

**CONTRACT FOR SERVICES PERFORMED
BY AND BETWEEN
STATE OF WISCONSIN/
THE DEPARTMENT OF HEALTH SERVICES
AND
DELOITTE CONSULTING LLP
FOR
THE WISCONSIN eHEALTH PROGRAM**

This Contract (“Contract”), effective as of January 1, 2015, is made and entered into by and between the Department of Health Services (DHS) (“the Department”), State of Wisconsin (“the State”) and Deloitte Consulting LLP (“the Contractor”).

WHEREAS, the Department issued **Request for Proposals (“RFP”) S-0190 DHCAA-14** soliciting bids/proposals to establish a set of Contracts as a purchasing vehicle for Authorized Users to 1) procure Health Information Technology (HIT) Services Suppliers’ Contracted Personnel for HIT-related projects at set Ceiling Bill Rates for specific job titles and levels, 2) establish a single uniform Rate Card with Ceiling Bill Rates for the job titles and levels, and 3) award the Department of Health Services’ Medicaid EHR Incentive Program Administration scope of work in Section 5.2 of the RFP to the Contractor with the highest total score on its Material and Cost proposals.

WHEREAS, the Contractor responded to said solicitation, and the Department has elected to enter into an arrangement whereby Contractor will provide services in accordance with the RFP and any applicable Statements of Work assigned to Contractor as a result of the RFP or through a subsequent Request for Services (“RFS”) under this Contract.

NOW, THEREFORE, in consideration of the mutual responsibilities and agreements set forth herein and in any Exhibits attached hereto and incorporated herein by reference, the Department and the Contractor agree as follows:

1. DEFINITIONS

Words and terms shall be given their ordinary and usual meanings. Unless negotiated otherwise by the parties, where capitalized, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

“Acceptance” shall mean the approval process described in Section 7, Approval of Deliverables.

“Agency” means an office, department, agency, institution of higher education, association, society or other body in the State of Wisconsin government created or authorized to be created by the State Constitution or any State law, which is entitled to expend moneys appropriated by State law, including the State legislature and the State courts.

“Authorized User” means the Department, any State Agency, University of Wisconsin campus, or other State public body authorized to use statewide contracts, including federally recognized Indian tribes and

bands in this State, as established in §§ 16.70 (1b), (2), (4) and (8), 16.73 and 66.0301 of the Wisconsin Statutes and § PRO-D-30 of the State Procurement Manual.

“Bill Rate(s)” means the hourly rate an Authorized User is charged for Contracted Personnel time worked.

“Business Day” means any day on which the Contracting Agency is open for business, generally Monday through Friday unless otherwise specified in this Contract.

“Confidential Information” shall mean the term as defined in Section 14, Confidential, Proprietary, and Personally Identifiable Information. Confidential Information may include, but is not limited to: (i) non-public Personally Identifiable Information (excluding Protected Health Information (as such term is defined in the Health Insurance Portability and Accountability Act of 1996) covered by a Business Associate Agreement (as such term is defined in Section 14.d hereof) entered into by an Authorized User and Contractor in connection with an Engagement (as such term is defined below) ; (ii) non-public information related to the State’s, Contractor’s, or Authorized User’s employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all non-public information or materials derived therefrom or based thereon; (iii) information expressly designated as confidential in writing by the disclosing party; or (iv) non-public individually identifiable health information that is not covered by the Health Insurance Portability and Accountability Act of 1996 pursuant to a Business Associate Agreement entered into by an Authorized User and the Contractor in connection with an Engagement.

“Contractor” means an individual, business, or agency that enters into a written contractual agreement to provide Services and Deliverables to the State or Authorized Users executing Engagement Letters and SOWs. A Contractor may be a service provider, a supplier of products, a manufacturer, or a consultant.

“Contracted Personnel” means Contractor’s employees or other personnel (including officers, agents, and Subcontractors) provided by the Contractor to perform work under this Contract for an Engagement with an Authorized User.

“Contractor Technology” means all works of authorship, materials, information, and other intellectual property created prior to or independently of the performance of the Services, or created by Contractor or its Subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon.

“Contracting Agency” means the State Agency entering into this Contract on behalf of the State.

“Day” means calendar day unless otherwise specified in this Contract.

“DHS Premises” means any and all physical locations through which the Department conducts business or renders services to its clients including, but not limited to, 1 West Wilson, Madison, Wisconsin, and all institutions affiliated with and under the control of the Department.

“Default” means the omission or failure to materially perform a contractual duty or materially provide Services or Deliverables as contractually required.

“Engagement” means the provision of Services to and completion of Deliverables for an Authorized User upon the assignment of Contracted Personnel for specific work and Deliverables under an Engagement Letter and SOW pursuant to the Request for Proposals (“RFP”) S-0190 DHCAA-14, Section 5.2 or a subsequent Request for Services issued under this Contract.

“Engagement Letter” means the document executed between an Authorized User and the Contractor to assign a specific scope of work from the RFP or a subsequent RFS to the Contractor under this Contract. The Engagement Letter includes a Statement of Work (SOW). The template for the Engagement Letter is provided in Exhibit B of this Contract.

“Deliverables” means any works of authorship, materials, information, and other intellectual property the Contractor or its Subcontractors create for delivery to the Authorized User as a result of Services as specified in the Engagement Letter and associated Statement of Work.

“Personally Identifiable Information” means an individual’s last name and the individual’s first name or first initial, in combination with and linked to any of the following elements, if that element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable: (a) the individual’s Social Security number; (b) the individual’s driver’s license number or state identification number; (c) the number of the individual’s financial account, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual’s financial account; (d) the individual’s DNA profile; or (e) the individual’s unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation, and any other information protected by state or federal law. For the purposes of this Contract, Personally Identifiable Information shall not include Protected Health Information as such term is defined by the Health Insurance Portability and Accountability Act of 1996.

“Municipality” includes a county, city, village, town, school district, federally recognized Indian tribe, school board of directors, sewer district, drainage district, vocational, technical, and adult education district or other public or Quasi-public Corporation, board, or other body having authority to award public contracts within the State.

“Parties” collectively refers to the Contractor and the Department and/or Authorized User, as applicable.

“Rate Card” means the document displaying the not-to-exceed ceiling Bill Rates established in the Contract.

“Request for Services (RFS)” means the document that includes the job title, job duties, skill sets, qualifications, deliverables, and overall specifications used to request and identify suitable candidates to fulfill an Authorized User’s service need. Request for Services is also used when referring to the entire end-to-end process conducted by the Authorized User to procure and hire Contracted Personnel under this Contract.

“State Purchase Order” means the State’s standard document of purchase.

“Services” means all services provided by the Contractor necessary to fulfill that which the Contractor is obligated to accomplish as described pursuant to a respective Engagement Letter and SOW.

“State” means the State of Wisconsin.

“Statement of Work (SOW)” means a formal document that captures and defines the work activities, services, Deliverables, and timeline the Contractor must execute in performance of specified work for the Authorized User. The SOW is included with the executed Engagement Letter and is updated from time to time upon the mutual agreement of the Authorized User’s representative and the Contractor.

“Subcontract” means a contract between the Contractor and Subcontractor to fulfill the requirements and performance obligations of this Contract.

“Subcontractor” means an entity that enters into a contract with the Contractor for the purpose of providing Services to or completing Deliverables for an Authorized User under an Engagement Letter and SOW.

2. SCOPE OF THIS CONTRACT. This Contract states the terms and conditions under which the Contractor will provide Services as detailed in RFP S-0190 DHCAA-14, Section 5.2 and subsequent Requests for Services (RFS) made by any Authorized Users under this Contract; in Engagement Letters and Statements of Work; and in Contractor’s RFP response.

3. CONTRACT PERIOD AND COST.

a. **Term.** The initial term of this Contract shall be from January 1, 2015 through December 31, 2017. This Contract is eligible to be renewed for four (4) additional one (1) year periods if mutually agreed upon by both the State and the Contractor. Both the initial and any potential subsequent renewal funding for Engagements executed between Authorized Users and the Contractor under this Contract will be based on the availability of funding from federal, state, and/or local sources, as applicable.

b. **HIT Services Supplier Rate Card with Ceiling Bill Rates.**

- i. The Rate Card with ceiling bill rates can be found in Exhibit A. The Contractor shall use this Rate Card for all work done under this Contract. Pricing shall remain firm as specified in this Contract. Pricing adjustments (inflationary or otherwise) not specified in the Cost Proposal shall not be presumed during the Contract period.
- ii. The Contractor shall respond to any Request for Services under this Contract with bill rates at or below the ceiling bill rate listed on the Rate Card. There shall be no special or additional charges or surcharges applied to the ceiling bill rates provided in the Rate Card.

4. DESCRIPTION OF CONTRACTOR WORK / SERVICES. The Contractor will provide Services and Deliverables in accordance with this Contract, RFP S-0190 DHCAA-14, the Contractor’s Technical Proposal, subsequent Requests for Services made by any Authorized Users under this Contract, and associated Engagement Letters/Statements of Work (SOW). For each Engagement awarded to the Contractor either through RFP S-0190 DHCAA-14 or a subsequent RFS, the Contractor and the Authorized User shall complete and sign an Engagement Letter (Exhibit B) and attach a SOW which will serve as the contractual instrument for the Engagement.

5. REQUEST FOR SERVICES (RFS) PROCESS: Authorized Users of this Contract that need HIT Services Supplier Contract Personnel for an Engagement shall complete an RFS form for either individual Contracted Personnel or a team. The following information shall be included in the

Request so the Contractor can propose a suitable individual or team to fulfill the Authorized User's service need: the job title, job duties, skill sets, qualifications, deliverables, and overall specifications. The Authorized User shall email the RFS to each of the HIT Service Supplier Contractors that have entered into this Contract with the Department and include a due date and time for responses. If the Contractor chooses to respond to the Request, the Contractor shall propose a Contractor Personnel candidate or team, including resumes, and provide a resource estimate with proposed rates for each individual using the Rate Card in Exhibit A. Proposed rates shall not exceed the ceiling rates specified in the Rate Card. The Authorized User shall select the individual or team of Contracted Personnel proposed that is the best fit for the scope of work and has a resource estimate that is the best value.

6. AUTHORIZED USERS' RESPONSIBILITIES.

Authorized Users shall cooperate with the Contractor hereunder, including, without limitation, (i) providing the Contractor with a reasonable workspace, and timely access to data, information, and personnel of the Authorized User; (ii) providing experienced and qualified personnel having appropriate skills to perform their assigned tasks and duties in a competent and timely fashion; (iii) providing a stable, fully functional system infrastructure environment which will support the Services and allow the Contractor and the Authorized User to work productively; and (iv) promptly notifying the Contractor of any issues, concerns, or disputes with respect to the Services. The Authorized User shall be responsible for the performance of its personnel and agents and for the accuracy and completeness of data and information provided to the Contractor for purposes of the performance of the Services. The Authorized User acknowledges and agrees the Contractor's performance is dependent upon the timely and effective satisfaction of the Authorized User's responsibilities hereunder and timely decisions and approvals of the Authorized User in connection with the Services. The Contractor shall be entitled to rely on all decisions and approvals of the Authorized User's Program Manager or designee, provided the Authorized User's Program Manager notifies the Contractor by email or other written Notice that such Authorized User's Program Manager has delegated authority to such designee. The Authorized User shall be solely responsible for, among other things: (i) making all management decisions and performing all management functions; (ii) designating a competent manager to oversee the Services; (iii) evaluating the adequacy and results of the Services; and (iv) establishing and maintaining internal controls, including, without limitation, monitoring ongoing activities.

7. APPROVAL OF DELIVERABLES.

- a. All Deliverables prepared by the Contractor for an Authorized User shall have the written approval of the Authorized User's project director/program manager or his or her written designee that such Deliverables comply in all material respects with the requirements of the respective Engagement Letter and SOW, which approval shall not be unreasonably withheld.
- b. An Authorized User shall complete its review of a Deliverable in not more than the number of business days that is specified in the respective Engagement Letter or SOW for the Authorized User's review of such Deliverable. If not specifically identified in the Engagement Letter or SOW, then the number of business days for any Authorized User review of a Deliverable shall be no more than ten (10) business days. The Authorized User shall provide the Contractor (i) with approval of the Deliverable or (ii) with a written statement, as provided below, of the deficiencies preventing approval. Such business days shall be counted from and include the first business day following the delivery of the Deliverable to the Authorized User.

- c. The Authorized User's review and approval of Deliverables shall be solely for the purpose of determining compliance in all material respects with the applicable specifications and acceptance criteria set forth in the respective Engagement Letter and SOW and not for any other purpose, including, without limitation, format or style of the Deliverables or the incorporation at that time of additional ideas or functionality. Approval shall be granted if the Deliverable conforms in all material respects to the applicable specifications and acceptance criteria set forth in the Engagement Letter and SOW. In the event of the Authorized User's rejection of a Deliverable, the Authorized User shall provide a complete and written statement which identifies in reasonable detail, with references to the applicable specifications or acceptance criteria in the Engagement Letter and SOW, all deficiencies.
- d. The Contractor shall have thirty (30) business days to complete all such corrective actions or changes in order for such Deliverable to conform in all material respects with the requirements therefor set forth in the Engagement Letter and SOW. The count of such business days shall begin on the first business day following the Contractor's receipt of the written statement of required corrective actions or changes as set forth in subparagraph b. of this Section.
- e. The Authorized User shall have ten (10) business days to complete a review of the corrective actions or changes made to the Deliverable in response to the Authorized User's written statement of deficiencies as set forth in subparagraph b. of this Section and notify the Contractor in writing of acceptance or rejection. The count of such days shall begin on the first business day after the Authorized User receives the corrected or changed Deliverable from the Contractor. The Authorized User's review and approval of such corrected or changed Deliverable shall be solely for the purpose of determining that corrections have been made to bring the Deliverables into compliance in all material respects with the specifications and acceptance criteria set forth in the respective Engagement Letter and SOW and not for any other purpose, including, without limitation, for format, style or the incorporation of additional ideas or functionality.
- f. The Authorized User and the Contractor may mutually agree to extend the period of time allotted for any review, correction, or change under this Section. Any such extension of time shall extend the schedule for subsequent Deliverables by a corresponding amount.
- g. Notwithstanding the provisions of subparagraphs a. through f. of this Section, approval of a Deliverable shall be deemed given by the Authorized User if the Authorized User has not delivered to the Contractor a notice of deficiencies in writing for such Deliverable prior to the expiration of any period for the Authorized User's review thereof as set forth in this Section, or if the Authorized User uses the Deliverable in production. Notwithstanding the foregoing provisions of this Section, approval of corrective actions or changes with respect to a Deliverable shall be deemed given by the Authorized User if the Authorized User has not rejected in writing, in accordance with this Section, such corrective actions or changes with respect to such Deliverables prior to the expiration of any period for the Authorized User's review thereof as set forth in this Section.
- h. To the extent that any Deliverables have been approved by the Authorized User at any stage of the Contractor's performance under the respective Engagement, the Contractor shall be entitled to rely on such approval for purposes of all subsequent stages of the Contractor's performance under the respective Engagement. Upon the Authorized User's approval of each Deliverable, the Authorized User agrees that, in the event of a contradiction between the Engagement Letter and SOW and the approved Deliverable, the contradiction shall be resolved by the approved Deliverable controlling.

- i. If the Contractor is unable to correct any deficiency in a Deliverable within the period of time set forth above, the Authorized User shall be entitled, at its option, to a refund or credit of professional fees paid to the Contractor under the respective Engagement with respect to the Services giving rise to the claimed deficiency and this shall be the Authorized User's sole and exclusive remedy, and the Contractor's sole and exclusive obligation, with respect to any claim that the Deliverables do not conform to the terms of the Engagement.

8. INVOICING AND PAYMENTS. The Contractor shall provide invoices to each Authorized User on a monthly basis or other schedule agreed upon by the parties in the applicable Engagement Letter and SOW and shall include the cost status reports for any and all Services provided during that period.

- a. The invoice and payment schedule will be mutually agreed upon by the Contractor and each Authorized User and included in the respective Engagement Letter.
- b. The Contractor acknowledges and agrees it is entitled to compensation only for Services and expenses as set forth in the applicable Engagement Letter.
- c. Authorized User acknowledges that temporary living reimbursements to Contractor's personnel who are considered to be away from home per the IRS when they are working for the Authorized User may be deemed compensatory under federal, state, and local tax laws if such personnel's assignment in a particular location will exceed or has exceeded one year. The parties shall cooperate in good faith to limit the duration of a person's assignment in a particular location to less than one year.

9. PROMPT PAYMENT. The Authorized User shall pay properly submitted Contractor invoices within 30 days of receipt, providing that the Services to be provided to the Authorized User have been delivered and rendered as specified in the applicable Engagement Letter and SOW.

- a. A properly submitted invoice is defined as one that is submitted in accordance with instructions contained on the Authorized User's Purchase Order, includes a reference to the proper Purchase Order number, and is submitted to the proper address for processing.
- b. If the Authorized User fails to pay a properly submitted invoice within 30 days of receipt, it shall pay a late payment penalty as provided in s. 16.528, Wis. Stats. If the Authorized User declares a good faith dispute in regard to an invoice pursuant to s.16.528 (3)(e), Wis. Stats., it may pay any undisputed portion of said invoice, and it shall provide written notice of the good faith dispute to Contractor, describing in reasonable detail the basis of such dispute, within thirty (30) days of the Authorized User's receipt of the applicable invoice.
- c. Without limiting its rights and remedies, the Contractor shall have the right to halt or terminate Services entirely if payment for any undisputed portion of an invoice is not received within thirty (30) days of an Authorized User's receipt of an invoice, and such failure to pay by Authorized User remains uncured ten (10) days after the Authorized User's receipt of written Notice thereof from the Contractor, and Contractor shall have the right to halt the Services or immediately terminate the Services entirely for convenience if payment for the disputed portion of an invoice is not received with sixty (60) days of an Authorized User's receipt of an invoice and the total outstanding amount under the applicable Engagement exceeds a hundred thousand dollars (\$100,000), and such failure to pay by Authorized User remains uncured ten (10) days after the Authorized User's receipt of written Notice thereof from the Contractor.

10. APPLICABLE LAW AND COMPLIANCE. This Contract shall be governed by the laws of the State of Wisconsin (without giving effect to the choice of law principles thereof) and as specified in Section 15.0 of the State of Wisconsin Standard Terms and Conditions (DOA-3054), Exhibit C.

- a. Any actions arising under this Contract shall be venued in the Circuit Court of Dane County, Wisconsin or in the federal court in the Western District of Wisconsin.
- b. Whistleblower Protection. All employees working for contractors, grantees, subcontractors, and sub-grantees on federal grants and contracts are covered under Federal Statute, 41 U.S.C. 4712. Then National Defense Authorization Act (NDAA) for Fiscal Year 2013 (pub.L.112-239, enacted January 2, 2013) mandates a pilot program entitled, "Pilot Program for Enhancement of Contractor Employee Whistleblower Protections." This program requires all grantees, their sub-grantees, and subcontractors to:
 - i. Inform their employees working on any federal award they are subject to the whistleblower rights and remedies of the pilot program;
 - ii. Inform their employees providing the Services hereunder in writing of employee whistleblower protections under 41 U.S.C 4712 in the predominant native language of the workforce; and
 - iii. Contractors and grantees will include such requirements in any agreement/contract made with a subcontractor or grantee.

Employees of a contractor, subcontractor, grantee, or sub grantee may not be discharged, demoted, or otherwise discriminated against as reprisal for "whistleblowing." In addition, whistleblower protections cannot be waived by any contract, policy, form or condition of employment.

The "Pilot Program for Enhancement of Contract or Employee Whistleblower Protections" is in effect for all grant contracts, sub-grants, and subcontracts through January 1, 2017.

11. CONTRACT/ENGAGEMENT TERMINATION, CANCELLATION, AND REVISIONS.

- a. The Contractor and, as applicable, the Department or Authorized Users shall agree to negotiate in good faith a change order to this Contract and any Engagement Letters or any part thereof in such material change of circumstances as:
 - i. Increased or decreased need for Services.
 - ii. Changes required by state and federal law or regulations, or court action.
 - iii. Reduction in the monies available that affect the substance of any Engagement Letters under this Contract.
- b. **Non-Appropriation.** An Authorized User may terminate its Engagement Letter and SOW in whole or in part, without penalty, if the Wisconsin legislature, United States Congress, or any other direct funding entity contributing to the financial support of the Engagement fails to appropriate sufficient funds to carry out the respective Engagement. In the event of a partial termination, the parties shall discuss the impact on the scope of Services given the remaining available funds and in good faith attempt to renegotiate the terms of the Engagement as

necessary. Should such renegotiation fail or either party determine that the core functions of the Engagement will not be able to be performed with the remaining available funds, either party or that party, respectively, may provide thirty (30) days' Notice, or a shorter time as mutually agreed, that it will terminate the Engagement for convenience. Unless otherwise specified in such Notice, upon receipt of the Notice, the Contractor shall then wind down its work on the Engagement as soon as reasonably practicable.

- i. If an Authorized User terminates under this paragraph b of Section 11, the Authorized User shall pay the Contractor in accordance with paragraph g.i of Section 11 and shall be entitled to any refund due in accordance with paragraph g.v of Section 11.
 - ii. Notwithstanding such Notice of termination by the Contractor, the Contractor shall continue to perform services, on a time and materials basis, until the Authorized User or a successor is prepared to assume performance of the Services, for a period not to exceed six (6) months.
- c. **Contract Termination for Convenience.** The Department or the Contractor may terminate this Contract for convenience for any reason by providing a written Notice to the other party at least thirty (30) days in advance of the intended termination date. Upon receiving or delivering the Notice, unless otherwise specified in such Notice, the Contractor shall wind down its work on all Engagements in progress that were commenced through an Engagement Letter under this Contract as soon as reasonably practicable.
- i. If the Department terminates under this paragraph c. of Section 11, Authorized Users with Engagements in progress may cancel their Engagement Letters under this Contract and pay the Contractor in accordance with paragraph g.i of Section 11 and shall be entitled to any refund due in accordance with paragraph g.v of Section 11.
 - ii. If the Contractor terminates under this paragraph c of Section 11, Authorized Users with Engagements in progress may cancel their Engagement Letters under this Contract and Authorized Users shall pay the Contractor in accordance with paragraph g.ii of Section 11 and shall be entitled to any refund due in accordance with paragraph g.v of Section 11.
- d. **Engagement Termination for Convenience.** An Authorized User or Contractor may terminate an Engagement for convenience for any reason by providing a written Notice to the other party at least thirty (30) days in advance of the intended termination date. Upon receiving or delivering the Notice, unless otherwise specified in such Notice, the Contractor shall wind down its work on the Engagement in progress as soon as reasonably practicable.
- i. If an Authorized User terminates under this paragraph d of Section 11, the Authorized User shall pay the Contractor in accordance with paragraph g.i of Section 11 and shall be entitled to any refund due in accordance with paragraph g.v of Section 11.
 - ii. If the Contractor terminates under this paragraph d of Section 11, the Authorized User shall pay the Contractor in accordance with paragraph g.ii of Section 11 and shall be entitled to any refund due in accordance with paragraph g.v of Section 11.
- e. **Termination by Department or Authorized User.** The Department reserves the right to terminate this Contract, and an Authorized User reserves the right to terminate an Engagement commenced through an Engagement Letter under this Contract, without penalty, if the Contractor:

- i. Fails to materially perform any obligation required under the Contract or an Engagement Letter and SOW and fails to cure such failure within thirty (30) days of the Contractor's receipt of written Notice specifying such failure from the Department or Authorized User; provided, however, for a failure that cannot reasonably be cured within thirty (30) days, the Department or Authorized User cannot terminate the Contract or Engagement respectively at the end of the thirty (30)-day period unless the Department or Authorized User reasonably determines the Contractor has failed to take good faith actions during the Notice period to remedy the failure. In such event, the Department or Authorized User will set a new cure period that will run from the end of this thirty (30)-day Notice period;
- ii. Files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity;
- iii. Makes an assignment for the benefit of creditors;
- iv. Fails to follow the sales and use tax certification requirements of s. 77.66, Wisconsin Statutes;
- v. Incurs a delinquent Wisconsin tax liability that Contractor does not dispute and Contractor fails to cure such tax liability within thirty (30) days of the Contractor's receipt of such written Notice;
- vi. Fails to submit a non-discrimination or affirmative action plan as required herein, provided that the Department or the Authorized User shall give Contractor written Notice specifying Contractor's failure, and Contractor fails to cure such failure with thirty (30) days of the Contractor's receipt of such written Notice;
- vii. Fails to follow the non-discrimination or affirmative action requirements of Chapter 111, subch. II, Wisconsin Statutes (Wisconsin's Fair Employment Law) provided that the Department or the Authorized User shall give Contractor written Notice specifying Contractor's failure and Contractor fails to cure such failure within thirty (30) days of the Contractor's receipt of such Notice;
- viii. Becomes a state or federally debarred contractor;
- ix. Is excluded from federal contracts by the state or federal government;
- x. Fails to maintain and keep in force all required insurance, permits and licenses provided that Authorized User shall give Contractor written Notice specifying Contractor's failure and Contractor fails to cure such failure within thirty (30) days of the Contractor's receipt of such Notice;
- xi. Fails to maintain the confidentiality of an Authorized User's information that is considered a material breach of its obligations with respect to Confidential Information hereunder, and fails to cure any such failure or breach within the time period reasonably specified (which shall be at least fifteen (15) days) by the Department or Authorized User in a written Notice to the Contractor that specifies such failure or breach; or
- xii. If at any time during the term of this Contract, the Contractor's performance threatens the health or safety of a State or local government employee, citizen, or customer and the

Contractor fails to eliminate such threat within the time period reasonably specified (which shall be at least fifteen (15) days) in written Notice from the Department or Authorized User that specifies such threat(s).

In the event of any termination of this Contract, this Contract shall continue to apply to all Engagements that are in existence at the effective date of such termination unless the Authorized User terminates those Engagements and the terms of the Contract will continue to survive for Engagements not individually terminated in which the Services have not been completed. If any Engagement is terminated pursuant to this Contract, this Contract shall continue to apply to all Engagements that have not been terminated.

If an Authorized User notifies the Contractor it will terminate an Engagement commenced through an Engagement Letter under this Contract under this paragraph e of Section 11, the Contractor shall wind down its work on the Engagement in progress as soon as reasonably practicable. The Authorized User shall pay the Contractor in accordance with paragraph g.iii of Section 11 and shall be entitled to any refund due in accordance with paragraph g.v of Section 11.

- f. The Contractor may terminate this Contract or an Engagement commenced through an Engagement Letter under this Contract for the Department's or the Authorized User's failure to perform under the terms of this Contract or the Engagement Letter after providing thirty (30) days written Notice of the Department's or Authorized User's right to cure such failure. For a breach that cannot reasonably be cured within thirty (30) days, the Contractor cannot terminate at the end of the Notice period if the Contractor determines the Department or Authorized User was taking good faith actions during the Notice period to remedy the breach. In such event, the Contractor will set a new cure period that will run from the end of this thirty (30)-day Notice period. If the Contractor terminates under this Section 11.f, the Authorized User shall pay the contractor in accordance with paragraph g.iv of Section 11 and shall be entitled to any refund due in accordance with paragraph g.v of Section 11.

g. Payments and Refunds Upon Termination or Cancellation.

- i. In the event the Department terminates the Contract for convenience or an Authorized User terminates an Engagement for convenience or non-appropriation reasons, the Contractor shall be entitled to receive compensation for any payments owed by an Authorized User for completed Services the Authorized User has received for an Engagement. With respect to Services for which performance had commenced but Services were partially completed for Engagements under this Contract, the Authorized User shall compensate the Contractor an amount calculated by multiplying the labor hours for such Services prior to the effective date of termination times the then-current applicable Contractor hourly rates for the applicable positions; provided, however, that the total amount shall not exceed the total price the parties agreed upon in writing that would be payable by the Authorized User for the applicable Services, if completed, multiplied by a percentage equal to the percentage of work completed for such Services as of the effective date of termination. Any Deliverables that have not been completed but are delivered upon termination shall be delivered to the Authorized User "AS IS," with no representations, warranties, or other obligations of any kind.
- ii. In the event the Contractor terminates the Contract and/or any Engagements for convenience, the Contractor shall be entitled to receive compensation for any payments owed by an Authorized User for Services provided to the Authorized User prior to the Engagement termination. Any Deliverables that have not been completed but are delivered

upon termination shall be delivered to the Authorized User “AS IS,” with no representations, warranties, or other obligations of any kind.

- iii. In the event the Department terminates the Contract or an Authorized User terminates an Engagement for cause due to Contractor breach, the Contractor shall be entitled to receive compensation for any payments owed by an Authorized User for Services provided to the Authorized User prior to the Engagement termination. Any Deliverables that have not been completed but are delivered upon termination shall be delivered to the Authorized User “AS IS,” with no representations, warranties, or other obligations of any kind. Notwithstanding the foregoing, the Authorized User shall be entitled to all contractual and legal remedies applicable in such case.
- iv. In the event the Contractor terminates the Contract and/or Engagements for cause due to a breach by the Department or an Authorized User, the Contractor shall be entitled to receive compensation for any payments owed by an Authorized User for completed Services the Authorized User has received for Engagements under this Contract. With respect to Services for which performance had commenced for but Services were partially completed for Engagements under this Contract, the Authorized User shall compensate the Contractor an amount calculated by multiplying the labor hours for such Services prior to the effective date of termination times the then-current applicable Contractor hourly rates for the applicable positions; provided, however, that the total amount shall not exceed the total price the parties agreed upon in writing that would be payable by the Authorized User for the applicable Services, if completed, multiplied by a percentage equal to the percentage of work completed for such Services of the effective date of termination. Any Deliverables that have not been completed but are delivered upon termination shall be delivered to the Authorized User “AS IS,” with no representations, warranties, or other obligations of any kind.
- v. In the event an Engagement is terminated for any reason, the Authorized User shall be entitled to a pro-rata refund for Services paid for but not received or implemented, and the Contractor shall pay such refund within 30 days of receiving written Notice from the Authorized User requesting the refund. This refund provision does not apply to amounts paid by the Authorized User under paragraph g.i and g.iv of Section 11.
- vi. Upon termination of this Contract for any reason, or upon contract expiration, each party shall be released from all obligations to the other arising after the date of termination or expiration, except those that by their terms survive such termination or expiration.
- h. **Contract Revisions.** Revision of this Contract or any Engagement Letters must be made by mutual agreement. The revision will be effective only when the Department or Authorized User in the case of an Engagement Letter attaches an addendum or amendment to this Contract or respective Engagement Letter which is signed by the authorized representatives of both parties, except in circumstances where an increase in funds is provided by the Purchaser for the same purpose as originally agreed upon, the Engagement Letter may be amended by a unilateral amendment. The SOW included with an Engagement Letter will be a dynamic project document and will be revised and updated by mutual agreement of the Authorized User’s and Contractor’s project or program management leads or designees.
- i. The Contractor must notify an Authorized User if it is unable to provide the required quality or quantity of services specified. Prior to an Authorized User initiating a termination of the

Engagement, the Authorized User will negotiate in good faith in an attempt to agree with Contractor to a change order to any Engagement Letters or any part thereof.

12. SUBCONTRACTING.

- a. Upon written approval of the Authorized User, the Contractor may use subcontractors to complete the scope of work under RFP S-0190 DHCAA-14, Section 5.2 and specific Engagements resulting from subsequent Requests for Services made by Authorized Users under this Contract. When the Contractor enters into a sub-contractual relationship, the Authorized User reserves the right to approve the subcontractor(s) selected.
- b. Approval of the processes used by the Contractor to select a subcontractor and of the subcontractor(s) chosen by the Contractor will not be unreasonably withheld, nor will the Authorized User invoke its approval right in order to reject procedures or subcontractors on unlawful grounds.
- c. The Contractor retains responsibility for fulfillment of all terms and conditions of this Contract and any applicable Engagement Letters/SOWs when it enters into sub-contractual agreements. The Contractor continues to be subject to the enforcement of all terms and conditions of this Contract and the Engagement Letters, even when issues of noncompliance are attributable to the Contractor's subcontractor rather than the Contractor.
- d. Except as otherwise provided herein, the Contractor is not permitted to subcontract this Contract. Only the vendor awarded a Contract under RFP S-0190 DHCAA-14 may respond to RFS's for future HIT projects requiring HIT Contracted Personnel as stated in Section 1.4.3.2 of RFP S-0190 DHCAA-14.

13. PAYMENT OFFSETS FOR CONTRACTOR'S DELINQUENCY. The Authorized User may offset payments made to the Contractor under this Contract in an amount necessary to satisfy a certified or verifiable delinquent payment owed to the State.

14. CONFIDENTIAL, PROPRIETARY, AND PERSONALLY IDENTIFIABLE INFORMATION.

- a. In connection with the performance of work hereunder, it may be necessary for the Authorized User or Contractor to disclose to one another certain information that is considered to be confidential, proprietary, or containing non-public Personally Identifiable Information ("Confidential Information"). Both the Authorized User and the Contractor shall not use such Confidential Information for any purpose other than the limited purposes set forth in this Contract, and all related and necessary actions taken in fulfillment of the obligations herein. Except as otherwise agreed in Section 14.g, each party shall hold all Confidential Information in confidence, and shall not disclose such Confidential Information to any persons other than those directors, officers, personnel, and agents who have a business-related need to have access to such Confidential Information in furtherance of the limited purposes of Engagements under this Contract and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Contract.
- b. Contractor and the Authorized User shall each institute and maintain such security procedures as are commercially reasonable to maintain the confidentiality of the Confidential Information while in its possession or control including transportation, whether physically or electronically.

- c. Contractor and the Authorized User shall each endeavor to include all indications of confidentiality contained on or included in any item of Confidential Information on any reproduction, modification, or translation of such Confidential Information by the other. If requested by the other, Contractor and the Authorized User shall each make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of the other, as directed.
- d. The Contractor shall comply with the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to the extent those regulations apply to the Contractor and the Services the Contractor provides under this Contract for a particular scope of work that the Contracted Personnel may be engaged in under an Authorized User's Engagement Letter and SOW. The Contractor may be required to execute a Business Associate Agreement (BAA), and the parties will mutually agree upon the terms of such BAA. For the Engagement awarded under RFP S-0190 DHCAA-14, Section 5.2, the awarded Contractor shall negotiate and execute a BAA with the Authorized User.
- e. *Credit Monitoring and Notification Responsibilities:* If the unauthorized disclosure of Personally Identifiable Information results from a breach by Contractor of the terms of this Section 14.a-c or g, Contractor shall reimburse the Authorized User for its reasonable and direct out-of-pocket costs of (i) its notification of affected individuals who are required by law to receive such notification; and (ii) credit monitoring (including identity theft insurance for affected individuals) for no more than a period of one year from the date an individual enrolls in credit monitoring if such Personally Identifiable Information includes information that makes identity theft possible.
- f. *Equitable Relief:* The Contractor acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose information is disclosed and to the State or Authorized User, which injury will not be compensable by money damages and for which there is not an adequate remedy available by law. Accordingly, the parties specifically agree that the State or Authorized User, on its own behalf or on behalf of the affected individuals, may seek injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Contract or under applicable law.
- g. To the extent that, in connection with any Engagement under this Contract, either party (each, the "receiving party") comes into possession of any trade secrets or other proprietary or Confidential Information of the other (the "disclosing party"), it will not disclose such information to any third party without the disclosing party's consent. The disclosing party hereby consents to the receiving party disclosing such information (i) to contractors, providing administrative, infrastructure and other support services to the receiving party but only to the extent necessary to provide these services, and subcontractors providing services in connection with this engagement, in each case, whether located within or outside of the United States, provided that such contractors and subcontractors have agreed to be bound by confidentiality obligations similar to those in this paragraph, (ii) as may be required by law, regulation, judicial or administrative process, or in accordance with applicable professional standards or rules, or in connection with litigation pertaining hereto, or (iii) to the extent such information (a) shall have otherwise become publicly available (including, without limitation, any information filed with any governmental agency and available to the public) other than as the result of a disclosure in breach hereof, (b) becomes available to the receiving party on a non-confidential basis from a source other than the disclosing party which the receiving party believes is not prohibited from disclosing such information by obligation to the disclosing party, (c) is known by the receiving party prior to its receipt from the disclosing party without any obligation of confidentiality with respect thereto, or

(d) is developed by the receiving party independently of any disclosures made by the disclosing party to the receiving party of such information. In satisfying its obligations under this paragraph, each party shall maintain the other's trade secrets and proprietary or Confidential Information in confidence using at least the same degree of care as it employs in maintaining in confidence its own trade secrets and proprietary or Confidential Information, but in no event less than a reasonable degree of care. Notwithstanding anything to the contrary herein, Authorized Users acknowledge that the Contractor, in connection with performing the Services, may develop or acquire experience, skills, knowledge and ideas that are retained in the unaided memory of its personnel. The Authorized Users acknowledge and agree that the Contractor may use and disclose such experience, skills, knowledge, and ideas.

- h. The Authorized User agrees that neither the Services nor any Deliverables are intended for the express or implied benefit of any person or entity other than the Authorized User. The Authorized User further agrees that the Services and Deliverables shall not be disclosed, in whole or in part, to any person or entity other than (i) the Authorized User, (ii) other contractors of the Authorized User, to whom the Authorized User may disclose the Deliverables solely for the purpose of providing services to the Authorized User, provided that such other contractors shall not disclose the Deliverables to any person or entity, and (iii) any other person or entity upon the prior written consent of Contractor's engagement leader, which shall not be unreasonably withheld, or (vii) to the extent required by law. The Authorized User acknowledges that the Deliverables are not intended or represented to be suitable for reuse by the Authorized User or others on any other project. Any use of completed Deliverables for other projects and/or any use of incomplete Deliverables will be at the Authorized User's sole risk and without liability to Contractor.

15. NOTICE AND CHANGE OF CONTACT INFORMATION. Any Notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if in writing and delivered personally or by email or facsimile and confirmed; or three (3) business days after mailing by first-class, certified, or registered-receipt requested mail, postage pre-paid postal service to the addresses noted in the Contact Information in Section 49 of this Contract. Notices for a specific Engagement will go to the addresses noted in the Contact Information of the Engagement Letter. Each party shall provide Notice to the other of changes of such addresses.

In the event the Contractor moves or updates contact information, the Contractor shall inform the Department and any Authorized Users with active Engagements of such changes in writing within ten (10) business days. Authorized Users shall not be held responsible for payments on Purchase Orders delayed due to the Contractor's failure to provide such Notice.

16. EXAMINATION OF RECORDS. The Contractor shall establish and maintain adequate records of all expenditures relating to fees and expenses incurred under the applicable Engagement Letter and SOW. The Department and any Authorized User shall at any time during normal business hours, upon prior reasonable written notice, have access to and the right to examine, audit, and review on Contractor's premises, any of the Contractor's pertinent records relating to fees and expenses under the applicable Engagement Letter and SOW This provision shall survive the termination, cancellation, or expiration of this Contract. The Contractor will retain all such documents relating to fees and expenses which are applicable to the contract for a period of not less than three (3) years after termination of the applicable Engagement Letter and SOW. For clarification purposes, Contractor shall not be required to provide access to (i) personnel records, (ii) unrelated cost information of Contractor, (iii) confidential or proprietary information of Contractor that is not relevant to the specific purpose herein described, (iv) information of or about any third party (including Contractor's other clients), or (v) information that could (A) jeopardize or undermine

Contractor's infrastructure security or (B) result in a violation of applicable law, regulation, or professional standards or rules.

- 17. BREACH NOT WAIVER.** A failure to exercise any right, or a delay in exercising any right, power, or remedy hereunder on the part of any parties shall not operate as a waiver thereof. Any express waiver shall be in writing and shall not affect any event or default other than the event or default specified in such waiver. A waiver of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The making of any payment to the Contractor under this Contract shall not constitute a waiver of default, evidence of proper Contractor performance, or acceptance of any defective item or work furnished by the Contractor.
- 18. SEVERABILITY.** If any provision of this Contract is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract shall remain valid and in full force and effect. The invalid provision shall be replaced by a valid provision that comes closest in intent to the invalid provision, as mutually agreed by the parties.
- 19. SOVEREIGN IMMUNITY.** Nothing in this Contract shall be construed to constitute a waiver of the State's sovereign immunity under the Eleventh Amendment to the United States Constitution and Article IV, Section 27 of the Wisconsin Constitution.
- 20. DISPUTE RESOLUTION.** In the event of any dispute or disagreement between the parties under this Contract or any Engagement executed under this Contract, whether with respect to the interpretation of any provision of this Contract or Engagement, or with respect to the performance of either party hereto, except for breach of Contractor's intellectual property rights, each party shall attempt to resolve such dispute informally in accordance with the following: Upon notice by a party to another party of a dispute ("Dispute Notice"), each party shall appoint a representative to meet for the purpose of endeavoring to resolve such dispute or negotiate for an adjustment to such provision in dispute. Unless otherwise agreed in writing by the parties, no legal action of any kind, except for the seeking of equitable relief and except with respect to disputes in connection with Section 9.c, may begin in regard to the dispute until this dispute resolution procedure expires after a reasonable period mutually agreed upon in writing by the parties to attempt resolution, not to exceed 60 days after the date of the Dispute Notice unless mutually extended by the parties in writing.
- 21. NO QUANTITY GUARANTEES.** Authorized Users may obtain related Services from other sources during the term of the Contract. The Department or the Authorized User makes no express or implied warranties whatsoever that any particular quantity or dollar amount of Services will be procured through this Contract. The Contractor understands this Contract does not bind any Authorized User to provide the Contractor any funding except as specified in an Engagement Letter.
- 22. PERFORMANCE DATES.** Contractor and the applicable Authorized User expressly acknowledge and agree that dates set forth in the applicable Engagement Letter and SOW are estimated and expected to be revised. Certain dates, however, may be noted in Engagement Letters and SOWs as "firm performance dates." Contractor agrees to use diligent efforts to meet any estimated dates. Contractor agrees to notify the applicable Authorized User promptly in writing if it expects or encounters significant delays in completing its Services.
- 23. APPARENT AGENCY.** The Contractor shall not intentionally take any action that would cause others to reasonably infer that the Contractor is acting as an Authorized User in any matter or in any way not expressly authorized by this Contract.

- 24. RESPONSIBILITY FOR ACTIONS.** The Contractor shall be solely responsible for its actions and those of its agents, employees, or subcontractors under this Contract to the extent it would be responsible to the Authorized User hereunder, and neither the Contractor nor any of the foregoing parties has authority to act or speak on behalf of Department or the Authorized User.
- 25. SECURITY OF PREMISES, EQUIPMENT, DATA AND PERSONNEL.** During the performance of Services under this Contract, the Contractor may have access to the personnel, premises, equipment, and other property, including data files, information, or materials (collectively referred to as “data”) belonging to the Authorized User. The Contractor shall be responsible for physical damage to the Authorized Users’ equipment, workplace, and its contents directly caused by Contractor’s personnel, Subcontractors, or agents engaged in the performance of Services hereunder.
- 26. ROYALTY-FREE RIGHTS TO USE SOFTWARE OR DOCUMENTATION DEVELOPED.** The federal government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes, the copyrights in any Deliverable developed under a grant, sub-grant, or contract under a grant or sub-grant or any rights of copyright to which a Contractor purchases ownership with grant support.
- 27. PROVISION OF SERVICES.** The Contractor shall provide the Services with all due skill, care, and diligence, in accordance with accepted industry practices for the performance of such Services and legal requirements applicable to it in its performance of the Services. The Authorized User may inspect, observe, and examine the performance of the Services rendered on the Authorized User’s premises at any time.
- 28. CONTRACTOR PERSONNEL.** The Authorized User reserves the right to refuse to admit to the Authorized User premises any person employed or contracted by the Contractor whose admission in the reasonable opinion of the Authorized User would be undesirable.

If requested in writing by the Authorized User, the Contractor shall provide a list of the names and addresses of all Contractor’s employees, contracted personnel, or subcontractor’s employees who may at any time require admission to the Authorized User premises in connection with the performance of Services, specifying each such person’s connection to the Contractor, the role the person is to take in the performance of the contract or engagement executed under this contract, and other particulars as the Authorized User may reasonably require.

- 29. BACKGROUND OR CRIMINAL HISTORY INVESTIGATION.** Contractor shall, as part of its standard hiring practices, have conducted a background check in accordance with Exhibit E on each of its personnel who will perform Services.
- 30. LIMITATION ON WARRANTIES.**

CONTRACTOR WARRANTS THAT IT SHALL PERFORM THE SERVICES IN GOOD FAITH AND IN A PROFESSIONAL MANNER CONSISTENT WITH GENERALLY ACCEPTED INDUSTRY STANDARDS FOR THE PERFORMANCE OF SUCH SERVICES AND IN ACCORDANCE WITH THE DESCRIPTION OF SERVICES OUTLINED IN THE ENGAGEMENT LETTER.

CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. AUTHORIZED USER’S EXCLUSIVE REMEDY FOR ANY BREACH OF THIS WARRANTY SHALL BE FOR CONTRACTOR, UPON RECEIPT

OF WRITTEN NOTICE, TO USE DILIGENT EFFORTS TO CURE SUCH BREACH, OR, FAILING ANY SUCH CURE IN A REASONABLE PERIOD OF TIME, THE RETURN OF PROFESSIONAL FEES PAID TO CONTRACTOR HEREUNDER WITH RESPECT TO THE SERVICES GIVING RISE TO SUCH BREACH.

31. CONTRACTOR’S INSURANCE RESPONSIBILITY. The Contractor shall maintain the insurance coverage specified in Section 23.0 of the State of Wisconsin Standard Terms and Conditions (DOA-3054). The Contractor shall provide the Department with a Certificate of Insurance showing up-to-date coverage before the Contract may commence. The Contractor shall not cancel or adversely change the coverage without providing the Department with thirty (30) days prior written Notice.

32. LIMITATION ON DAMAGES AND INDEMNIFICATION

a. The Authorized User, on the one hand, and the Contractor, on the other hand, each agrees that the other party, its subcontractors, and their respective personnel shall not be liable for any claims, liabilities or expenses relating to this Contract, the Services, or an Engagement Letter and Statement of Work (“Claims”) for an aggregate in excess of: (i) in the case of Contractor, the fees paid by the Authorized User to Contractor and the fees properly accrued and billable to the Authorized User by Contractor pursuant to the applicable Engagement Letter and Statement of Work, or (ii) in the case of the Authorized User, the fees paid and payable by the Authorized User to Contractor pursuant to the applicable Engagement Letter and Statement of Work, except to the extent finally judicially determined to have resulted primarily from the recklessness, bad faith or intentional misconduct of the other party, its subcontractors or their respective personnel . In no event shall either party, its subcontractors or their respective personnel be liable for any loss of use, data, goodwill, revenues or profits (whether or not deemed to constitute a direct Claim), or any consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense (including, without limitation, lost profits and opportunity costs), relating to the applicable Engagement Letter and Statement of Work. The provisions of this Section 32.a shall not apply to (i) any Claim for which one party has an obligation to indemnify the other, (ii) to any Claim for breach of Section 37 - Ownership Rights, or (iii) any Claim for a material breach of a party’s obligations under Section 14.a-c, e, f, and g hereof or (iv) any Claim for a material breach of any of a party’s obligations under the Business Associate Agreement (as defined in Section 14.d hereof), to the extent such Business Associate Agreement has been executed pursuant to the applicable Engagement (collectively, subsections (iii) and (iv) shall be referred to as “Confidentiality Claims”); provided, however, with respect to subsections (iii) and (iv) only, that the Authorized User, on the one hand, and the Contractor, on the other hand, and each of their respective affiliates, subcontractors, and their respective personnel shall not be liable to the other party for any Confidentiality Claims for an aggregate in excess of two (2) times fees paid by the Authorized User to Contractor and the fees properly accrued and billable to the Authorized User by Contractor pursuant to the applicable Engagement Letter and Statement of Work. In circumstances where all or any portion of the provisions of this Section 32 are finally judicially determined to be unavailable, the aggregate liability of each party, its subcontractors and their respective personnel for any Claim shall not exceed an amount which is proportional to the relative fault that their conduct bears to all other conduct giving rise to such Claim.

Notwithstanding anything herein to the contrary, the parties agree that Contractor shall have no liability to the Department or the State for any claims, liabilities, or expenses relating to this Contract, the Services, or an Engagement Letter or Statement of Work except to the extent the Department, as an Authorized User, enters into an Engagement with Contractor hereunder and under such circumstances, the Department shall be subject to the terms of this Section 32.a.

- b. The Contractor shall indemnify, defend, and hold harmless an Authorized User and its personnel from and against any and all Claims attributable to claims of third parties solely for bodily injury, death, or damage to real or tangible personal property, to the extent directly and proximately caused by the negligence or intentional misconduct of the Contractor, its employees, agents, and subcontractors while engaged in the performance of the Services; provided, however, that if there also is fault on the part of any entity or individual indemnified hereunder or any entity or individual acting on an Authorized User's behalf, the foregoing indemnification shall be on a comparative fault basis.
- c. As a condition to the foregoing indemnity obligations, the indemnified party shall provide the indemnifying party with prompt Notice of any Claim for which indemnification shall be sought hereunder and shall cooperate in all reasonable respects with the indemnifying party in connection with any such Claim. The indemnifying party shall be entitled to control the handling of any such Claim and to defend or settle any such Claim, in its sole discretion, with counsel of its own choosing.
- d. The Contractor agrees to indemnify, defend, and hold harmless the State and Authorized Users, its officers, and employees from and against any and all Claims attributable to claims of third parties for infringement by a Deliverable of any U.S. patent or copyright or any unauthorized use of any trade secret, except to the extent that such infringement or unauthorized use arises from, or could have been avoided except for (i) the indemnified party's modification of the Deliverable or use thereof in a manner not contemplated by the respective Engagement Letter, (ii) the failure of the indemnified party to use any corrections or modifications made available by the Contractor, (iii) information, materials, instructions, or specifications provided by or on behalf of the indemnified party, or (iv) the use of the Deliverable in combination with any product or data not provided by the Contractor unless the Contractor consented to such use in writing. If an Authorized User's use of any such Deliverable, or any portion thereof, is or is likely to be enjoined by order of a court of competent jurisdiction as such an infringement or unauthorized use, the Contractor, at its option and expense, shall have the right to (a) procure for the Authorized User the continued use of such Deliverable, (b) replace such Deliverable with a non-infringing Deliverable, or (c) modify such Deliverable so it becomes non-infringing; provided that, if (b) or (c) is the option chosen by the Contractor, the replacement or modified Deliverable is capable of performing substantially the same function. The foregoing provisions of this paragraph constitute the sole and exclusive remedy of the indemnified parties, and the sole and exclusive obligation of the Contractor, relating to a claim that any of the Contractor's Deliverables infringes any patent, copyright, or other intellectual property right of a third party.

33. INDEPENDENT CONTRACTOR. The Contractor shall act as an independent Contractor in performing all Services under this Contract, except as otherwise outlined herein, and shall maintain complete control over its employees, contracted personnel, and subcontractors, if any.

34. DEBARMENT REPRESENTATION. As of the effective date of the applicable Engagement Letter and to the actual knowledge of the engagement principal, the Contractor represents to the best of its knowledge and belief, that it, its affiliates performing Services as subcontractors under the relevant Engagement, and its principals performing Services under the relevant Engagement

- 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 the applicable Engagement Letter been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection 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 (b) of this representation.

To the extent the engagement principal becomes aware, the Contractor will promptly notify the State if during the term of the relevant Engagement Letter, as applicable, it or any of the persons listed in the paragraph above are proposed for debarment, suspension, or exclusion from participation in a federal assistance program.

35. ANTITRUST ASSIGNMENT. The Contractor and the Department recognize that overcharges resulting from antitrust violations are, in actual economic practice, usually borne by the Department. Therefore, to the extent the Contractor purchases goods or services on the State's behalf under this Contract, the Contractor hereby assigns to the Department any and all claims for such overcharges as to goods and services purchased in connection with this Contract, except as to overcharges not passed on to the State.

36. ANTI-LOBBYING ACT. The Anti-Lobbying Act prohibits the recipients of federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the applicant certifies 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 making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement;
- b. If any funds other than federal 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 grant or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions. The parties agree that this Standard Form – LLL is not applicable to Contractor.
- c. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

37. OWNERSHIP RIGHTS.

- a. For purposes of these terms (i) “Technology” means works of authorship, materials, information and other intellectual property; (ii) “Contractor Technology” means all Technology created prior to or independently of the performance of the Services, or created by the Contractor or its Subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon; and (iii) “Deliverables” means all Technology that the Contractor or its Subcontractors create for delivery to an Authorized User as a result of the Services as specified in an Engagement Letter and associated SOW.
- b. Upon full and final payment to Contractor hereunder, and subject to all other terms and conditions herein, the Contractor hereby (i) assigns to the Authorized User all rights in and to the Deliverables, except to the extent they include any Contractor Technology; and (ii) grants to the Authorized User the right to use any Contractor Technology included in the Deliverables in connection with its use of the Deliverables. Except for the foregoing license grant, the Contractor or its licensors retain all rights in and to all Contractor Technology.
- c. To the extent any Contractor Technology provided to an Authorized User hereunder is a product (to the extent it constitutes merchandise within the meaning of Section 471 of the Internal Revenue Code), such Contractor Technology is licensed to the Authorized User by Deloitte Consulting Product Services LLC on the terms and conditions herein. The assignment and license grant in Section 37.b do not apply to any works of authorship, materials, information or other intellectual property (including any modifications or enhancements thereto or derivative works based thereon) that is subject to a separate license agreement between the Authorized User and a third party, including, without limitation, Deloitte Consulting Product Services LLC.

38. NON-EXCLUSIVITY. The parties acknowledge that the Contractor shall have the right to (i) provide consulting or other services of any kind or nature whatsoever to any person or entity as the Contractor in its sole discretion deems appropriate, subject to Exhibit D, Paragraph 3.0, or (ii) use any works of authorship or other intellectual property that may be included in the Deliverables, to develop for itself, or for others, materials or processes that may be similar to those produced as a result of the Services.

39. PROMOTIONAL ADVERTISING AND NEWS RELEASES. Reference to or use of the State of Wisconsin, the Great Seal of the State, the Wisconsin Coat of Arms, any Agency or other sub-units of the State government, or any state official or employee, for commercial promotion is strictly prohibited. The Contractor shall not issue news releases or make other public statements or release broadcast e-mails pertaining to this Contract without prior written approval of the Department or Authorized User in the case of specific Engagements under this Contract. Notwithstanding the foregoing, the Contractor may identify the State of Wisconsin as a client when the Contractor provides a general list of Contractor’s clients and as a specific citation within proposals.

40. EQUAL EMPLOYMENT OPPORTUNITY. As directed per federal Executive Order 11246 and amended by Executive Order 11375 and as supplemented by the Department of Labor Regulations (41 CFR Part 60): the Executive Order prohibits federal contractors and subcontractors who do over \$10,000 in government business in one (1) year from discriminating in employment decision on the basis of race, color, religion, sex or national origin. This Executive Order also requires a government Contractor to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. (<http://www.dol.gov/compliance/laws/comp-eeo.htm>)

41. AMERICANS WITH DISABILITIES. This Act (28 CFR Part 35, Title II, Subtitle A) prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public and state and local governments, except public transportation services.

- 42. AFFIRMATIVE ACTION PLAN (AA).** As required by Wisconsin's Contract Compliance Law (s. 16.765, Wis. Stats.), every Contractor contracting with the State must agree to equal employment and affirmative action policies and practices in its employment programs. For agreements where the Contractor has twenty-five (25) employees or more and a contract value of \$50,000 or more annually, the Contractor must submit an Affirmative Action Plan within **15 working days** of execution of this Contract. Exemptions exist, and are noted in the Instructions for Vendors posted on the following website: <http://vendornet.state.wi.us/vendornet/contract/contcom.asp>.

The Contractor must submit its Affirmative Action Plan or request for exemption from filing an Affirmative Action Plan in accordance to the Wisconsin Office of Contract to:

Department of Health Services, Division of Enterprise Services
 Bureau of Strategic Sourcing
 Affirmative Action Plan/CRC Coordinator
 1 West Wilson Street, Room 655
 P.O. Box 7850
 Madison, WI 53707

And a PDF version electronically to: aaplan@dhs.wisconsin.gov

Compliance with the requirements of the AA Plan will be monitored by the DHS Office of Affirmative Action and Civil Rights Compliance.

- 43. CIVIL RIGHTS COMPLIANCE (CRC).** All primary recipients and sub-recipients of State funding must file a new Civil Rights Compliance Letter of Assurance (CRC LOA) for the compliance period of 2014-2017 regardless of the number of employees and the amount of the funding received. Primary recipients and sub-recipients with 50 or more employees and who receive over \$50,000 in funding must complete a Civil Rights Compliance Plan (CRC Plan). The CRC Plan **should not** be sent to the State department, but must be submitted upon written request. Complete Instructions and Templates for CRC Letter of Assurance and CRC Plans can be located at the following link: <http://www.dhs.wisconsin.gov/Publications/P0/p00164.pdf> (717KB)

For technical assistance on all aspects of the Civil Rights Compliance, the Contractor is to contact the DHS' AA/CRC Office at the address listed in Section 42, Affirmative Action Plan.

All Contractors must comply with the CRC Plan requirements within 15 working days of execution of this Contract in accordance with the procedures outline on the following website: <http://dhs.wisconsin.gov/civilrights/CRC/requirements.htm>.

Failure to comply with the Section 42 or 43 provisions may result in the following consequences:

- a. Termination of this Contract for convenience as provided in Section 11, Contract/Engagement Termination, Cancellation, And Revisions
- b. Designation of the Contractor as "ineligible" for future consideration as a responsible qualified bidder or proposer for State contracts; or
- c. Withholding of payment(s) due for any Engagements under the Contract until the Contractor is in compliance.

- 44. NON-SOLICITATION.** During the term of any Engagement under this Contract, each party agrees that its personnel (in their capacity as such) who had direct and substantive contact in the course of the respective Engagement with personnel of the other party shall not, without the other party's consent, directly or indirectly employ, solicit, engage, or retain the services of such personnel of the other party. In the event a party breaches this provision, the aggrieved party shall be entitled to seek injunctive or other equitable relief. This provision shall not restrict the right of either party to solicit or recruit generally in the media or generally through other employment announcements.
- 45. CONTRACT AMENDMENT.** This Contract may not be modified or amended except by mutual agreement of the Department and the Contractor in writing.
- 46. ASSIGNMENT OF CONTRACT.** The Contractor, the State, and/or the Department shall not assign this Contract to another party, without prior written consent of the other party. Notwithstanding the foregoing, the Department reserves the right to assign this Contract to Wisconsin's Vendor Management Services (VMS) program vendor, presently TAPFIN, or a successor vendor to administer the Contract at any point during the term of this Contract as described in Section 9.13 of RFP S-0190 DHCAA-14. The Department shall give the Contractor advance written notice of such assignment. The Contractor shall have the right to terminate this Agreement and any outstanding Engagements for convenience upon written notice to the Department and the applicable Authorized Users. If the Department exercises its right to assign this Contract to TAPFIN or a successor vendor, and the Contractor does not exercise its right to terminate this Contract or any Engagements, it shall participate in the VMS program or its Contract will be terminated for convenience.
- 47. ENTIRE CONTRACT.** This Contract, including all documents incorporated herein by reference, constitutes the final and complete contract of the Parties in connection with the subject matter hereof, and supersedes all prior and contemporaneous contracts, understandings, negotiations, and discussions, whether oral or written, by the Parties. This Contract shall be construed as a fully integrated contract. There are no warranties, representations, or contracts among the parties in conjunction with the subject matter hereof, except as specifically set forth or referred to herein.
- 48. CONTRACT INCORPORATION/CONFLICTS BETWEEN DOCUMENTS; ORDER OF PRECEDENCE.** The parties specifically acknowledge and accept the incorporation of all exhibits, attachments, appendices, and addenda to the Contract, Contractor's proposals as submitted, and addenda to RFP S-0190 DHCAA-14 as an integral and critical provision of this Contract. This Contract, together with all incorporated portions thereto, constitutes the entire contract by and between the parties. Any amendment to this Contract shall be in writing and signed by all parties. This Contract may be executed in two (2) or more counterparts, each of which will be deemed an original.

In the event that there is a conflict between documents comprising this Contract, the following order of precedence shall apply:

- a. The applicable Engagement Letter and Statement of Work
- b. Body of this Contract
- c. State of Wisconsin Standard Terms and Conditions (DOA-3054), Exhibit C
- d. State of Wisconsin Supplemental Terms and Conditions (DOA-3681), Exhibit D

- e. The applicable RFS
- f. Contractor's Proposal Dated (6/16/14) (due date)
- g. State RFP dated (5/5/14) (issue date)

49. PARTIES' CONTACT INFORMATION. Communications to either the Contractor or the Department shall be provided in the manner(s) indicated herein. The parties reserve the right to make changes to the contact information by giving ten (10) days' written notice to the other. The parties for contacts for this base Contract are as follows:

Contractor Program Manager	Name: Russ Pederson Address: 111 South Wacker Drive Chicago, IL 60606-4301 Telephone: (312) 486-0751 Email: rpederson@deloitte.com
DHS Contract Administrator – Fiscal	Name: Sheila Kurt Address: Department of Health Services, Division of Health Care Access and Accountability – Bureau of Operational Coordination 1 West Wilson Street, Rm 472 Madison, WI 53703 Telephone: (608) 261-6862 Email: Sheila.Kurt@dhs.wisconsin.gov
DHS Contract Manager	Name: Erin Warner Address: Department of Health Services, Division of Enterprise Services – Bureau of Strategic Sourcing 1 West Wilson Street Madison, WI 53703 Telephone: (608) 267-7637 Email: Erin.Warner@dhs.wisconsin.gov
DHS Contract Administrator	Name: Denise Webb Address: Department of Health Services, Division of Health Care Access and Accountability – Bureau of Operational Coordination 1 West Wilson Street, Rm 465 Madison, WI 53703 Telephone: (608)267-6767 Email: Denise.Webb@dhs.wisconsin.gov

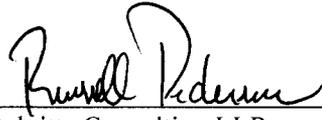
For specific Engagements executed under this contract, communications to either the Contractor or the Authorized User shall be provided in the manner(s) indicated in the respective Engagement Letter.

50. WAIVER OF JURY TRIAL. THE PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM RELATING TO THIS CONTRACT.

51. LIMITATION ON ACTIONS. No action, regardless of form, relating to this Contract, the Services, or an Engagement Letter and SOW, may be brought by either party more than three (3) years after the

cause of action has accrued, except that an action for non-payment may be brought not later than three (3) years following the date of the last payment due to the party bringing such action.

52. TIMELY CONTRACT SIGNING. In order for this Contract to become effective, both parties' Authorized Representatives must sign below within 60 days of one (1) another. If the number of days between signature dates, inclusive of the two (2) signature dates, exceeds 60, this Contract becomes null and void.



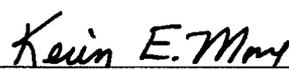
Deloitte Consulting LLP

12/30/14

Date

Russell J. Pederson, Principal

Printed Name



DHS or Designee (Authorization attached if Designee)

1/21/15

Date

Kevin E. Moore, Deputy Secretary

Printed Name

Exhibit A**HIT Services Supplier Rate Card**

The following table represents the ceiling bill rates that are to be used for all work done under this contract.

Title/Level	Rate
HIT Program Manager	\$188.63
HIT Project Manager I	\$157.86
HIT Project Manager II	\$181.39
HIT Project Manager III	\$257.78
HIT Business Analyst/Consultant I	\$110.18
HIT Business Analyst/Consultant II	\$133.69
HIT Business Analyst/Consultant III	\$176.60
HIT System Analyst I	\$121.26
HIT System Analyst II	\$153.01
HIT System Analyst III	\$192.04
HIT Technical Specialist I	\$119.43
HIT Technical Specialist II	\$160.54
HIT Technical Specialist III	\$199.32
Health Data Analyst I	\$116.34
Health Data Analyst II	\$156.66
Health Data Analyst III	\$202.76
HIT Interface Specialist	\$145.63
HIT Solutions Architect	\$193.32
HIT Technical Assistance/Outreach Specialist	\$129.79
HIT Communication Specialist I	\$79.88
HIT Communication Specialist II	\$118.77
HIT Technical Writer I	\$108.39
HIT Technical Writer II	\$139.97
HIT Admin Support Specialist	\$58.73
HIT Privacy and Security Specialist	\$214.62

Exhibit B**HIT Services Supplier Engagement Letter Template****HIT SERVICES SUPPLIER ENGAGEMENT LETTER**

This Engagement Letter is between [Authorized User] (the “Authorized User”) and Deloitte Consulting LLP (the “Contractor”). Capitalized terms not otherwise defined herein shall have the meaning given to them in the HIT Services Supplier Contract.

Title – [Enter Name]

Overview – See Statement of Work (SOW), Attachment 1

Deliverables – See SOW.

HIT Contracted Personnel – [List HIT contracted personnel proposed in contractor’s response to Request for Services (RFS) that were selected/accepted by Authorized User.]

Authorized User’s Key Staff – [List Authorized User’s key staff.]

Change Control – [Describe process for managing and approving changes to the scope of work/requirements, deliverables, schedule, and budget.]

Reporting and Monitoring – See SOW, Attachment 1 [Describe required activity reports and status meetings, including specifications and periodicity.]

Funding and Payments – [Describe the funding being provided by Authorized User, which will be based on the approved budget in the SOW, and the payments terms.]

Term of the Agreement*

This Engagement Letter will be in effect from [Date] through [Date].

This Engagement Letter is only effective to the extent the current HIT Services Supplier Contract - 435400-P15-eHealth-Del-01 (“Contract”) is in effect.

Upon the termination of this engagement for any reason, or upon engagement’s expiration, each party shall be released from all obligations to the other party arising after the date of termination or expiration, except for the parties' respective termination obligations set forth in Section 11 of the Contract and those that by their terms survive such termination or expiration.

Engagement*

All terms and conditions outlined in the Contract for Services by and between State of Wisconsin Department of Health Services and Deloitte Consulting LLP (the “Contractor”) for the Wisconsin E-Health Program (the “HIT Services Supplier Contract”) apply to Authorized User and its RFS, Contractor, and this Engagement Letter. Such HIT Services Supplier Contract is incorporated into this Engagement Letter.

Additional Obligations

[Reserved for Authorized User to add any additional Terms & Conditions not addressed under the Contract.]

Contact Information

Communications to either Contractor or Authorized User shall be provided in the manner(s) indicated herein. The parties reserve the right to make changes to the contact information by giving thirty (30) days' written Notice to the other.

Contractor	Name: Title: Address: Phone: E-mail:
Authorized User	Name: Title: Address: Phone: E-mail:

With the signatures affixed below, Contractor is granted written authorization to proceed with the engagement and commence with the requested services.

As per Section 4 of the Contract, the Engagement Letter and SOW will serve as the contractual instrument for this specific engagement. The services performed under this Engagement Letter shall provide the Authorized User with the identified deliverables.*

Approvals

_____ Date _____
Contractor Representative

_____ Date _____
Authorized User Representative

Enclosure
Attachment 1, SOW

* This language cannot be removed or modified by the Authorized User or Contractor without approval by DHS.

Standard Terms And Conditions (Request For Bids / Proposals)

- 1.0 SPECIFICATIONS:** The specifications in this request are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. The State of Wisconsin shall be the sole judge of equivalency. Bidders/proposers are cautioned to avoid bidding alternates to the specifications which may result in rejection of their bid/proposal.
- 2.0 DEVIATIONS AND EXCEPTIONS:** Deviations and exceptions from original text, terms, conditions, or specifications shall be described fully, on the bidder's/proposer's letterhead, signed, and attached to the request. In the absence of such statement, the bid/proposal shall be accepted as in strict compliance with all terms, conditions, and specifications and the bidders/proposers shall be held liable.
- 3.0 QUALITY:** Unless otherwise indicated in the request, all material shall be first quality. Items which are used, demonstrators, obsolete, seconds, or which have been discontinued are unacceptable without prior written approval by the State of Wisconsin.
- 4.0 QUANTITIES:** The quantities shown on this request are based on estimated needs. The state reserves the right to increase or decrease quantities to meet actual needs.
- 5.0 DELIVERY:** Deliveries shall be F.O.B. destination freight prepaid and included unless otherwise specified.
- 6.0 PRICING AND DISCOUNT:** The State of Wisconsin qualifies for governmental discounts and its educational institutions also qualify for educational discounts. Unit prices shall reflect these discounts.
- 6.1** Unit prices shown on the bid/proposal or contract shall be the price per unit of sale (e.g., gal., cs., doz., ea.) as stated on the request or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price, the unit price shall govern in the bid/proposal evaluation and contract administration.
- 6.2** Prices established in continuing agreements and term contracts may be lowered due to general market conditions, but prices shall not be subject to increase for ninety (90) calendar days from the date of award. Any increase proposed shall be submitted to the contracting agency thirty (30) calendar days before the proposed effective date of the price increase, and shall be limited to fully documented cost increases to the contractor which are demonstrated to be industry wide. The conditions under which price increases may be granted shall be expressed in bid/proposal documents and contracts or agreements.
- 6.3** In determination of award, discounts for early payment will only be considered when all other conditions are equal and when payment terms allow at least fifteen (15) days, providing the discount terms are deemed favorable. All payment terms must allow the option of net thirty (30).
- 7.0 UNFAIR SALES ACT:** Prices quoted to the State of Wisconsin are not governed by the Unfair Sales Act.
- 8.0 ACCEPTANCE-REJECTION:** The State of Wisconsin reserves the right to accept or reject any or all bids/proposals, to waive any technicality in any bid/proposal submitted, and to accept any part of a bid/proposal as deemed to be in the best interests of the State of Wisconsin.
- Bids/proposals MUST be date and time stamped by the soliciting purchasing office on or before the date and time that the bid/proposal is due. Bids/proposals date and time stamped in another office will be rejected. Receipt of a bid/proposal by the mail system does not constitute receipt of a bid/proposal by the purchasing office.
- 9.0 METHOD OF AWARD:** Award shall be made to the lowest responsible, responsive bidder unless otherwise specified.
- 10.0 ORDERING:** Purchase orders or releases via purchasing cards shall be placed directly to the contractor by an authorized agency. No other purchase orders are authorized.
- 11.0 PAYMENT TERMS AND INVOICING:** The State of Wisconsin normally will pay properly submitted vendor invoices within thirty (30) days of receipt providing goods and/or services have been delivered, installed (if required), and accepted as specified.
- Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing.
- A good faith dispute creates an exception to prompt payment.
- 12.0 TAXES:** The State of Wisconsin and its agencies are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below. The State of Wisconsin, including all its agencies, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. The State of Wisconsin may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials.
- 13.0 GUARANTEED DELIVERY:** Failure of the contractor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the contractor liable for all costs in excess of the contract price when

alternate procurement is necessary. Excess costs shall include the administrative costs.

14.0 ENTIRE AGREEMENT: These Standard Terms and Conditions shall apply to any contract or order awarded as a result of this request except where special requirements are stated elsewhere in the request; in such cases, the special requirements shall apply. Further, the written contract and/or order with referenced parts and attachments shall constitute the entire agreement and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the contracting authority.

15.0 APPLICABLE LAW AND COMPLIANCE: This contract shall be governed under the laws of the State of Wisconsin. The contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. The State of Wisconsin reserves the right to cancel this contract if the contractor fails to follow the requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax. The State of Wisconsin also reserves the right to cancel this contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

16.0 ANTITRUST ASSIGNMENT: The contractor and the State of Wisconsin recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Wisconsin (purchaser). Therefore, the contractor hereby assigns to the State of Wisconsin any and all claims for such overcharges as to goods, materials or services purchased in connection with this contract.

17.0 ASSIGNMENT: No right or duty in whole or in part of the contractor under this contract may be assigned or delegated without the prior written consent of the State of Wisconsin.

18.0 WORK CENTER CRITERIA: A work center must be certified under s. 16.752, Wis. Stats., and must ensure that when engaged in the production of materials, supplies or equipment or the performance of contractual services, not less than seventy-five percent (75%) of the total hours of direct labor are performed by severely handicapped individuals.

19.0 NONDISCRIMINATION / AFFIRMATIVE ACTION: In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation as defined in s. 111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities.

19.1 Contracts estimated to be over twenty-five thousand dollars (\$25,000) require the submission of a written affirmative action plan by the contractor. An exemption occurs from this requirement if the contractor has a workforce of less than twenty-five (25) employees. Within fifteen (15) working days after the contract is awarded, the contractor must submit the plan to the contracting state agency for approval. Instructions on preparing the plan and technical assistance regarding this clause are available from the contracting state agency.

19.2 The contractor agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the contracting state agency that sets forth the provisions of the State of Wisconsin's nondiscrimination law.

19.3 Failure to comply with the conditions of this clause may result in the contractor's becoming declared an "ineligible" contractor, termination of the contract, or withholding of payment.

20.0 PATENT INFRINGEMENT: The contractor selling to the State of Wisconsin the articles described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe any United States patent. The contractor covenants that it will at its own expense defend every suit which shall be brought against the State of Wisconsin (provided that such contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.

21.0 SAFETY REQUIREMENTS: All materials, equipment, and supplies provided to the State of Wisconsin must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code and all applicable OSHA Standards.

22.0 WARRANTY: Unless otherwise specifically stated by the bidder/proposer, equipment purchased as a result of this request shall be warranted against defects by the bidder/proposer for one (1) year from date of receipt. The equipment manufacturer's standard warranty shall apply as a minimum and must be honored by the contractor.

23.0 INSURANCE RESPONSIBILITY: The contractor performing services for the State of Wisconsin shall:

23.1 Maintain worker's compensation insurance as required by Wisconsin Statutes, for all employees engaged in the work.

23.2 Maintain commercial liability, bodily injury and property damage insurance against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out this contract. Minimum coverage shall be one million

dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.

- 23.3** The state reserves the right to require higher or lower limits where warranted.
- 24.0 CANCELLATION:** The State of Wisconsin reserves the right to cancel any contract in whole or in part without penalty due to nonappropriation of funds or for failure of the contractor to comply with terms, conditions, and specifications of this contract.
- 25.0 VENDOR TAX DELINQUENCY:** Vendors who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.
- 26.0 PUBLIC RECORDS ACCESS:** It is the intention of the state to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities.
- Bid/proposal openings are public unless otherwise specified. Records may not be available for public inspection prior to issuance of the notice of intent to award or the award of the contract.
- 27.0 PROPRIETARY INFORMATION:** Any restrictions on the use of data contained within a request, must be clearly stated in the bid/proposal itself. Proprietary information submitted in response to a request will be handled in accordance with applicable State of Wisconsin procurement regulations and the Wisconsin public records law. Proprietary restrictions normally are not accepted. However, when accepted, it is the vendor's responsibility to defend the determination in the event of an appeal or litigation.
- 27.1** Data contained in a bid/proposal, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented. All data, documentation, and innovations become the property of the State of Wisconsin.
- 27.2** Any material submitted by the vendor in response to this request that the vendor considers confidential and proprietary information and which qualifies as a trade secret, as provided in s. 19.36(5), Wis. Stats., or material which can be kept confidential under the Wisconsin public records law, must be identified on a Designation of Confidential and Proprietary Information form (DOA-3027). Bidders/proposers may request the form if it is not part of the Request for Bid/Request for Proposal package. Bid/proposal prices cannot be held confidential.
- 28.0 DISCLOSURE:** If a state public official (s. 19.42, Wis. Stats.), a member of a state public official's immediate family, or any organization in which a state public official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this agreement, and if this agreement involves payment of more than three thousand dollars (\$3,000) within a twelve (12) month period, this contract is voidable by the state unless appropriate disclosure is made according to s. 19.45(6), Wis. Stats., before signing the contract. Disclosure must be made to the State of Wisconsin

Ethics Board, 44 East Mifflin Street, Suite 601, Madison, Wisconsin 53703 (Telephone 608-266-8123).

State classified and former employees and certain University of Wisconsin faculty/staff are subject to separate disclosure requirements, s. 16.417, Wis. Stats.

- 29.0 RECYCLED MATERIALS:** The State of Wisconsin is required to purchase products incorporating recycled materials whenever technically and economically feasible. Bidders are encouraged to bid products with recycled content which meet specifications.
- 30.0 MATERIAL SAFETY DATA SHEET:** If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29CFR 1910.1200, provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).
- 31.0 PROMOTIONAL ADVERTISING / NEWS RELEASES:** Reference to or use of the State of Wisconsin, any of its departments, agencies or other subunits, or any state official or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the State of Wisconsin. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the contracting agency.
- 33.0 HOLD HARMLESS:** The contractor will indemnify and save harmless the State of Wisconsin and all of its officers, agents and employees from all suits, actions, or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the operations of the contractor, or of any of its contractors, in prosecuting work under this agreement.
- 34.0 FOREIGN CORPORATION:** A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement is required to conform to all the requirements of Chapter 180, Wis. Stats., relating to a foreign corporation and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority. Any foreign corporation which desires to apply for a certificate of authority should contact the Department of Financial Institutions, Division of Corporation, P. O. Box 7846, Madison, WI 53707-7846; telephone (608) 261-7577.
- 35.0 WORK CENTER PROGRAM:** The successful bidder/proposer shall agree to implement processes that allow the State agencies, including the University of Wisconsin System, to satisfy the State's obligation to purchase goods and services produced by work centers certified under the State Use Law, s.16.752, Wis. Stat. This shall result in requiring the successful bidder/proposer to include products provided by work centers in its catalog for State agencies and campuses or to block the sale of comparable items to State agencies and campuses.
- 36.0 FORCE MAJEURE:** Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy,

acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.

Supplemental Standard Terms and Conditions for Procurements for Services

- 1.0 ACCEPTANCE OF BID/PROPOSAL CONTENT:** The contents of the bid/proposal of the successful contractor will become contractual obligations if procurement action ensues.
- 2.0 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION:** By signing this bid/proposal, the bidder/proposer certifies, and in the case of a joint bid/proposal, each party thereto certifies as to its own organization, that in connection with this procurement:
- 2.1** The prices in this bid/proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder/proposer or with any competitor;
- 2.2** Unless otherwise required by law, the prices which have been quoted in this bid/proposal have not been knowingly disclosed by the bidder/proposer and will not knowingly be disclosed by the bidder/proposer prior to opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other bidder/proposer or to any competitor; and
- 2.3** No attempt has been made or will be made by the bidder/proposer to induce any other person or firm to submit or not to submit a bid/proposal for the purpose of restricting competition.
- 2.4** Each person signing this bid/proposal certifies that: He/she is the person in the bidder's/proposer's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to 2.1 through 2.3 above; (or)
He/she is not the person in the bidder's/proposer's organization responsible within that organization for the decision as to the prices being offered herein, but that he/she has been authorized in writing to act as agent for the persons responsible for such decisions in certifying that such persons have not participated, and will not participate in any action contrary to 2.1 through 2.3 above, and as their agent does hereby so certify; and he/she has not participated, and will not participate, in any action contrary to 2.1 through 2.3 above.
- 3.0 DISCLOSURE OF INDEPENDENCE AND RELATIONSHIP:**
- 3.1** Prior to award of any contract, a potential contractor shall certify in writing to the procuring agency that no relationship exists between the potential contractor and the procuring or contracting agency that interferes with fair competition or is a conflict of interest, and no relationship exists between the contractor and another person or organization that constitutes a conflict of interest with respect to a state contract. The Department of Administration may waive this provision, in writing, if those activities of the potential contractor will not be adverse to the interests of the state.
- 3.2** Contractors shall agree as part of the contract for services that during performance of the contract, the contractor will neither provide contractual services nor enter into any agreement to provide services to a person or organization that is regulated or funded by the contracting agency or has interests that are adverse to the contracting agency. The Department of Administration may waive this provision, in writing, if those activities of the contractor will not be adverse to the interests of the state.
- 4.0 DUAL EMPLOYMENT:** Section 16.417, Wis. Stats., prohibits an individual who is a State of Wisconsin employee or who is retained as a contractor full-time by a State of Wisconsin agency from being retained as a contractor by the same or another State of Wisconsin agency where the individual receives more than \$12,000 as compensation for the individual's services during the same year. This prohibition does not apply to individuals who have full-time appointments for less than twelve (12) months during any period of time that is not included in the appointment. It does not include corporations or partnerships.
- 5.0 EMPLOYMENT:** The contractor will not engage the services of any person or persons now employed by the State of Wisconsin, including any department, commission or board thereof, to provide services relating to this agreement without the written consent of the employing agency of such person or persons and of the contracting agency.
- 6.0 CONFLICT OF INTEREST:** Private and non-profit corporations are bound by ss. 180.0831, 180.1911(1), and 181.0831 Wis. Stats., regarding conflicts of interests by directors in the conduct of state contracts.
- 7.0 RECORDKEEPING AND RECORD RETENTION:** The contractor shall establish and maintain adequate records of all expenditures incurred under the contract. All records must be kept in accordance with generally accepted accounting procedures. All procedures must be in accordance with federal, state and local ordinances.
- The contracting agency shall have the right to audit, review, examine, copy, and transcribe any pertinent records or documents relating to any contract resulting from this bid/proposal held by the contractor. The contractor will retain all documents applicable to the contract for a period of not less than three (3) years after final payment is made.
- 8.0 INDEPENDENT CAPACITY OF CONTRACTOR:** The parties hereto agree that the contractor, its officers, agents, and employees, in the performance of this agreement shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the state. The contractor agrees to take such steps as may be necessary to ensure that each subcontractor of the contractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the state.

Background Check Process

Deloitte LLP and its subsidiaries (collectively the "Deloitte U.S. Firms") generally require that background investigations be conducted for all employees, partners, and principals at the time that they join the Deloitte U.S. Firms. Potential issues that are identified in the background investigation are reviewed on an individual case-by-case basis, in light of guidance from the Equal Employment Opportunity Commission and applicable federal, state and local law. This individualized assessment includes a determination of such factors as whether the issues identified are job related or pose a risk to the Deloitte U.S. Firms or to their respective employees, partners, principals, or clients. The type of background investigation performed depends on whether the individual joining one of the Deloitte U.S. Firms is a partner, principal or employee, and the level of the employee. While background investigations were not always performed on Deloitte U.S. Firms' personnel, and may not always have covered the same information, all background investigations of Deloitte U.S. Firms' personnel in the U.S. *currently* include the following, at a minimum:

- SSN verification: confirms a valid number and the names and addresses associated with that number
- Felony and misdemeanor conviction searches: searches of the following records for felony and misdemeanor convictions are performed for the last five years in areas of residence, work and school:
 - Federal courts
 - County courts
 - State repositories, where the state has made one available and it is reasonably accessible
- A national criminal record database search, including the state sex offender registries.
- Education confirmation: all education beyond high school confirmed
- Employment confirmation: all professional employment in the last five years is confirmed
- Searches of various government and criminal sanctions lists, such as SEC, OFAC, OIG/GSA, FDA, FBI Most Wanted, EU Terrorist Watch List, Interpol Watch List, etc.
- Professional licenses: confirm relevant professional licenses