

Contract No. HBE-xxx	Subrecipient* <input type="checkbox"/> Yes <input checked="" type="checkbox"/> NO
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CONTRACT NO. HBE-xxx

**CONTRACT FOR PRODUCTS AND SERVICES
BETWEEN
WASHINGTON HEALTH BENEFIT EXCHANGE
AND**

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

(contractor name)
(address)
(city, state zip)
Phone:
FAX:
Email:
WA State UBI Number:

1. IT IS MUTUALLY AGREED THAT:

The purpose of this contract is to provide the Washington Health Benefit Exchange with <enter detailed description of the contract purpose> services to meet needs of the Washington Health Benefit Exchange. The Contractor will perform the WAHBE responsibilities and duties, as defined in Statements of Work, throughout the term of the resulting Contract.

As fully described in Exhibit C *Statement of Work*, the Contractor will assume full responsibility of the following activities:

2. SPECIAL TERMS AND CONDITIONS

Under no circumstances will contractors perform any work until this Contract and any subsequent Statement of Work (SOW) have been fully executed. Any work performed without a properly executed Contract, Statement of Work, or amendment will be at the Contractor's risk. The Exchange is under no obligation to pay for work performed without properly executed authorization.

3. SCOPE OF WORK

- A. Exhibit A, attached hereto and incorporated by reference, contains the *General Terms and Conditions* governing work to be performed under this contract, the nature of the working relationship between the Exchange and the Contractor, and specific obligations of both parties.
- B. The Contractor will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth in Exhibit C, Statement of Work, attached hereto and incorporated by reference herein and any other Statement of Work entered into by the parties under this Contract.

All written reports and invoices required under this Contract must be delivered to the Contract Manager, in accordance with the schedule in Exhibit C, Statement of Work.

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

4. PERIOD OF PERFORMANCE

The period of performance under this Contract will be from Enter Start Date, or from the Date of execution, whichever is later, through Enter End Date, unless sooner terminated as provided herein. No billable activity may take place until this Contract has been signed by both parties. The Exchange may extend this Contract through Enter Final End Date, in whatever time increments the Exchange deems appropriate. Notwithstanding the foregoing, no extension of this Contract will extend the Statement of Work, which may only be changed by written agreement of both parties.

5. PRICING AND ADJUSTMENT

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

6. COMPENSATION

The Maximum Not-To-Exceed Compensation, which includes any allowable expenses, payable to the Contractor for satisfactory performance of the work under this Contract shall not exceed Dollars (\$).

Contractor and WAHBE agree that timely completion by Contractor of all Work and delivery of any Work Products is critical, and no additional compensation shall be paid unless the Statement of Work (Exhibit C) under the Contract is expanded by written amendment executed by authorized representatives of the Contractor and WAHBE. WAHBE shall make payment to the Contractor upon receipt and acceptance of specified deliverables and accompanying properly executed invoices.

6.1 Compensation for Services

Contractor's compensation for services rendered shall be based on:

- Rates and/or deliverables identified in Exhibit C, Statement of Work
The Statement of Work details maximum payment amounts per Activity. These amounts may not be exceeded without prior written approval from the HBE Contract Manager.
- The following rates for any additional services performed under authority of this contract

6.2 Expenses

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 the Exchange as reimbursable and stated in the Statement of Work.

Such expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. Contractor shall receive compensation for travel expenses at current Washington Health Benefit Exchange travel reimbursement rates. To receive reimbursement, Contractor must provide a detailed breakdown of authorized expenses, identifying what was expended and when.

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

7. INVOICES AND BILLING PROCEDURES

The Exchange will pay Contractor upon receipt of properly completed invoices, which shall be submitted to the Project Manager not more often than monthly. If invoices are submitted less frequently than monthly, Exchange may request monthly estimate of fees incurred.

NOTE: Payment can also be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the Contract, payment at conclusion of the Contract, etc.

The invoices shall describe and document to the Exchange's satisfaction a description of work performed, the progress of the project, and fees. The invoice shall include the Contract reference number HBE-XXX. 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 in order to receive reimbursement.

All invoices must be submitted to the Project Manager, and must meet with the approval of the Project Manager or his/her designee prior to payment. The Project Manager is responsible for review of invoices submitted and authorize contractor payments, which such authorization shall not be unreasonably withheld. The review shall ensure the authorized amount is not exceeded and reviewed by the Finance Team to assure that the dollar limit established by this Contract will not be exceeded by the sum of all Work Orders executed.

Contractor shall only submit invoices for services or deliverables as permitted by this section of the Contract. The Exchange will return incorrect or incomplete invoices to the Contractor for correction and reissue. The Contract number must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract. Invoices must reference this Contract number and provide detailed information as requested by Exchange. If the Statement of Work specifies multiple deliverables, description of work shall specify the applicable deliverable number, and completion date.

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

Payment shall be sent to the address designated by the Contractor, unless the Exchange has opted to use electronic fund transfer.

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

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

Note: WAHBE has designated this Contractor as a "Vendor".

8. CONTRACT MANAGEMENT

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

Contract Manager for Contractor is:

(CONTRACT MANAGER NAME)
(ADDRESS)

(CITY, STATE ZIP)

Phone:

FAX:

Email:

Contract Manager for Exchange is:

Kelly Boston
WA Health Benefit Exchange
810 Jefferson Street (mailing address-Post Office Box 657, Olympia, WA 98507)
Olympia, WA 98504
Phone: (360) 688-7747
E-mail address: kelly.boston@wahbexchange.org

9. Notices

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

10. ASSURANCES

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

11. 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 basic Contract instrument
- Exhibit A – General Terms and Conditions
- Exhibit B – Federal Certifications and Assurances
- Exhibit C - Statement of Work
- Exhibit D – Data Security Requirements
- Enter RFP, RFQ, or RFQQ and Date released
- Contractor's Response to Enter RFP, RFQ, or RFQQ and Date released
- Any other provision, term or material incorporated herein by reference or otherwise incorporated

12. ENTIRE AGREEMENT

This Contract including referenced exhibits 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.

13. 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.

14. APPROVAL

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

THIS CONTRACT, consisting of Enter # pages and Enter # attachments, is executed by the persons signing below who warrant that they have the authority to execute the Contract.

<CONTRACTOR>

WASHINGTON HEALTH BENEFIT EXCHANGE

Signature

Signature

Title

Date

Title

Date

SAMPLE

**EXHIBIT A
GENERAL TERMS AND CONDITIONS**

1. DEFINITIONS

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

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

2. ADVANCE PAYMENTS PROHIBITED

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

3. AMENDMENTS

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

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

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

5. ASSIGNMENT

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

6. ATTORNEYS' FEES

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

7. Background and Reference Checks

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

8. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

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

9. CONFLICT OF INTEREST

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

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

10. COPYRIGHT PROVISIONS

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

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

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

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

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

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

11. COVENANT AGAINST CONTINGENT FEES

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

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

12. DISALLOWED COSTS

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

13. DISPUTES

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

1. The request for a dispute hearing must:

- Be in writing;
- State the disputed issue(s);
- State the relative positions of the parties;
- State the CONTRACTOR'S name, address, and Contract number; and
- Be mailed to the AGENT and the other party's (respondent's) Contract Manager within 3 working calendar days after the parties agree that they cannot resolve the dispute.

2. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working calendar days.

3. The AGENT shall review the written statements and reply in writing to both parties within 10 working days. The AGENT may extend this period if necessary by notifying the parties.

4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

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

14. DUPLICATE PAYMENT

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

15. GOVERNING LAW

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

16. INDEMNIFICATION

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

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

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

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

17. INDEPENDENT CAPACITY OF THE CONTRACTOR

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

18. INDUSTRIAL INSURANCE COVERAGE

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

19. INSURANCE

- 19.1. Upon execution of the Contract, and during the remaining term of this Contract, Contractor shall maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor shall provide written notice of such to WAHBE within one Business Day of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may result in this Contract's termination.
- 19.2. The minimum acceptable limits shall be as indicated below for each of the following categories:

- a. Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate
 - b. Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
 - c. Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;
 - d.
 - e. Crime Coverage with a deductible not to exceed \$1 million, and coverage of not less than \$2 million single limit per occurrence and \$2 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; and Employee Dishonesty.
- 19.3. Contractor must provide HBE with a complete copy of the contractor's insurance policy, verifying compliance with the above stated limits and endorsements. Certificates of Liability Insurance (COIs) are not sufficient and will not be accepted as verification of coverage.
- 19.4. Premiums on all insurance policies shall be paid by Contractor or its Subcontractors. Such insurance policies shall name WAHBE as an additional insured on all general liability and umbrella policies.
- 19.5. Insurance policies shall not be canceled or nonrenewed in scope of coverage without provision for equivalent substitute insurance. Contractor's insurance policies shall not be reduced in scope without WAHBE's prior written consent.
- 19.6. Contractor agrees to waive all rights of subrogation against WAHBE for losses arising from services performed by Contractor under this Contract.
- 19.7. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the WAHBE and shall include a severability of interests (cross-liability) provision.
- 19.8. Contractor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate insurance policies and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.
- 19.9. Contractor shall furnish to WAHBE copies of insurance policies of all required insurance within 30 calendar days of this Contract's Effective Date, and copies of renewal certificates of all required insurance within 30 calendar days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section.

20. LICENSING, ACCREDITATION AND REGISTRATION

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

21. LIMITATION OF AUTHORITY

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

22. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

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

23. NONDISCRIMINATION

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

24. NON-SOLICITATION

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

25. PRIVACY

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

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

26. PUBLICITY

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

27. RECORDS MAINTENANCE

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

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

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

28. REGISTRATION WITH DEPARTMENT OF REVENUE

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

29. RIGHT OF INSPECTION

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

30. SAVINGS

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

31. SEVERABILITY

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

32. SITE SECURITY

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

33. SUBCONTRACTING

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

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

34. SURVIVORSHIP

All license and purchase transactions executed and services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, prices and price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled; Confidentiality/Safeguarding Of Information; Copyright Provisions; Incorporated Documents and Order of Precedence; Limitation of Liability; Publicity; Disputes; Records Maintenance, Vendor's Commitments; Vendor's Proprietary Information; and Warranties and Representations shall survive the termination of this Contract.

35. TAXES

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

36. TERMINATION FOR CAUSE

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

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

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

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

37. TERMINATION FOR CONVENIENCE

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

38. TERMINATION FOR FUNDING CONTINGENCY

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

39. TERMINATION PROCEDURES

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

The EXCHANGE shall pay to the CONTRACTOR the agreed upon price, if separately stated, for completed work and services accepted by the EXCHANGE, and the amount agreed upon by the CONTRACTOR and the EXCHANGE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by the EXCHANGE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the AGENT shall determine the extent of the liability of the EXCHANGE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The EXCHANGE may withhold from any amounts due the CONTRACTOR such sum as the AGENT determines to be necessary to protect the EXCHANGE against potential loss or liability.

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

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

1. Stop work under the Contract on the date, and to the extent specified, in the notice;
2. 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;
3. Assign to the EXCHANGE, in the manner, at the times, and to the extent directed by the AGENT, all of the rights, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, in which case the EXCHANGE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the AGENT to the extent AGENT may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the EXCHANGE and deliver in the manner, at the times, and to the extent directed by the AGENT any property which, if the Contract had been completed, would have been required to be furnished to the EXCHANGE;
6. Complete performance of such part of the work as shall not have been terminated by the AGENT; and
7. Take such action as may be necessary, or as the AGENT may direct, for the protection and preservation of the property related to this contract, which is in the possession of the CONTRACTOR and in which the EXCHANGE has or may acquire an interest.

40. TREATMENT OF ASSETS

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

41. U.S. Department of Treasury, Office of Foreign Assets Control

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

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

42. CONTRACTOR'S PROPRIETARY INFORMATION

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

43. WAIVER

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

EXHIBIT B

FEDERAL COMPLIANCE, CERTIFICATIONS, AND ASSURANCES

In the event federal funds are included in this agreement, 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.

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

Carole Holland
WA Health Benefit Exchange
810 Jefferson Street (mailing address-PO Box 657, Olympia WA 98507)
Olympia, WA 98504
(360) 688-7720
Fax: (360) 688-7332
Email address: carole.holland@wahbexchange.org

- a. Source of Funds:** Federal funds to support this agreement are identified by the Catalog of Federal Domestic Assistance (CFDA) number 93.525, the full and complete terms and provisions of which are hereby incorporated into this agreement can be found by reference in Exhibit E.
- b. Modifications:** This agreement may not be modified or amended, nor may any term or provision be waived or discharged, including this particular Paragraph, except in writing, signed upon by both parties.
- 1.** Examples of items requiring Washington Health Benefit Exchange prior written approval include, but are not limited to, the following:
 - i.** Deviations from the budget and Project plan.
 - ii.** Change in scope or objective of the agreement.
 - iii.** Change in a key person specified in the agreement.
 - iv.** The absence for more than three months or a 25% reduction in time by the Project Manager/Director.
 - v.** Need for additional funding.
 - vi.** Inclusion of costs that require prior approvals as outlined in the appropriate cost principles.
 - vii.** Any changes in budget line item(s) of greater than twenty percent (20%) of the total budget in this agreement.
 - 2.** No changes are to be implemented by the Sub-recipient/vendor until a written notice of approval is received from the Health Benefit Exchange.
- c. Condition for Receipt of Health Benefit Exchange Funds:** Funds provided by Washington Health Benefit Exchange to the Sub-recipient/vendor under this agreement may not be used by the Sub-recipient/vendor as a match or cost-sharing provision to secure other federal monies.

- d. *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” must make a citizenship/qualified alien determination/ verification of applicants at the time of application as part of the eligibility criteria. Non-US citizens and unqualified aliens are not eligible to receive the services. PL 104-193 also includes specific reporting requirements.
- e. *Federal Compliance:* The Sub-recipient/vendor shall comply with all applicable State and Federal statutes, laws, rules, and regulations in the performance of this agreement, whether included specifically in this agreement or not.
- f. *Civil Rights and Non-Discrimination Obligations* During the performance of this agreement, 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>

Exchange Federal Compliance Contact Information
 Washington Health Benefit Exchange
 810 Jefferson Street (mailing address-PO Box 657, Olympia WA 98507)
 Olympia, Washington 98504

IV. STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES - Following are the Assurances, Certifications, and Special Conditions that apply to all federally funded (in whole or in part) agreements administered by the Washington Health Benefit Exchange.

CERTIFICATIONS

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 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 calendar days after such conviction;
- e) Notifying the agency in writing within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every contract officer or other designee on 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 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, the EXCHANGE has designated the following central point for receipt of such notices:

Legal Services Director
WA Health Benefit Exchange
PO Box 657
Olympia, WA 98501

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

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 must disclose lobbying undertaken with non-Federal (nonappropriated) 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:

- (1) 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.
- (2) 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

- (3) The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subcontracts, and contracts under grants, loans and cooperative agreements) and that all Sub-recipient/vendors 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 and not more than \$100,000 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 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/vendors shall certify accordingly.

The Public Health Services strongly encourages all recipients to provide a smoke-free workplace and promote the non-use of tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

6. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS INSTRUCTIONS FOR CERTIFICATION

- 1) By signing and submitting this proposal, the prospective contractor is providing the certification set out below.
- 2) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective contractor to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency

determined to enter into this transaction. If it is later determined that the prospective contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

- 4) The prospective contractor shall provide immediate written notice to the department or agency to whom this contract is submitted if at any time the prospective contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to whom this contract is submitted for assistance in obtaining a copy of those regulations.
- 6) The prospective contractor agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the EXCHANGE.
- 7) The prospective contractor further agrees by submitting this contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," provided by HHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List (of excluded parties).
- 9) Nothing contained in the foregoing shall be construed to require establishment of a system

of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

certification, such prospective contractor shall attach an explanation to this proposal.

10) Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the EXCHANGE may terminate this transaction for cause or default.

7. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

- 1)** The prospective contractor certifies to the best of its knowledge and belief, that it and its principals:
- 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-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 for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - d)** Have not within a three-year period preceding this contract had one or more public transactions (Federal, State or local) terminated for cause or default.
- 2)** Where the prospective contractor is unable to certify to any of the statements in this

CONTRACTOR SIGNATURE REQUIRED

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

Exhibit D – Data Security Requirements

1. Definitions.

- a. “Authorized User(s)” means an individual or individuals with an authorized business requirement to access EXCHANGE Confidential Information.
- b. “Hardened Password” means a string of at least eight characters including 1 upper case, 1 lower case, one number and 1 special character (i.e., nonalphanumeric characters). The administrator and 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 Userids, First Name or the last name of the user. “Transmitting” means the transferring of data electronically, such as via email.
- c. “Transmitting” means the transferring of data electronically, such as via email.
- d. “Transporting” means the physical transferring of data that has been stored.
- e. “Unique User ID” means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase, or other mechanism, authenticates a user to an information system.

2. Data Transmitting. When transmitting EXCHANGE Confidential Information electronically, including via email, the Data shall be protected by:

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

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

- a. Hard disk drives. Data stored on local workstation hard disks. Access to the Data will be restricted to Authorized User(s) by requiring logon to the local workstation using a Unique User ID and Hardened Password or other authentication mechanisms which provides equal or greater security, such as biometrics or smart cards. The data on the drive will only be accessible to authenticated individuals that need to access it. That is, the data will be secured on the disk in such a way that other authenticated individuals that do not need access to the data will not have the ability to access it. Workstations with sensitive data stored on them will 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 will be documented. Hard drives that have contained sensitive data will be wiped with a method that will render the deleted information irretrievable.

- b. Network server disks. Data stored on hard disks mounted on network servers and made available through shared folders. Access to the Data will be restricted to Authorized Users through the use of access control lists which will grant access only after the Authorized User has authenticated to the network using a Unique User ID and Hardened Password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on disks mounted to such servers must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.

For EXCHANGE Confidential Information stored on these disks, deleting unneeded Data is sufficient as long as the disks remain in a Secured Area and otherwise meet the requirements listed in the above paragraph. Destruction of the Data as outlined in Section 5. Data Disposition may be deferred until the disks are retired, replaced, or otherwise taken out of the Secured Area.

- c. Removable Media, including Optical discs (CDs or DVDs) in local workstation optical disc drives and which will not be transported out of a secure area. Sensitive or Confidential Data provided by the EXCHANGE on removable media, such as optical discs or USB drives, which will be used in local workstation optical disc drives or USB connections shall be encrypted with 128-bit AES encryption or better. When not in use for the contracted purpose, such discs must be locked in a drawer, cabinet or other container to which only authorized users have the key, combination or mechanism required to access the contents of the container. Workstations which access EXCHANGE Data on optical discs must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
- d. Optical discs (CDs or DVDs) in drives or jukeboxes attached to servers and which will not be transported out of a secure area. Data provided by the EXCHANGE on optical discs which will be attached to network servers shall be encrypted with 128-bit AES encryption or better. Access to Data on these discs will be restricted to authorized users through the use of access control lists which will grant access only after the authorized user has been authenticated to the network using a unique user ID and complex password or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Data on discs attached to such servers must be located in an area which is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
- e. Paper documents. All paper records must be protected by storing the records in a secure area which is only accessible to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.

- f. Access via remote terminal/workstation over the State Governmental Network (SGN) or WA Health Benefit Exchange network (EXCHANGE Network). Data accessed and used interactively over the SGN or EXCHANGE Network. Access to the Data will be controlled by EXCHANGE staff who will issue authentication credentials (e.g. a unique user ID and complex password) to authorized contractor staff. Contractor shall have established and documented access termination procedures for existing staff with access to EXCHANGE Data. These procedures shall be provided to EXCHANGE staff upon request. The Contractor will notify EXCHANGE staff immediately whenever an authorized person in possession of such credentials is terminated or otherwise leaves the employment of the contractor, and whenever a user's duties change such that the user no longer requires access to perform work for this Contract.
- g. Access via remote terminal/workstation over the Internet through Secure Access Washington. Data accessed and used interactively over the Internet. Access to the Data will be controlled by EXCHANGE staff who will issue remote access authentication credentials (e.g. a unique user ID and complex password) to authorized contractor staff. Contractor will notify EXCHANGE staff immediately whenever an authorized person in possession of such credentials is terminated or otherwise leaves the employ of the contractor and whenever a user's duties change such that the user no longer requires access to perform work for this Contract.
- h. Data storage on portable devices or media.
 - (1) EXCHANGE Data shall not be stored by the Contractor on portable devices or media unless specifically authorized within the Special Terms and Conditions of the contract. If so authorized, the Data shall be given the following protections:
 - (a) Encrypt the Data with a key length of at least 128 bits using an industry standard algorithm (e.g., AES, *Twofish*, *RC6*, etc.)
 - (b) Control access to devices with a unique user ID and password or stronger authentication method such as a physical token or biometrics.
 - (c) Manually lock devices whenever they are left unattended and set devices to lock automatically after a period of inactivity, if this feature is available. Maximum period of inactivity is 20 minutes.Physically protect the portable device(s) and/or media by
 - (d) Keeping them in locked storage when not in use
 - (e) Using check-in/check-out procedures when they are shared, and
 - (f) Taking frequent inventories
 - (2) When being transported outside of a secure area, portable devices and media with confidential EXCHANGE Data must be under the physical control of contractor staff with authorization to access the Data.

- (3) Portable devices include any small computing device that can be transported. They include, but are not limited to; handhelds/PDAs/phones, Ultramobile PCs, flash memory devices (e.g. USB flash drives, personal media players), and laptop/notebook/tablet computers.
- (4) Portable media includes any Data storage that can be detached or removed from a computer and transported. They include, but are not limited to; optical media (e.g. CDs, DVDs), magnetic media (e.g. floppy disks, tape, Zip or Jaz disks), USB drives, or flash media (e.g. CompactFlash, SD, MMC).

4. Data Segregation.

- a. EXCHANGE Data must be segregated or otherwise distinguishable from non-EXCHANGE Data. This is to ensure that when no longer needed by the contractor, all EXCHANGE Data can be identified for return or destruction. It also aids in determining whether EXCHANGE Data has or may have been compromised in the event of a security breach.
- b. EXCHANGE Data will be kept on media (e.g. hard disk, optical disc, tape, etc.) which will contain no non-EXCHANGE Data. Or,
- c. EXCHANGE Data will be stored in a logical container on electronic media, such as a partition or folder dedicated to EXCHANGE Data. Or,
- d. EXCHANGE Data will be stored in a database which will contain no non-EXCHANGE Data. Or,
- e. EXCHANGE Data will be stored within a database and will be distinguishable from non-EXCHANGE Data by the value of a specific field or fields within database records. Or,
- f. When stored as physical paper documents, EXCHANGE Data will be physically segregated from non-EXCHANGE Data in a drawer, folder, or other container.
- g. When it is not feasible or practical to segregate EXCHANGE Data from non-EXCHANGE Data, then both the EXCHANGE Data and the non-EXCHANGE Data with which it is commingled must be protected as described in this exhibit.

5. Data Disposition. When the contracted work has been completed or when no longer needed, except as noted in 2.b above, Data shall be returned to the EXCHANGE or destroyed. Media on which Data may be stored and associated acceptable methods of destruction are as follows:

Data stored on:	Will be destroyed by:
Server or workstation hard disks, or Removable media (e.g. floppies, USB flash drives, portable hard disks, Zip or similar disks)	Using a "wipe" utility which will overwrite the Data at least three (3) times using either random or single character Data, or Degaussing sufficiently to ensure that the Data cannot be reconstructed, or Physically destroying the disk

Paper documents with sensitive or confidential Data	Recycling through a contracted firm provided the contract with the recycler assures that the confidentiality of Data will be protected.
Paper documents containing confidential information requiring special handling (e.g. protected health information)	On-site shredding by a method that renders the Data unreadable, pulping, or incineration
Optical discs (e.g. CDs or DVDs)	Incineration, shredding, or cutting/breaking into small pieces.
Magnetic tape	Degaussing, incinerating or crosscut shredding

6. Notification of Compromise or Potential Compromise. The Contractor shall have an established and documented policy to deal with the compromise or potential compromise of Data that complies with the HITECH Act of ARRA 209. The Contractor shall provide EXCHANGE staff of such policy upon request. The compromise or potential compromise of EXCHANGE shared Data must be reported to the EXCHANGE Contact designated on this Contract within one (1) business day of discovery.

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