**Department of Employee Trust** **Funds**

P.O. Box 7931

Madison, WI 53707-7931

**Appendix 1**

**General Questionnaire**

**RFP ETJ0048**

**Business Process Management and Strategic Mapping**

**Consulting Services**

**This General Questionnaire section is scored. (300 total points)**

The purpose of this questionnaire is to provide the Department with a basis for determining the Proposer’s capability to undertake the Contract.

All Proposers must respond to the questions/requirements below by restating the question or requirement and the identifying number of each (for example, 1.3.i.a), and providing a detailed written response. The Proposal, at a minimum, must address the items listed below, and be organized and labeled in the order indicated below. Instructions for formatting the written response to this section are found in Section 2.4 Proposal Organization and Format.

Include your answers to this Questionnaire and all requested documents associated with the questions/requirements below in Tab 2 of your Proposal. Label all documents provided with the question or requirement number it applies to.

The Proposer must be able to perform the Services according to the requirements contained in this RFP.

The Proposer must provide sufficient detail for the evaluation committee and the Department to understand how the Proposer will comply with each requirement. If the Proposer believes Proposer’s qualifications go beyond the minimum requirements or add value, indicate those capabilities in the appropriate section of the Proposal. **Associated costs should ONLY be listed in the Cost Proposal. Do not include cost/pricing information in any other section of the Proposal.**

**1.0 Staffing and Experience**

|  |  |
| --- | --- |
| 1.1 | Contact InformationProvide Proposer’s company name, main office address, website, telephone number and name of the authorized official responsible for all activities relating to the Proposal.  |
| 1.2 | **Firm Experience**Proposer must have at least 10 years of experience conducting **all** of the following with public pension funds: strategic planning, organizational effectiveness including development of an outcomes-based metrics program, implementation of a balanced score-card, creation of a sustainable business process management program and end-to-end process blueprint, project portfolio management and related executive consulting and training services. Confirm in writing that Proposer has the above-listed experience and provide a summary of the Proposer’s general qualifications to provide the services described in Appendix 2 – Requirements and Technical Questionnaire. |
| 1.3 | **Firm Profile**i. Describe:1. Number of employees.
2. Proposer’s contribution to or involvement with professional organizations, such as the Project Management Institute, American Society of Quality (ASQ), Association of Business Process Management Professionals (ABPMP) registered training provider, National Association of State Retirement Administrators (NASRA) and Public Retirement Information Systems Management (PRISM).
3. Proposer’s BPM and holistic process blueprint capability as well as development of and connecting strategic Balanced Score Card metrics with day-to-day operational performance metrics.
4. The location of Proposer’s office(s), and number of employees in that office or offices, from which the work on this engagement is to be sourced.

ii. Submit Proposer’s audited financial statements for the two (2) most recent fiscal years including the audit opinion, balance sheet, statement of operations, and notes to the financial statements, or evidence of the firm’s financial and organizational stability. |
| 1.4 | **Management Profile**Identify Proposer’s principal supervisory and management staff, including engagement partners, managers, other supervisors and specialists who would be assigned to this engagement. Include:1. Information on the qualifications, experience, training, and consulting experience of each person who will be involved with this engagement, including certifications from organizations such as ABPMP, ASQ, Project Management Institute (PMI) and membership in professional organizations relevant to the performance of the services solicited in this RFP.
2. Whether or not the persons listed above, in the past five (5) years, have been the subject of any disciplinary action or inquiry in any jurisdiction. Senior managers who may be assigned to this engagement must be specifically identified.
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| 1.5 | **Ownership and Client Profile**Describe Proposer’s principal business and client base. The response must address the following:1. Proposer’s volume of business and market share in relation to the services solicited in this RFP.
2. The percentage of public pension funds business Proposer had compared to Proposer’s total business during 2018-2019.
3. The types of services provided by the Proposer’s office that will manage this engagement. List separately engagements that are relevant to the proposed services with public pension funds, insurance industry clients, state, federal and non-profit organizations, including type and scope of engagements in the past three years.
4. Is Proposer a subsidiary or affiliate of another company? Describe in detail.
5. Provide full disclosure of all direct or indirect ownership of Proposer, including information regarding all situations where any insurance or investment company has any ownership or monetary interest in Proposer.
6. Any pending agreements to merge or sell the firm.
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| 1.8 | **Discipline and Litigation**Proposer must not have been the subject of any disciplinary action or inquiry during the past five (5) years. 1. Provide detailed and specific information regarding all situations where Proposer has been investigated, cited, or threatened with a citation or disciplinary action, by any certifying body, state or federal regulatory agency within the last five (5) calendar years. Provide a detailed description of any litigation involving contracts in which your firm has been or is involved. The response must include all such situations including the date such action was initiated and how the matter was resolved.
2. Has Proposer been subject to any litigation alleging breach of contract, contract default, fraud, breach of fiduciary duty, or other willful or negligent misconduct? If so, provide details including dates and outcomes. The Department reserves the right to reject a Proposal based on this information.
3. Provide information for all situations where a contract has been canceled or where a contract was not renewed due to the fault or alleged fault on the part of Proposer.

During the term of the Contract, Contractor shall keep the Department apprised of any litigation or disciplinary action the Contractor may become involved in. |
| 1.9 | **Quality Control**Proposer must have an internal quality control system in place. Describe Proposer’s internal quality control procedures for keeping good records, documenting business processes, checking for errors, and reviewing processes for effectiveness and opportunities to improve. Describe how Proposer’s quality control processes would be applied to each statement of work for the projects described in Appendix 2.  |
| 1.10 | **Current Resources**Provide a statement as to the extent to which Proposer can perform the proposed Services using only present staff and computer equipment/software/technology, and the extent to which additional resources will be needed by Proposer and how that will be addressed by Proposer. |
| 1.11 | **Problem Resolution**Describe Proposer’s problem resolution process in the event an issue arises between you and the Department that requires escalation beyond the key staff. 1. Outline the problem resolution process including escalation steps.
2. Name the title(s)/individual(s) with problem resolution authority.
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**Appendix 2**

**Requirements and Technical Questionnaire**

**RFP ETJ0048**

**Business Process Management and Strategic Mapping**

**Consulting Services**

**This Technical Questionnaire section is scored. (500 total points)**

The purpose of this questionnaire is to provide the Department with a basis for determining the Proposer’s capability to undertake the Contract.

Section 1 of this document includes the scope and requirements of this RFP and the expected deliverables or Services to be delivered by the Contractor under the Contract. All Proposers must respond to all questions/requirements stated in Section 2 below by restating the question or requirement and the identifying number of each (for example, 2.1 or 2.3.a), and providing a detailed written response. The Proposal, at a minimum, must address the items listed below and be organized and labeled in the order indicated below. Instructions for formatting the written response to this section are found in RFP Section 2.4 Proposal Organization and Format.

Include your answers to this Questionnaire and all requested documents associated with the questions/requirements below in Tab 2 of your Proposal. Label all documents provided with the question or requirement number it applies to.

The Proposer must be able to perform Services according to the requirements contained in this RFP.

The Proposer must provide sufficient detail for the evaluation committee and the Department to understand how the Proposer will comply with each requirement. If the Proposer believes Proposer’s qualifications go beyond the minimum requirements or add value, indicate those capabilities in the appropriate section of the Proposal. **Associated costs should ONLY be listed in the Cost Proposal. Do not include cost/pricing information in any other section of the Proposal.**

**1.0 Services and Deliverables Required**

The Department’s Office of Enterprise Initiatives (OEI) is seeking consulting, training and advisory services in the areas of business process management, process blueprint, project portfolio management, organizational effectiveness and strategic planning. The Contractor shall objectively and systematically consult on the Department’s current methods and procedures in these areas to provide an independent assessment on what is needed to mature these areas, create alignment and implement changes as needed to increase organizational effectiveness. The Contractor shall use its judgment, experience and creativity in conducting this engagement.

**The Department is seeking to outsource the following consulting, training, advisory and review services that are anticipated to span the balance of FY20 (contract start date – June 30, 2020) FY21 (July 1, 2020 – June 30, 2021), FY22 (July 1, 2021 – June 30, 2022):**

1. **Business Process Management**: The Contractor shall consult on the Department’s existing business process management (BPM) program, processes and tools. Perform a gap analysis of the Department’s current process versus best practices. For the gaps identified, the Contractor shall identify remediation plans and work with the Department’s Office of Enterprise Initiatives and Business Process and Analysis Center of Excellence (BPA CoE) to implement the plans. The Department’s goal is to develop and mature the Department’s BPM program as a sustainable asset for the Department by providing support for existing BPM initiatives, initiate and mentor new projects and augment staff skillsets with training and mentoring. The Contractor may provide these services onsite, remotely or by using a combination thereof.

The Department’s BPM experts require both technical and “soft” skills to lead the Department forward through myriad complex situations. Department experts have already received essential BPM skills training. Up to three days of additional training for these experts is desired. This Contractor-provided training may include a combination of facilitation, business analysis, and advanced BPM skills. The Department prefers Association of Business Process Management Professionals (ABPMP)-compliant training so that these experts may pursue Certified Business Process Associate (CBPA) certification or Certified Business Process Professional (CBPP) certification in the future.

* + - The Contractor will provide BPM training related to the Department’s current BPM methodology and build on this methodology to mature standards and skills for sixteen (16) current Department BPM practitioners as well as new Department BPM practitioners that may be identified during the term of the Contract.
	+ The Contractor will execute the Department’s BPM training program to expand the number of Department staff trained in this methodology. The Contractor will execute training over a three to four-month time frame using a learn-by-doing approach. The Department prefers ABPMP-compliant training so that Department experts may pursue CBPA or CBPP certification in the future.
		- The Contractor will deliver just-in-time training in the form of 2-3-day onsite workshops. The participants will be grouped into small teams. Each team will work together on a single pilot project.
		- The Contractor will provide coaching for pilot projects based on the methodology agreed upon between the Department and the Contractor for no greater than 20 Department staff.
		- The Contractor will develop additional technical and soft skill training for the Department’s BPM experts.
	+ The Department’s BPM experts are Business Analysts who are the go-to resources their peers can rely on for technical and practical guidance in executing process improvement opportunities across the organization. They lead and/or facilitate Department projects. These experts have received training and are gaining experience through process improvement projects. The Department desires additional coaching to help them grow in their roles as they encounter various challenges in applying these concepts throughout the term of the Contract.
		- The Contractor will provide coaching and mentoring to project teams in developing implementation plans that are comprehensive and high quality to ensure effective execution.
		- The Contractor will provide support (through web meetings, document review etc.) for BPM project initiatives.
		- The Contractor will participate in scoping, chartering, preparation and review of BPM project recommendations.
		- The Contractor will mentor Department BPM experts through coaching to assist in professional growth and skills development.
		- The Contractor will assist with Department BPM project idea generation and selection to ensure inclusion of a range of analysis challenges, meaningful business results that are achievable within 3 months to ensure delivery of business value.
		- The Contractor will provide BPM and BPA CoE coaching to help make BPM part of the Department’s culture.
	+ Coaching and support in maturing the BPA CoE. This CoE is intended to assure consistency in process improvement and management techniques and business analysis throughout the Department. By providing a forum for sharing new learning and best practices, it will also help make BPM a sustainable part of the culture. While the Department is already in the process of developing the BPA CoE, consulting is desired to inform structure, performance metrics, roles, scope and governance.
		- To assure the process improvement methodology developed is maintained and utilized on a consistent basis by both business analysts and subject matter experts throughout the Department, the Contractor will assist with evolving and maturing the Department’s BPM methodology including ensuring the Department’s BPM playbook is consistent with best practices and supports the Department’s evolution. This playbook is intended to be a how-to guide for the Department’s BPM methodology and for process analysis techniques.
1. **Process Blueprint**: The Contractor shall consult with the Department on refinement of the Department’s process blueprint through mentorship and coaching of trained BPM staff, process owners and operational subject matter experts on development of a holistic end-to-end process blueprint that clarifies major process flows, key support processes, data, systems, stakeholders and development of key performance measures. The Contractor may provide these services onsite, remotely or by using a combination thereof.
	* The Contractor will build on the Department’s current efforts to integrate and align the Department’s process blueprint Level 0 and Level 1 of the Department’s Business Capability Model (BCM). A current example of the Department’s BCM is shown in Appendix 5.
		+ The Contractor will coach, mentor and review work processes to create supplier, input, process, output, and customer (SIPOC) diagrams related to the Department’s process blueprint.
		+ The Contractor will coach and mentor process owners and BPM practitioners in identifying process gaps.
	* The Contractor will Train Process Owners
		+ The Department has identified process owners for key business processes. The Department envisions this group of process owners understanding how the Department’s cross-functional value chains operate. These process owners will have responsibility for monitoring performance, identifying opportunities to optimize process flow and chartering improvement projects. The Department envisions a two-day workshop to deliver new skills to owners of the Department’s Level 0 and Level 1 of the Department’s BCM, see Appendix 5. This document will be shared with the Contractor after the Contract is signed.
	* The Contractor will Deliver BPM Training for Executives
		+ The process blueprint and deliverables described above will require the Department’s leadership team to change/modify some of their management and governance practices. The Contractor will develop and provide a ‘BPM 101’ training for executives to educate leaders on how to leverage new structures and metrics for optimal strategic and operational performance.
		+ The Contractor will develop linkage between process performance metrics and the Department’s strategic goals. The Contractor will assist the Department in the development and evaluation of key metrics for each Level 1 process and recommend changes as necessary. To complete this objective effectively, the Contractor may need to assist the Department in developing a strategic balanced scorecard and/or strategy map.
2. **Strategic planning:** The Contractor shall consult with Department senior leadership to develop a strategy map for Department strategic goals creating a line-of-sight from strategy to execution. The Contractor will consult with the Department to establish a governance and oversight framework for the Department’s strategic plan and execution of strategic initiatives. The governance framework shall establish project portfolio management best practices for strategic initiatives leveraging existing governance frameworks including selection, prioritization, reporting and evaluation to leverage the Department’s portfolio management tool, Eclipse. The Contractor will provide sponsors and Department executives training on attributes of successful sponsorship of strategic initiatives. The Contractor may provide these services onsite, remotely or by using a combination thereof.
* The Contractor will Refine the Department’s Governance Model
	+ The Contractor will monitor the implementation and validate the results of projects already in progress.
	+ The Contractor will create mechanisms for ongoing evaluation/prioritization of potential strategic initiatives.
	+ The Contractor will develop a strategy for performance monitoring of inflight strategic initiatives.
	+ The Contractor shall consult on process prioritization and linkage to the Department’s strategic plan with BPA project selection and integration with the enterprise project portfolio.
* The Contractor will Create a Strategy Map of ETFs four strategic goals
	+ The Contractor will work with the Department to select individuals for leadership and implementation teams.
	+ The Contractor will assist the Department in defining roles and responsibilities of the implementation team.
	+ The Contractor will conduct training to introduce strategy maps, including examples that are meaningful and relatable to the Department.
	+ The Contractor will review the Department’s strategic goals and initiatives to determine suitability for strategy mapping.
	+ The Contractor will consult with and guide the Department through development of a strategy map and related outcomes-based metrics.
	+ The Contractor will deliver training to establish understanding among leadership and implementation teams on the connection between, and use of, strategy maps and the Balanced Score Card.
1. **Balanced Score Card:** The Contractor shall consult with Department executives and leadership to implement a Balanced Score Card (BSC) building on the strategy map established in Section III above with associated outcome-based performance metrics that demonstrate organizational effectiveness. The Contractor may provide these services onsite, remotely or by using a combination thereof.
	* The Contractor will Measure Development
		+ The Contractor will assist the Department in identifying members of the implementation team who have a broad range of expertise and deep understanding of the Department’s culture and operations as well as the Department’s long-range strategic direction.
		+ The Contractor will facilitate working sessions to ensure work teams understand the strategy map(s) and ideation of potential measures for each strategic objective.
		+ The Contractor will evaluate measures from the Department’s prior strategic planning efforts.
		+ The Contractor and the Department will prioritize measures for the BSC.
		+ The Contractor will establish measurement definitions and explain and demonstrate them through workshop(s) with stakeholders.
		+ The Contractor will work with the BSC implementation team on data collection.
		+ The Contractor will assist the Department in determining ETF staff to function as an implementation team ‘owner’ for further development of measures and relevant operational metrics of each measure.
		+ The Contractor may be required to conduct targeted 1:1 meeting(s) with each ‘owner’ to complete the measurement definitions, determine best methods for data collection, and discuss appropriate tools needed to properly interpret the measures on the BSC.
	* The Contractor will Conduct a Measurement Finalization Facilitated Session
		+ The Contractor will revise the measurement definitions as needed.
		+ The Contractor will conduct group meetings to analyze and interpret the data gathered for the measures.
		+ The Contractor will format the scorecard.
		+ The Contractor will ensure Department executives understand the measures and obtain executive buy-in of the measures.
	* Contractor’s Presentation of Results
		+ The Contractor will facilitate a session with Department leadership and the implementation team to review the BSC recommendation and make any adjustments or modifications to the BSC based on leadership recommendations.
2. **Portfolio Management**: The Contractor shall consult with the Department, the Department’s portfolio committee and strategic council to establish and mature project and project portfolio management methodologies, and guidelines for project selection with a focus on establishing administration of Department resource allocation and project portfolio(s). The Contractor may provide these services onsite, remotely or by using a combination thereof.
* The Contractor will finalize project selection factors and weighting, risk matrix components and align projects with an eye toward holistic resource allocation.
* The Contractor will refine the Department’s project governance model including the development of roles and responsibilities.
* The Contractor will establish project portfolio management practices to monitor the implementation and validate the results of projects already in progress.
* The Contractor will create mechanisms for ongoing evaluation/prioritization of potential initiatives and for performance monitoring. An important component of the prioritization should include linkages to the Department’s strategic plan.
1. **Executive support:** The Contractorshall provide consulting and mentoring for overall integration of the initiatives described in Sections I-V above and transition (organizational change) management support to develop organizational buy-in of changes. The Contractor shall assist the transition management team with preparing for and delivering organization change for wide-spread adoption of the changes. The Contractor may provide these services onsite, remotely or by using a combination thereof.

**1.1 Timing, Location and Conduct of Work**

Work may be conducted onsite at the Department’s headquarters, remotely/off-site, or by using a combination thereof at mutually agreeable times. The Department may provide laptops and network/systems access for the Contractor as requested.

**1.2 Project Deliverables – Statement of Work**

**For each project agreed to by the Contractor and the Department, a signed statement of work will be developed with specific deliverables. A statement of work is required for all engagements and shall include the following:**

**Statement of Work**: A statement of work for each engagement, including objective, scope of work, project staffing, approach for the engagement, estimated timeline of key milestones, such as planning, analysis and development and implementation of the solution, frequency and method of status reporting as well as estimated hours by staff level, must be prepared and approved by the OEI Director before work is initiated. Statements of work will be incorporated into the statements of work for each engagement.

**1.3 Acceptance Criteria**

## The Department’s evaluation and acceptance criteria of the aforementioned deliverables shall include but not be limit to completeness, accuracy, and quality of the deliverable. Acceptance criteria will be specified in the statement of work for each specific engagement as needed.

**1.4 Changes to Engagement**

**Changes with no impact on cost and/or timeline:** Any changes to the engagement requirements that have no impact on either the cost or the timeline must be mutually agreed upon by the Department and the Contractor and shall be documented by e-mail or other written means between the OEI Director and the Contractor.

**Changes with impact on cost and/or timeline:** Any changes to the engagement requirements that have impact on cost, either an increase or a decrease, or alter the timeline for any deliverables will require the following:

1. A new or revised statement of work setting forth the requirements of the proposed changes
2. A written summary of the facts that led to the decision
3. An impact analysis on related tasks, budget, and the overall Services to be delivered by the Contractor
4. Approval signature from the Department and the Contractor

Costs not included in the agreed upon engagement statement of work signed by the Department and the Contractor through the above process shall not be eligible for reimbursement.

**1.5 Engagement Scope**

The schedule for each aspect of the engagement planned for the next 3 years will be jointly determined by the Department and the Contractor, included in a statement of work signed by the Department and the Contractor, and appended to the Contract. The following is the Department’s estimated timeline:

|  |  |
| --- | --- |
| **Date** | **Event** |
| February 18, 2020 | Estimated Contract start date |
| February 18-28, 2020 | Preplanning work, Contractor onboarding and SOW development for first initiative(s). Subsequent SOWs pertaining to the work outlined in Section 1 above will be developed as needed.  |
| March 2, 2020 - December 31, 2024 | Complete engagements defined in SOW(s). Over the course of the Contract, execute, provide deliverables and finalize engagements outlined in Section 1.0 above, as specified in the SOW(s). as o Consulting, training and advisory services in the areas of: * Business Process Management
* Business Process Blueprint
* Portfolio Management
* Balanced Score Card
* Strategic Planning
* Executive Support and Mentoring for Overall Integration of the Above Initiatives
 |

**2.0 Questionnaire**

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| --- | --- |
| **2.1** | **Specific Approach**Provide a work plan for the performance of the services for each consulting engagement identified in Section 1.0, I-VI above, including an explanation of the Proposer’s methodology to be followed. In developing the work plan, include a breakdown of major segments of the initiative and hours for each team member.At a minimum, provide the following information in the work plan:1. **Summary:** State Proposer’s overall approach to meeting the objectives and satisfying the scope of work to be performed, sequence of activities, and a description of methodology or techniques to be used. Include the approach to be taken to gain and document an understanding of the Department’s current approach.
2. **Program Schedule:** Provide projected milestones or benchmarks for completing the projects (to include status reports and deliverables).
3. **Engagement Organization:** Describe the Proposer’s proposed management structure, program monitoring procedures, and organization of the proposed team. Provide a statement detailing Proposer’s approach to the project, specifically address the Proposer’s ability and willingness to commit and maintain staffing to successfully complete the projects.
4. **Assigned Contractor Personnel:** Provide the following information about the Proposer’s staff to be assigned to each project:
* List all key personnel assigned to the project by level, name and location. Provide a resume or similar statement describing the background, qualifications and experience of the lead person and all persons assigned to the project.
* Provide a statement of education and training programs provided to, or required of, the staff identified for participation in the project, particularly with reference to management consulting, governmental pension practices and procedures.
1. **Planned Use of Software/Programs:** Describe the Proposer’s system(s) or approach to document project findings and artifacts.
2. **Department Personnel:** Provide a summary and profile of the type of Department resources you expect to interface with during the engagements.
 |
| **2.3** | **Qualifications**i) Provide a statement of the Proposer’s background and related experience in performing services like those listed in Section 1.0, I-VI above in the past two years for Proposer’s clients, preferably, public pension organizations, including technical capabilities and approach. At a minimum, provide the following information in the response: 1. Evidence of how Proposer has successfully conducted similar contractual consulting services. Include a description of the services provided and the size and type of client the services were provided for.
2. A description of how the services were provided successfully (or otherwise) according to project objectives, timelines and within the allocated budget, and any other positive effects.
3. A description of any standardized or repeatable service delivery methods and capabilities learned in providing the services.

ii) Describe Proposer’s approach to service delivery management and working relationships with clients and other providers in the client's service ecosystem. iii) Provide a summary of Proposer’s service delivery methodologies and adherence to industry standards related to BPM, organizational performance and outcome-based metrics programs, and strategic alignment. iv) Provide work samples or artifacts Proposer has developed for similar engagements commonly associated with the types of services described in this RFP. Proposer is encouraged to include example report formats or templates exclusive of any confidential or proprietary information which should be redacted. |
| **2.4** | **References**Using FORM F – Vendor References, provide a minimum of four references for engagements the Proposer has performed during the last five years that demonstrate the Proposer’s ability to successfully complete engagements similar to those described in this RFP. Include the name of the reference’s organization, the contact name, title, telephone number, and engagement title/type of services provided for all references listed. |
| **2.5** | **Conflict of Interest**Address possible conflicts of interest with other Proposer clients should Proposer be awarded a Contract.  |
| **2.6** | **Engagement Issues**Describe Proposer’s approach to resolve any engagement difficulties. Identify and describe any anticipated difficulties in performing the Services for the Department. |
| **2.7** | **Additional Work**The Department and the Contractor may agree on additional services not specified in the RFP. Examples of additional work may include but are not limited to Project Management, Business Analysis, and organizational change management training. These services will not be included in the initial Contract, however, the ability of the Contractor to perform these services will be a factor in the Contractor selection process. Describe Proposer’s capabilities and experience in providing each of the above-named services.The Department will provide written requirements for any additional work requested. A statement of work as described in Section 1.2 above, must be reviewed and approved by the OEI Director prior to the Contractor commencing any additional work.  |

**Department of Employee Trust** **Funds**

P.O. Box 7931

Madison, WI 53707-7931

**Appendix 3**

**Department Terms and Conditions**

**RFP ETJ0048**

**Business Process Management and Strategic Mapping**

**Consulting Services**

Rev. Date: 05-01-2019

**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” 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, color, handicap, sex, physical condition, developmental disability as defined in Wis. Stat. § 51.01(5); sexual orientation as defined in Wis. Stat. § 111.32(13m), 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.

Pursuant to 2019 Wisconsin Executive Order 1, the Contractor agrees it will hire only on the basis of merit and will not discriminate against any persons performing a contract, subcontract or grant because of military or veteran status, gender identity or expression, marital or familial status, genetic information or political affiliation.

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 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 1/Type 2 Report:** If the Department requires Contractor to provide a Service Organization Control (SOC) audit report, Contractor will furnish the Department with a copy of Contractor’s annual independent service auditor’s report on management’s description of Contractor’s system and the suitability of the design and operating effectiveness of controls (SOC 1, Type 2). This independent audit of the Contractor’s controls must be completed in accordance with the American Institute of Certified Public Accountants’ (AICPA) 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 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. In addition, the Department requires Contractor to submit a letter of attestation indicating Contractor’s receipt of management’s assertion of control compliance from Contractor’s subcontractors, when applicable.

**6.2 SOC 2/Type 2 Report:** If the Department requires Contractor to provide a SOC audit report, Contractor will furnish the Department with a copy of Contractor’s annual independent service auditor’s report on Contractor’s controls relevant to security, availability, processing integrity, confidentiality, and privacy. The SOC audit report must be a type 2 report that includes management’s description of Contractor’s systemand the suitability of the design controls set forth in AICPA Trust Services Criteria Section 100 (2017). This independent audit of the Contractor’s controls must be completed in accordance with the AICPA SSAE No. 18 (SOC 2, Type 2). The SSAE 18 (SOC 2, 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 2, Type 2) audit covers less than 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 2, Type 2) audit. In addition, the Department requires Contractor to submit a letter of attestation indicating Contractor’s receipt of management’s assertion of control compliance from Contractor’s subcontractors.

**6.3 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.

**6.4 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.

**6.5 LAB Audit:** The Department is audited by the State of Wisconsin Legislative Audit Bureau annually, as required by Wis. Stat. § 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](https://dpm.wi.gov/%20Hand%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 the 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 the 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 a Department solicitation, such performance standards and guarantees may have been set forth in the solicitation.

**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 the number of 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 appropriate Sections herein. The allotted time periods above are in addition to those periods for a party to cure provided elsewhere herein or 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 suspending 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 Wis. Stat. § 111 Subchapter II, Wisconsin’s Fair Employment Law, 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, becomes 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 Section 22, Subsection (v), 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, PRIVACY AND HIPAA BUSINESS ASSOCIATE AGREEMENT:** This Section is intended to cover handling of Confidential Information under State and federal law, including, where applicable, 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” 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) Personally Identifiable Information under [Wis. Stat. § 19.62(5)](https://docs.legis.wisconsin.gov/document/statutes/19.62%285%29); (iii) Protected Health Information under HIPAA, 45 CFR 160.103; (iv); proprietary information; (v) non-public information related to the State of Wisconsin’s employees, customers, technology (including databases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; (vi) information expressly designated as confidential in writing by the State of Wisconsin; (vii) 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, ETF 10.70(1) and ETF 10.01(3m); or (viii) any material submitted by the Contractor in response to a Department solicitation 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.
	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 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 information 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;
	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 the confidentiality of the information has been or is suspected of being breached;
	6. Not use for its own benefit Confidential Information or any information derived from such information; and
	7. 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).
5. **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.
6. **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.
7. **MANDATORY REPORTING:** Contractor shallreport to the Department in the manner set forth in Subsection 22(m) 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.
8. **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.
9. **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.
10. **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.
	1. Contractor shall keep all HIPAA logs (logs of any systems that have information relating to HIPAA) for six (6) years**.**
11. **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.
12. **INTERNAL PRACTICES:** Contractor shall make its internal practices, books, and records available to the Secretary of the United States Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.
13. **CONTRACTOR REPORTING OF BREACH OR SUSPECTED BREACH OR DISCLOSURE TO THE DEPARTMENT:**
14. 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:
15. The nature of the unauthorized access, use or disclosure;
16. A list of any persons affected (if available);
17. A description of the information included in the breach, impermissible use, or impermissible disclosure;
18. The date or dates of the suspected breach, impermissible use, or impermissible disclosure;
19. The date of the discovery by Contractor;
20. A list of the proactive steps taken by Contractor and being taken to correct the breach, impermissible use or impermissible disclosure; and
21. Contact information at Contractor for affected persons who contact the Department regarding the issue.
22. 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.
23. 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:
24. A complete list of any persons affected (whose Confidential Information was supplied to Contractor by the Department) and their contact information;
25. Copies of correspondence or notifications provided to the public, media, OCR, other governmental entity, or persons potentially affected;
26. 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;
27. 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;
28. A list of the corrective actions taken to mitigate the suspected breach, impermissible use, or impermissible disclosure; and
29. A list of the corrective actions taken to prevent a similar future breach, impermissible use, or impermissible disclosure.
30. **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:
31. Immediately preserving any potential forensic evidence relating to the breach, and remedying the breach as quickly as circumstances permit;
32. 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;
33. 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;
34. 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;
35. 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;
36. Coordinating all media, law enforcement, or other breach notifications with the Department in advance of such notification(s), unless expressly prohibited by law; and
37. 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.
38. **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.
39. **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.
40. **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.
41. **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.
42. **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.
43. **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.
44. **Survival:**  The obligations of Contractor under this Section shall survive the termination of the Contract.
45. **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:
46. Retain only that Confidential Information which is necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities;
47. Return to the Department or, if agreed to by the Department, destroy the remaining Confidential Information that Contractor still maintains in any form;
48. 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;
49. 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 under Subsection 22(d) which applied prior to termination;
50. 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
51. If required by the Department, transmit the Confidential Information to another contractor of the Department.
52. **ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS:** 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 these Terms and Conditions or the Contract.

**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 the Department and its governing boards (“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 the Department, its governing boards, 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, Contractor employees or subcontractors; (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 the 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 INFORMATION SECURITY AGREEMENT**

1. **PURPOSE AND SCOPE OF APPLICATION:** This Information Security Agreement (“Agreement”) is designed to protect the Department’s Confidential Information (defined above in Section 22.0) and Department Information Resources (defined below). This Agreement describes the information security obligations of Contractor, its employees, contractors and third-party users that connect to Department Information Resources and/or gain access to Confidential Information.
2. **DEFINED TERMS**:
3. Department Information Resources. “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 devices; devices managed or used through service agreements; storage, processing, and 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 Information Resources 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 Information Security Plan 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. **SAFEGUARD STANDARD:** Contractor agrees to protect the security of Confidential Information according to all applicable laws and regulations by generally accepted information risk management security control frameworks, standards or guidelines such as the ISO/IEC 27000-series, NIST800-53, CIS Critical Security Controls for Effective Cyber Defense or HIPAA Security Rule – 45 CFR Part 160 and Subparts A and C of Part 164 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. Contractor will ensure that all security measures are regularly reviewed including ongoing monitoring, monthly vulnerability testing and annual penetration and security incident response tests, 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.
2. **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 shall develop, implement, and maintain a comprehensive Information Security Plan that contains administrative, technical, and physical safeguards designed to ensure the privacy, security, integrity, availability, and confidentiality of the Confidential Information. Contractor must provide evidence to the Department of one or more of the following for the plan:
	1. Certification in, or compliance with, generally accepted information risk management security control frameworks, standards or guidelines such as:
		1. ISO/IEC 27000-series;
		2. NIST800-53;
		3. CIS Critical Security Controls for Effective Cyber Defense; or
		4. HIPAA Security Rule - 45 CFR Part 160 and Subparts A and C of Part 164; and
	2. Compliance with any state or federal regulations by which the person or entity who owns or licenses such information may be regulated; or
	3. At a minimum, include the elements listed in the Information Security Plan Requirements set forth below.
2. Upon the Department’s request, Contractor shall submit one of the following documents to the Department:
	1. Independent attestation of certification;
	2. Information Security Plan scope statement;
	3. Information Security Plan statement of applicability; or
	4. SOC 2, Type 2 audit and letter of attestation indicating Contractor’s receipt of management’s assertion of control compliance from Contractor’s subcontractors as described in Section 6 Audit Provision.

 The Department reserves the right to require the Contractor to provide more than one of the above documents. If Contractor is unable to produce one of the above documents, Contractor may satisfy the requirement by providing the assurances in Section 28.0(h) below.

1. Annually, or upon a significant change in risk posture, Contractor will review its Information Security Plan and update and revise it as needed. If at any time there are any material reductions to Contractor’s Information Security Plan, Contractor will notify the Department within two weeks of the completion of the review and prior to implementation. In such instances, the Department will require an explanation of the reductions. 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 defined herein.
2. **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. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the Department requires and is entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Department.
3. **INFORMATION SECURITY PLAN REQUIREMENTS:**

**If Contractor cannot provide evidence of its Information Security Plan as required in Section 28.0(f)(2)a above, Contractor shall provide the following assurances to the Department:**

1. **Security Policies:**
	1. Contractor’s security policy is documented, has obtained management approval, is reviewed no less frequently than annually and is maintained to ensure its continuing suitability, adequacy and effectiveness; and
	2. Contractor’s operational, technical and administrative policies, standards and guidelines are documented, have obtained management approval, are reviewed no less frequently than annually and are maintained to ensure their continuing suitability, adequacy and effectiveness.
2. **Security Organization:**
	1. The Contractor’s security organization is governed and overseen by Contractor’s senior leadership;
	2. Contractor’s security organization includes representation from across Contractor’s organization with defined roles and responsibilities;
	3. Contractor has clearly defined information security responsibilities;
	4. Contractor has confidentiality or non-disclosure agreements in place with the appropriate external entities;
	5. Contractor’s management and implementation of information security (i.e. control objectives, controls, policies, processes, and procedures for information security) are reviewed independently at planned intervals, or when significant changes to the implementation of information security occur; and
	6. Contractor’s agreements with third parties involving accessing, processing, communicating or managing the Contractor’s information or information processing facilities, cover all relevant security requirements.
3. **Asset Management:**
	1. Contractor has identified, inventoried, assigned ownership and established rules for acceptable use for information and associated assets; and
	2. Contractor has a process in place to classify information in terms of its value, legal requirements, sensitivity and criticality to Contractor.
4. **Human Resources:**
	1. Security roles and responsibilities of Contractor’s employees, contractors and third-party users have been defined and documented in accordance with Contractor’s information security policy;
	2. Contractor performs background verification checks on all candidates for employment, contractors, and third-party users in accordance with relevant laws, regulations and ethics, and proportional to the business requirements, the classification of the information to be accessed, and the perceived risks;
	3. All Contractor’s employees and, where relevant, contractors and third-party users, shall receive appropriate security awareness training and regular updates regarding Contractor’s security policies and procedures, as relevant for their job function;
	4. Contractor has a formal disciplinary process in place for employees who have committed a security breach;
	5. Contractor’s employees’ responsibilities for performing employment terminations and changes of employment status are clearly defined and assigned;
	6. All Contractor’s employees, contractors and third-party users shall return all Contractor’s and the Department’s assets in their possession upon termination of their employment, contract or agreement; and
	7. The access rights of all Contractor employees, contractors and third-party users to information and information processing facilities are removed upon termination of their employment, contract or agreement, or adjusted upon a status change.
5. **Physical and Environmental Security:**
	1. **Secure Areas**
		1. Contractor has a physical and environmental policy in place, with standards and guidelines that have been documented and obtained management approval, that is reviewed no less frequently than annually and is maintained to ensure its continuing suitability, adequacy and effectiveness;
		2. Contractor’s secure areas are protected by appropriate entry controls to ensure that only authorized personnel are allowed access; and
		3. Contractor’s physical protection and guidelines for working in secure areas have been adequately designed and applied.
	2. **Equipment security**
		1. Contractor’s equipment, and the equipment Contractor may utilize in its operations that is owned by a third party, is maintained to ensure its continued availability and integrity; and
		2. Contractor’s security measures have been applied to off-site equipment to address the risks of working outside the Contractor’s premises.
	3. **Operations management**
		1. Contractor’s operating procedures have been documented, maintained, and made available to all users who require them;
		2. Contractor controls changes to information processing facilities and systems; and
		3. Contractor has segregated duties and areas of responsibility to reduce opportunities for unauthorized or unintentional modification or misuse of Contractor’s assets.
	4. **Third party service delivery management**
		1. Security controls, service definitions and delivery levels included in Contractor’s third-party service delivery agreements are implemented, operated, and maintained by the third party; and
		2. The services, reports and records provided by third parties are regularly monitored, reviewed and audited by Contractor.
	5. **Back-up**
		1. Contractor regularly makes and tests back-up copies of information and software in accordance with Contractor’s backup policy.
	6. **Network security management**
		1. Networks are managed and controlled, either by Contractor or a third party under contract with Contractor; and
		2. Security features, service levels, and management requirements of all Contractor’s network services have been identified and included in any network services agreement, whether these services are provided in-house by Contractor or outsourced.
	7. **Media handling**
		1. Contractor has procedures in place to prevent unauthorized disclosure, modification, misuse, removal or destruction of assets, and interruption to business activities; and
		2. Contractor has procedures in place for the management of removable media, including the secure and safe disposal of media when no longer required.
	8. **Exchange of information**
		1. Contractor has established agreements for the secure exchange of information and software between Contractor and appropriate external parties;
		2. Contractor shall ensure information involved in electronic messaging is protected;
		3. Contractor has developed and implemented policies and procedures to protect the exchange of information; and
		4. Contractor shall ensure the integrity of information being made available on a publicly available system is protected to prevent unauthorized modification.
	9. **Monitoring**
		1. Contractor shall produce and keep a rolling twelve (12) consecutive months of audit logs recording user activities, exceptions, and information security events to assist in future investigations and access control monitoring;
		2. Contractor’s logging facilities and log information are protected against tampering and unauthorized access; and
		3. Contractor’s system administrator and system operator activities are logged.
6. **Access Management:**
	1. **Access control**
		1. Contractor has an established and documented access control policy that is reviewed regularly based on business and security requirements for access;
		2. Contractor has a formal user registration and de-registration procedure in place for granting and revoking access to all information systems and services;
		3. Contractor restricts and controls the allocation and use of access privileges;
		4. Contractor controls the allocation of passwords through a formal management process; and
		5. Contractor’s management reviews users’ access rights at regular intervals using a formal process.
	2. **User responsibilities**
		1. Users are required to follow good security practices in the selection and use of passwords;
		2. Users shall ensure that unattended equipment is protected; and
		3. Users shall adopt a clear desk policy for papers and removable storage media and a clear screen policy for information processing facilities.
	3. **Network access control**
		1. Contractor’s users shall only be provided with access to the services that they have been specifically authorized to use;
		2. Contractor has implemented appropriate authentication methods to control access by remote users;
		3. Contractor has segregated groups of information services, users, and information systems on networks;
		4. For shared networks, especially those extending across Contractor’s boundaries, Contractor has restricted the capability of users to connect to the network, in line with Contractor’s access control policy; and
		5. Contractor has implemented routing controls for networks to ensure that computer connections and information flows do not breach Contractor’s access control policy.
7. **Security Requirements of Information Systems:**
	1. **Correct processing in applications**
		1. Contractor shall validate data input to applications to ensure the data is correct and appropriate, and incorporate validation checks to detect any corruption of information through processing errors or deliberate acts;
		2. Contractor has identified the requirements for ensuring authenticity and protecting message integrity in applications, and identified and implemented appropriate controls; and
		3. Contractor has validated the data output from an application to ensure that the processing of stored information is correct and appropriate to the circumstances.
	2. **Cryptographic controls**

i. Contractor has a cryptographic controls policy in place that is documented, has obtained management approval, is reviewed no less frequently than annually and is maintained to ensure its continuing suitability, adequacy and effectiveness.

* 1. **Security of system files**
		1. Contractor has procedures in place to control the installation of software on operational systems;
		2. Contractor selects test data carefully, and the test data is protected and controlled; and
		3. Contractor restricts access to program source code.
	2. **Security in development and support processes**
		1. Contractor has implemented procedures to maintain the security of application system software and information;
		2. Contractor utilizes formal change control procedures to implement changes; and
		3. Contractor supervises and monitors outsourced software development.
	3. **Technical Vulnerability Management**
		1. Contractor documents the technical vulnerabilities, the exposure evaluated, and the appropriate measures taken to address the associated risk.
1. **Information Security Incident Management:**
	1. Contractor communicates information security events and weaknesses associated with information systems in a manner allowing timely corrective action to be taken;
	2. All Contractor’s employees, contractors and third-party users of information systems and services are provided awareness training on reporting an observed or suspected incident; and
	3. **Management of information security incidents and improvements**
		1. The responsibilities and procedures of Contractor’s management have been established to ensure timely, effective, and orderly response to information security incidents;
		2. Contractor has mechanisms in place to enable the security incidents to be quantified and monitored; and
		3. Where a follow-up action against a person or organization after an information security incident involves legal action (either civil or criminal), Contractor shall collect, retain and present evidence in conformance with the rules for evidence established in the relevant jurisdiction(s).
2. **Business Continuity Management:**
	* 1. Contractor has implemented one or more business continuity plans, including an information security plan, to maintain or restore operations and ensure availability of information at the required level and in the required timeframe following interruption to, or failure of, critical business processes;
		2. Contractor tests and updates its business continuity plans regularly to ensure that they are up to date and effective; and
		3. Contractor shall include the Department’s designated contact in Contractor’s business continuity plans for notification concerning any disruption that may impact the Services.
3. **Compliance:**
	1. **Identification of applicable legislation**
		1. Contractor understands all relevant statutory, regulatory and contractual requirements under the Contract, and Contractor’s approach to meet these requirements has been explicitly defined, documented, and kept up to date;
		2. Contractor has implemented appropriate procedures to ensure compliance with legislative, regulatory, and contractual requirements under the Contract on the use of material which may be afforded intellectual property rights;
		3. Contractor shall ensure that important records are protected from loss, destruction and falsification, in accordance with the statutory, regulatory, contractual, and business requirements under the Contract; and
		4. Contractor shall ensure the protection and privacy of data as required in relevant legislation, regulations, and, as applicable, the Contract.

**29.0 DISCLOSURE:** If a State public official (Wis. Stat. § 19.42), 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 Wis. Stat. § 19.45(6), before the Contract is signed. Disclosure must be made to the Department or the State of Wisconsin Ethics Commission, P.O. Box 7125, Madison, Wisconsin 53703 (telephone: 608-266-8123; fax: 608-264-9319; email: Ethics@wi.gov).

**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. If such action is taken by the State, the Department will not be liable for any impact sustained by the Contractor due to any delay, or total offset, of any payment owed to the Contractor under the Contract by the Department.

**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. 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 Wis. Stat. §19.36(3), 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.

**Department of Employee Trust** **Funds**

P.O. Box 7931

Madison, WI 53707-7931

**Appendix 4**

**Pro Forma Contract**

**RFP ETJ0048**

**Business Process Management and Strategic Mapping**

**Consulting Services**

|  |
| --- |
| **Contract: ETJ0048 Business Process Management and Strategic Mapping Consulting Services**  |
| **Contract Period:** xxxx - xxxx with the option for renewal for xxxx |

1. This Contract is entered into by the State of Wisconsin Department of Employee Trust Funds (Department or ETF), and xxx (Contractor), whose address and principal officer appear below. The Department is the sole point of contact for this Contract.

2. Whereby the Department agrees to direct the purchase and Contractor agrees to supply the Contract requirements in accordance with the Department Terms and Conditions, and the documents specified in the order of precedence below, hereby made a part of this Contract by reference.

3. For purposes of administering this Contract, the order of precedence is:

(a) This Contract;

(b) Exhibit A, Contract Clarifications;

(c) Request for Proposal (RFP) ETJ0048 released on xxxx; and,

(d) Contractor’s proposal dated xxxx.

|  |  |  |
| --- | --- | --- |
| **State of Wisconsin****Department of Employee Trust Funds** |   | **Contractor** |
|   | Legal Company Name: |
|  |  *SAMPLE* |
| By *(Name):* | Trade Name: |
|   |   |
| Signature: | Taxpayer Identification Number: xxx |
|  |  |
| Date of Signature:  | Contractor Address (Street Address, City, State, Zip):  |
| Contact A. John Voelker, ETF Deputy Secretary, if questions arise: (608) xxx |
|  | Name & Title (print name and title of person authorized to legally sign for and bind Contractor):  |
|  |
|  |
|  | Signature: |
|  | *SAMPLE* |
|  |  | Date of Signature: |
|  |  | Email: Phone:  |

**Department of Employee Trust** **Funds**

P.O. Box 7931

Madison, WI 53707-7931

**Appendix 5**

**Business Capability Model**

**RFP ETJ0048**

**Business Process Management and Strategic Mapping**

**Consulting Services**

