**Department Terms and Conditions**

**1.0 ENTIRE AGREEMENT:** The following terms and conditions are hereby made a part of the underlying contract.These Department Terms and Conditions, the underlying contract, its exhibits, subsequent amendments and other documents incorporated by order of precedence in the contract encompass the entire contract (“Contract”) and contain the entire understanding between the Wisconsin Department of Employee Trust Funds (“Department”) and the contractor named in the Contract (“Contractor”) on the subject matter hereof, and no representations, inducements, promises, or agreements, oral or otherwise, not embodied herein shall be of any force or effect. The Contract supersedes any other oral or written agreement entered into between the Department and the Contractor on the subject matter hereof. The terms “State,” “ETF,” and “Department” may be used interchangeably herein.

 The Contract may be amended at any time by written mutual agreement of the Department and Contractor, but any such amendment shall be without prejudice to any claim arising prior to the date of the change. No one, except duly authorized officers or agents of the Contractor and the Department, shall alter or amend the Contract. No change in the Contract shall be valid unless evidenced by an amendment that is signed by such officers of the Contractor and the Department.

**2.0 COMPLIANCE WITH THE CONTRACT AND APPLICABLE LAW:** In the event of a conflict between the Contract and any applicable federal or state statute, administrative rule, or regulation; the statute, rule, or regulation will control.

In connection with the performance of work under the Contract, the Contractor agrees not to discriminate against employees or applicants for employment because of age, race, religion, creed, color, handicap, physical condition, developmental disability as defined in Wis. Stat. § 51.01 (5); marital status, sex, sexual orientation as defined in s.111.32(13m), Wis. Stats., national origin, ancestry, arrest record, conviction record; or membership in the national guard, state defense force, or any reserve component of the military forces of the United States or the state of Wisconsin (the “State”). 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. Contractor further agrees to take affirmative action to ensure equal employment opportunities. The contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

Contracts estimated to be over fifty thousand dollars ($50,000) require the submission of a written affirmative action plan by the Contractor. Contractors with an annual work force of less than fifty (50) employees are exempt from this requirement. Contractor shall provide the plan to the Department within fifteen (15) business days of the Department’s request for such plan after the award of the Contract.

 The Contractor shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA) of 1990. Evidence of compliance with ADA shall be made available to the Department upon request.

 The Contractor acknowledges that Wis. Stat. § 40.07 specifically exempts information related to individuals in the records of the Department of Employee Trust Funds from the Wisconsin Public Records Law. Contractor shall treat any such records provided to or accessed by Contractor as non-public records as set forth in Wis. Stat. § 40.07.

 Contractor will comply with the provisions of Wis. Stat. § 134.98 Notice of Unauthorized Acquisition of Personal Information.

**3.0 LEGAL RELATIONS:** 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 the Contract and which in any manner affect the work or its conduct. This includes but is not limited to laws regarding compensation, hours of work, conditions of employment and equal opportunities for employment.

 In carrying out any provisions of the Contract or in exercising any power or authority granted to the Contractor thereby, there shall be no liability upon the Department, it being understood that in such matters that the Department acts as an agent of the State.

 The Contractor accepts full liability and agrees to hold harmless the State, the Department’s governing boards, the Department, its employees, agents and contractors for any act or omission of the Contractor, or any of its employees, in connection with the Contract.

 No employee of the Contractor may represent himself or herself as an employee of the Department or the State.

**4.0 CONTRACTOR:** The Contractor will be the sole point of contact with regard to contractual matters, including the performance of services specified in the Contract (the “Services”) and the payment of any and all charges resulting from contractual obligations.

 None of the Services to be provided by the Contractor shall be subcontracted or delegated to any other organization, subdivision, association, individual, corporation, partnership or group of individuals, or other such entity without prior written notification to, and approval of, the Department.

After execution of the Contract, the Department will provide Contractor with the name of the Department’s designated contact person and commit to a timely approval process for Contractor’s notification of a change in subcontractor(s) and/or delegated Services.

 The Contractor shall be solely responsible for its actions and those of its agents, employees or subcontractors under the Contract. The Contractor will be responsible for Contract performance when subcontractors are used. Subcontractors must abide by all terms and conditions of the Contract.

 Neither the Contractor nor any of the foregoing parties has the authority to act or speak on behalf of the State.

 The Contractor will be responsible for payment of any losses by its subcontractors or agents.

 Any notice required or permitted to be given shall be deemed to have been given on the date of delivery or three (3) business days after mailing by the United States Postal Service, certified or registered mail-receipt requested. In the event the Contractor moves or updates contact information, the Contractor shall inform the Department of such changes in writing within ten (10) business days. The Department shall not be held responsible for payments delayed due to the Contractor’s failure to provide such notice.

**5.0 CONTRACTOR PERFORMANCE:** Work under the Contract shall be performed in a timely, professional and diligent matter by qualified and efficient personnel and in conformity with the strictest quality standards mandated or recommended by all generally-recognized organizations establishing quality standards for the work of the type specified in the Contract. The Contractor shall be solely responsible for controlling the manner and means by which it and its employees or its subcontractors perform the Services, and the Contractor shall observe, abide by, and perform all of its obligations in accordance with all legal and Contract requirements.

 Without limiting the foregoing, the Contractor shall control the manner and means of the Services so as to perform the work in a reasonably safe manner and comply fully with all applicable codes, regulations and requirements imposed or enforced by any government agencies. Notwithstanding the foregoing, any stricter standard provided in plans, specifications or other documents incorporated as part of the Contract shall govern.

 The Contractor shall provide the Services with all due skill, care, and diligence, in accordance with accepted industry practices and legal requirements, and to the Department’s satisfaction; the Department’s decision in that regard shall be final and conclusive.

 All Contractor’s Services under the Contract shall be performed in material compliance with the applicable federal and state laws and regulations in effect at the time of performance, except when imposition of a newly enacted or revised law or regulation would result in an unconstitutional impairment of the Contract.

 The Contractor will make commercially reasonable efforts to ensure that Contractor's professional and managerial staff maintain a working knowledge and understanding of all federal and state laws, regulations, and administrative code appropriate for the performance of their respective duties, as well as contemplated changes in such law which affect or may affect the Services delivered under the Contract.

 The Contractor shall maintain a written contingency plan describing in detail how it will continue operations and Services under the Contract in certain events including, but not limited to, strike and disaster, and shall submit it to the Department upon request.

**6.0 AUDIT PROVISION:** The Contractor and its authorized subcontractors are subject to audits by the State, the Legislative Audit Bureau (LAB), an independent Certified Public Accountant (CPA), or other representatives as authorized by the State. The Contractor will cooperate with such efforts and provide all requested information permitted under the law.

**6.1 SOC Report:** If the Department requires Contractor to provide a SOC Audit, Contractor will furnish the Department with an annual copy of an Independent Service Auditor’s Report on Management’s Description of the Service Organization’s System and the Suitability of the Design and Operating Effectiveness of Controls (SOC 1, Type 2), which will be provided to the Department by May 1 following each plan year. This independent audit of the Contractor’s controls must be completed in accordance with the American Institute of Certified Public Accountants’ Statements on Standards for Attestation Engagements (SSAE) No. 18 (SOC 1, Type 2). The SSAE 18 (SOC 1, Type 2) annual audit will include all programs under the Contract and will be conducted at the Contractor’s expense. If the Contractor’s SSAE 18 (SOC 1, Type 2) audit covers less than the twelve (12) months of a calendar year, the Contractor will provide a bridge letter to the Department, stating whether processes and controls have changed since the SSAE 18 (SOC 1, Type 2) audit.

**6.2 Contract Compliance Audit:** The Department may schedule and arrange for an independent certified public accountant to perform agreed upon procedures or consulting work related to the Contractor’s compliance with the Contract on a periodic basis, as determined by the Department. The audit scope will be determined by the Department and may include recordkeeping, participant account activity, claims processing, administrative performance standards, and any other relevant areas to the programs under the Contract. The timeline of the audit will be mutually agreed upon by the Department and the Contractor. A minimum ten (10) business day notice is required.

**6.3 Open Access:** All Contractor books, records, ledgers, data, and journals relating to the programs under the Contract will be open for inspection and audit by the Department, its designees, or the State of Wisconsin Legislative Audit Bureau, at any time during normal working hours. A minimum ten (10) business day notice will be provided. Records or data requested shall be provided electronically in a format mutually agreed upon by the Department and Contractor. The Department shall have access to interview any employee and authorized agent of the Contractor involved with the Contract in conjunction with any audit, review, or investigation deemed necessary by the Department or the State.

**6.4 LAB Audit:** The Department is audited by the State of Wisconsin Legislative Audit Bureau annually, as required by Wisconsin Statute 13.94 (1) (dd). The Contractor agrees to provide necessary information related to any such audit for all programs under the Contract, as requested by the Department or auditor.

**7.0 CRIMINAL BACKGROUND VERIFICATION:** The Department follows the provisions in the Wisconsin Human Resources Handbook Chapter 246, Securing Applicant Background Checks (see <https://dpm.wi.gov/Hand%20Book%20Chapters/WHRH_Ch_246.pdf>). The Contractor is expected to perform background checks that, at a minimum, adhere to those standards. This includes the criminal history record from the Wisconsin Department of Justice (DOJ), Wisconsin Circuit Court Automation Programs (CCAP), and other State justice departments for persons who have lived in a state(s) other than Wisconsin. More stringent background checks are permitted. Details regarding the Contractor's background check procedures should be provided to the Department regarding the measures used by the Contractor to protect the security and privacy of program data and participant information. A copy of the results of the criminal background checks the Contractor conducted must be made available to the Department upon request. The Department reserves the right to conduct its own criminal background checks on any or all employees or subcontractors of and referred by the Contractor for the delivery or provision of Services.

**8.0 COMPLIANCE WITH ON-SITE PARTY RULES AND REGULATIONS:** Contractor and the Department agree that their employees, while working at or visiting the premises of the other party, shall comply with all internal rules and regulations of the other party, including security procedures, and all applicable federal, state, and local laws and regulations applicable to the location where said employees are working or visiting.

 The Department is responsible for allocating building and equipment access, as well as any other necessary services available from the Department that may be used by the Contractor. Any use of the Department facilities, equipment, internet access, and/or services shall only be to assist Contractor in providing the Services, as authorized by the Department. The Contractor will provide its own personal computers, which must comply with the Department security policies before connection to the Department’s local computer network.

**9.0 SECURITY OF PREMISES, EQUIPMENT, DATA AND PERSONNEL:** The Department shall have the right, acting by itself or through its authorized representatives, to enter the premises of the Contractor at mutually agreeable times to inspect and copy the records of the Contractor and the Contractor’s compliance with this section. In the course of performing Services under the 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 Department.

 The Contractor shall be responsible for damage to the Department’s equipment, workplace, and its contents, or for the loss of data, when such damage or loss is caused by the Contractor, contracted personnel, or subcontractors, and shall reimburse the Department accordingly upon demand. This remedy shall be in addition to any other remedies available to the Department by law or in equity.

**10.0 BREACH NOT WAIVER:** A failure to exercise any right, or a delay in exercising any right, power or remedy hereunder on the part of either party 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 or in the Contract 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 the Contract shall not constitute a waiver of default, evidence of proper Contractor performance, or acceptance of any defective item or Services furnished by the Contractor.

**11.0 SEVERABILITY:** The provisions of the Contract shall be deemed severable and the unenforceability of any one or more provisions shall not affect the enforceability of any of the other provisions. If any provision of the Contract, for any reason, is declared to be invalid, unenforceable, or illegal, the parties shall substitute an enforceable provision that, to the maximum extent possible in accordance with applicable law, preserves the original intentions and economic positions of the parties.

**12.0 LIQUIDATED DAMAGES:** The Contractor and Department acknowledge that it can be difficult to ascertain actual damages when a Contractor fails to carry out its responsibilities under the Contract. Because of that, the Contractor and Department will negotiate liquidated damages, as required by the Department, for the Contract. The Contractor agrees that the Department shall have the right to liquidate such damages, through deduction from the Contractor’s invoices, in the amount equal to the damages incurred, or by direct billing to the Contractor.

 The Department shall notify the Contractor in writing of any claim for liquidated damages pursuant to this section within thirty (30) calendar days after the Contractor’s failure to perform in accordance with the terms and conditions of the Contract.

 Notwithstanding the foregoing language, when necessary, the Department will identify in the Contract, specific financial penalties for failure of the Contractor to meet performance standards and guarantees. If the Contract was established through the Department’s Request for Bid (RFB) or Request for Proposals (RFP) procurement process, such performance standards and guarantees may have been set forth in the RFB/RFP.

**13.0 CONTRACT DISPUTE RESOLUTION:** In the event of any dispute or disagreement between the parties under the Contract, whether with respect to the interpretation of any provision of the Contract, or with respect to the performance of either party thereto, except for breach of Contractor’s intellectual property rights, 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.

 Contractor shall continue without delay to carry out all its responsibilities under the Contract, which are not affected by the dispute. Should Contractor fail to perform its responsibilities under the Contract that are not affected by the dispute without delay, any and all additional costs incurred by the Contractor and the Department as a result of such failure to proceed shall be borne by the Contractor and the Contractor shall not make any claim against the Department for such costs. The Department’s non-payment of fees in breach of the Contract that are overdue by sixty (60) calendar days is a dispute that will always be considered to affect Contractor’s responsibilities.

 No legal action of any kind, except for the seeking of equitable relief in the case of the public’s health, safety or welfare, may begin in regard to the dispute until this dispute resolution procedure has been elevated to the Contractor’s highest executive authority and the equivalent executive authority within the Department, and either of the representatives in good faith concludes, after a good faith attempt to resolve the dispute, that amicable resolution through continued negotiation of the matter at issue does not appear likely.

 The party believing itself aggrieved (the “Invoking Party”) shall call for progressive management involvement in the dispute negotiation by delivering written notice to the other party. Such notice shall be without prejudice to the Invoking Party’s right to any other remedy permitted by the Contract. After such notice, the parties shall use all reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between authorized negotiators for the parties at the following successive management levels, each of which shall have a period of allotted time as specified below in which to attempt to resolve the dispute:

 **Level Contractor The Department Allotted Time**

 First Level 1 entity Level 1 entity 10 Business Days

 Second Level 2 entity Level 2 entity 20 Business Days

 Third Level 3 entity Level 3 entity 30 Business Days

 The allotted time for the First Level negotiations shall begin on the date the Invoking Party’s notice is received by the other party. Subsequent allotted time is days from the date that the Invoking Party’s notice was originally received by the other party. If the Third Level parties cannot resolve the issue within thirty (30) business days of the Invoking Party’s original notice, then the issue shall be designated as a dispute at the discretion of the Invoking Party and, if so, shall be resolved in accordance with the section below. The time periods herein are in addition to those periods for a party to cure provided elsewhere in the Contract, and do not apply to claims for equitable relief (e.g., injunction to prevent disclosure of Confidential Information). The Department may withhold payments on disputed items pending resolution of the dispute.

**14.0** **CONTROLLING LAW:** All questions as to the execution, validity, interpretation, construction and performance of the Contract shall be construed in accordance with the laws of the State of Wisconsin, without regard to any conflicts of laws or choice of law principles. Any court proceeding arising or related to the Contract or a party’s obligations under the Contract shall be exclusively brought and exclusively maintained in the State of Wisconsin, Dane County Circuit Court, or in the District Court of the United States Western District (if jurisdiction is proper in federal court), or upon appeal to the appellate courts of corresponding jurisdiction, and Contractor hereby consents to the exclusive jurisdiction and exclusive venue therein and waives any right to object to such jurisdiction or venue. To the extent that in any jurisdiction Contractor may now or hereafter be entitled to claim for itself or its assets immunity from suit, execution, attachment (before or after judgment) or other legal process, Contractor, to the extent it may effectively do so, irrevocably agrees not to claim, and it hereby waives, the same.

**15.0 RIGHT TO SUSPEND OPERATIONS:** If, at any time during the period of the Contract, the Department determines that the best interest of the Department or its governing boards would be best served by the Contractor temporarily holding of all Services, the Department will promptly notify the Contractor. Upon receipt of such notice, the Contractor shall suspend all Services.

**16.0 TERMINATION OF THE CONTRACT:** The Department may terminate the Contract at any time at its sole discretion by delivering one-hundred eighty (180) calendar days written notice to the Contractor.

Upon termination, the Department’s liability shall be limited to the prorated cost of the Services performed as of the date of termination plus expenses incurred with the prior written approval of the Department.

 If the Contractor terminates the Contract, the Contractor shall refund all payments made under the Contract by the Department to the Contractor for work not completed or not accepted by the Department. Such termination shall require written notice to that effect to be delivered by the Contractor to the Department not less than one-hundred eighty (180) calendar days prior to said termination.

 Upon any termination of the Contract, the Contractor shall perform the Services specified in a transition plan if so requested by the Department; provided, however, that except as expressly set forth otherwise herein, the Contractor shall not be obligated to perform such Services unless all amounts due to the Contractor under the Contract, including payment for the transition Services, have been paid. Failure of the Contractor to comply with a transition plan upon the Department’s request and upon payment shall constitute a separate breach for which the Contractor shall be liable.

 Upon the expiration or termination of the Contract for any reason, each party shall be released from all obligations to the other arising after the expiration date or termination date, except for those that by their terms survive such termination or expiration.

**17.0 TERMINATION FOR CAUSE:** If the Contractor fails to perform any material requirement of the Contract, breaches any material requirement of the Contract, or if the Contractor’s full and satisfactory performance of the Contract is substantially endangered, the Department may terminate the Contract. Before terminating the Contract, the Department shall give written notice of its intent to terminate to Contractor after a thirty (30) calendar day written notice and cure period.

 The Department reserves the right to cancel the Contract in whole or in part without penalty in the event one (1) or more of the following occurs:

1. If the Contractor intentionally furnished any statement, representation, warranty, or certification, in connection with the Contract which is materially false, incorrect, or incomplete;

2. If applicable, if the Contractor fails to follow the sales and use tax certification requirements of Wis. Stat. § 77.66;

3. If the Contractor incurs a delinquent Wisconsin tax liability;

4. If the Contractor fails to submit a non-discrimination or affirmative action plan per the requirements of Wis. Stat. § 16.765 and Wisconsin’s Fair Employment Law, subch. II, Chapter 111 of the Wisconsin Statutes as required herein;

5. If the Contractor is presently identified on the list of parties excluded from State of Wisconsin procurement and non-procurement contracts;

6. If the Contractor becomes a state or federal debarred Contractor, or becomes excluded from State contracts;

7. If the Contractor fails to maintain and keep in force all required insurance, permits and licenses as required per the Contract;

8. If the Contractor fails to maintain the confidentiality of the Department’s information that is considered to be Confidential Information or Protected Health Information;

9. If the Contractor files a petition in bankruptcy, become insolvent, or otherwise takes action to dissolve as a legal entity;

10. If at any time the Contractor’s performance threatens the health or safety of a State employee, citizen, or customer;

11. If the Contractor violates any requirements in Section 22.0 below regarding Confidential Information; or

12. If the Department or State fails to appropriate funds for the project described in the Contract.

 In the event of a termination for cause by the Department, the Department shall be liable for payments for any work accepted by the Department prior to the date of termination.

**18.0 REMEDIES OF THE DEPARTMENT:** The Department shall be free to invoke any and all remedies permitted under Wisconsin law. In particular, if the Contractor fails to perform as specified in the Contract, the Department may issue a written notice of default providing for at least a seven (7) business day period in which the Contractor shall have an opportunity to cure, provided that cure is possible, feasible, and approved in writing by the Department. Time allowed for cure of a default shall not diminish or eliminate the Contractor’s liability. If the default remains, after opportunity to cure, then the Department may: (1) exercise any remedy provided in law or in equity or (2) terminate Contractor’s Services.

 If the Contractor fails to remedy any delay or other problem in its performance of the Contract after receiving reasonable notice from the Department to do so, the Contractor shall reimburse the Department for all reasonable costs incurred as a direct consequence of the Contractor’s delay, action, or inaction.

 In case of failure to deliver Services in accordance with the Contract, or services from other sources as necessary to fulfill the Contract, the Contractor shall be responsible for the additional cost of such services, including purchase price and administrative fees. This remedy shall be in addition to any other legal remedies available to the Department.

**19.0 TRANSITIONAL SERVICES:** Upon cancellation, termination, or expiration of the Contract for any reason, the Contractor shall provide reasonable cooperation, assistance and Services, and shall assist the Department to facilitate the orderly transition of the work under the Contract to the Department and/or to an alternative contractor selected for the transition upon written notice to the Contractor at least thirty (30) business days prior to termination or cancellation, and subject to the terms and conditions set forth in the Contract.

**20.0 ADDITIONAL INSURANCE RESPONSIBILITY:** The Contractor shall exercise due diligence in providing the Services under the Contract. In order to protect the Department’s governing boards and any Department employee against liability, cost, or expenses (including reasonable attorney fees), which may be incurred or sustained as a result of Contractor’s errors or other failure to comply with the terms of the Contract, the Contractor shall maintain errors and omissions insurance including coverage for network and privacy risks, breach of privacy and wrongful disclosure of information in an amount acceptable to the Department with a minimum of **$1,000,000** per claim and **$5,000,000** aggregate in force during the Contract period and for a period of three (3) years thereafter for Services completed. Contractor shall furnish the Department with a certificate of insurance for such amount. Further, this certificate shall designate the State of Wisconsin Department of Employee Trust Funds and its affiliated boards as additional insured parties. The Department reserves the right to require higher or lower limits where warranted.

**21.0 OWNERSHIP OF MATERIALS:** Except as otherwise provided in subsection (t) of Section 22, all information, data, reports and other materials as are existing and available from the Department and which the Department determines to be necessary to carry out the scope of Services under the Contract shall be furnished to the Contractor and shall be returned to the Department upon completion of the Contract. The Contractor shall not use such materials for any purpose other than carrying out the work described in the Contract.

 The Department will be furnished without additional charge all data, models, information, reports, and other materials associated with and generated under the Contract by the Contractor.

 The Department shall solely own all customized software, documents, and other materials developed under the Contract. Use of such software, documents, and materials by the Contractor shall only be with the prior written approval of the Department.

 The Contract shall in no way affect or limit the Department’s rights to use, disclose or duplicate, for any purpose whatsoever, all information and data pertaining to the Department, employees or members and generated by the claims administration and other Services provided by Contractor under the Contract.

 All files (paper or electronic) containing any Wisconsin plan member, claimant or employee information and all records created and maintained in the course of the work specified by the Contract are the sole and exclusive property of the Department. Contractor may maintain copies of such files during the term of the Contract as may be necessary or appropriate for its performance of the Contract. Moreover, Contractor may maintain copies of such files after the term of the Contract (i) for one hundred twenty (120) days after termination, after which all such files shall be transferred to the Department or destroyed by Contractor, except for any files as to which a claim has been made, and (ii) for an unlimited period of time after termination for Contractor’s use for statistical purposes, if Contractor first deletes all information in the records from which the identity of a claimant or employee could be determined and certifies to the Department that all personal identifiers have been removed from the retained files.

**22.0** **CONFIDENTIAL INFORMATION AND HIPAA BUSINESS ASSOCIATE AGREEMENT:** This Section is intended to cover handling of Confidential Information under State and federal law, and specifically to comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH), the Genetic Information Nondiscrimination Act (GINA), and the federal implementing regulations for those statutes requiring a written agreement with business associates.

1. **DEFINITIONS:** As used herein, unless the context otherwise requires:
	1. Business Associate. “Business Associate” has the meaning ascribed to it at 45 CFR 160.103 and refers to the Contractor.
	2. Confidential Information. “Confidential Information” has the meaning set forth below in Section 28.0.
	3. Covered Entity. “Covered Entity” has the meaning ascribed to it at 45 CFR 160.103 and refers to the Department of Employee Trust Funds.
	4. HIPAA Rules. “HIPAA Rules” mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
	5. Individual Personal Information. “Individual Personal Information” has the meaning ascribed to it at Wis. Admin. Code ETF § 10.70 (1).
	6. Medical Record. “Medical Record” has the meaning ascribed to it at Wis. Admin. Code ETF 10.01 (3m).
	7. Protected Health Information. “Protected Health Information” has the meaning ascribed to it under 45 s. CFR 160.103.
2. **PROVISION OF CONFIDENTIAL INFORMATION FOR CONTRACTED SERVICES:** The Department, a different business associate of the Department or a contractor performing services for the Department may provide Confidential Information to the Contractor under the Contract as the Department determines is necessary for the proper administration of the Contract, as provided by Wis. Stat. § 40.07 (1m) (d) and (3).
3. **DUTY TO SAFEGUARD CONFIDENTIAL INFORMATION:** The Contractor shall safeguard Confidential Information supplied to the Contractor or its employees under the Contract. In addition, the Contractor will only share Confidential Information with its employees on a need-to-know basis. Should the Contractor fail to properly protect Confidential Information, any cost the Department pays to mitigate the failure will be subtracted from the Contractor’s invoice(s).
4. **USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION:** Contractor shall:
	1. Not use or disclose Confidential Information for any purpose other than as permitted or required by the Contract or as required by law. Contractor shall not use or disclose member or employee names, addresses, or other data for any purpose other than specifically provided for in the Contract;
	2. Make uses and disclosures and requests for any Confidential Information following the minimum necessary standard in the HIPAA Rules;
	3. Use appropriate safeguards to prevent use or disclosure of Confidential Information other than as provided for by the Contract, and with respect to Protected Health Information, comply with Subpart C of 45 CFR Part 164;
	4. Not use or disclose Confidential Information in a manner that would violate Subpart E of 45 CFR Part 164 or Wis. Stat. § 40.07; and
	5. If applicable, be allowed to use or disclose Confidential Information for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor, provided the disclosures are required by law, or Contractor obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Contractor of any instances of which it is aware in which the confidentiality of the information has been or is suspected of being breached.
5. **COMPLIANCE WITH ELECTRONIC TRANSACTIONS AND CODE SET STANDARDS:** The Contractor shall comply with each applicable requirement of 45 C.F.R. Part 162 if the Contractor conducts standard transactions, as that term is defined in HIPAA, for or on behalf of the Department.
6. **MANDATORY REPORTING:** Contractor shallreport to the Department in the manner set forth in Subsection 22(l) any use or disclosure or suspected use or disclosure of Confidential Information not provided for by the Contract, of which it becomes aware, including breaches or suspected breaches of unsecured Protected Health Information as required at 45 CFR 164.410.
7. **DESIGNATED RECORD SET:** Contractor shall make available Protected Health Information in a designated record set to the individual as necessary to satisfy the Department’s obligations under 45 CFR 164.524.
8. **AMENDMENT IN DESIGNATED RECORD SET:** Contractor shall make any amendment to Protected Health Information in a designated record set as directed or agreed to by the Department pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy the Department’s obligations under 45 CFR 164.526.
9. **ACCOUNTING OF DISCLOSURES:** Contractor shall maintain and make available the information required to provide an accounting of disclosures to the individual as necessary to satisfy the Department’s obligations under 45 CFR 164.528.
10. **COMPLIANCE WITH SUBPART E OF 45 CFR 164:** To the extent Contractor is to carry out one or more of the Department’s obligations under Subpart E of 45 CFR Part 164, Contractor shall comply with the requirements of Subpart E that apply to a covered entity in the performance of such obligation.
11. **INTERNAL PRACTICES:** Contractor shall make its internal practices, books, and records available to the Secretary of the United States Department of Labor for purposes of determining compliance with the HIPAA Rules.
12. **CONTRACTOR REPORTING OF BREACH OR SUSPECTED BREACH OR DISCLOSURE TO THE DEPARTMENT:**
13. Within twenty-four (24) hours after Contractor becomes aware of a suspected breach, impermissible use, or impermissible disclosure, Contractor shall notify in writing the Department Program Manager and Privacy Officer. A suspected breach, impermissible use, or impermissible disclosure is considered to be discovered as of the first day on which such occurrence is known to Contractor, or, by exercising reasonable diligence, would have been known to Contractor. The notification must contain details sufficient for the Department Program Manager and Privacy Officer to determine the Department’s response. Sufficient details include, without limitation:
14. A list of any persons affected (if available);
15. Information about the information included in the breach, impermissible use, or impermissible disclosure;
16. The date or dates of the suspected breach, impermissible use, or impermissible disclosure;
17. The date of the discovery by Contractor;
18. A list of the proactive steps taken by Contractor and being taken to correct the breach, impermissible use or impermissible disclosure; and
19. Contact information at Contractor for affected persons who contact the Department regarding the issue.
20. Not less than one (1) business day before Contractor makes any external communications to the public, media, federal Office for Civil Rights (OCR), other governmental entity, or persons potentially affected by the breach, impermissible use, or impermissible disclosure, provide a copy of the planned communication to the Department Program Manager and Privacy Officer.
21. Within thirty (30) business days after Contractor makes the initial report under this section, Contractor shall research the suspected breach, impermissible use, or impermissible disclosure of Confidential Information and provide a report in writing to the Department Program Manager. The report must contain, at a minimum:
22. A complete list of any persons affected (whose Confidential Information was supplied to Contractor by the Department) and their contact information;
23. Copies of correspondence or notifications provided to the public, media, OCR, other governmental entity, or persons potentially affected;
24. Whether Contractor’s Privacy Officer has determined there has been a reportable breach under HIPAA, or an unauthorized acquisition under Wis. Stat. §134.98 and the reasoning for such determination;
25. If Contractor determines there has been a breach, impermissible use, or impermissible disclosure, an explanation of the root cause of the breach, impermissible use, or impermissible disclosure;
26. A list of the corrective actions taken to mitigate the suspected breach, impermissible use, or impermissible disclosure; and
27. A list of the corrective actions taken to prevent a similar future breach, impermissible use, or impermissible disclosure.
28. **CLASSIFICATION LABELS:** Contractor shall ensure that all data classification labels contained on or included in any item of Confidential Information shall be reproduced by Contractor on any reproduction, modification, or translation of such Confidential Information. Contractor shall 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 Department, as directed by the Department.
29. **SUBCONTRACTORS:** If applicable, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit Confidential Information on behalf of Contractor agree to the same restrictions, conditions, and requirements that apply to Contractor with respect to such information.
30. **NOTICE OF LEGAL PROCEEDINGS:** If Contractor or any of its employees, agents, or subcontractors is legally required in any administrative, regulatory or judicial proceeding to disclose any Confidential Information, contractor shall give the Department prompt notice (unless it has a legal obligation to the contrary) so that the Department may seek a protective order or other appropriate remedy. In the event that such protective order is not obtained, Contractor shall furnish only that portion of the information that is legally required and shall disclose the Confidential Information in a manner reasonably designed to preserve its confidential nature.
31. **MITIGATION:** The Contractor shall take immediate steps to mitigate any harmful effects of the suspected or actual unauthorized use, disclosure, or loss of any Confidential Information provided to Contractor under the Contract. The Contractor shall reasonably cooperate with the Department’s efforts to comply with the breach notification requirements of HIPAA, to seek appropriate injunctive relief or otherwise prevent or curtail such suspected or actual unauthorized use, disclosure or loss, or to recover its Confidential Information, including complying with a reasonable corrective action plan, as directed by the Department.
32. **COMPLIANCE REVIEWS:** The Department may conduct a compliance review of the Contractor’s security procedures before and during the Contract term to protect Confidential Information.
33. **AMENDMENT:** The Parties agree to take such action as is necessary to amend the Contract as necessary for compliance with the HIPAA Rules and other applicable law.
34. **Survival:**  The obligations of Contractor under this Section survive the termination of the underlying Contract.
35. **RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION:** Upon termination of the Contract for any reason, Contractor, with respect to Confidential Information received from the Department, another contractor of the Department, or created, maintained, or received by Contractor on behalf of the Department, shall:
36. Retain only that Confidential Information which is necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities;
37. Return to the Department or, if agreed to by the Department, destroy the remaining Confidential Information that Contractor still maintains in any form;
38. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Subsection, for as long as Contractor retains the Protected Health Information;
39. Not use or disclose the Confidential Information retained by Contractor other than for the purposes for which such Confidential Information was retained and subject to the same conditions set out above under Subsection 22(d) which applied prior to termination;
40. Return to the Department or, if agreed to by the Department, destroy the Protected Health Information retained by Contractor when it is no longer needed by Contractor for its proper management and administration or to carry out its legal responsibilities; and
41. If required by the Department, transmit the Confidential Information to another contractor of the Department.

**23.0** **INDEMNIFICATION:**

**23.1 SCOPE OF INDEMNIFICATION FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT:** In the event of a claim against the Parties for Intellectual Property Rights Infringement associated with a claim for benefits, Contractor agrees to defend, indemnify and hold harmless Board and Department (“Indemnified Parties”) from and against any and all claims, actions, loss, damage, expenses, costs (including reasonable fees for Department’s staff attorneys and/or attorneys from the Wisconsin Attorney General’s Office) reasonable attorneys’ fees otherwise incurred by Board, Department and/or the Wisconsin Attorney General’s Office, court costs, and related reasonable legal expenses whether incurred in defending against such claims or enforcing this Section.

**23.2 SCOPE OF OTHER INDEMNIFICATION**: In addition to the foregoing Section, Contractor shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, actions, loss, damage, expenses, costs (including reasonable fees for the Department’s staff attorneys and/or attorneys from the Wisconsin Attorney General’s Office), court costs, and related reasonable legal expenses whether incurred in defending against such claims or enforcing this Section, or liability arising from or in connection with the following: (a) Contractor’s performance of or failure to perform any duties or obligations under any agreement between Contractor and any third party; (b) injury to persons (including death or illness) or damage to property caused by the act or omission of Contractor or Contractor personnel; (c) any claims or losses for Services rendered by any subcontractor, person, or firm performing or supplying Services, materials, or supplies in connection with the Contractor’s performance of the Contract; (d) any claims or losses resulting to any person or third party entity injured or damaged by the Contractor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (e) any failure of the Contractor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

**23.3 INDEMNIFICATION NOTICE**: The Department shall give the Contractor prompt written notice of such claim, suit, demand, or action (provided that a failure to give such prompt notice will not relieve the Contractor of its indemnification obligations hereunder except to the extent Contractor can demonstrate actual, material prejudice to its ability to mount a defense as a result of such failure). The Department will cooperate, assist, and consult with the Contractor in the defense or investigation of any claim made or suit filed against Department resulting from Contractor’s performance under the Contract.

**23.4 NO INDEMNIFICATION OBLIGATIONS**: Contractor shall, as soon as practicable, notify the Department of any claim made or suit filed against Contractor resulting from Contractor’s obligations under the Contract if such claim may involve the Department. The Department has no obligation to provide legal counsel or defense to Contractor if a suit, claim, or action is brought against Contractor or its subcontractors as a result of Contractor’s performance of its obligations under the Contract. In addition, Department has no obligation for the payment of any judgments or the settlement of any claims against Contractor arising from or related to the Contract. Department has not waived any right or entitlement to claim sovereign immunity under the Contract.

**23.5 CONTRACTOR’S DUTY TO INDEMNIFY**: The Contractor shall comply with its obligations to indemnify, defend and hold the Indemnified Parties harmless with regard to claims, damages, losses and/or expenses arising from a claim. The Contractor shall be entitled to control the defense of any such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing; however, the Contractor shall consult with the Department regarding its defense of any claim and not settle or compromise any claim or action in a manner that imposes restrictions or obligations on Department, requires any financial payment by the Department, or grants rights or concessions to a third party without first obtaining the Department’s prior written consent. Contractor shall have the right to assert any and all defenses on behalf of the Indemnified Parties, including sovereign immunity.

 In carrying out any provision of the Contract or in exercising any power or authority granted to the Contractor thereby, there shall be no liability upon the Department, it being understood that in such matters the Department acts as an agent of the State.

 The Contractor shall at all times comply with and observe all federal and State laws and regulations which are in effect during the period of the Contract and which in any manner affect the work or its conduct.

**24.0 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, which injury shall not be compensable by money damages and for which there is not an adequate remedy available at law. Accordingly, the Department and the Contractor specifically agree that the Department, on its own behalf or on behalf of the affected individuals, shall be entitled to obtain 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 the Contract or under applicable law.

**25.0 RIGHT TO PUBLISH OR DISCLOSE:** Throughout the term of the Contract, the Contractor must secure the Department's written approval prior to the release of any information which pertains to work or activities covered by the Contract.

 The Department and the Contractor agree that it is a breach of the Contract to disclose any information to any person that the Department or its governing boards may not disclose under Wis. Stat. § 40.07. Contractor acknowledges that it will be liable for damage or injury to persons whose Confidential Information is disclosed by any officer, employee, agent, or subcontractor of the Contractor without proper authorization.

**26.0 TIME IS OF THE ESSENCE:** Timely provision of the Services required under the Contract shall be of the essence of the Contract, including the provision of the Services within the time agreed or on a date specified in the Contract.

**27.0 IDENTIFICATION OF KEY PERSONNEL AND PERSONNEL CHANGES:** The Department will designate a contract administrator, who shall have oversight for performance of the Department’s obligations under the Contract. The Department shall not change the person designated without prior written notification to the Contractor.

 The State of Wisconsin reserves the right to approve all individuals assigned to the project described in the Contract. The Contractor agrees to use its best efforts to minimize personnel changes during the Contract term.

 At the time of contract negotiations, the Contractor shall furnish the Department with names of all key personnel assigned to perform work under the Contract and furnish the Department with criminal background checks.

 The Contractor will designate a contract administrator who shall have executive and administrative oversight for performance of the Contractor's obligations under the Contract. The Contractor shall not change this designation without prior written notice to the Department.

 The Contractor may not divert key personnel for any period of time except in accordance with the procedure identified in this Section. The Contractor shall provide a notice of proposed diversion or replacement to the Department Program Manager and Contract Manager at least sixty (60) calendar days in advance, together with the name and qualifications of the person(s) who will take the place of the diverted or replaced staff. At least thirty (30) calendar days before the proposed diversion or replacement, the Department shall notify the Contractor whether the proposed diversion or replacement is approved or rejected, and if rejected shall provide reasons for the rejection. Such approval by the Department shall not be unreasonably withheld or delayed.

 Replacement staff shall be on-site within two (2) weeks of the departure date of the person being replaced. The Contractor shall provide the Department with reasonable access to any staff diverted by the Contractor.

 Replacement of key personnel shall be with persons of equal ability and qualifications. The Department has the right to conduct separate interviews of proposed replacements for key personnel. The Department shall have the right to approve, in writing, the replacement of key personnel. Such approval shall not be unreasonably withheld. Failure of the Contractor to promptly replace key personnel within thirty (30) calendar days after departure shall entitle the Department to terminate the Contract. The Contractor’s notice and justification of a change in key personnel must include identification of proposed substitute key personnel and must provide sufficient detail to permit the Department to evaluate the impact of the change on the project and/or maintenance.

 Any of the Contractor’s staff that the Department deems unacceptable shall be promptly and without delay removed from the project by the Contractor and replaced by the Contractor within thirty (30) calendar days by another employee with acceptable experience and skills subject to the prior approval of the Department. Such approval by the Department will not be unreasonably withheld or delayed.

 An unauthorized change by the Contractor of any contracted personnel designated as key personnel will result in the imposition of liquidated damages, as defined in the Contract.

**28.0 DATA SECURITY AND PRIVACY AGREEMENT**

1. **PURPOSE AND SCOPE OF APPLICATION:** This Data Security and Privacy Agreement (Agreement) is designed to protect the Department of Employee Trust Funds’ (Department) Confidential Information and Department Information Resources (defined below). This Agreement describes the data security and privacy obligations of Contractor and its sub-contractors that connect to Department Information Resources and/or gain access to Confidential Information.
2. **DEFINED TERMS**:
3. **Confidential Information** means all tangible and intangible information and materials being disclosed in connection with the Contract, in any form or medium without regard to whether the information is owned by the State of Wisconsin or by a third party, which satisfies at least one of the following criteria: (i) Individual Personal Information; (ii) Protected Health Information under HIPAA, 45 CFR 160.103; (iii) proprietary information; (iv) non-public information related to the State of Wisconsin’s employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; (v) information expressly designated as confidential in writing by the State of Wisconsin; (vi) all information that is restricted or prohibited from disclosure by State or federal law, including Individual Personal Information and Medical Records as governed by Wis. Stat. § 40.07, Wis. Admin. Code ETF 10.70(1) and 10.01(3m); or (vii) any material submitted by the Contractor in response to a Department RFB/RFP that the Contractor designates confidential and proprietary information and which qualifies as a trade secret, as provided in Wis. Stat. § 19.36 (5) or material which can be kept confidential under the Wisconsin public records law.

1. **Department Information Resources** means those devices, networks and related infrastructure that the Department has obtained for use to conduct Department business. Devices include but are not limited to, Department-owned, managed, used through service agreements storage, processing, communications devices and related infrastructure on which Department data is accessed, processed, stored, or communicated, and may include personally owned devices. Data includes, but is not limited to, Confidential Information, other Department created or managed business and research data, metadata, and credentials created by or issued on behalf of the Department.

1. **ACCESS TO DEPARTMENT INFORMATION RESOURCES:** In any circumstance when Contractor is provided access to Department Information Resources, it is solely Contractor’s responsibility to ensure that its access does not result in any access by unauthorized individuals to Department Information Resources. Contractors who access the Department’s systems from any Department location must at a minimum conform with Department security standards that are in effect at the Department location(s) where the access is provided. Any Contractor technology and/or systems that gain access to Department Information Resources must comply with, at a minimum, the elements in the Computer System Security Requirements set forth in this Agreement.
2. **COMPLIANCE WITH APPLICABLE LAWS:** Contractor agrees to comply with all applicable state and federal laws, as well as industry best practices, governing the collection, access, use, disclosure, safeguarding and destruction of Confidential Information.

1. **PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION:** Contractor agrees to hold the Department’s Confidential Information, and any information derived from such information, in strictest confidence. Contractor will not access, use or disclose Confidential Information other than to carry out the purposes for which the Department disclosed the Confidential Information to Contractor, except as permitted or required by applicable law, or as otherwise authorized in writing by the Department. For avoidance of doubt, this provision prohibits Contractor from using for its own benefit Confidential Information or any information derived from such information. If required by a court of competent jurisdiction or an administrative body to disclose Confidential Information, Contractor will notify the Department in writing immediately upon receiving notice of such requirement and prior to any such disclosure, to give the Department an opportunity to oppose or otherwise respond to such disclosure (unless prohibited by law from doing so).
2. **REQUIREMENT TO KEEP CONFIDENTIAL INFORMATION WITHIN THE UNITED STATES:** The Contractor’s transmission, transportation or storage of Confidential Information outside the United States, or access of Confidential Information from outside the United States, is prohibited except on prior written authorization by the Department.

1. **SAFEGUARD STANDARD:** Contractor agrees to protect the privacy and security of Confidential Information according to all applicable laws and regulations, including HIPAA, by commercially-acceptable frameworks or standards such as the ISO/IEC 27000-series, NIST, 800-53, RFC 2196, IEC 62443, and SANS CIS Top 20. ISO 27001, etc. Security Controls, and no less rigorously than it protects its own confidential information, but in no case less than reasonable care. Contractor will implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of the Confidential Information. All Confidential Information stored on portable devices or media must be encrypted in accordance with the Federal Information Processing Standards (FIPS) Publication 140-2. Contractor will ensure that all security measures are regularly reviewed including ongoing monitoring, an annual penetration and vulnerability test, and an annual security incident response test, and revised, no less than annually, to address evolving threats and vulnerabilities while Contractor has responsibility for the Confidential Information under the terms of this Agreement. Prior to agreeing to the terms of this Agreement, and periodically thereafter (no more frequently than annually) at the Department’s request, Contractor will provide assurance, in the form of a third-party audit report or other documentation acceptable to the Department, such as SOC2 Type II, demonstrating that appropriate information security safeguards and controls are in place.

1. **INFORMATION SECURITY PLAN:**

1. Contractor acknowledges that the Department is required to comply with information security standards for the protection of Confidential Information as required by law, regulation and regulatory guidance, as well as the Department’s internal security program for information and systems protection.

1. Contractor will establish, maintain and comply with an information security plan (Information Security Plan), which will contain, at a minimum, such elements as those set forth in this Agreement.

1. Contractor’s Information Security Plan will be designed to:

**a.** Ensure the privacy, security, integrity, availability, and confidentiality of Confidential Information;

**b.** Protect against any anticipated threats or hazards to the security or integrity of Confidential Information;

**c.** Protect against unauthorized access to or use of Confidential Information that could result in harm or inconvenience to the person that is the subject of such information;

**d.** Reduce risks associated with Contractor having access to Department Information Resources; and

**e.** Comply with all applicable legal and regulatory requirements for data protection.

1. On at least an annual basis, Contractor will review its Information Security Plan, update and revise it as needed, and submit it to the Department upon request. At the Department’s request, Contractor will make modifications to its Information Security Plan or to the procedures and practices thereunder to conform to the Department’s security requirements as they exist from time to time. If there are any significant modifications to Contractor’s Information Security Plan, Contractor will notify the Department within a reasonable period of time, not to exceed two weeks. Any significant modification must include the same or a higher framework or information security standard maturity level than what currently exists in Contractor’s Security Plan.

1. **RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION:**

Upon termination of the Contract for any reason, Contractor, with respect to Confidential Information received from the Department, another contractor of the Department, or created, maintained, or received by Contractor on behalf of the Department, shall:

**(1)** Retain only that Confidential Information which is necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities;

**(2)** Where feasible, return to the Department, or, if agreed to by the Department, destroy the remaining Confidential Information that Contractor still maintains in any form;

**(3)** Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Subsection, for as long as Contractor retains the Protected Health Information;

**(4)** Not use or disclose the Confidential Information retained by Contractor other than for the purposes for which such Confidential Information was retained and subject to the same conditions set out above under Subsection (d) which applied prior to termination;

**(5)** Return to the Department or, if agreed to by the Department, destroy the Protected Health Information retained by Contractor when it is no longer needed by Contractor for its proper management and administration or to carry out its legal responsibilities; and

**(6)** If required by the Department, transmit the Confidential Information to another contractor of the Department.

1. **NOTIFICATION OF CORRESPONDENCE CONCERNING CONFIDENTIAL INFORMATION:** Contractor agrees to notify the Department immediately, both orally and in writing, but in no event more than twenty-four (24) hours after Contractor receives correspondence or a complaint regarding Confidential Information, including but not limited to, correspondence or a complaint that originates from a regulatory agency or an individual.

1. **BREACHES OF CONFIDENTIAL INFORMATION:**

**CONTRACTOR REPORTING OF BREACH OR SUSPECTED BREACH OR DISCLOSURE TO THE DEPARTMENT:**

**(1)** Within twenty-four (24) hours after Contractor becomes aware of a suspected breach, impermissible use, or impermissible disclosure of the Department’s Confidential Information, Contractor agrees to notify in writing the Department Program Manager and Privacy Officer. A suspected breach, impermissible use, or impermissible disclosure is considered to be discovered as of the first day on which such occurrence is known to Contractor, or, by exercising reasonable diligence, would have been known to Contractor. The notification must contain details sufficient for the Department Program Manager and Privacy Officer to determine the Department’s agency response. Sufficient details include, without limitation:

1. The nature of the unauthorized access, use or disclosure;
2. A list of any affected persons (if available), whose Confidential Information was supplied to Contractor by the Department;
3. Information about the information included in the breach, impermissible use, or impermissible disclosure;
4. The date or dates of the suspected breach, impermissible use, or impermissible disclosure;
5. The date of the discovery by Contractor;
6. A list of the pro-active steps taken by Contractor and being taken to correct the breach, impermissible use or impermissible disclosure; and
7. Contact information at Contractor for affected persons who contact the Department regarding the issue.
8. Not less than twenty-four (24) hours before Contractor makes any external communications to the public, media, federal Office for Civil Rights (OCR), other governmental entity, or persons potentially affected by the breach, impermissible use, or impermissible disclosure, Contractor agrees to provide a copy of the planned communication to the Department Program Manager and Privacy Officer.
9. Within thirty (30) days after Contractor makes the initial report under this section, Contractor shall research the suspected breach, impermissible use, or impermissible disclosure of Confidential Information and provide a report in writing to the Department Program Manager. The report must contain, at a minimum:
10. A complete list of any affected persons (whose Confidential Information was supplied to Contractor by the Department) and their contact information;
11. Copies of correspondence or notifications provided to the public, media, OCR, other governmental entity, or persons potentially affected;
12. Whether Contractor’s Privacy Officer has determined there has been a reportable breach under HIPAA, or an unauthorized acquisition under Wis. Stat. §134.98 and the reasoning for such determination;
13. If Contractor determines there has been a breach, impermissible use, or impermissible disclosure, an explanation of the root cause of the breach, impermissible use, or impermissible disclosure;
14. A list of the corrective actions taken to mitigate the suspected breach, impermissible use, or impermissible disclosure; and
15. A list of the corrective actions taken to prevent a similar future breach, impermissible use, or impermissible disclosure.

**COORDINATION OF BREACH RESPONSE ACTIVITIES:**

1. Contractor will fully cooperate with the Department’s investigation of any breach of Confidential Information involving Contractor, including but not limited to making witnesses, documents, HIPAA logs, systems logs, video recordings, or other pertinent or useful information available immediately upon Contractor’s reporting of the breach and throughout the investigation. Contractor’s full cooperation will include but not be limited to Contractor:

**a.** Immediately preserving any potential forensic evidence relating to the breach, and remedying the breach as quickly as circumstances permit

**b.** Within forty-eight (48) hours designating a contact person to whom the Department will direct inquiries, and who will communicate Contractor responses to Department inquiries; Contractor will designate a Privacy Officer and Security Officer to serve as contacts for the Department.

**c.** As rapidly as circumstances permit, applying appropriate resources to remedy the breach condition, investigate, document, restore the Department service(s) as directed by the Department, and undertake appropriate response activities such as working with the Department, its representative, and law enforcement to identify the breach, identify the perpetrator(s), and take appropriate actions to remediate the security vulnerability;

**d.** Providing status reports to the Department at least every two (2) hours until the root cause of the breach is identified and a plan is devised to fully remediate the breach;

**e.** Once the root cause of the breach is identified and a plan is devised to fully remediate the breach, providing status reports to the Department daily or at mutually agreed upon timeframes, to the Department on breach response activities, findings, analyses, and conclusions;

**f.** Coordinating all media, law enforcement, or other breach notifications with the Department in advance of such notification(s), unless expressly prohibited by law; and

**g.** Ensuring that knowledgeable Contractor staff is available on short notice, if needed, to participate in Department-initiated meetings and/or conference calls regarding the breach.

**ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS:**

1. Contractor will make itself and any employees, subcontractors, or agents assisting Contractor in the performance of its obligations available to the Department at no cost to the Department to testify as witnesses, or otherwise, in the event of a breach or other unauthorized disclosure of Confidential Information caused by Contractor that results in litigation, governmental investigations, or administrative proceedings against the Department, its directors, officers, agents or employees based upon a claimed violation of laws relating to security and privacy or arising out of this Agreement or the Contract.

1. **RETENTION OF LOGS:**
2. Contractor shall keep all HIPAA logs (logs of any systems that have information relating to HIPAA) for six (6) years.
3. Contractor shall keep all firewall logs for twelve (12) months.
4. **ADDITIONAL INSURANCE:** In addition to the insurance required under the Contract, Contractor, at its sole cost and expense, will obtain, keep in force, and maintain an insurance policy (or policies) that provides coverage for privacy and data security breaches. This specific type of insurance is typically referred to as Privacy, Technology and Data Security Liability, Cyber Liability, or Technology Professional Liability. In some cases, Professional Liability policies may include some coverage for privacy and/or data breaches. Regardless of the type of policy in place, it needs to include coverage for reasonable costs in investigating and responding to privacy and/or data breaches with the following minimum limits unless the Department specifies otherwise: $1,000,000 Each Occurrence and $5,000,000 Aggregate.

1. **INFORMATION SECURITY PLAN REQUIREMENTS:**

**(1)** Contractor will develop, implement, and maintain a comprehensive Information Security Plan that is written in one or more readily accessible parts and contains administrative, technical, and physical safeguards. The safeguards contained in the Information Security Plan must be consistent with the safeguards for protection of Confidential Information and information of a similar character set forth in any state or federal regulations by which the person who owns or licenses such information may be regulated.

**(2)** Without limiting the generality of the foregoing, every comprehensive Information Security Plan will include, but not be limited to:

**a.** Designating one or more employees to maintain the comprehensive Information Security Plan;

**b.** Identifying and assessing internal and external risks to the security, confidentiality, and/or integrity of any electronic, paper or other records containing Confidential Information and of Department Information Resources, and evaluating and improving, where necessary, the effectiveness of the current safeguards for limiting such risks, including but not limited to:

**--** Ongoing employee (including temporary and contract employee) training;

**--** Employee compliance with policies and procedures; and

**--** Means, including Contractor staff, processes, and technology, for detecting information system intrusions, data breaches, and anomalous system behavior or activity, and for preventing security breaches, intrusions, or unauthorized access to information systems or networks.

**c.** Developing security policies for employees relating to the storage, access and transportation of records containing Confidential Information outside of business premises.

**d.** Imposing disciplinary measures for violations of the comprehensive Information Security Plan rules.

**e.** Preventing terminated employees from accessing records containing Confidential Information and/or Department Information Resources.

**f.** Overseeing service providers, by:

-- Taking reasonable steps to select and retain third-party service providers that are capable of maintaining appropriate security measures to protect such Confidential Information and Department Information Resources consistent with all applicable laws and regulations; and

-- Requiring such third-party service providers by contract to implement and maintain such appropriate security measures for Confidential Information.

**g.** Placing reasonable restrictions upon physical access to records containing Confidential Information and Department Information Resources and requiring storage of such records and data in locked facilities, storage areas or containers.

**h.** Restrict physical access to any network or data centers that may have access to Confidential Information or Department Information Resources.

**i.** Requiring regular monitoring to ensure that the comprehensive Information Security Plan is operating in a manner reasonably calculated to prevent unauthorized access to or unauthorized use of Confidential Information and Department Information Resources; and upgrading information safeguards as necessary to limit risks.

**j.** Reviewing the scope of the security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing Confidential Information and of Department Information Resources.

**k.** Documenting responsive actions taken in connection with any incident involving a breach, and mandating post-incident review of events and actions taken, if any, to make changes in business practices relating to protection of Confidential Information and Department Information Resources.

1. **COMPUTER SYSTEM SECURITY REQUIREMENTS:** To the extent that Contractor electronically stores or transmits Confidential Information or has access to any Department Information Resources, it will include in its written, comprehensive Information Security Plan the establishment and maintenance of a security system covering its computers, including any wireless system, that, at a minimum, and to the extent technically feasible, will have the following elements:

**(1)** Secure user authentication protocols including:

**a.** Control of user IDs and other identifiers;

**b.** A secure method of assigning and selecting passwords, or use of unique identifier technologies, such as biometrics or token devices;

**c.** Multi-Factor Authentication (MFA);

**d.** Control of data security passwords to ensure that such passwords are kept in a location and/or format that does not compromise the security of the data they protect;

**e.** MFA for system administrators and others with ‘super-user’ access rights;

**f.** Restricting access to active users and active user accounts only;

**g.** Blocking access to user identification after multiple unsuccessful attempts to gain access or the limitation placed on access for the particular system; and

**h.** Periodic review of user access, access rights and audit of user accounts.

**(2)** Secure access control measures that:

**a.** Restrict access to records and files containing Confidential Information and systems that may have access to Department Information Resources to those who need such information to perform their job duties; and

**b.** Assign unique identifications plus passwords, which are not vendor supplied default passwords, to each person with computer access, which are reasonably designed to maintain the integrity of the security of the access controls.

1. Encryption of all transmitted records and files containing Confidential Information.
2. Adequate security of all networks that connect to Department Information Resources or access Confidential Information, including wireless networks.
3. Reasonable monitoring of systems, for unauthorized use of or access to Confidential Information and Department Information Resources.
4. Encryption of all Confidential Information stored on Contractor devices, including laptops or other portable storage devices.
5. For files containing Confidential Information on a system that is connected to the Internet or that may have access to Department Information Resources, reasonably up-to-date firewall, router and switch protection and operating system security patches, reasonably designed to maintain the integrity of the Confidential Information.
6. Reasonably up-to-date versions of system security agent software, including intrusion detection systems, which must include malware protection and reasonably up-to-date patches and virus definitions, or a version of such software that can still be supported with up-to-date patches and virus definitions, and is set to receive the most current security updates on a regular basis.

**(9)** Education and training of employees on the proper use of the computer security system and the importance of Confidential Information and network security.

With reasonable notice to Contractor, the Department may require additional security measures which may be identified in additional guidance, contracts, communications or requirements.

**29.0 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 the Contract, and if the Contract involves payment of more than three thousand dollars ($3,000) within a twelve (12) month period, the Contract is voidable by the Department unless appropriate disclosure is made according to s. 19.45(6), Wis. Stats., before the Contract is signed. Disclosure must be made to the Department or the State of Wisconsin Ethics Board, 44 East Mifflin Street, Suite 601, Madison, Wisconsin 53703 (Telephone 608-266-8123).

**30.0 DISCLOSURE OF INDEPENDENCE AND RELATIONSHIP:**

**30.1** Contractor certifies that no relationship exists between Contractor and the Department 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 may waive this provision, in writing, if those activities of the Contractor will not be adverse to the interests of the State.

**30.2** Contractor agrees 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 Department or has interests that are adverse to the Department. The Department may waive this provision, in writing, if those activities of the Contractor will not be adverse to the interests of the State.

**31.0 PROMOTIONAL ADVERTISING / NEWS RELEASES:** Reference to or use of the Department, the State, any of its departments, agencies or other subunits, or any State official or employee for commercial promotion is prohibited. News releases pertaining to the Contract, shall not be made without prior approval of the Department. Release of broadcast e-mails pertaining to the Contract shall not be made without prior written authorization of the Department.

**32.0 EMPLOYMENT:** The Contractor will not engage the services of any person or persons now employed by the State, including any department, commission or board thereof, to provide services relating to the Contract without the written consent of the employing agency of such person or persons and of the Department.

**33.0 INDEPENDENT CAPACITY OF CONTRACTOR:** The Department and the Contractor agree that the Contractor, its officers, agents, and employees, in the performance of the Contract 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.

**34.0 TAXES:** The State and its agencies are exempt from payment of all federal tax and State and local taxes on its purchases except Wisconsin excise taxes as described below.

 The State is exempt from payment of Wisconsin sales or use tax on its purchases. The State 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.

**35.0 VENDOR TAX DELINQUENCY:** The State may offset Contractor’s payments if Contractor has a delinquent State tax liability.

**36.0 FOREIGN CORPORATION:** If Contractor is a foreign corporation (any corporation other than a Wisconsin corporation), Contractor 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 Corporations, P. O. Box 7846, Madison, WI 53707-7846; telephone (608) 261-7577.

**37.0 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 Department shall have the right to audit, review, examine, copy, and transcribe any pertinent records or documents relating to the Contract held by the Contractor.

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 a contract. Pursuant to §19.36 (3), Wis. Stats., all records of the Contractor that are produced or collected under the Contract are subject to disclosure pursuant to a public records request. Upon receipt of notice from the State of a public records request for records produced or collected under the Contract, the Contractor shall provide the requested records to the Department. The Contractor, following final payment, shall retain all records produced or collected under the Contract for six (6) years.

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

**39.0 ASSIGNMENT:** No right or duty in whole or in part of the Contractor under the Contract may be assigned or delegated without the prior written consent of the Department.

**40.0 PATENT INFRINGEMENT:** If goods, products, or articles are provided under the Contract, the Contractor guarantees such items were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of such items described in the Contract 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 (provided that the 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 items, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.

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

**42.0 FORCE MAJEURE**: Neither the Contractor nor the Department shall be in default by reason of any failure in performance of the Contract 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 non-performing party.