whether in Contract, tort, negligence, strict liability or by statute or otherwise, for any claim related to or arising under this Contract, exceed the maximum compensation.
- C. Contractor shall not be liable, regardless of the form of action, whether in Contract, tort, negligence, strict liability or by statute or otherwise, for any claim related to or arising under this Contract for consequential, incidental, indirect, or special damages.
- D. The disclaimers of certain damages and the damages limitations in sections 16.B. and 16.C. shall not apply to damages, expenses, losses, fees, liabilities, costs or other amounts arising from Contractor's indemnification obligations.

16. 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.

17. DISALLOWED COSTS

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

18. 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 WAHBE's CEO.
- 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 WAHBE's CEO 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 WAHBE's CEO and the requester within five (5) business days.
- D.** WAHBE's CEO 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.

19. DUPLICATE OR ERRONEOUS PAYMENT

- A.** 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.
- B.** Contractor shall refund to WAHBE the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice of such erroneous or overpayment.

20. FORCE MAJEURE

- A.** Neither party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such party's performance of this Contract is prevented by reason of force majeure.
- B. Notification:** If either party is delayed by force majeure, said party shall provide written notification within 48 hours. The notification shall provide evidence of the force majeure to the reasonable satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. At WAHBE's discretion, 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.

21. 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.

22. 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.

23. INDEMNIFICATION

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

24. INDEPENDENT CAPACITY OF THE CONTRACTOR

Both WAHBE and Contractor, in the performance of this Contract, will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter [41.06 RCW](#) or [Title 51 RCW](#). Conduct and control of the work will be solely with Contractor.

25. 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

26. INTELLECTUAL PROPERTY RIGHTS PROVISIONS

- A.** In accordance with [U.S. Copyright Act 17 U.S. Code § 101](#), unless otherwise provided, all Materials produced under this Contract, including without limitation Deliverables, shall be considered "works for hire" and shall be owned by WAHBE. WAHBE shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright Act, Contractor hereby irrevocably assigns all right, title, and interest in materials, including all intellectual

property rights, to WAHBE effective from the moment of creation of such materials. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

- B.** Contractor shall, at the expense of WAHBE, assist WAHBE or its nominees to obtain copyrights, trademarks, or patents for all such materials in the United States and any other countries. Contractor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents in and to such Materials. Contractor agrees to and hereby, to the extent permissible, waives all legal and equitable rights relating to the Materials, including without limitation all rights of identification of authorship and any and all rights of approval, restriction or limitation on use or subsequent modifications.
- C.** Contractor shall retain all patent, copyright and other intellectual property rights in the Contractor Technology.
- D.** For Materials that are delivered under the Contract, but that incorporate Contractor Technology not produced under the Contract or that are owned by third parties, Contractor hereby grants to WAHBE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to use, demonstrate, translate, reproduce, distribute, prepare derivative works based upon, publicly perform, and publicly display.
- E.** Contractor shall exert all reasonable efforts to advise WAHBE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this Contract.
- F.** Contractor hereby represents as of the Effective Date and warrants to WAHBE thereafter that Contractor is and shall be the owner of the Contractor Technology and Materials provided hereunder or otherwise has the right to grant to WAHBE the licensed rights to the Contractor Technology and Materials provided by Contractor through this Contract without violating any rights of any third party worldwide. Contractor represents and warrants that: (i) Contractor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Contractor Technology or Materials infringe or misappropriate any patents, copyrights, or trade secrets of any third party or WAHBE, and (ii) the Contractor Technology and Materials do not and shall not infringe upon or misappropriate any patents, copyrights, trade secrets or any other intellectual property rights of any third party. Contractor shall promptly give WAHBE prompt notice of each notice or claim of infringement or misappropriation of other intellectual property right worldwide received by Contractor with respect to the Contractor Technology or Materials delivered under this Contract.
- G.** WAHBE shall have the right to modify or remove any restrictive markings placed upon the Deliverables or other Materials by Contractor.

27. KNOWLEDGE TRANSFER

Contractor shall provide a WAHBE-approved Knowledge Transfer Plan as a deliverable under this Contract. The plan shall address, at minimum, the capture of all critical knowledge and a plan of action to transfer it from Contractor to WAHBE staff. The plan shall be provided to WAHBE-staff for approval as reflected in the Project Plan or Statement of Work. An updated plan shall be provided to WAHBE-staff for approval no less than 90 days prior to the final end-date of the Contract, or if terminated earlier, within 30 days' notice of Contract termination.

28. 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.

29. LIMITATION OF AUTHORITY

Only the WAHBE Chief Executive Officer, or 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.

30. LIQUIDATED DAMAGES (AMENDED OR DELETED AS APPLICABLE)

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

Deliverable	WAHBE Acceptance of each Deliverable by the scheduled Acceptance date in the Project plan	WAHBE shall assess \$ [Amount] per calendar day from the scheduled Deliverable Acceptance date until the date each Deliverable receives Acceptance from WAHBE
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- B. The assessment of liquidated damages shall not constitute a waiver or release of any other remedy WAHBE may have under this Contract for Contractor’s breach of this Contract, including without limitation, WAHBE’s right to terminate this Contract, and WAHBE shall be entitled in its discretion to recover actual damages caused by Contractor’s failure to perform its obligations under this Contract. However, WAHBE will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages.
- C. The parties acknowledge and agree that Contractor could incur liquidated damages for more than one Critical Deliverable if Contractor fails to timely perform its obligations by each applicable date for such Deliverables.
- D. Amounts due WAHBE as liquidated damages may be deducted by WAHBE from any money payable to Contractor under this Contract, or WAHBE may bill Contractor as a separate item therefor and Contractor shall promptly pay such bills.

31. LOSS OF FUNDING

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. 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.

32. NONDISCRIMINATION

During the performance of this Contract, Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies. In the event of the Contractor’s non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and Contractor may be declared ineligible for further Contracts with WAHBE. Contractor 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.

33. PRIVACY AND SECURITY TRAINING

If any work shall take place on WAHBE property, then prior to conducting any work, all Contractor employees and supervisory personnel performing work under this Contract must attend Privacy and Security training, which is provided onsite at WAHBE by WAHBE staff. Any time, travel, or other expenses required to send Contractor or Contractor's employees to this training shall be the sole responsibility of the Contractor. Training shall not exceed four (4) hours per year per person.

34. 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.

35. PUBLICITY

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

36. QUALITY ASSURANCE

A. Right of Inspection

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

B. Contractor Commitments, Warranties and Representations

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

C. Representations and Warranties for Deliverables and Work

Contractor represents and warrants that all supplies, work, Warranties, Deliverables and other Materials, and/or equipment provided under this Contract shall be fit for the purpose(s) for which they are intended and for merchantability and shall conform to the requirements and specifications herein. Contractor shall promptly repair or replace each of the Deliverables that does not meet

and conform to applicable requirements and specifications as provided herein and at no additional charge to WAHBE.

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

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

D. Date Warranty

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

E. Cost of Remedying Defects

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

37. RECORDS RETENTION AND ACCESS

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

A. Contractor and its Subcontractors shall maintain books, records, documents and other evidence which sufficiently and properly reflect the accuracy of amounts billed to WAHBE during the performance of this Contract and shall retain all such records for six years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for one year following the termination of litigation, including all appeals if the litigation has not terminated within six (6) years from the date of expiration or termination of this Contract.

B. All such records shall be subject at reasonable times and upon prior written notice to Contractor to examination, inspection, copying, or audit by personnel so authorized by the WAHBE, state and federal officials so authorized by law, rule, regulation or contract, when applicable, during the term and during the six (6) year period thereafter. During the term, the access to these items will be provided within Thurston County. During the six (6) year period after the term, delivery of and access to these items will be at no cost to WAHBE. WAHBE's personnel shall be accompanied by Contractor personnel at all times during any such examination, inspection, review or audit. Contractor will make no charges for services rendered in connection with an audit requested by WAHBE. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.

38. 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.

39. 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.

40. SEVERABILITY

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

41. SITE SECURITY

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

42. SOLICITATION

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

43. SUBCONTRACTING

- A.** Neither Contractor nor any Subcontractor shall enter into subcontracts for any work under this Contract without submitting a completed Subcontractor Utilization Statement (Exhibit E) to contracts@wahbexchange.org and receiving prior written approval from WAHBE. Any such approval may be rescinded in WAHBE's sole discretion.
- B.** Contractor is responsible and liable for the proper performance of and the quality of any work performed by Subcontractors. Contractor is responsible for Subcontractors compliance with the Contract and Subcontract terms and conditions. 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.
- C.** Additionally, Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are carried forward to any subcontracts.
- D.** Upon expiration or termination of this Contract for any reason, WAHBE will have the right to enter into direct agreements with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct agreements with WAHBE.

44. 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 regarding; Claims, Confidentiality and Safeguarding of Information, Governing Law, Indemnification, Insurance, Intellectual Property Rights, Order of Precedence, Public Disclosure, Publicity, Quality Assurance, Records Retention and Access, and Severability shall survive the termination of this Contract.

45. TAXES

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

Contractor shall pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. WAHBE, as a quasi-governmental organization, is exempt from property tax.

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.

Contractor shall be solely responsible for all expenses related to salaries, payroll taxes, unemployment contributions, and other benefits for its staff, or any other taxes, insurance, and all out-of-pocket expenses incurred in connection with performance of its obligations under this Contract.

46. TERMINATION

A. Termination or Suspension for Cause

- (1) In the event WAHBE determines Contractor has failed to comply with the conditions of this Contract in a timely manner, WAHBE has the right to suspend or terminate this Contract. Before suspending or terminating the Contract, WAHBE shall notify Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days, the Contract may be terminated or suspended.
- (2) In the event of termination or suspension, Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.
- (3) WAHBE reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Contractor or a decision by WAHBE to terminate the Contract. A termination shall be deemed a "Termination for Convenience" if it is determined that Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

B. Termination for Convenience

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

C. Termination for Funding Contingency

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, WAHBE may terminate

this Contract without advance notice; subject to renegotiation under those new funding limitations and conditions.

D. Termination for WAHBE's Non-Payment

Except to the extent WAHBE is exercising its remedies, if WAHBE fails to pay Contractor undisputed, material amounts when due under the Contract and fails to make such payments within one hundred eighty (180) days of receipt of notice from Contractor of the failure to make such payments, Contractor may, by giving notice to WAHBE, terminate this Contract as of a date specified in the notice of termination. Contractor shall not have the right to terminate the Contract for WAHBE's breach of the Contract except as provided in this Section.

E. Termination Procedures

- (1) Upon termination of this Contract, WAHBE, in addition to any other rights provided in this Contract, may require Contractor to deliver to WAHBE any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.
- (2) Subject to WAHBE's exercise of its remedies, WAHBE shall pay to Contractor the agreed upon price, if separately stated, for completed work and services accepted by WAHBE, and the amount agreed upon by Contractor and WAHBE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by WAHBE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the WAHBE CEO 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 WAHBE CEO 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 WAHBE CEO, Contractor shall:
 - i. Stop work under the Contract on the date, and to the extent specified, in the notice; and
 - 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; and
 - iii. Assign to WAHBE, in the manner, at the times, and to the extent directed by the WAHBE CEO, 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; and
 - iv. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the WAHBE CEO to the extent WAHBE CEO may require, which approval or ratification shall be final for all the purposes of this clause; and
 - v. Transfer title to WAHBE and deliver in the manner, at the times, and to the extent directed by the WAHBE CEO any property which, if the Contract had been completed, would have been required to be furnished to WAHBE; and
 - vi. Complete performance of such part of the work as shall not have been terminated by the WAHBE CEO; and
 - vii. Take such action as may be necessary, or as the WAHBE CEO 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.

47. 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. Contractor shall surrender to WAHBE all property of WAHBE prior to settlement upon completion, termination or cancellation of this Contract.
- 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.** All reference to Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

48. 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.

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

- A.** WAHBE complies with U.S. Department of the Treasury, Office of [Foreign Assets Control \(OFAC\)](#) payment rules. OFAC prohibits financial transactions with individuals or organizations, which have been placed on the OFAC Specially Designated Nationals (SDN) and Blocked Persons sanctions list located at <https://sanctionssearch.ofac.treas.gov/>. Compliance with OFAC payment rules ensures that WAHBE does not conduct business with individuals or organizations that have been determined to be supporters of terrorism and international drug dealing or that pose other dangers to the United States.
- B.** In the event of a positive match, WAHBE reserves the right to: (1) make a determination of "reasonability" before taking the positive match to a higher authority, (2) seek assistance from the Washington State Office of the State Treasurer (OST) for advanced assistance in resolving the positive match, (3) comply with an OFAC investigation, if required, and/or (4) if the positive match is substantiated, notify Contractor in writing and terminate the Contract according to the Termination for Convenience provision without making payment. WAHBE will not be liable for any late payment fees or missed discounts that are the result of time required to address the issue of an OFAC match.

50. WAIVER

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

SAMPLE

EXHIBIT B – STATEMENT OF WORK TEMPLATE

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 [specific goods or services].

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 Project Manager, subcontracting or substituting proposed Contractor staff/employees with other staff/employees will not be allowed. The WAHBE Project 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 Project Manager

Contractor Project 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. The WAHBE Project Manager will act as the single point of contact for the Contractor Project Manager; and has the authority to make the following project related actions and decisions:

- (1) Review and accept the Contractor project plan and other Contractor work products and artifacts.
- (2) Review and accept or reject change requests related to this scope of work.
- (3) Participate in working sessions with the Contractor.
- (4) Review and provide comment on each draft and final deliverable within ten (10) business days.
- (5) Respond to Contractor requests for information, clarification, and make project related decisions within five (5) working days (unless there is another agreed upon timeframe).
- (6) Provide for security clearance to buildings and equipment after normal business hours and holidays when required.
- (7) Provide a project office consisting of a safe working environment space and facilities for Contractor Contract Manager and other personnel on-site.

B. WAHBE Project Manager is the primary contact for all aspects of the project, resourcing, scheduling, planning and project implementation. WAHBE Project 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 C – FEDERAL COMPLIANCE, CERTIFICATIONS, AND ASSURANCES (If Applicable)

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:

Jim Crawford, Chief Financial Officer
Washington Health Benefit Exchange (WAHBE)
810 Jefferson Street SE
Olympia, WA 98501-1417
Phone: (360) 688-7720
Email: jim.crawford@wahbexchange.org

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

- (1) Deviations from the budget and Project plan.
- (2) Change in scope or objective of the Contract.
- (3) Change in a key person specified in the Contract.
- (4) The absence for more than three (3) months or a twenty-five percent (25%) reduction in time by the Contract Manager or Department Director.
- (5) Need for additional funding.
- (6) Inclusion of costs that require prior approvals as outlined in the appropriate cost principles.
- (7) 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 Street 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 D – DATA SECURITY & REPORTING REQUIREMENTS (For applicable IT projects only)

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 Contractor 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 Contracted purpose, such devices must be locked in a drawer, cabinet or other container to which only authorized users have the key, combination or mechanism required to access the contents of the container. Workstations which access WAHBE data on optical discs shall be in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
 - vi. When being transported outside of a secure area, portable devices and media with confidential WAHBE data must be under the physical control of Contractor staff with authorization to access the data.
 - vii. WAHBE data shall not be stored on portable devices or media unless specifically authorized within the Special Terms and Conditions of the Contract. Portable media includes any data storage that can be detached or removed from a computer and transported. If so authorized, the data shall be given the following protections:
 - a. Encrypt the data with a key length of at least two hundred fifty-six (256) bit AES using an industry standard algorithm.
 - b. Control access to devices with a Unique User ID and hardened password or stronger authentication method such as physical token or biometrics.
 - c. Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity, if this feature is

- available. Maximum period of inactivity is twenty (20) minutes.
- d. Physically protect the portable device(s) and/or media by:
 - i. Keeping them in locked storage when not in use
 - ii. Using check-in/check-out procedures when they are shared, and
 - iii. 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:
 - a. Transmitting the data within the WAHBE network or Contractor's internal network, or;
 - b. 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 drives, portable hard disks, Zip or similar disks)	Using a “wipe” utility which will overwrite the data at least three (3) times using either random or single character data, or Degaussing sufficiently to ensure that the data cannot be reconstructed, or Physically destroying the disk
Paper documents with sensitive or confidential data	Shredded and recycled through a Contracted firm provided the Contract with the recycler assures that the confidentiality of data will be protected
Paper documents containing confidential information requiring special handling (e.g. protected health information)	On-site shredding by a method that renders the data unreadable, crosscut shredding, pulping, or incineration
Optical discs (e.g. CDs or DVDs)	Incineration, shredding, or cutting/breaking into small pieces
Magnetic tape	Degaussing, incinerating or crosscut shredding

10. Data shared with Subcontractors: If WAHBE data provided under this Contract is to be shared with a Subcontractor; the Contract with the Subcontractor shall include all the data security provisions in this Contract and any Amendments, attachments, or exhibits to this Contract.

11. Notice of Unauthorized Disclosure or Security Breach. Contractor shall immediately notify WAHBE of:

- a. Unauthorized disclosure or use of any WAHBE Data;
- b. Any breaches of security that may compromise the WAHBE data or Contractor’s ability to safeguard WAHBE data;
- 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.

EXHIBIT E
Washington Health Benefit Exchange
Subcontractor Utilization Statement
(Use Additional Sheets as Necessary)

THIS FORM MUST BE RETURNED DIRECTLY TO CONTRACTS@WAHBEXCHANGE.ORG

Prime Contractor	Contract Number: HBE-
Mailing Address: (PO BOX is OK):	
City, State, Zip Code:	

I DO NOT PLAN TO USE SUBCONTRACTORS - OR - LIST ALL SUBCONTRACTORS YOU PLAN TO USE BELOW:

Firm Name:	
Address:	Federal I.D. Number:
City, State, Zip Code:	UBI Number:
Description of Work to be Sub-let:	
Business Diversity Classification: None/Not Applicable <input type="checkbox"/> Minority-Owned <input type="checkbox"/> Veteran-Owned <input type="checkbox"/> Small Business <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Certification Number (if applicable)	

Firm Name:	
Address:	Federal I.D. Number:
City, State, Zip Code:	UBI Number:
Description of Work to be Sub-let:	
Business Diversity Classification: None/Not Applicable <input type="checkbox"/> Minority-Owned <input type="checkbox"/> Veteran-Owned <input type="checkbox"/> Small Business <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Certification Number (if applicable)	

Authorized Prime Contractor Signature: **Printed Name:** **Date:**

REQUIRED: Attach the following for each Subcontractor that will work under this Contract:

1. Resume
2. Three (3) professional references