

PROPOSALS MUST BE SEALED AND ADDRESSED TO:
 AGENCY ADDRESS:

REQUEST FOR PROPOSAL
 THIS IS NOT AN ORDER

PROPOSER (Name and Address)

Remove from Proposer list for this commodity/service. (Return this page only.)

Proposal envelope must be sealed and plainly marked in lower corner with due date and Request for Proposal # **1687 DHCAA-SM**. Late proposals will be rejected. Proposals MUST be date and time stamped by the soliciting purchasing office on or before the date and time that the proposal is due. Proposals dated and time stamped in another office will be rejected. Receipt of a proposal by the mail system does not constitute receipt of a proposal by the purchasing office. Any proposal which is inadvertently opened as a result of not being properly and clearly marked is subject to rejection. Proposals must be submitted separately, i.e., not included with sample packages or other proposals. Proposal openings are public unless otherwise specified. Records will be available for public inspection after issuance of the notice of intent to award or the award of the contract. Proposer should contact person named below for an appointment to view the proposal record. Proposals shall be firm for acceptance for sixty (60) days from date of proposal opening, unless otherwise noted. The attached terms and conditions apply to any subsequent award.

Proposals MUST be in this office no later than MARCH 18, 2010 11:00 AM CST	Public Opening <input type="checkbox"/> No Public Opening <input checked="" type="checkbox"/>
--	--

Name (Contact for further information) Susan McKercher
--

Phone 608.267.7637	Date
------------------------------	------

Quote Price and Delivery FOB

Description

The Department of Health Services' Division of Health Care Access and Accountability (DHCAA) along with the Division of Long Term Care (DLTC) seek a vendor to provide actuarial services. The actuarial consulting firm (contractor) selected will be responsible for providing a variety of services including, but not limited to, evidence based scenario modeling, cost effectiveness analyses, cost containment analysis of quality data as well as setting capitation for various provider assessments.

The Department seeks a qualified actuarial services entity to develop actuarially derived capitation rates utilizing a variety of parameters such as recipients' age, gender, eligibility category, disease burden, and geographic location. This requires that the contractor have experience in long-term health care issues and health-based risk adjustment payment techniques.

The contractor will be expected to perform within a dynamic regulatory and legislative environment which can produce swift and significant impacts on rates. Therefore, the actuarial entity may be directed to develop multiple models and actuarial scenarios to assist the Department in determining the impact of the proposed regulation or legislation. The contractor must have the capabilities to review, understand and advise the Department on expected solvency of healthcare plans and other issues that affect the Department's health and long term care programs.

Payment Terms:

Delivery Time:

- We claim minority bidder preference [Wis. Stats. s. 16.75(3m)]. Under Wisconsin Statutes, a 5% preference may be granted to CERTIFIED Minority Business Enterprises. Bidder must be certified by the Wisconsin Department of Commerce. If you have questions concerning the certification process, contact the Wisconsin Department of Commerce, 5th Floor, 201 W. Washington Ave., Madison, Wisconsin 53702, (608) 267-9550.
- We are a work center certified under Wis. Stats. s. 16.752 employing persons with severe disabilities. Questions concerning the certification process should be addressed to the Work Center Program, State Bureau of Procurement, 6th Floor, 101 E. Wilson St., Madison, Wisconsin 53702, (608) 266-2605.

Wis. Stats. s. 16.754 directs the state to purchase materials which are manufactured to the greatest extent in the United States when all other factors are substantially equal. Materials covered in our bid were manufactured in whole or in substantial part within the United States, or the majority of the component parts thereof were manufactured in whole or in substantial part in the United States.

Yes No Unknown

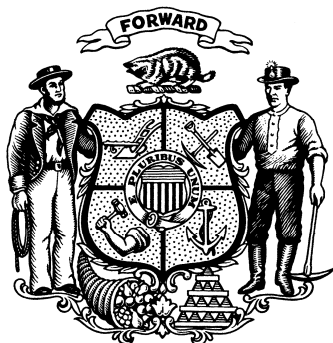
In signing this proposal we also certify that we have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a proposal; that this proposal has been independently arrived at without collusion with any other Proposer, competitor or potential competitor; that this proposal has not been knowingly disclosed prior to the opening of proposals to any other Proposer or competitor; that the above statement is accurate under penalty of perjury.

We will comply with all terms, conditions and specifications required by the state in this Request for Proposal and all terms of our proposal.

Name of Authorized Company Representative (Type or Print)	Title	Phone ()	
		Fax ()	
Signature of Above	Date	Federal Employer Identification No.	Social Security No. if Sole Proprietor (Voluntary)

REQUEST FOR PROPOSAL

**STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES
DIVISION OF HEALTH CARE ACCESS AND ACCOUNTABILITY**



RFP # 1687 DHCAA-SM

Actuarial Services

PROPOSALS MUST BE RECEIVED BY 11:00 AM CST on March 18, 2010

**LATE PROPOSALS WILL BE REJECTED
FAXED PROPOSALS WILL NOT BE ACCEPTED
THE STATE RESERVES RIGHT TO REJECT ANY AND ALL PROPOSALS**

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1.0 GENERAL INFORMATION

1.1 Introduction and Background

The purpose of this document is to provide interested parties with information enabling them to prepare and submit a proposal for actuarial services for the Wisconsin Department of Health Services (DHS), Division of Health Care Access and Accountability (DHCAA) and Division of Long Term Care (DLTC). The actuarial consulting entity(ies) (contractor) selected will be responsible for providing actuarial analyses for the Department.

The State, as represented by its DHS, intends to use the results of this process to award a single fixed price contract to purchase actuarial services. A vendor's proposal must respond to and include all service requirements in the RFP. If it is determined in the evaluation review of proposals that one contractor cannot adequately meet all of the requirements in the request for proposal, the state reserves the right to negotiate the most effective division of the project requirements with the highest scoring proposers, including the right to choose a single vendor to provide a portion of the services or to subdivide the project and make more than one award. The State may, at its discretion, decide not to award a contract.

1.2 Program Background and Goals

1.2.1 Family Care, Pace and Family Care Partnership

Family Care, PACE and Family Care Partnership are comprehensive and flexible long-term care service systems which strive to foster peoples' independence and quality of life while recognizing the need for interdependence and support.

These managed long-term care programs improve the cost-effective coordination of long-term care services by creating a single flexible benefit that includes a large number of health and long-term care services that otherwise would be offered through separate programs. A member of an MCO has access to a large number of specific health services offered by Medicaid, as well as the long-term care services in the Home and Community-Based Waivers program array and the very flexible state-funded Community Options Program. In order to ensure access to services, MCOs develop and manage a comprehensive network of long-term care services and support either through contracts with providers or by direct service provision by MCO employees. MCOs are responsible for assuring and continually improving the quality of care and services consumers receive. MCOs receive a monthly per person payment to manage and purchase care for their members who may be living in their own homes, group living situations, or nursing facilities. Some highlights of the Family Care benefit package are:

- **People Receive Services Where They Live.** MCO members receive Family Care services where they live, which may be in their own home or supported apartment, or in alternative residential settings such as Residential Care Apartment Complexes, Community-Based Residential Facilities, Adult Family

Homes, Nursing Homes, or Intermediate Care Facilities for people with developmental disabilities.

- **People Receive Interdisciplinary Case Management.** Each member has support from an interdisciplinary team that consists of, at a minimum, a social worker/care manager and a Registered Nurse. Other professionals, as appropriate, also participate as members of the interdisciplinary team. The interdisciplinary team conducts a comprehensive assessment of the member's needs, abilities, preferences and values with the consumer and his or her representative, if any. The assessment looks at areas such as: activities of daily living, physical health, nutrition, autonomy and self-determination, communication, and mental health and cognition.

- **People Participate in Determining the Services They Receive.** Members or their authorized representatives take an active role with the interdisciplinary team in developing their care plans. MCOs provide support and information to ensure members are making informed decisions about their needs and the services they receive. Members may also participate in the Self-Directed Supports component of Family Care, in which they have increased control over their long-term care budgets and providers.

Family Care Services Include:

- **Long-Term Care Services** that have traditionally been part of the Medicaid Waiver programs or the Community Options Program. These include services such as adult day care, home modifications, home delivered meals and supportive home care.

- **Health Care Services** that help people achieve their long-term care outcomes. These services include home health, skilled nursing, mental health services, and occupational, physical and speech therapy. For Medicaid recipients, health care services not included in Family Care are available through the Medicaid fee-for-service program.

- **People Receive Help Coordinating Their Primary Health Care.** In addition to ensuring that people get the health and long-term care services in the Family Care benefit package, the MCO interdisciplinary teams also help members coordinate all their health care, including, as needed, helping members get to and communicate with their physicians and helping them manage their treatments and medications.

- **People Receive Services to Help Achieve Their Employment Objectives.** Services such as daily living skills training, day treatment, pre-vocational services and supported employment are included in the Family Care benefit package. Other Family Care services such as transportation and personal care also help people meet their employment goals.

- **People Receive Outcome-based Services.** The MCO is not restricted to providing only the specific services listed in the Family Care benefit package. The MCO interdisciplinary care management team and the member may decide that other services, treatments or supports are more likely to help the member achieve his or her outcomes, and the MCO may then authorize those services in the member's care plan.

The Family Care Partnership Program is an integrated acute health and long-term care program for frail elderly and people with disabilities. The Partnership Program consists of several community-based organizations located in different geographical regions of Wisconsin. It is a voluntary enrollment program allowing members to live in the setting of their choice, to participate in community life, and to be engaged in the decision-making processes regarding their own care.

The Program for All inclusive Care for the Elderly (PACE) program is a unique capitated managed care benefit for the frail elderly provided by a not-for-profit or public entity that features a comprehensive medical and social service delivery system. It uses a multidisciplinary team approach in an adult day health center supplemented by in-home and referral service in accordance with participants' needs. PACE integrates acute and long-term services.

1.2.2 Medicaid Managed Care

Wisconsin Medicaid programs allow health care providers to deliver medically necessary health care services to qualifying persons including members of low-income families with dependent children, pregnant women, and elderly, blind and disabled individuals. Wisconsin Medicaid and BadgerCare operate pursuant to Chapter 49 of the Wisconsin Statutes, Titles XIX and XXI of the Federal Social Security Act, and related State and Federal regulations.

Wisconsin Medicaid is among the national leaders in the use of managed care programs that include rigorous oversight of Health Maintenance Organizations (HMOs) and specialized managed care programs, including access and quality assurance requirements, comprehensive utilization reporting, performance audits, and recipient safeguards.

One of the key goals of Wisconsin's Medicaid managed care programs is to provide an increased level of preventive care and better health outcomes at a lower cost than would have been achieved absent managed care availability. The managed care organizations receive a monthly capitation payment for each enrollee. The utilization of managed care delivery systems has moved Wisconsin Medicaid from simply a payer of claims to a more effective purchaser of health care services and outcomes.

1.3 Scope of Project

The Department seeks a qualified actuarial services entity to develop actuarially derived capitation rates that use a variety of parameters including recipients' age, gender, eligibility category, disease burden, and geographic location. The actuarial firm sought

by the Department should have experience in long-term health care issues and health-based risk adjustment payment techniques.

The successful Proposer will understand that their work on behalf of the Department exists within a dynamic regulatory and legislative environment. This environment can have a swift and significant impact on rates. Therefore, the actuarial firm will likely be directed to develop multiple models and actuarial scenarios to assist the Department in determining the impact of the proposed regulation or legislation.

The contractor must have the capabilities to review, understand and advise the Department on expected solvency of healthcare plans and other issues that affect the Department's health and long term care programs.

On an ongoing basis, the actuarial firm:

- Develops Medicaid fee-for-service and managed care equivalent costs.
- Develops cost trend factors.
- Develops projections of progressive savings models.
- Develops utilization rates.
- Applies risk-based weights.
- Reviews and understands contracted Managed Care Organizations' (MCO) financial performance under current and proposed rate structures.
- Assists Department in development of appropriate administrative loads for cap rates.
- Assists Department in meeting all requirements for managed care rate setting as contained in the Balanced Budget Act of 1997.
- Assists the Department in modeling new and innovative methodologies for rate adjustment in a risk-based capitated environment.

1.4 Procuring and Contracting Agency

This Request for Proposal (RFP) is being issued by the Wisconsin Department of Health Services which is the sole point of contact for the State of Wisconsin during the procurement process. The person responsible for managing the procurement process is Susan McKercher.

The contract resulting from this RFP will be administered by the Wisconsin Department of Health Services (DHS), Division of Health Care Access and Accountability, Bureau of Fiscal Management (BFM). The Contract Administrator will be the Director of the Bureau of Fiscal Management or designee. The Contract Administrator shall exercise all of the Department's rights under this contract. The Bureau of Fiscal Management is responsible for policy development, implementation, and rate setting for Wisconsin Medicaid Managed Care programs. The Division of Long Term Care (DLTC) which is responsible for Family Care, PACE, and Partnership rate setting, in cooperation with the Division of Health Access and Accountability, may also request actuarial services.

With respect to the scope of work under this contract and the Contractor's performance thereof, the Contract Administrator or designated DHS staff will issue, from time to time, such written specifications and instructions as may be necessary for the Contractor to carry out its obligations. The Contract Administrator or designated staff will periodically evaluate the Contractor's performance under this contract. The Contractor shall promptly

undertake such improvements and corrections as may be reasonably necessary to correct the problems and/or deficiencies identified in these evaluations.

The Contract Administrator shall designate a BFM staff person as the actuarial Contract Specialist. For the purposes of daily communications and the informal discussion of questions and problems, this Contract Specialist will serve as the principal liaison between the Department and the Contractor. The Contract Administrator may change the contract specialist at any time and may designate a deputy contract specialist and/or separate contract specialists and/or deputy contract specialists to monitor different aspects of the contract.

1.5 Definitions

The following definitions are used throughout this RFP.

Actuarial Administrator is defined as the chief representative of the actuarial entity awarded this contract.

Agency is defined as the Wisconsin Department of Health Services.

BadgerCare is defined as part of the Wisconsin Medical Assistance Program operated by the Wisconsin Department of Health and Family Services under Title XIX and Title XXI of the Federal Social Security Act, s. 49.655, Wis. Stats., and related State and Federal rules and regulations.

Children Come First (CCF) is defined as a multi-agency community-based system of mental health and alcohol and other drug abuse services for children with severe emotional disturbances. This behavioral health program is considered an MCO for the purposes of the DHS Actuarial Services Contract.

CMS is defined as Centers for Medicare and Medicaid Services, a federal agency.

Contract is defined as the agreement executed between the selected Proposer and the Department to accomplish the purposes specified in this RFP.

Contractor is defined as an actuarial service entity awarded the contract resulting from this RFP.

Department is defined as the Wisconsin Department of Health Services.

Dual Medicaid/Medicare Eligible is defined as those persons who are eligible simultaneously for both Medicaid and Medicare.

DHCAA is defined as the Division of Health Care Access and Accountability within the Wisconsin Department of Health Services

DLTC is defined as Division of Long Term Care within the Wisconsin Department of Health Services.

Enrollee is defined as a Medicaid, BadgerCare Plus, Family Care, PACE, or Partnership recipient enrolled in a CMO/HMO/MCO in a designated managed care program. Enrollees may also be referred to as *members*.

FCP is defined as Family Care Partnership.

HIPAA is defined as Health Insurance Portability and Accountability Act.

Health Maintenance Organization (HMO) is defined as an organization that manages and delivers a wide variety of covered health care and long-term services in an organized, cost-effect manner. For purposes of this RFP, a HMO is synonymous with Managed Care Organization (MCO).

ICF-MR is defined as Intermediate Care Facility for the Mentally Retarded

Long-Term Care Functional Screen (LTCFS) is defined as the tool that is currently used to risk adjust the Family Care, Family Care Partnership, and PACE capitation rates.

Managed Care Organization (MCO) is defined as an organization that manages and delivers a wide variety of covered health care and long-term services in an organized, cost-effect manner. For purposes of this RFP, a MCO is synonymous with Health Maintenance Organization (HMO).

Medicaid Long Term Care is defined as long-term care services and support for elders and people with disabilities.

Medicaid Managed Care is the BadgerCare Plus and Medicaid SSI Program operated by the Wisconsin Department of Health Services under Title XIX of the Federal Social Security Act, Wis. Stats., Ch. 49, and related state and federal rules and regulations.

PACE is the Program for All inclusive Care for the Elderly.

Proposer is defined as an entity submitting a Proposal in response to this RFP.

Recipient is defined as any individual entitled to benefits under Title XIX and XXI of the Social Security Act and under the Medicaid State Plan as defined in Chapter 49, Wis. Stats.

State is defined as the State of Wisconsin.

Vendor is defined as an entity submitting a Proposal in response to this RFP.

Wisconsin Medical Assistance Program (Wisconsin Medicaid, MA or Medicaid) is defined as a program operated by the Department under Title XIX of the Federal Social Security Act, Ch. 49, Wis. Stats., and related state and federal rules and regulations.

Wraparound Milwaukee is defined as a multi-agency community-based system of mental health and alcohol and other drug abuse services for children with severe emotional

disturbances. This behavioral health program is considered an MCO for the purposes of the DHS Actuarial Services Contract.

1.6 Clarification and/or Revisions to the Specifications and Requirements

Any questions concerning this RFP must be submitted in writing via email to Susan McKercher (with a copy to Jody Brassfield) to the addresses below. Questions must be submitted on or before close of business February 19, 2010.

Susan McKercher, Purchasing Manager
Susan.McKercher@wisconsin.gov
Email cc to: Jody.Brassfield@dhs.wisconsin.gov

Telephone questions are not allowed. Any oral responses, information, dates, and/or advice received by a prospective Proposer from the Department or Department staff shall not, in any manner whatsoever and whether before or after the release of this RFP, be binding on the State of Wisconsin, unless followed-up and explicitly confirmed and stated in writing by the State.

Vendors are expected to raise any questions, exceptions, or additions they have concerning the RFP DOCUMENT at this point in the RFP process. If a vendor discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in this RFP, the vendor should notify immediately the above named individual of such error and request modification or clarification of the RFP.

In the event that it becomes necessary to provide additional clarifying data or information, or to revise any part of this RFP, revisions, amendments, and/or supplements will be officially issued via posting to the Wisconsin VendorNet System website under RFP #1687 DHCAA-SM.

Any contact with State employees concerning this RFP is prohibited, except as authorized by the RFP procurement manager during the period from date of release of the RFP until the notice of intent to contract is released.

Violation of these conditions may, at the sole discretion of the State, be considered sufficient cause by the department to reject a bid, irrespective of any other consideration.

1.7 Reasonable Accommodations

The Department will provide reasonable accommodations, including the provision of informational material in an alternative format, for qualified individuals with disabilities upon request. If you think you need accommodations contact Susan McKercher at (608) 267-7637 or Susan.McKercher@wisconsin.gov by February 8, 2009.

1.8 Calendar of Events

Listed below are specific and estimated dates and times of actions related to this RFP. The actions with specific dates must be completed as indicated unless otherwise changed

by the State. In the event that the State finds it necessary to change any of the specific dates and times in the calendar of events listed below, it will do so by issuing a supplement to this RFP. There may or may not be a formal notification issued for changes in the estimated dates and times.

DATE	EVENT
February 3, 2010	Date of issue of the RFP (posted to VendorNet)
February 19, 2010	Deadline for Vendor Written Questions
March 3, 2010 (estimated)	All Questions and Answers posted to VendorNet
March 18, 2010 11:00 AM CST	Proposals due from vendors
May 3, 2010 (estimated)	Notification of intent to award sent to vendors
May 18, 2010 (estimated)	Contract effective Date/ Transition Start Date
July 1, 2010	Transition End Date / Contract Full Implementation

1.9 Contract Term and Funding

The contract shall be effective on the date indicated in the contract and shall run for a three-year period with the option, by mutual agreement of Agency and Contractor, to renew for two additional one (1) year periods.

1.10 VendorNet Registration

The State of Wisconsin's purchasing information and vendor notification service is available to all businesses and organizations that want to sell to the State. Anyone may access VendorNet on the Internet at <http://vendornet.state.wi.us> to get information on State purchasing practices and policies, goods and services that the State buys, and tips on selling to the State. Vendors may use the same Web site address for inclusion on the bidders list for goods and services that the organization wants to sell to the State. A subscription with notification guarantees the organization will receive an email message each time a State agency, including any campus of the University of Wisconsin System, posts a Request for Bid (RFB) or RFP in their designated commodity/service area(s) with an estimated value over \$25,000. Organizations without Internet access receive paper copies in the mail. Increasingly, State agencies also are using VendorNet to post simplified bids valued at \$25,000 or less. Vendors also may receive email notices of these simplified bid opportunities.

1.11 Letter of Intent to Submit Proposal

Vendors intending to submit a Proposal under the auspices of this RFP are encouraged to notify the Department of such intent via email. Such notice must be submitted via the email protocol described in Section 1.5 and include the information prescribed below.

The Letter of Intent should clearly and completely identify the prospective Proposer with the full name, title, complete street address, office telephone number, and fax number of the prospective Proposer's contact person. The subject line in the email submission should state the following: Letter of Intent RFP 1687 DHCAA-SM.

Failure to submit a timely and complete Letter of Intent will not preclude the submission of a proposal, nor does submission of a timely and complete Letter of Intent require that the prospective Proposer submit a proposal.

2.0 PREPARING AND SUBMITTING A PROPOSAL

2.1 General Instructions

The evaluation and selection of a contractor and the contract will be based on the information submitted in the vendor's proposal plus references and any required on-site visits or oral interviews. Failure to respond to each of the requirements in the RFP may be the basis for rejecting a response.

Elaborate proposals (e.g., expensive artwork), beyond that sufficient to present a complete and effective proposal, are not necessary or desired.

The Department reserves the right to reject any or all bids deemed by the State as not meeting the provisions contained herein. All proposals are to be complete when they are submitted. Failure to submit a complete proposal may be the basis for rejecting a proposal.

2.2 Incurring Costs

The State of Wisconsin is not liable for any cost incurred by proposers in replying to this RFP.

2.3 Submitting the Proposal

Proposers must submit Proposals in strict accordance with the requirements set forth in this section. All materials must be submitted to:

Susan McKercher
Purchasing Manager
Department of Health Services
Division of Enterprise Services
1 W. Wilson St., Room 750
Madison, WI 53701-7850
(608) 267-7637

Proposals must be received in the above office by the specified date and time stated below. All Proposals must be time-stamped as accepted by the Purchasing Office by the stated time. Proposals not so stamped will not be accepted. Receipt of a Proposal by the State mail system does not constitute receipt of a Proposal by the Purchasing Office, for purposes of this RFP.

Proposals must be prepared in two (2) components: Technical Proposal and Cost Proposal, prepared in accordance with the requirements stated in this RFP. The original and four (4) paper copies of the Technical Proposal under sealed cover and the original and two (2) paper copies of the Cost Proposal sealed under separate cover must be

received at the above address no later than **11:00 AM CST on Thursday March 18, 2010.**

In addition, both Technical and Cost Proposals must be submitted on a total of three (3) reproducible CDs or DVDs recorded as follows:

- One disc for the entire Technical Proposal including any proprietary information. Enclose this disc with the Technical Proposal package.
- One disc for the Technical Proposal excluding the proprietary information reported on the Designation of Confidential and Proprietary Information form (DOA-3027). Enclose this disc within the Technical Proposal package. This disc would be used by the Department in responding to open records requests concerning this RFP.
- One disc for the Cost Proposal containing a PDF of the completed and signed Appendix B. Enclose this disc within the Cost Proposal package.

Proposers are cautioned that receipt of a Proposal package by the United States Postal Service, State of Wisconsin mail system or a commercial carrier does not constitute receipt of a Proposal by the Department for purposes of this procurement. All Proposals received after the closing date and time will not be reviewed and will be returned, unopened, to the Proposer. **No exceptions will be allowed.**

The outside cover of the package containing the **Technical Proposal** (paper and discs) must be marked:

TECHNICAL PROPOSAL
Actuarial Services RFP
Name and Address of Proposer
Due: March 18, 2010 11:00 AM CST
RFP #1687 DHCAA-SM

The outside cover of the package containing the **Cost Proposal** (paper and discs) must be marked:

COST PROPOSAL
Actuarial Services RFP
Name and Address of Proposer
Due: March 18, 2010 11:00 AM CST
RFP #1687 DHCAA-SM

2.4 Proposal Organization and Format

Technical Proposals must be typed and submitted on 8.5 by 11 inch paper bound securely; presented in 12-point Times New Roman font; and appear in the order and by the number assigned in the RFP. Proposals must be organized with the following headings and subheadings. Each heading and subheading must be separated by tabs or

otherwise clearly marked. An outline prescribing the RFP sections which must be submitted or responded to in the Technical Proposal is illustrated below:

- I. Cover Page
- II. Statement of Introduction
- III. Response to General Requirements
 - a. Organizational Capabilities (Section 4.1)
 - b. Staff Qualifications (Section 4.2)
 - c. Proposer Client List (Section 4.3)
- IV. Response to Technical Proposal (Section 5.0)
- V. Cost Proposal (Section 6.0 and Appendix B)
- VI. Required Forms
 - a. Designation of Confidential and Proprietary Information (Form DOA-3027)
 - b. Vendor Information (Form DOA-3477)
 - c. Vendor Reference (Form DOA-3478)

The Proposer must separately submit its **Cost Proposal** in the format provided in Appendix B according to the instructions provided. Failure to provide any requested information in the prescribed format may result in disqualification of the Proposal. No mention of the Cost Proposal or any of its details may be made in the Technical Proposal.

2.5 Multiple Proposals

Multiple Proposals from a vendor will not be permissible. Only one Proposal per actuarial entity will be accepted.

2.6 Oral Presentations and Site Visits

Top scoring Proposers (based on an evaluation of the written Proposals) may be required to participate in interviews and/or site visits to support and clarify their Proposals, if requested by the State. The State will make every reasonable attempt to schedule each presentation at a time and location that is agreeable to the Proposer. Failure of a Proposer to interview or permit a site visit on the date scheduled may result in rejection of the vendor's Proposal.

2.7 Withdrawal of Proposals

Proposals shall be irrevocable until the contract award is made unless the Proposal is withdrawn. Proposers may withdraw a Proposal in writing at any time up to the Proposal closing date and time or upon expiration of five (5) business days after the due date and time if received by the RFP project manager. To accomplish this, the written request must be signed by an authorized representative of the Proposer and submitted to the RFP project manager and submitted to the address prescribed in Section 2.3. If a previously submitted Proposal is withdrawn before the Proposal due date and time, the Proposer may submit another Proposal at any time up to the Proposal closing date and time.

2.8 Transmittal Letter

A Transmittal Letter must accompany the RFP package. It must be on official business letterhead of the prime Proposer submitting the proposal, and must be signed by an individual authorized to legally bind the Proposer.

The Transmittal Letter must stipulate the following:

- The Proposer is the prime contractor and is a corporation or other legal entity;
- A statement identifying any and all subcontractors that will be responsible for fulfilling the requirements of this RFP is included in the proposal as appropriate;
- No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal;
- No cost or pricing information has been included in the Transmittal Letter or the Technical Proposal;
- The Technical and Cost Proposal are valid for a minimum of six months from the proposal due date;
- The person signing this proposal is authorized to make decisions on behalf of the Proposer's organization as to the prices quoted and that the person has not participated, and will not participate, in any action contrary to the this statement;
- Assurance that the Proposer will agree to execute and fulfill a contract according to the conditions and terms specified in this RFP;
- That the proposal is predicated upon the requirements, terms, and conditions of this RFP, all its attachments, and any supplements or revisions thereof; and
- That the individual signing this Transmittal Letter is authorized to legally represent the Proposer.

3.0 PROPOSAL SELECTION AND AWARD PROCESS

3.1 Preliminary Evaluation

Any proposal failing to provide all response requirements as specified in this RFP, and in the prescribed format, may be removed from further consideration and the vendor notified accordingly.

3.2 Proposal Scoring

Accepted Proposals will be reviewed by an evaluation committee and scored against the stated criteria. A Proposer may not contact any member of an evaluation committee except at the State's direction. The committee may review references, request interviews, and/or conduct on-site visits and use the results in scoring the Proposals. Proposals from certified Minority Business Enterprises may have points weighted by a factor of 1.00 to 1.05 to provide up to a five percent (5%) preference to these businesses (Wis. Stats. 16.75(3m)). The evaluation committee's scoring will be tabulated and general and technical proposals ranked based on the numerical scores received.

The Cost Proposals will be calculated with the most points awarded to the Proposal with the lowest cost. Other Cost Proposals will be assigned points that correlate to those assigned to the lowest Cost Proposal.

3.3 Evaluation Criteria

The proposals will be scored using the following criteria:

<u>Description</u>	<u>Percentage of Score</u>
General Requirements	7%
Technical Requirements	63%
Cost Proposal	30%
Total	100%

Proposals must generate a score of at least sixty percent (60%) of the combined point value of the General and Technical Requirements scored by all evaluators. That number of points and the total maximum number of points allowed for the overall evaluation will be dependent on the final number of evaluators. At a minimum, there will be three evaluators scoring the General and Technical sections.

3.4 Right to Reject Proposals and Negotiate Contract Terms

The State reserves the right to reject any and all Proposals. The State may negotiate the terms of the contract, including the award amount, with the selected Proposer prior to entering into a contract. If contract negotiations cannot be concluded successfully with the highest scoring Proposer, the agency may negotiate a contract with the next highest scoring Proposer.

3.5 Award and Final Offers

The State will compile the final composite scores (Technical and Cost) for each Proposal. The award will be granted in one of two ways. The award may be granted to the highest scoring responsive and responsible Proposers. Alternatively, the highest scoring Proposer or Proposers may be requested to submit final and best offers. If final and best offers are requested by the State and submitted by the vendor, they will be evaluated against the stated criteria, scored and ranked by the evaluation committee. The award then will be granted to the highest scoring Proposers. However, a Proposer should not expect that the State will request a final and best offer.

If deemed to be in the best interest of the State, additional contracts may be awarded to one or more Proposals as described in Section 1.1 of this RFP.

3.6 Notification of Intent to Award

All vendors who respond to this RFP will be notified in writing of the State's intent to award the contract(s) as a result of this RFP.

After notification of the intent to award is made, and under the supervision of agency staff, copies of Proposals will be available for public inspection from 8:00 AM to 4:30

PM. CST at One West Wilson Street, Madison, Wisconsin. Vendors should schedule reviews with Susan McKercher at (608) 267-7637.

3.7 Appeals Process

Notices of intent to protest and protests must be made in writing to the Secretary of DHS. Protestors should make their protests as specific as possible and should identify statutes and Wisconsin Administrative Code provisions that are alleged to have been violated.

Any written notice of intent to protest the intent to award a contract must be filed with:

Karen Timberlake, Secretary
Department of Health Services
One West Wilson Street
PO Box 7850
Madison, WI 53701-7850

The notice of intent to protest the intent to award a contract must be received in her office no later than five (5) working days after the notices of intent to award are issued.

Any written protest must be received within ten (10) working days after the notice of intent to award is issued.

The decision of the Secretary of Department of Health Services may be appealed to the Secretary of the Department of Administration within five (5) working days of issuance, with a copy of such appeal filed with the Department of Health Services. The appeal must allege a violation of a Wisconsin statute or a section of the Wisconsin Administrative Code.

4.0 GENERAL PROPOSAL REQUIREMENTS

4.1 Organization Capabilities

Describe your organization's capability to provide the actuarial services required in this RFP. Be specific and identify projects, dates, and results.

Include a statement identifying the formal name, title, type of business, business address, location of Proposer's principal offices, and an identification of any other location or site which is proposed to provide any services or resources in the execution of duties of this RFP.

Include a brief history of your business entity and the firm's experience over the past five (5) years, focusing on services in which you provided comprehensive actuarial services similar to those required in this RFP for a government sponsored health insurance program similar to Medicaid. The response should include, but not be limited to, the following:

- Names and types of programs
- Specific dates and length of contracts or renewals

- Scope of the entity's involvement
- Number of clients/customers served
- Specific outcomes

4.2 Staff Qualifications

Describe the entity's staffing pattern including subcontracted staff (Appendix C, Section II, Part D) for meeting the requirements of this RFP. Provide resumes describing the educational and work experiences for each of the key staff (e.g., principal project lead, actuaries, and support staff) who would be assigned to the project. Proposer must agree that all Proposer staff, and subcontract staff, dedicated to fulfilling State actuarial services will be free of conflicts between State actuarial requirements in this RFP and the interests of managed care entities the State may contract with. (See Supplemental Terms & Conditions 9.0) The Proposer must submit an organizational chart showing the Proposer's staff and subcontract staff assigned to fulfill proposal requirements.

4.3 Proposer Client List and References

Proposers must include in their RFPs a list of all client organizations, including points of contact (name, address and telephone number). The State reserves the right to contact any clients listed, however the Proposer may be required to recommend a maximum of five organizations that can be used as references. Selected organizations may be contacted to determine the quality of work performed and personnel assigned to the project. The results of the reference checks will be provided to the Evaluation Committee.

5.0 TECHNICAL REQUIREMENTS

5.1 Capabilities and Demonstrated Abilities

By citing examples from prior experience with named entities similar in size and scope to the State of Wisconsin, describe your firm's capabilities and demonstrated abilities in the following areas:

- 5.1.1 Describe your firm's familiarity with managed long-term care programs that are both (i) consumer-based and (ii) home and community-based and the implications these have on reimbursement methodology, their goals, and the incentives they create.
- 5.1.2 Demonstrate solid understanding of concepts and details associated with the federal CMS rate setting checklist for risk-based health plans.
- 5.1.3 Demonstrate the ability to meet the capacity to perform additional analyses as requested by the Department.
- 5.1.4 Demonstrate the ability to provide actuarial assistance in the development of the Medicaid special MCO capitation rates. Follow generally accepted actuarial

principles and practices meeting the requirements of both state and federal regulations and mandates.

- 5.1.5 Demonstrate the capability to receive, load, and analyze all data provided by the State and the HMO/MCOs for the purpose of MCO and HMO capitation rate development in paper or electronic formats by the transmission mode prescribed by the State.
- 5.1.6 Demonstrate knowledge of or experience with the regulation and financial oversight of HMO/MCOs on a state and federal level.
- 5.1.7 Describe ability to access relevant data other than State and MCO/HMO supplied data for use in capitation rate development. For example, using average Midwest commercial MCO/HMO utilization trend data for recent periods of time.
- 5.1.8 Describe ability to evaluate and provide actuarial assistance to ensure that rates are appropriate for the populations covered and that the rates are appropriate for the services furnished to these special managed care programs. Demonstrate experience in the conceptualization and development of new payment methodologies.
- 5.1.9 Demonstrate knowledge of and experience in developing rate structures for Medicaid managed care programs undergoing fundamental changes in structure and/or substantial expansion.
- 5.1.10 Demonstrate knowledge to develop HMO rates that carve out specific benefits such as prescription drugs.
- 5.1.11 Demonstrate knowledge of developing alternative payment methodologies for Medicaid Managed Care such as maternity kick payments, carve-outs of prescription drugs and other benefits.
- 5.1.12 Demonstrate experience in developing specific rate components, such as specialized administrative funding models and geographic or labor region cost factors for a specified selection of services.
- 5.1.13 Demonstrate an understanding of actuarial assistance in the research and development of a new risk adjusted payment methodology for Medicaid Managed Care Programs, Family Care, Family Care Partnership, and PACE Programs.
- 5.1.14 Demonstrate knowledge of and experience with accepted risk adjusted methodologies such as the Hierarchical Condition Category (HCC), the Chronic Illness and Disability Payment System (CDPS), or other methodologies that use diagnoses to reflect acute and primary costs.
- 5.1.15 Demonstrate knowledge of the Family Care, Family Care Partnership, and PACE risk adjustment methodologies that use data from the Long-Term Care Functional Screen including but not limited to, Activities of Daily Living (ADLs), Instrumental Activities of Daily Living (IADLs), behavioral variables,

interactions among variables and medication management factors to reflect long term care costs.

- 5.1.16 Demonstrate an ability to evaluate the incorporation of variables associated with mortality, level of care, frailty or dementia in addition to the usual demographic variables such as age, gender, county, Medicare eligibility status in the new risk adjusted payment methodology.
- 5.1.17 Demonstrate a familiarity with Medicare Special Needs Plans (SNP) data analysis, and experience in increasing state purchasing power with respect to Medicare in the context of a fully Integrated Delivery System (IDS) model.
- 5.1.18 Demonstrate an ability to develop appropriate trend factors for the populations and services included in the calculation of the rates for these programs.
- 5.1.19 Demonstrate the ability to revise methodologies (old and new) to accommodate the Medicare Drug benefit and create appropriate Medicaid rates for the Medicaid-only eligible population and the Dual Medicaid/Medicare eligible population.
- 5.1.20 Demonstrate the ability to evaluate methodologies and advise the Department on the development of a methodology to separate Medicare and Medicaid costs in the integrated Medicare/Medicaid programs which is necessary in calculating accurate Medicaid rates and year end adjustments.
- 5.1.21 Demonstrate the ability to implement and maintain a separate accounting function for services performed pursuant to the contract and maintain comprehensive auditing and internal control procedures.
- 5.1.22 Demonstrate ability to assume and implement Medicaid rate analysis and development work described above as part of a structured transition from a prior contractor including how the entity will prepare for and manage efficiently the transition of work associated with assuming a contract for the responsibilities described, including anticipated transition timeline of technical requirements.
- 5.1.23 Demonstrate the ability to implement provider assessments and other various cost containment methods.

5.2 Anticipated Work Products

Anticipated work products include, but are not limited to:

- 5.2.2 All work products associated with contractor responsibilities described or specified in the previous section. All final data extracts and databases created within this contract.
- 5.2.3 An annual report detailing the rate setting process and calculations for each program. This report shall include all relevant tables and calculations used or

prepared by the contractor to calculate the Managed Care Equivalent (MCE). A separate report shall be prepared for each program for which the contractor develops the MCE. Evaluations of rate setting methods, calculations, materials or assumptions prepared by the Department, other state agencies or other Department-contracted parties for use by the contractor for rate setting exercises and analyses.

- 5.2.4 Payment revenue models for use by the Department to conduct rate modeling. The contractor shall design and supply electronic rate model files as prescribed by the Department to allow for in-house rate modeling based on a variety of factors including regional configuration, revenue/rate targets, varying discount and savings targets and other assumptions including MCE(s) as calculated by the contractor.
- 5.2.5 Provide additional analyses as prescribed by the Department that may not be specifically defined in the scope of the services described herein.
- 5.2.6 Rate certification letters and related documents as prescribed by the Department to be submitted to CMS for approval in accordance with the Balanced Budget Act of 1997.
- 5.2.7 Reports outlining how rate development complies with the Managed Care Rate Setting CMS checklist and should reflect the necessary costs associated with meeting requirements in technical and general areas.
- 5.2.8 At least twice a year summarize Wisconsin Medicaid Managed Care and issue reports by plan outlining cost and utilization data.
- 5.2.9 Provide supporting documentation to the Department and offer plans to verify the accuracy of analysis completed and base data.
- 5.2.10 Provide support and analysis to Department work efforts associated with State and/or Federal Health Care Reform.
- 5.2.11 Provide analysis supporting the development of new or revised benefit plans.

5.3 Contractor Responsibilities

- 5.3.2 Develop familiarity with the Wisconsin Long-Term Care Functional Screen (LTCFS) tool that is currently used to risk adjust the Family Care, Family Care Partnership, and PACE capitation rates.
- 5.3.3 Assess the actuarial and general business requirements associated with employing the LTCFS tool to risk adjust capitated rates in an expanded Family Care, Family Care Partnership, and PACE programs.

- 5.3.4 Review the current LTCFS-based rating model for overall integrity, potential areas of improvement, and compliance with all federal Medicaid rules and regulations. Identify and propose innovative adjustments to the model in support of program goals and values.
- 5.3.5 Provide a statistical analysis of the relationships that exist within the LTCFS data for both current and future Family Care, Family Care Partnership, and PACE enrollees, in existing service and potential expansion populations, examining relationships within and across the various modules of the screening tool.
- 5.3.6 Provide a sound actuarial analysis of the encounter data that is currently being collected from BadgerCare, SSI managed care, Family Care, Family Care Partnership, and PACE MCOs.
- 5.3.7 Establish what pieces of LTCFS data are long-term care “cost drivers,” in the sense that the data elements are highly predictive of long-term care costs and are appropriate for inclusion as risk adjusters in a payment model.
- 5.3.8 Periodically present detailed, technical results of a rate setting model to a non-technical audience with backgrounds primarily in the social services.
- 5.3.9 Interact with CMS, as requested by DHS, on issues related to the interpretation of federal rules and regulations as they apply to managed long-term care programs operating on multiple Medicaid waivers.
- 5.3.10 With the prior approval of the State (See Appendix C, Section II, Part D), proposer may subcontract with an actuarial entity that meets the qualification standards established by the American Academy of Actuaries and follows the practice standards established by the Actuarial Standards Board.
- 5.3.11 Perform HMO/MCO capitation rate setting according to generally accepted actuarial principles and practices. In addition, calculate periodic retrospective adjustments to these rates including but not limited to, adjustments for individuals relocating from nursing homes or ICF-MR facilities, individuals with HIV/AIDS or who are ventilator dependent, dual eligible, and adjustments for health status and long-term care functional status using the methodologies articulated by the Department and summarized in the provisions of the Family Care, Family Care Partnership, and PACE contract.
- 5.3.12 Perform MCO capitation rate setting according to generally accepted actuarial principles and practices in support of Family Care, Family Care Partnership, and PACE program expansion at the request of the Department. If directed, calculate capitation rates for expansion for counties or regions specified by the Department. Provide supporting data and rate reports.
- 5.3.13 Propose and analyze alternatives to current regression models if requested by the State, including but not limited to the addition of modifiers (such as wage or geographical modifiers, administrative components, etc.).

- 5.3.14 Provide updated MCE reports, including actual to expected cost analysis by HMO/MCO and by region, at the request of the State.
- 5.3.15 Follow Federal regulations and guidelines, and State interpretations of those regulations and guidelines, in the performance of HMO/MCO capitation rate setting methodology.
- 5.3.16 Provide the State a certification, at the conclusion of each specific HMO/MCO program rate setting cycle which states that Federal regulations were complied with and which includes a detailed description of the rate setting methodology, including all necessary assurances and explanations or other material specified by the Department.
- 5.3.17 Follow the parameters and priorities of HMO/MCO capitation rate development, as set by the State, in each contract rate period.
- 5.3.18 Meet the work plan timelines and milestones, as set by the State, of HMO/MCO capitation rate development in each contract rate period. Examples of milestones include data definitions and data templates for data to be supplied by HMO/MCOs for capitation rate development.
- 5.3.19 Perform reasonable reliability and validity checks on all HMO/MCO capitation rate development data provided by HMO/MCOs and the State. Work directly with HMO/MCOs and the State to resolve reliability and validity problems with HMO/MCO provided data.
- 5.3.20 Participate in periodic meetings of State and HMO/MCO staff throughout each capitation rate cycle, for appropriate HMO/MCO programs, to discuss the parameters, priorities, methodology, and ongoing results of HMO/MCO capitation rate development in each rate cycle. Provide documents and data, as directed by State staff, to discuss at these meetings.
- 5.3.21 Provide the State with the reports, data sets, analyses, and documents relevant to the capitation rate setting process and calculations in the format(s) specified by the State.
- 5.3.22 Perform specific modeling or analysis of options for proposed changes to existing capitation rate methodologies as directed by State staff.
- 5.3.23 Provide the State with the reports including all formulas, data sets, analyses, and documents relevant to the capitation rate setting process.
- 5.3.24 Work collaboratively with State staff and other State vendors to improve the accuracy and efficiency of capitation rate development methodologies.
- 5.3.25 Work collaboratively with State staff to improve the accuracy and efficiency of the existing data sources and new data sources used for capitation rate development.

- 5.3.26 Train State staff in methodologies used to set rates.
- 5.3.27 Document and justify all work, in collaboration with the State, when the work is subject to any Federal or State audit.
- 5.3.28 Document clear demarcation of roles and responsibilities on shared work projects, assuming liability where appropriate.
- 5.3.29 Maintain the flexibility to be responsive to variations in project deadlines and evolving scope of work, particularly (but not exclusively) in conjunction with proposed State or Federal rules or law changes, including Health Care Reform.
- 5.3.30 At the end of the contract period, work cooperatively with the State and any of their specified contracting organizations to develop and successfully implement a plan to transition all data, methodologies, documentation, and ongoing projects to the succeeding contracting organization, vendor, or firm.
- 5.3.31 For each Wisconsin Medicaid MCO program (including CCF and WAM), complete the capitation rate development analysis, results, certification, and other documentation within the timelines specified by the State.

6.0 COST PROPOSAL

6.1 Cost Proposal for Actuarial Services

For services under this RFP, the only accepted format for submitting a cost proposal will be a completed and signed Cost Proposal Worksheet (Appendix B). Proposers are required to separate the annual cost into the following payment categories depicting total cost in the sub-categories of Medicaid Long Term Care (WI Family Care) and Medicaid Managed Care.

The hours and cost calculation must include an all-inclusive proposal, encompassing a full rebasing of the Managed Care Equivalent, and represent the entity's costs and hours to perform the requirements enumerated in the RFP. Other direct, indirect, allocated, or incidental expenses not included in this Cost Proposal may NOT be charged to the ensuing contract.

Hourly rates submitted in Section II of Appendix B will be applied to any additional analyses referenced in Section 5.2.5.

Failure to provide any requested information in the prescribed format may result in disqualification of the proposal.

6.2 General instructions on preparing cost proposals

The cost proposal should be submitted per instructions detailed in Section 2.3. The proposal will be scored using a standard quantitative calculation where the most points will be awarded to the proposal with the lowest cost. Various costing methodologies and models are available to analyze the cost information submitted to determine the lowest costs to the State. The State will select one method and use it consistently throughout its analysis.

6.3 Format for submitting cost proposals

Cost proposal formats are provided as Appendix B.

6.4 Fixed price period

All prices, costs, and conditions outlined in the proposal shall remain fixed and valid for acceptance for sixty (60) calendar days starting on the due date for proposals.

7.0 SPECIAL CONTRACT TERMS AND CONDITIONS

7.1 Prime Contractor and Minority Business Subcontractors

The prime contractor will be responsible for contract performance when subcontractors are used. However, when subcontractors are used, they must abide by all terms and conditions of the contract. If subcontractors are to be used, the Proposer must clearly explain their participation.

The State of Wisconsin is committed to the promotion of minority business in the state's purchasing program and a goal of placing 5% of its total purchasing dollars with certified minority businesses. Authority for this program is found in Wis. Stat 15.107(2), 16.75(4), 16.75(5) and 560.036(2). The contracting agency is committed to the promotion of minority business in the state's purchasing program.

The State of Wisconsin policy provides that minority-owned business enterprises certified by the Wisconsin Department of Commerce, Bureau of Minority Business Development should have the maximum opportunity to participate in the performance of its contracts. The supplier/contractor is strongly urged to use due diligence to further this policy by awarding subcontracts to minority-owned business enterprises or by using such enterprises to provide goods and services incidental to this agreement, with a goal of awarding at least 5% of the contract price to such enterprises.

The supplier/contractor shall furnish appropriate quarterly information about its effort to achieve this goal, including the identities of such enterprises certified by the Wisconsin Department of Commerce and their contract amount.

A listing of certified minority businesses, as well as the services and commodities they provide, is available from the Department of Administration, Office of the Minority Business Program, 608/267-7806. The listing is published on the Internet at: <http://www.doa.state.wi.us/dsas/mbe/index.asp>.

8.0 STANDARD TERMS AND CONDITIONS

The State of Wisconsin reserves the right to incorporate standard State contract provisions into any contract negotiated with any proposal submitted responding to this RFP (Standard Terms and Conditions (DOA-3054) and Supplemental Standard Terms and Conditions for Procurements for Services (DOA-3681)). Failure of the successful proposer to accept these obligations in a contractual agreement may result in cancellation of the award.

Standard Terms And Conditions (Request For Bids / Proposals)

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

contract and/or order with referenced parts and attachments shall constitute the entire agreement and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the contracting authority.

- 15.0 APPLICABLE LAW AND COMPLIANCE:** This contract shall be governed under the laws of the State of Wisconsin. The contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. The State of Wisconsin reserves the right to cancel this contract if the contractor fails to follow the requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax. The State of Wisconsin also reserves the right to cancel this contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.
- 16.0 ANTITRUST ASSIGNMENT:** The contractor and the State of Wisconsin recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Wisconsin (purchaser). Therefore, the contractor hereby assigns to the State of Wisconsin any and all claims for such overcharges as to goods, materials or services purchased in connection with this contract.
- 17.0 ASSIGNMENT:** No right or duty in whole or in part of the contractor under this contract may be assigned or delegated without the prior written consent of the State of Wisconsin.
- 18.0 WORK CENTER CRITERIA:** A work center must be certified under s. 16.752, Wis. Stats., and must ensure that when engaged in the production of materials, supplies or equipment or the performance of contractual services, not less than seventy-five percent (75%) of the total hours of direct labor are performed by severely handicapped individuals.
- 19.0 NONDISCRIMINATION / AFFIRMATIVE ACTION:** In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation as defined in s. 111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities.
- 19.1** Contracts estimated to be over twenty-five thousand dollars (\$25,000) require the submission of a written affirmative action plan by the contractor. An exemption occurs from this requirement if the contractor has a workforce of less than twenty-five (25) employees. Within fifteen (15) working days after the contract is awarded, the contractor must submit the plan to the contracting state agency for approval. Instructions on preparing the plan and technical assistance

regarding this clause are available from the contracting state agency.

- 19.2** The contractor agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the contracting state agency that sets forth the provisions of the State of Wisconsin's nondiscrimination law.
- 19.3** Failure to comply with the conditions of this clause may result in the contractor's becoming declared an "ineligible" contractor, termination of the contract, or withholding of payment.
- 20.0 PATENT INFRINGEMENT:** The contractor selling to the State of Wisconsin the articles described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe any United States patent. The contractor covenants that it will at its own expense defend every suit which shall be brought against the State of Wisconsin (provided that such contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.
- 21.0 SAFETY REQUIREMENTS:** All materials, equipment, and supplies provided to the State of Wisconsin must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code and all applicable OSHA Standards.
- 22.0 WARRANTY:** Unless otherwise specifically stated by the bidder/proposer, equipment purchased as a result of this request shall be warranted against defects by the bidder/proposer for one (1) year from date of receipt. The equipment manufacturer's standard warranty shall apply as a minimum and must be honored by the contractor.
- 23.0 INSURANCE RESPONSIBILITY:** The contractor performing services for the State of Wisconsin shall:
- 23.1** Maintain worker's compensation insurance as required by Wisconsin Statutes, for all employees engaged in the work.
- 23.2** Maintain commercial liability, bodily injury and property damage insurance against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out this contract. Minimum coverage shall be one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.
- 23.3** The state reserves the right to require higher or lower limits where warranted.
- 24.0 CANCELLATION:** The State of Wisconsin reserves the right to cancel any contract in whole or in part without penalty due to nonappropriation of funds or for failure of the contractor to comply with terms, conditions, and specifications of this contract.

25.0 VENDOR TAX DELINQUENCY: Vendors who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.

26.0 PUBLIC RECORDS ACCESS: It is the intention of the state to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities.

Bid/proposal openings are public unless otherwise specified. Records may not be available for public inspection prior to issuance of the notice of intent to award or the award of the contract.

27.0 PROPRIETARY INFORMATION: Any restrictions on the use of data contained within a request, must be clearly stated in the bid/proposal itself. Proprietary information submitted in response to a request will be handled in accordance with applicable State of Wisconsin procurement regulations and the Wisconsin public records law. Proprietary restrictions normally are not accepted. However, when accepted, it is the vendor's responsibility to defend the determination in the event of an appeal or litigation.

27.1 Data contained in a bid/proposal, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented. All data, documentation, and innovations become the property of the State of Wisconsin.

27.2 Any material submitted by the vendor in response to this request that the vendor considers confidential and proprietary information and which qualifies as a trade secret, as provided in s. 19.36(5), Wis. Stats., or material which can be kept confidential under the Wisconsin public records law, must be identified on a Designation of Confidential and Proprietary Information form (DOA-3027). Bidders/proposers may request the form if it is not part of the Request for Bid/Request for Proposal package. Bid/proposal prices cannot be held confidential.

28.0 DISCLOSURE: If a state public official (s. 19.42, Wis. Stats.), a member of a state public official's immediate family, or any organization in which a state public official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this agreement, and if this agreement involves payment of more than three thousand dollars (\$3,000) within a twelve (12) month period, this contract is voidable by the state unless appropriate disclosure is made according to s. 19.45(6), Wis. Stats., before signing the contract. Disclosure must be made to the State of Wisconsin Ethics Board, 44 East Mifflin Street, Suite 601, Madison, Wisconsin 53703 (Telephone 608-266-8123).

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

29.0 RECYCLED MATERIALS: The State of Wisconsin is required to purchase products incorporating recycled materials whenever technically and economically feasible. Bidders are encouraged to bid products with recycled content which meet specifications.

30.0 MATERIAL SAFETY DATA SHEET: If any item(s) on an order(s) resulting from this award(s) is a hazardous chemi-

cal, as defined under 29CFR 1910.1200, provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).

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

32.0 HOLD HARMLESS: The contractor will indemnify and save harmless the State of Wisconsin and all of its officers, agents and employees from all suits, actions, or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the operations of the contractor, or of any of its contractors, in prosecuting work under this agreement.

33.0 FOREIGN CORPORATION: A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement is required to conform to all the requirements of Chapter 180, Wis. Stats., relating to a foreign corporation and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority. Any foreign corporation which desires to apply for a certificate of authority should contact the Department of Financial Institutions, Division of Corporation, P. O. Box 7846, Madison, WI 53707-7846; telephone (608) 261-7577.

34.0 WORK CENTER PROGRAM: The successful bidder/proposer shall agree to implement processes that allow the State agencies, including the University of Wisconsin System, to satisfy the State's obligation to purchase goods and services produced by work centers certified under the State Use Law, s.16.752, Wis. Stat. This shall result in requiring the successful bidder/proposer to include products provided by work centers in its catalog for State agencies and campuses or to block the sale of comparable items to State agencies and campuses.

35.0 FORCE MAJEURE: Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.



Supplemental Standard Terms and Conditions for Procurements for Services

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

10.0 REQUIRED FORMS

The following forms must be completed and submitted with the proposal in accordance with the instructions given in Section 2.4. Blank forms are attached.

- Designation of Confidential and Proprietary Information (DOA-3027)
- Vendor Information (DOA-3477)
- Vendor Reference (DOA-3478)

DESIGNATION OF CONFIDENTIAL AND PROPRIETARY INFORMATION

The attached material submitted in response to Bid/Proposal # _____ includes proprietary and confidential information which qualifies as a trade secret, as provided in s. 19.36(5), Wis. Stats., or is otherwise material that can be kept confidential under the Wisconsin Open Records Law. As such, we ask that certain pages, as indicated below, of this bid/proposal response be treated as confidential material and not be released without our written approval.

Prices always become public information when bids/proposals are opened, and therefore cannot be kept confidential.

Other information cannot be kept confidential unless it is a trade secret. Trade secret is defined in s. 134.90(1)(c), Wis. Stats. as follows: "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply:

1. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
2. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

We request that the following pages not be released

Section	Page #	Topic
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

IN THE EVENT THE DESIGNATION OF CONFIDENTIALITY OF THIS INFORMATION IS CHALLENGED, THE UNDERSIGNED HEREBY AGREES TO PROVIDE LEGAL COUNSEL OR OTHER NECESSARY ASSISTANCE TO DEFEND THE DESIGNATION OF CONFIDENTIALITY AND AGREES TO HOLD THE STATE HARMLESS FOR ANY COSTS OR DAMAGES ARISING OUT OF THE STATE'S AGREEING TO WITHHOLD THE MATERIALS.

Failure to include this form in the bid/proposal response may mean that all information provided as part of the bid/proposal response will be open to examination and copying. The state considers other markings of confidential in the bid/proposal document to be insufficient. The undersigned agrees to hold the state harmless for any damages arising out of the release of any materials unless they are specifically identified above.

Company Name	_____
Authorized Representative	_____
	Signature
Authorized Representative	_____
	Type or Print
Date	_____

This document can be made available in accessible formats to qualified individuals with disabilities.

VENDOR INFORMATION

1. BIDDING / PROPOSING COMPANY NAME _____

FEIN _____

Phone () _____ Toll Free Phone () _____

FAX () _____ E-Mail Address _____

Address _____

City _____ State _____ Zip + 4 _____

2. Name the person to contact for questions concerning this bid / proposal.

Name _____ Title _____

Phone () _____ Toll Free Phone () _____

FAX () _____ E-Mail Address _____

Address _____

City _____ State _____ Zip + 4 _____

3. Any vendor awarded over \$25,000 on this contract must submit affirmative action information to the department. Please name the Personnel / Human Resource and Development or other person responsible for affirmative action in the company to contact about this plan.

Name _____ Title _____

Phone () _____ Toll Free Phone () _____

FAX () _____ E-Mail Address _____

Address _____

City _____ State _____ Zip + 4 _____

4. Mailing address to which state purchase orders are mailed and person the department may contact concerning orders and billings.

Name _____ Title _____

Phone () _____ Toll Free Phone () _____

FAX () _____ E-Mail Address _____

Address _____

City _____ State _____ Zip + 4 _____

5. CEO / President Name _____

This document can be made available in accessible formats to qualified individuals with disabilities.

VENDOR REFERENCE

FOR VENDOR: _____

Provide company name, address, contact person, telephone number, and appropriate information on the product service(s) used for four (4) or more installations with requirements similar to those included in this solicitation document. If the bidder is proposing any arrangement involving a third party, the named references should also be involved in a similar arrangement.

Company Name _____

Address (include Zip + 4) _____

Contact Person _____ Phone No. _____

Product(s) and/or Service(s) Used _____

Company Name _____

Address (include Zip + 4) _____

Contact Person _____ Phone No. _____

Product(s) and/or Service(s) Used _____

Company Name _____

Address (include Zip + 4) _____

Contact Person _____ Phone No. _____

Product(s) and/or Service(s) Used _____

Company Name _____

Address (include Zip + 4) _____

Contact Person _____ Phone No. _____

Product(s) and/or Service(s) Used _____

This document can be made available in accessible formats to qualified individuals with disabilities.

Appendix A – Historical Actuarial Services Cost Summary

Division	State Fiscal Year 2007	State Fiscal Year 2008	State Fiscal Year 2009
DDES / DLTC Programs	\$155,151	\$435,189	\$515,851
DHCAA Programs	\$527,904	\$881,309	\$669,194
Total Program Amount	\$683,055	\$1,316,498	\$1,185,045
Total Annual Billable Hours	2,671	3,817	3,670

Appendix C – Draft Contract

The following sample contract is provided for informational purposes only and may or may not reflect the actual contract negotiated between the State and the selected vendor.

CONTRACT for SERVICES

SAMPLE CONTRACT

This contractual agreement is entered into for a period of three (3) years beginning December 1, 2008, and ending November 30, 2011, with an option by mutual agreement of the Agency and Contractor, to renew for one (1) additional two-year period and five (5) subsequent one-year periods, by and between the State of Wisconsin as represented by the **Department of Health Services** (DHS), on behalf of the Division of Health Care Access and Accountability (DHCAA), whose principal business address is One West Wilson Street, PO Box 309, Madison, WI 53707-0309, herein referred to as *the State*, and _____, whose principal business address is _____, hereinafter referred to as *the Contractor*.

Unless otherwise agreed to by the parties, the terms and conditions of the Contract shall remain in full force and effect throughout any and all renewal periods.

WHEREAS, the State wishes to purchase services from the Contractor as it is authorized to do so by Wisconsin law; and

WHEREAS, the Contractor is engaged in furnishing the desired services;

NOW THEREFORE, in consideration of the mutual undertakings and agreements herein set forth and which the Parties hereby acknowledge constitute good and valuable consideration sufficient to establish this Contract as a binding legal obligation under applicable law, the Parties hereby agree as follows:

I. DEFINITIONS

Unless otherwise defined herein, the definition of any term requiring such can be found in the RFP or in the applicable law(s).

Contract: the collected documents describing the agreement between the parties, including the body of this Contract, the attachments, the provisions of the RFP along with its amendments and its Questions and Answers documents as posted, the provisions of the Contractor's Technical and Cost Bids, as accepted by the State, and any written

clarifications thereof, and any other documents incorporated by reference into this Contract as if fully set forth herein.

Days: calendar days, unless otherwise noted.

RFP: the Request for Proposal and all Attachments thereto, as issued by the State under the title of _____ and clarified and amended throughout the procurement process.

II. FUNCTIONS AND DUTIES OF THE CONTRACTOR

A. General Contractual Responsibilities

1. Effect and maintain liaison and fully cooperate with designated State staff with respect to the direction and performance of Contractor's contractual responsibilities. The State's Contract Administrator will be Elias Soto.
2. Assume complete financial responsibility and liability for payment to creditors for costs incurred by Contractor in the performance of contractual obligations.
3. No later than three (3) days from the date of discovery of any problem which may jeopardize the successful or timely completion of its obligations, notify the Contract Administrator in writing of the problem, including in such notice Contractor's recommendation for expeditious resolution of the problem.
4. Refer to the Contract Administrator any suspected fraudulent or abusive practices Contractor encounters in the performance of its contractual activities. Produce, on a timely basis, reports and other documentation reflecting information or data possessed by the Contractor which is in need of investigation or document suspected instances of fraud or abuse in any of the programs administered.

B. Copyright Ownership

All right, title, and interest in all copyrightable materials that the Contractor may conceive or originate, either individually or jointly with others, and that are designed or developed with State or Federal funds in the course of performing this Contract will be the property of the State and are by this Contract assigned to the State along with ownership of any and all copyrights in the copyrightable material. The Contractor agrees to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials in any and all countries. Where applicable, works of authorship created by the Contractor, either individually or jointly with others, for the State in performance of this Contract will be considered "works made for hire" as defined in the U.S. Copyright Act.

C. Compliance with Applicable Laws and Policies

1. General

The Contractor and its subcontractors shall comply with all applicable Federal and State laws and State policies and standards that are in effect during the term of this Contract and that in any manner affect the work performed, with particular emphasis on the confidentiality provisions of federal food stamp law and federal and state Medicaid and other public benefits laws. In addition, the Contractor shall comply with the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR, Parts 160, 162 and 164, to the extent those regulations apply to the services the Contractor provides or purchases with funds provided under this contract. The Contractor has been deemed a “Business Associate” and will be required to sign a Business Associate Agreement.

2. Drug-Free Workplace

The Contractor will provide a drug-free workplace, in accordance with the Drug-Free Workplace Act of 1988 and implemented in 45 CFR Part 76 Subpart F for grantees, as defined in 45 CFR Part 76, Section 76.606 and 76.610.

3. Affirmative Action/Civil Rights Compliance.

Within fifteen (15) working days after the Contract is awarded, the Contractor will submit to the DHS Affirmative Action/Civil Rights Compliance Office a copy of the Contractor’s Civil Rights Compliance Plan. The DHS standards for Affirmative Action/Civil Rights Compliance are located at:

<http://dhs.wisconsin.gov/civilrights/index.htm>

The Civil Rights Compliance Plan contains four components: Affirmative Action, Nondiscrimination, Civil Rights, and Language Access.

The Plan outlines its policies and procedures to meet the requirements under Title VI and VII of the Civil Rights Act of 1964, and as amended in 1991; Sections 503 and 504 of the Rehabilitation Act of 1973; Title VI XVI of the Public Service Health Act; the Age Discrimination Act in Employment of 1967 and Age Discrimination Act of 1975; the Omnibus Budget Reconciliation Act of 1981; the Americans with Disabilities Act of 1990; and the Wisconsin Fair Employment ss.11.31 to 111.395 Wis. Stats., and s.16.765 Wis. Stats., and ADM 50.

- a. No otherwise qualified person may be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination in any manner on the basis of race, color, national origin, religion, sex, disability or age. Providers who receive funding from the Centers for Medicare and Medicaid Services (CMS), whether directly from DHS or through one of its contractors/grantees, will not discriminate against otherwise qualified persons based on their political affiliation. This policy covers eligibility for and access to service delivery and treatment in all programs and activities.
- b. No otherwise qualified person may be excluded from employment, be denied the benefits of employment, or otherwise be subject to discrimination in employment in any manner or term of employment on the basis of race, creed, color, national origin, ancestry, age, gender, disability, arrest or conviction records, sexual orientation, marital status, and membership in the military reserve. The Wisconsin Fair Employment Act also prohibits discrimination based upon the following: the results of honesty or genetic tests that are not administered for job-related purposes, and the use of lawful or unlawful products outside work hours. All employees are expected to support goals and programmatic activities relating to non-discrimination in employment.
- c. The Contractor will post the Equal Opportunity Policy in conspicuous places available to applicants for and recipients of services, applicants for employment, and employees. The complaint process will be conducted according to State Standards and will be made available in languages and formats understandable to applicants, clients, and employees. The language access requirements for persons with disabilities and persons who have limited English proficiency are found in greater detail on the website listed above.
- d. The Contractor agrees that its service providers and their subcontractors will comply with the employment and service delivery guidelines in the Civil Rights Compliance Plan requirements issued by DHS.
- e. Requirements stated herein apply to any and all subcontracts. The Contractor has primary responsibility to take constructive steps to ensure the compliance of its subcontractors.

D. Contract Management

1. Records

Documentation and materials developed or acquired by the Contractor pertaining to work performed under this Contract will become the property of the State. All records, books and documents, including electronic storage media, relating to financial matters will be maintained in accordance with generally accepted accounting procedures and practices that sufficiently and properly reflect all revenues and expenditures of funds provided by the State under the Contract.

Contractor and its subcontractors shall retain and safeguard all pertinent records, documents and other material prepared or utilized in the performance of contractual responsibilities for a period of five years following expiration or termination of contract. Contractor shall not use or disclose any records, information or material developed or acquired in the performance of its Contractual obligations for purposes not directly related to Contractor's performance under this Contract, without the prior written approval of the State. The said pertinent records shall be delivered to the State upon request.

At any time during the Contract and for five years following the expiration or termination of the Contract, the Contractor and its subcontractors shall permit authorized personnel designated by either the United States Department of Health and Human Services, United State Department of Agriculture, Comptroller General, or the Wisconsin Department of Health Services to have access at reasonable times to any of the Contractor's pertinent books, documents, electronic media, and records of any kind, involving transactions relating to this Contract. Access shall include the right to examine, audit, excerpt, transcribe or reproduce, any of the subject material. Contractor shall have the right to reproduce said material on the Contractor's premises at a cost not to exceed the cost that would have been incurred if the materials were reproduced off the Contractor's premises. If the information requested is in electronic format, Contractor will provide copies of the media as may be requested by the State.

Notwithstanding the above, access and examination of records which relate to (1) litigation or the settlement of claims arising out of the performance of this Contract, or (2) costs and expenses of this Contract as to which exception has been taken by the State, CMS, DHHS, USDA, OIG, Comptroller General or any of their authorized representatives, shall continue at least until such appeals, litigation, claims or exceptions have been disposed of. The Contractor further agrees that the substance of this clause shall be inserted in each subcontract.

Upon expiration or termination of the Contract and at the request of the State, the Contractor will cooperate with the State to facilitate the transfer of any records or documents during the required retention period.

2. Monitoring

The Contractor will provide reports, as requested by the State, including status, progress, program, and financial reports, that will be used for monitoring progress or performance of the contractual services.

The Contractor will permit access to its premises, upon reasonable prior notice, persons duly authorized by the State or Federal government and to interview any employees of the Contractor to be assured of satisfactory performance of the requirements of the Contract. Such inspection will not unduly interfere with the Contractor's performance under the Contract. Following any such inspections, the State will provide the Contractor with a list of its comments with regard to the manner in which said services are being performed. The Contractor will develop and implement a corrective action plan, as directed by the State.

3. Audits

The Contractor will, as applicable, ensure that the funds received from the State under this Contract and all other funds, regardless of the source, used to finance the services to be performed under this Contract receive annual audits pursuant to Office of Management and Budget Circular A-133. This requirement applies to its subcontractors, as well. Said audits will be performed by an independent Certified Public Accountant (CPA) or accounting firm, as applicable, in accordance with the generally accepted government auditing standards covering financial and compliance audits. The audit will ensure that all related party transactions are disclosed.

The Contractor will assume full financial liability for any and all audit exceptions chargeable to the Contractor and its subcontractors under this Contract. The State has the right under this Contract to withhold payment or reimbursement to the Contractor in order to satisfy any financial chargeback made by any of the personnel authorized hereunder to audit and examine the financial books, records, procedures and accounts of the Contractor and its subcontractors.

The Contractor will secure an annual SAS 70 examination on its operations and provide the report of this examination to the State within 30 days of the completion of the audit.

4. Insurance

The Contractor will provide liability insurance coverage on a comprehensive basis and hold such liability insurance at all times during the existence of the Contract. The Contractor accepts full responsibility for identifying and determining the type(s) and extent of liability insurance necessary to provide reasonable financial protection for the Contractor and the State to be served under the Contract. Upon the execution of the Contract, the Contractor will furnish the State written verification supporting both the determination and existence of such insurance coverage, including Certificates of Insurance for all types of insurance required under this paragraph. The State reserves the right to require additional insurance.

The Contractor will maintain all required insurance for its employees, including workers' compensation insurance.

5. Privacy and Confidential Information

This Section is in addition to the responsibilities and obligations imposed on the Contractor through any Business Associate Agreement between the State and the Contractor. In the event of a conflict between this Section and the BAA, the BAA will have precedence.

Definitions

"*Confidential Information*" means all tangible and intangible information and materials accessed or disclosed in connection with this Agreement, in any form or medium (and without regard to whether the information is owned by the State or by a third party), that satisfy at least one of the following criteria: (i) Personally Identifiable Information; (ii) Individually Identifiable Health Information; (iii) non-public information related to the State's employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived there from or based thereon; or (iv) information designated as confidential in writing by the State.

"*Individually Identifiable Health Information*" means information that relates to the past, present, or future physical or mental health or condition of the individual, or that relates to the provision of health care in the past, present or future, and that is combined with or linked to any information that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

"Personally Identifiable Information" means an individual's last name and the individual's first name or first initial, in combination with and linked to any of the following elements, if the element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable: (a) the individual's Social Security number; (b) the individual's driver's license number or state identification number; (c) the individual's date of birth; (d) the number of the individual's financial account, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual's financial account; (e) the individual's DNA profile; or (f) the individual's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical characteristic.

"Corrective Action Plan" means a plan communicated by the State to the Contractor for the Contractor to follow in the event of any threatened or actual use or disclosure of any Confidential Information that is not specifically authorized by this Agreement, or in the event that any Confidential Information is lost or cannot be accounted for by the Contractor.

Duty of Non-Disclosure and Security Precautions

Contractor shall not use Confidential Information for any purpose other than the limited purposes set forth in the Agreement. Contractor shall hold the Confidential Information in confidence, and shall not disclose such Confidential Information to any persons other than those directors, officers, employees, and agents (*"Representatives"* who have a business-related need to have access to such Confidential Information in furtherance of the limited purposes of this Agreement and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Agreement). Contractor shall be responsible for the breach of this Agreement by any of its Representatives.

Contractor shall institute and/or maintain such procedures as are reasonably required to maintain the confidentiality of the Confidential Information, and shall apply the same level of care as it employs to protect its own confidential information of like nature.

Contractor shall ensure that all indications of confidentiality 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. If requested by the State, 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 State, as directed.

If requested by the State, Contractor shall return or destroy all Individually Identifiable Health Information and Personally Identifiable Information it holds upon termination of this Agreement.

Limitations on Obligations

The obligations of confidentiality assumed by Contractor pursuant to this Agreement shall not apply to the extent Contractor can demonstrate that such information:

- a. is part of the public domain without any breach of this Agreement by Contractor;
- b. is or becomes generally known on a non-confidential basis, through no wrongful act of Contractor;
- c. was known by Contractor prior to disclosure hereunder without any obligation to keep it confidential;
- d. was disclosed to it by a third party which, to the best of Contractor's knowledge, is not required to maintain its confidentiality;
- e. was independently developed by Contractor; or
- f. is the subject of a written agreement whereby the State consents to the disclosure of such Confidential Information by Contractor on a non-confidential basis.

Legal Disclosure

If Contractor or any of its Representatives shall be under a legal obligation in any administrative, regulatory or judicial circumstance to disclose any Confidential Information, Contractor shall give the State prompt notice thereof (unless it has a legal obligation to the contrary) so that the State may seek a protective order or other appropriate remedy. In the event that such protective order is not obtained, Contractor and its Representatives 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.

Unauthorized Use, Disclosure, or Loss

If Contractor becomes aware of any threatened or actual use or disclosure of any Confidential Information that is not specifically authorized by this Agreement, or if any Confidential Information is lost or cannot be accounted for, Contractor shall notify the State's (Contract Manager/Contact Liaison/Privacy Officer) within the same business day the Contractor becomes aware of such use, disclosure, or loss. Such notice shall include, to the best of the Contractor's knowledge at that time, the persons affected, their identities, and the Confidential Information disclosed.

The Contractor shall take immediate steps to mitigate any harmful effects of the unauthorized use, disclosure, or loss. The Contractor shall

reasonably cooperate with the State's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such threatened or actual breach, or to recover its Confidential Information, including complying with a reasonable Corrective Action Plan.

If the unauthorized use, disclosure, or loss is of Personally Identifiable Information, or reasonably could otherwise identify individuals, Contractor shall, at its own cost, take any or all of the following measures that are directed by the State as part of a Corrective Action Plan:

- a. Notify the affected individuals by mail or the method previously used by the State to communicate with the individual. If the Contractor cannot with reasonable diligence determine the mailing address of the affected individual and the State has not previously contacted that individual, the Contractor shall provide notice by a method reasonably calculated to provide actual notice.
- b. Notify consumer reporting agencies of the unauthorized release.
- c. Offer credit monitoring and identity theft insurance to affected individuals from a company, and under terms, acceptable to the State for one year from the date the individual enrolls in credit monitoring.
- d. Provide a customer service or hotline to receive telephone calls and provide assistance and information to affected individuals during hours that meet the needs of the affected individuals, as established by the State.
- e. Adequately staff customer service telephone lines to assure an actual wait time of less than five (5) minutes for callers.

If the unauthorized use, disclosure, or loss is of Individually Identifiable Health Information, Contractor shall, at its own cost, notify the affected individuals by mail or the method previously used by the State to communicate with the individual. If the Contractor cannot with reasonable diligence determine the mailing address of the affected individual and the State has not previously contacted that individual, the Contractor shall provide notice by a method reasonably calculated to provide actual notice. In addition, the Contractor will take other measures as are directed by the State as part of a Corrective Action Plan:

Liquidated Damages: Equitable Relief: Indemnification

Indemnification: In the event of a breach of this Section by Contractor, Contractor shall indemnify and hold harmless the State of Wisconsin and any of its officers, employees, or agents from any claims arising from the acts or omissions of the Contractor, and its subcontractors, employees and agents, in violation of this Section, including but not limited to costs of monitoring the credit of all persons whose Confidential Information was disclosed, disallowances or penalties from federal oversight agencies, and any court costs, expenses, and reasonable attorney fees, incurred by the

State in the enforcement of this Section. In addition, notwithstanding anything to the contrary herein, the Contractor shall compensate the State for its actual staff time and other costs associated with the State's response to the unauthorized use or disclosure constituting the breach.

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 will not be compensable by money damages and for which there is not an adequate remedy available at law. Accordingly, the parties specifically agree that the State, 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 this Agreement or under applicable law.

Liquidated Damages: The Contractor agrees that an unauthorized use or disclosure of Confidential Information may result in damage to the State's reputation and ability to serve the public interest in its administration of programs affected by this Agreement. Such amounts of damages which will be sustained are not calculable with any degree of certainty and thus shall be the amounts set forth herein. Assessment under this provision is in addition to other remedies under this Agreement and as provided in law or equity. The State shall assess damages as appropriate and notify the Contractor in writing of the assessment. The Contractor shall automatically deduct the damage assessments from the next appropriate monthly invoice, itemizing the assessment deductions on the invoice.

Liquidated Damages shall be as follows:

- a. \$1000 for each individual whose Confidential Information was used or disclosed;
- b. \$2500 per day for each day that the Contractor fails to substantially comply with the Corrective Action Plan under this Section

Compliance Reviews

The State may conduct a compliance review of the Contractor's security procedures to protect Confidential Information under Section _ (the audit section) of this Agreement.

Survival

This Section shall survive the termination of the Agreement.

6. Subcontractors

The Contractor may not enter into a subcontract for work to be performed under the Contract if the subcontract value would exceed ten percent (10%) of the annualized value of the base Contract between the Contractor and the State without prior written approval of the State, which approval will not be unreasonably withheld. The State may rescind the approval during the term of the Contract for good cause. The Contractor will provide copies of all contracts with these subcontractors, excluding pricing or proprietary information, forty-five (45) business days prior to the effective date of such subcontracts. Upon receipt, the State will have twenty (20) business days to review such contracts and provide in writing to the Contractor any concerns regarding the level of service that is required of such subcontractors by the Contractor in meeting its contractual obligations to the State. If the State expresses concerns, the Contractor agrees to resolve any such concerns in these subcontracts. The Contractor will address each concern in writing to the State no later than twenty (20) business days from receipt of the State's concerns. Approval by the State of any subcontract will not be deemed in any event or in any manner as a provision for the incurring of any obligation by the State in excess of the total dollar amount in the Contract.

All subcontracts are subject to the same conditions of the Contract between the State and the Contractor and to any conditions of approval the State may deem necessary.

The Contractor is solely responsible for Contract performance by all of its subcontractors, and subcontractors must adhere to the same standards required of the Contractor.

7. Staffing

The State reserves the right to require replacement of any individual working under the Contract for reasonable cause, as determined by the State.

8. Reports

The Contractor shall provide the State with written reports that are clear, concise and useful for the audience for whom they are intended. The reports shall be composed in a manner consistent with State specifications. All reports shall be provided in electronic formats compatible with software applications in use by the State (i.e., MS WORD, EXCEL, etc) as well as in hard copy, as specified by the State. The Contractor is responsible for assuring that it completely understands the specifications and requirements for all reporting and other activities under the contract.

Where required, the Contractor shall provide supporting documents such as attachments for the report.

9. Travel

The State assumes no liability for any accident or injury that may occur to the Contractor's employees, agents, subcontractors or personal property while en-route to or from government facilities or during any travel associated with or mandated by the terms of the Contract.

III. FINANCIAL MATTERS

A. Costs and Payments

Payment for services provided in accordance with the terms and conditions of this contract shall not exceed **\$2,759,284.00** for the initial one-year period beginning December 1, 2008, and ending November 30, 2009. Amendments to this Contract will be issued to prescribe the limit of funding for years two and three of the Contract. In no case, however, shall the annual payment for services exceed the dollar limitations of the accepted Bid.

The Contractor will report actual costs of the project monthly and reimbursement of that amount will be processed. Monthly payments to the Contractor will be generally limited to one-twelfth (1/12) of the annualized contract with exceptions to this limitation allowed for material fluctuations in contractor outlays as the project develops.

Invoices will be submitted to the Division of Health Care Access and Accountability, Attn: Elias Soto, 1 West Wilson Street, Room 265, P.O. Box 309, Madison, WI 53701-0309. Invoices must itemize categories of expenses actually incurred, including personnel services, fringe benefits, program supplies, operational costs, travel, and other direct and indirect costs. The State will issue payment to the Contractor within thirty days or notify the Contractor, in writing, of questioned items on the invoices.

B. Taxes

The Contractor will be responsible for payment of taxes on the funds received under this Contract, which will be identified under the Contractor's actual tax identification number(s).

C. Overpayments

The Contractor will return to the State any overpayments due to unearned funds or funds disallowed pursuant to the terms of the Contract that were disbursed to the Contractor by the State. The Contractor will return any overpayment to the State within forty (40) days after either discovery by the Contractor or its

independent auditor or notification by the State of the overpayment. In the event the State first discovers an overpayment has been made, the State will notify the Contractor by letter of such a finding. At its discretion, the State may recover the overpayments by deducting the overpayment amount from any money otherwise payable to the Contractor.

D. Withholding and Deduction

1. Withholding

The State has the right to withhold any and all payments due the Contractor if the Contractor fails to perform consistent with this Contract, fails to meet a provision of this Contract, or if the State reasonably determines such withholding to be necessary to protect the State against potential losses or liabilities, including potential Federal disallowance or sanctions. The payments to be withheld will be in an amount the State determines necessary to cause the Contractor to correct its failures or to protect the State against potential losses or liabilities and will be withheld until the failure to perform or meet the Contract provision is cured, or until the potential loss or liability ceases. The State will withhold funds pursuant to this section only after the State has given notice of intent to withhold funds and the reasons for withholding continue after fourteen (14) days of such notification.

2. Deduction

The State makes payments only for services that are actually provided and that meet the terms and conditions of this Contract. Therefore, the State has the right to reduce its total financial obligations to the Contractor by the amount being withheld if, at the expiration or the termination of the Contract, the Contractor has not yet cured its failures or caused the potential losses or liabilities to cease. In addition, the State has the right to reduce its total financial obligations to the Contractor by an amount equal to the amount imposed against the State as a Federal disallowance or sanction that is attributable to the Contractor's performance or failure to perform.

The State has the right to deduct from funds otherwise payable to the Contractor any amounts due the State from the Contractor for any other reason specifically provided under this Contract.

E. Accounting Systems

The Contractor shall maintain an accounting system in accordance with generally accepted accounting principles and in accordance with appropriate Federal guidelines for the purpose of audit and examination of any books, documents, papers, and records maintained in support of this Contract. All funds under this

Contract shall be fully accounted for separately and independently of any other funds of the Contractor. The Contractor shall establish and maintain separate ledgers and checking accounts for the revenues from this Contract, wherein funds shall be clearly identifiable. All disbursements shall be supported by an invoice approved and signed by an appropriate Contractor's representative to document receipt of the materials or services. A separate Accounts Receivable file shall be maintained for each carrier to whom billings are directed and the state shall have access to review it in Wisconsin at any time during normal business hours.

IV. CONTRACTOR COMMITMENTS AND CERTIFICATIONS

A. Debarment

The Contractor certifies that neither the Contractor nor any of its owners, officers, principals, agents or employees, whether paid or voluntary, neither is or has been debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs nor has been proposed for debarment, suspension or exclusion. The Contractor further certifies the same for its subcontractors or their owners, officers, principals, agents or employees.

The Contractor will immediately notify the State if during the term of the Contract it or its subcontractor or any of the persons listed in the paragraph above are proposed for debarment, suspension or exclusion from participation in a federal assistance program.

B. Political Activity and Lobbying

The Contractor will comply with all applicable provisions of the Federal "Hatch Act," as amended.

The Contractor warrants and represents to the State that no Federal or State funds, including but not limited to the funds received from the State under this Contract, have been paid or will be paid, either directly or indirectly, for any partisan political activity or to further the election or defeat of any candidate for public office. The Contractor further agrees that if any other funds from any source are used for such purposes as are described hereinabove in this paragraph, the Contractor will immediately disclose same in writing to the State.

The Contractor warrants and represents to the State that no Federal or State funds, including but not limited to the funds received from the State under this Contract, have been paid or will be paid, either directly or indirectly, to lobby, influence or attempt to influence any federal or state agency or any member of Congress or any State's legislature concerning any state or Federal statute, legislation, grant, loan, cooperative agreement or any other matter pending before the Congress or before any State legislature.

C. Conflict of Interest

The Contractor certifies that it does not presently have any interest, and will not acquire any interest, direct or indirect, that will conflict in any manner or degree with its performance under this Contract. The Contractor will not employ or contract with any entity or person that has such a known conflict.

D. Infringement

The Contractor represents that to the best of its knowledge none of the software to be used, developed, or provided pursuant to the Contract violates or infringes upon any patent, copyright, or any other right of a third party. In the event of any action brought against the State in which infringement of a U.S. patent or copyright is claimed, the Contractor will indemnify the State against any expenses, costs or damages incurred by the State on account of such claim, provided that:

- The Contractor is notified of any claim within fifteen (15) work days after the State becomes aware of it; and
- The Contractor is afforded an opportunity to participate in the defense, or in the negotiation of a settlement, of such claims. The Contractor shall have the right to disapprove any negotiated settlement. No limitation of liability provision of the Contract shall apply to the indemnification provided by this Section.

In the event such a claim occurs or in the Contractor's opinion is likely to occur, the Contractor will, at its option and expense, either procure for the State the right to continue using the software or to replace or modify the same so that it becomes non-infringing within a reasonable period of time mutually agreed to between the State and the Contractor.

V. CONTRACT PERFORMANCE; DELIVERABLES

The Contractor must provide the services and comply with all the requirements and specifications contained in the RFP, as amended.

Contractor acknowledges that time is of the essence in the performance by the Contractor. By means of a Service Adjustment Authorization (SSA), negotiated and signed by both parties, the State will advise the Contractor as to the date on which full implementation of the services are to begin and will direct the Contractor to begin implementation on that date. In so doing, the State will adjust the deliverable dates cited in Attachment V, B-1 through B-8 of the RFP, to coincide with the designated implementation date.

All clarifications regarding scope of services, targeted service levels, and delivery parameters necessitated during the contract period will be similarly issued, negotiated,

and signed using the SSA methodology. All SSA's will become part of this Contract upon signature by both parties.

VI. DAMAGES AND INDEMNIFICATION

A. Liability; Indemnification

The Contractor agrees to be liable for all claims, suits, judgments, or damages, including court costs and attorney's fees, arising out of the acts or omissions of the Contractor and its agents, subcontractors, and employees in the course of the operation of the Contract.

Further, the Contractor agrees to indemnify and defend the State against all claims, suits, judgments, or damages, including court costs and attorney's fees, arising out of acts or omissions of the Contractor and its agents, subcontractors, and employees in the course of the operation of the Contract.

Upon notice of any claim against the State for which the Contractor has agreed to defend the State, the State will provide prompt notice of said claim to the Contractor. The State will provide reasonable assistance in defense of claims. Any proposed settlement will be subject to review and approval by the State.

B. Damages

1. Damages in General.

The Contractor shall be liable to the State for all direct damages that may be incurred by the State as a result of the Contractor's acts or failure to perform in conformance with the Contract.

If the State elects to not exercise a damage clause in a particular instance, this decision shall not be construed as a waiver of the State's right to pursue associated damages or other remedies, including contract termination, for failure to meet performance requirements in the future.

2. Liquidated Damages

The State declares, and the Contractor acknowledges, that the State may suffer damages due to the Contractor's delay or failure to perform in accordance with the terms and conditions of this Agreement. Since it is impractical and difficult to accurately fix actual damages sustained in the event of any such delay or failure, the parties agree that damages sustained from the following causes shall be in the amount set forth in this section as liquidated damages and not as a penalty.

The State will notify the Contractor in writing of the assessment of liquidated damages. The Contractor shall not be liable for liquidated damages when delays or failures arise from causes that are not primarily the responsibility of the Contractor or result from causes beyond the reasonable control of Contractor (Force Majeure). At the State's option, the following liquidated damages may be deducted by the State from any monies due and payable to the Contractor:

Damages may be assessed by the State, in the amount of \$2,500 per working day, not to exceed one-half the total annual amount of the Contract, for every day past the scheduled implementation date informed by Section V of this Contract.

VII. STOP AND CORRECT

A. Stop Services

In addition to its other remedies, the State has the right at any time to order that the services of the Contractor or any of its subcontractors be fully or partially stopped, if, in the reasonable judgment of the State, the services fail to comply with the terms and conditions, including without limitation the performance requirements in the RFP. The Contractor will receive from the State advance written notice of the reasons for the order and a description of the actions that must be taken in order to correct the noncompliance.

B. Correction

If the State determines that a noncompliance by the Contractor with any term or provision of this Contract is occurring, it has the right to demand immediate correction while permitting the Contractor to continue to provide services under this Contract. The Contractor will, without additional cost to the State, correct or revise all errors or deficiencies in any Contract work.

In addition, if the Contractor fails to commence such correction and diligently prosecute the same to completion, the State may directly or through another contractor, correct any noncompliance without prejudice to any other remedy it may have. The Contractor will directly reimburse the State for all reasonable and necessary costs incurred by the State, including procurement-related costs to correct such noncompliance, or the State may deduct these costs from payment otherwise due the Contractor.

VIII. CONTRACT AMENDMENT

Except where mandated by a change in State or Federal law or court order, any modification to or amendment of the original Contract requires the mutual written consent of the parties.

IX. EXPIRATION; TERMINATION; TURNOVER

A. Expiration

Unless sooner terminated, the Contract will expire on November 30, 2011 or, in the event the State elects to renew the Contract, on the expiration date specified in the renewal agreement.

B. Termination.

1. The Contract may be terminated by mutual written agreement of the parties.
2. The Contract may be terminated by the State for the following reasons:
 - For cause, upon a failure of Contractor to comply with the terms and conditions of this Contract, provided that the State shall give Contractor written notice specifying Contractor's breach. In the event that thirty (30) days after the receipt by Contractor of such notice, Contractor shall not have remedied said breach or, for a breach which cannot reasonably be corrected in thirty (30) days, commenced in good faith to correct said breach and thereafter proceeded diligently to complete such correction, the State may, by giving written notice to Contractor, terminate the Contract as of the date specified in the notice. The following will constitute Contractor breach under this paragraph in addition to other Contractor breaches:
 - fails to follow the sales and use tax certification requirements of s. 77.66, Wis. Stats.;
 - has a delinquent Wisconsin tax liability;
 - fails to follow the non-discrimination or affirmative action requirements of such. II, Chapter 111 of the Wisconsin Statutes (Wisconsin's Fair Employment Law); or,
 - fails to maintain and keep in force all required insurance, permits or licenses required in this Agreement.

The State may terminate this Contract for cause but without providing an opportunity to cure if the Contractor:

- is or becomes a federally debarred contractor;

- is presently identified on the list of parties excluded from federal or state procurement and non-procurement contracts;
- intentionally or through lack of reasonable care, releases the State's Confidential Information; or
- files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity.

Termination for cause by the State shall, in addition to any other rights the State may have, require reimbursement of the State's reasonable termination costs.

- For convenience if the State shall have reasonably and in good faith determined that termination would be in the best interest of the State, provided that State shall give Contractor no less than ninety (90) days prior written notice. The State shall afford the Contractor reasonable opportunity to present arguments that termination is not in the best interest of the State. Termination by State pursuant to this subsection shall create an obligation upon State to reimburse Contractor the cost of contractual services performed prior to the date of termination plus any termination expenses incurred with the prior written approval of the State.
- If required by a change in federal or state law or by court order to the extent said change necessitates termination in whole or in part.
- By the State, in whole or in part, whenever funding from State or Federal sources is withdrawn, reduced, or limited. The State will not incur liability beyond the payment of those services agreed to and provided through the date of termination of the Contract for lack of appropriation of funds. The State is the final authority as to the availability of funds and will provide as much notice of termination under this provision to the Contractor as is reasonably possible. Notwithstanding the foregoing, the contract will continue in full force and effect during any period of sixty (60) days or less wherein funds are temporarily unavailable either from State or Federal funding sources.

3. The Contract may be terminated by the Contractor for the following reasons:

- For cause, upon a failure of State to comply with the terms and conditions of this Contract, provided that Contractor shall give the State written notice specifying State's breach. In the event that (i) the alleged breach is related to payment for Contractor's services and within ten (10) days of receipt of notice, the State shall not have

contested, remedied or taken action to remedy the breach alleged or (ii) the alleged breach does not relate to payment for Contractor's services and within thirty (30) days of receipt of notice the State shall not have either contested or remedied said breach, or for breach which cannot be reasonably remedied in thirty (30) days, commenced in good faith effort to correct said breach, then Contractor may, by giving thirty (30) days advance written notice, terminate the Contract. Termination by Contractor under this subsection shall impose on the State an obligation to reimburse Contractor the cost of services performed up to the date of termination and reasonable, direct and fixed termination costs incurred by the Contractor, such as unavoidable rent, utilities, severance pay and/or equipment costs.

- For convenience if written notice is delivered by the Contractor to the State not less than ninety (90) days prior to the effective date of said termination.

4. Unless otherwise directed, Contractor will continue providing the services delineated in Attachment V of the RFP until the date of termination.

Contractor shall meet any obligations that are imposed under this Contract upon termination, including providing copies at the State's request of any documents, work papers, records, magnetic media, or reports of any kind relating to the services delivered under this Contract.

C. Turnover.

1. Turnover Responsibilities

The parties acknowledge that the continuing provision of high quality services requires that there be no disruption of services during a turnover from the Contractor to the State or to a successor contractor, if any, at the expiration or termination of this Contract. Accordingly, the Contractor will cooperate fully in providing for an orderly and controlled transition to the State or to a successor contractor and will minimize any disruption in the services to be performed under this Contract.

2. Continuation

Notwithstanding any other provision in this Contract, the Contractor shall continue providing Contract services until the State determines that the State or a successor contractor is prepared to fully assume the Contractor's duties and obligations under this Contract. All the terms and conditions of the Contract will apply during this continuation period.

3. Staff

The Contractor shall maintain the staffing requirements in this Contract until the State or a successor contractor fully assumes the Contractor's responsibilities under this Contract.

4. Management

The Department's Contract Administrator will oversee the turnover by coordinating turnover activities and approving the turnover plan. The Contractor shall designate a person responsible for coordinating its turnover responsibilities and will assign staff as the State determines is necessary to assist in the turnover. Status meetings including staff from all parties involved in the turnover will be held as frequently as the State determines is necessary.

5. Turnover Plan

The Contractor shall provide the State with a plan for the complete turnover of its responsibilities under the Contract in a manner to allow for uninterrupted continuation of services and will revise the plan until acceptable to the State. The Contractor shall submit the plan at one of the following times, depending upon which applies: no less than 60 days prior to the Contract's expiration; within 10 working days of notice of termination by the State; or, along with Contractor's notice of termination. The plan will include provisions for the transfer of all client-related information held by the Contractor or its subcontractors and not also held by the State.

X. MISCELLANEOUS PROVISIONS

A. Anti-Trust Violations

The Contractor and the State recognize that overcharges resulting from antitrust violations are, in actual economic practice, usually borne by the State. Therefore, the Contractor hereby assigns to the State any and all claims for such overcharges as to goods and services purchased in connection with this Contract, except as to overcharges not passed on to the State.

B. Assignment and Acquisition

The Contractor may not assign or transfer this Contract or any of its rights hereunder or delegate any of its duties and obligations hereunder without the prior written consent of the State, which will not be unreasonably denied or delayed, provided that any permitted assignment will neither operate to relieve the Contractor of any of its duties and obligations hereunder nor affect any remedies available to the State that may arise from any breach of the provisions of this

Contract by the Contractor. Any attempted assignment, transfer or delegation in contravention of this section of the Contract will be null and void.

The Contractor will notify the State of any merger or acquisition that the Contractor determines will affect its ability to provide any of its duties and obligations under this Contract.

C. Authority

The Contractor has no authority to bind, obligate, or commit the State by any representation or promise without the prior written approval of the State. Likewise, the State has no authority to bind, obligate, or commit the Contractor by any representation or promise without the prior written approval of the Contractor.

D. Authorization

Both the Contractor and the State have full power and authority to enter into and perform their respective duties and obligations under this Contract, and the person signing this Contract on behalf of each party has been properly authorized and empowered to enter into this Contract and to bind each party to each and every one of the terms and conditions set forth herein as well as to ensure that each party has all required legal right and power to perform all acts called for by this Contract in Wisconsin and elsewhere.

The Contractor will notify the State in writing of any changes in the person or persons authorized to sign amendments to the Contract on behalf of Contractor.

E. Binding Effect

Each party agrees that this Contract binds it and each of its officers, employees, agents, independent contractors, and representatives.

F. Choice of Law

The Contractor agrees to be bound by the laws of the State of Wisconsin and to bring any legal proceedings arising under the Agreement in a court of the State of Wisconsin. For the purpose of Federal jurisdiction, in any action in which the State of Wisconsin is a party, venue shall be in the United States Western District Court for the State of Wisconsin.

G. Conflicts Among Documents; Order of Precedence

In the event that there is a conflict in the requirements laid out by the various documents that inform this Contract, the following order of precedence will apply:

- Federal laws, regulations and policies, as amended;
- State laws, regulations and policies, as amended;
- The terms and conditions in the body of this Contract, including all attachments and incorporations, as amended;
- RFP Question and Answer documents as posted;
- The RFP and Attachments, as amended;
- The Contractor's response to the RFP, including the Cost Bid, as accepted.

A higher-order document will supersede a lower-order document to the extent necessary to resolve any inconsistencies. An inconsistency does not exist solely because a higher-order document is silent on a matter that is addressed in a lower-order document.

H. Cooperation of Parties and Dispute Resolution Process

The parties agree to act in good faith to fully cooperate with each other in connection with the performance of their respective duties and obligations under this Contract.

When a material dispute involving neither the payment provisions of this Contract nor any matter that causes or creates significant potential financial losses or liability for the other party arises, the sole and exclusive method available to the parties of resolving such dispute is for either party to request a review by the Administrator of the State's Division of Health Care Access and Accountability. If this review does not result in the satisfactory resolution of the dispute, either party may request a review with the Deputy Secretary of DHS.

The parties will also use the process described above for the resolution of any dispute regarding the payment provisions of this Contract or for any matter that causes or creates significant potential financial losses or liability for the other party. However, if the parties are unable to resolve such a dispute to their mutual satisfaction, both parties will have available to them all rights and remedies that exist under this Contract and applicable Federal and State laws and regulations, including without limitation the right to litigate the dispute in any court of competent jurisdiction.

The existence of a dispute notwithstanding, both parties agree to continue without delay to carry out all of the respective duties and obligations under this Contract that are not affected by the dispute. The Contractor further agrees to abide by the interpretation of the State's Contract Administrator regarding the matter in dispute, pending final determination.

I. Documentation

Notwithstanding any provision in this Contract to the contrary, the standards, formats and forms for all documentation required of Contractor hereunder shall be mutually agreed upon by State and Contractor and shall, including all criteria developed or revised by the Contractor for work performed under the Contract, become the property of the State.

J. Entire Agreement and Acknowledgment of Understanding

The State and the Contractor agree that this Contract is the complete and exclusive statement of agreement between the parties relating to the subject matter of this Contract. The State and the Contractor further agree that this Contract supersedes all proposals, letters of intent or prior agreements, oral or written, and all other communications and representations between the parties relating to the subject matter of this Contract.

K. Force Majeure

The Contractor shall be excused from performance hereunder for any period that it is prevented from providing, arranging for, or paying for services arising out of causes beyond the control and without fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God, fires, strikes by other than the Contractor's employees, and freight embargoes. In all cases, the failure to perform must be beyond the control of, and through no fault or negligence of, the Contractor.

L. Headings

The headings throughout this Contract are for reference purposes only, and the words contained therein will in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Contract.

M. Hiring of Employees

The Contractor will not, for purposes of providing services under this Contract, knowingly engage (as a full-time, part-time or other member of the professional staff) any persons who are or have been at any time during the term of this Contract in the employ of the State without the prior written approval of the State, which will not be unreasonably denied or delayed. Likewise, the State will not, for purposes of providing services under this Contract, knowingly engage (as a full-time, part-time or other member of the professional staff) any persons who are or have been at any time during the term of this Contract in the employ of the Contractor without the prior written approval of the Contractor, which will not be unreasonably denied or delayed.

N. Independent Capacity of Contractor

The Contractor shall perform under the terms of the Contract as an independent Contractor and not as an employee, representative, or agent, of either the DHS or the State of Wisconsin. Neither the State of Wisconsin nor the Department of Health Services shall assume any responsibility for liability Contractor may incur directly, or indirectly, as a result of its performance under this Contract.

O. Non-waiver

Any failure or delay by either party to exercise or partially exercise any right, power, or privilege under this Contract will not be deemed a waiver of any such right, power, or privilege under this Contract. Any waivers granted by either party for current breaches will not indicate a course of dealing with or excusing other or subsequent breaches.

P. Notices

Notice will be deemed given by the parties under this Contract if in writing and delivered personally, by facsimile, or mailed by first-class, registered, or certified mail, postage prepaid, to the parties at the addresses shown below.

Any notice required or permitted to be given to a party will be in writing and addressed as follows:

In case of notice to the State:

**Division of Health Care Access and Accountability (DHCAA)
Department of Health Services
PO Box 309
Madison, WI 53701-0309**

Phone: (608) 266-0203
EliasN.Soto@dhs.wisconsin.gov

In case of notice to the Contractor:

Q. Promotion of Minority Business

The State is committed to the promotion of minority business in the state's purchasing program and therefore the Contractor will be encouraged to purchase services and supplies for performance under this Contract from minority

businesses certified by the Wisconsin Department of Commerce, Bureau of Minority Business Development. The Contractor shall submit a quarterly report of purchases of such supplies and services.

R. Remedies

Except as otherwise provided herein, no remedy conferred by any of the specific provisions of this Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given there under, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

S. Right to Publish

The Contractor will be allowed to make public oral presentations, and to write and have such writing published subject to the State's review and approval before public release of the information on subjects associated with the work under this Contract.

T. Severability

If any provision of the Contract is found to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision. The remainder of the Contract shall be enforced to the fullest extent permitted by law.

U. Survival

The provisions regarding confidential information and indemnification survive the expiration or termination of the Contract, along with any other provisions contained in this Contract that by their language, sense and context are intended to survive.

XI. CONDITIONS OF THE PARTIES OBLIGATIONS

A. Contingency

This contract is contingent upon authorization of Wisconsin and United States law. Any material amendment or repeal of the same affecting relevant funding or authority of the State shall serve to revise or terminate this agreement, except as further agreed to by the parties hereto.

B. Lawful Powers

The State and the Contractor understand and agree that no clause, term or condition of this contract shall be construed to supersede the lawful powers or duties of either party.

C. Signatures

This agreement becomes null and void if the time between the earlier dated signature and the later dated signature on this agreement exceeds sixty (60) days inclusive of the two signature dates.

Contractor's Authorized Representative
Name:
Title:

Date _____

Contractor's Contract Administrator
Name:
Title:

Date _____

State's Authorized Representative:
Jason A. Helgerson
State Medicaid Director

Date _____

State's Contract Administrator:
Elias Soto, Director
Bureau of Operational Coordination

Date _____

Attachment I

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (Agreement) supplements and is incorporated into the existing Underlying Contract (Contract) Agreement between (Business Associate) and the **Department of Health Services, Division of Health Care Access and Accountability** (Covered Entity) effective December 1, 2008, and terminates any prior existing Business Associate Agreements.

This Agreement is specific to those services, activities, or functions performed by the Business Associate on behalf of the Covered Entity when such services, activities, or functions are covered by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Services, activities, or functions covered by this Agreement include, but are not limited to:

The Covered Entity and Business Associate agree to modify the Contract to incorporate the terms of this Agreement and to comply with the requirements of HIPAA addressing confidentiality, security and the transmission of individually identifiable health information created, used or maintained by the Business Associate during the performance of the Contract and after Contract termination. The parties agree that any conflict between provisions of the Contract and this Agreement will be governed by the terms of this Agreement.

1. DEFINITIONS

Protected Health Information (PHI) means:

Health information, including demographic information, created, received, maintained, or transmitted by the Business Associate, on behalf of the Covered Entity, where such information relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the payment for the provision of health care to an individual, that identifies the individual or provides a reasonable basis to believe that it can be used to identify an individual.

PHI excludes individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act (FERPA) and employment records held by the Covered Entity in its role as employer.

For the purposes of this Business Associate Agreement, PHI also includes the definitions of “registration record” and “treatment record” as defined in s. 51.30(1), Stats.:

- a. **“Registration records” include all the records of the department, county departments under s. 51.42 or 51.437, treatment facilities, and other persons providing services to the department, county departments or facilities which identify individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism or drug dependence.**

- b. **“Treatment records” include the registration and all other records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by county departments under s. 51.42 or 51.437 and their staffs, and by treatment facilities. Such records do not include notes or records maintained for personal use by an individual providing treatment services for the department, a county department under s. 51.42 or 51.437, or a treatment facility if such notes or records are not available to others.**

Individual means:

The person who is the subject of protected health information or the personal representative of an Individual as defined and provided for under applicable provisions of HIPAA.

Disclosure means:

The release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.

Designated Record Set means:

(1) A group of records maintained by or for a covered entity that is:

- (i) **The medical records and billing records about individuals maintained by or for a covered health care provider;**
- (ii) **The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or**
- (iii) **Used, in whole or in part, by or for the covered entity to make decisions about individuals.**

(2) For purposes of this Agreement, the term record means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.

Incident means:

A use or disclosure of PHI by the Business Associate or subcontractor not authorized by this Agreement or in writing by the Covered Entity. Also included in this definition are any attempted, successful or unsuccessful, unauthorized access, modification, or destruction of PHI, including electronic PHI, or interference with the operation of any information system that contains PHI.

2. PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION

The Business Associate shall not use or disclose any PHI except as permitted or required by the Contract or this Agreement, as permitted or required by law, or as otherwise authorized in writing by the Covered Entity.

3. PERMITTED USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

The Business Associate may use or disclose PHI only for the following purpose(s):

- a. for the delivery of the services, program management, activities, or functions contracted for in the Contract; or
- b. for meeting contractual or legal obligations as established in any agreements between the parties evidencing their business relationship; or
- c. as permitted by HIPAA if such use or disclosure were made by the Covered Entity or otherwise required by applicable law, rule or regulation; or
- d. for use in the operations of the Business Associate as provided in paragraph 4 of this Agreement; or
- e. as otherwise authorized by the Covered Entity in writing; or
- f. data aggregation for the health care operations of the Covered Entity.

Note: For the purposes of the Contract and this Agreement, s. 51.30, Stats., and HFS 92, Wis. Admin. Code, contain provisions that are more stringent than the federal HIPAA statutes and regulations. The Business Associate may disclose PHI without prior written informed consent from the individual or his/her legal representative only to the Covered Entity, the individual or his/her legal representative, to the county staff of the county believed to be the county of responsibility, nursing facility staff of the facility to which the individual is seeking admission or is a current resident, and, if applicable, to the hospital staff where the individual currently is located on an inpatient basis.

4. SAFEGUARDING AND MAINTENANCE OF PROTECTED HEALTH INFORMATION

- a. The Business Associate will develop, implement, maintain, and use:
 - (i) reasonable and appropriate administrative, technical, and physical safeguards to prevent improper use or disclosure of PHI, in any form or media; and,
 - (ii) reasonable and appropriate administrative, technical, and physical security measures that protect the confidentiality, integrity and availability of electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- b. The Business Associate will document PHI safeguards and security measures and agrees to provide the Covered Entity with access and review of this documentation if requested by the Covered Entity or an agent of the Covered Entity. Security measures employed by the Business Associate must be sufficient to ensure that the Covered Entity is compliant

with the HIPAA privacy and security requirements for those covered services, activities, or functions performed on behalf of the Covered Entity on or before the date such requirements become effective.

- c. The Business Associate agrees to conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of electronic protected health information held by the Business Associate. The Business Associate and Covered Entity agree that all costs associated with performance of these activities will be the responsibility of the Business Associate unless the Covered Entity agrees to be responsible for some or all of the costs associated with the performance of these activities.

5. USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION BY SUBCONTRACTORS AND AGENTS OF THE BUSINESS ASSOCIATE

The Business Associate agrees to require any agent, including subcontractors, to whom the Business Associate provides PHI to comply with the same restrictions and conditions applicable to the Business Associate with respect to PHI. Business Associate further agrees to ensure that any agents or subcontractors, to whom the Business Associate provides PHI received from, or created or received by the Business Associate on behalf of the Covered Entity agrees to the same restrictions and conditions applicable to the Business Associate with respect to such information. This provision does not apply to the use or disclosure of PHI by subcontractors that provide health care treatment to individuals or to other persons or organizations that have entered into an Organized Health Care Arrangement (OHCA) as provided for under the provisions of HIPAA.

6. ACCESS TO PROTECTED HEALTH INFORMATION

At the request of the Covered Entity, the Business Associate agrees to provide access to PHI held by the Business Associate that the Covered Entity has determined to be part of the Designated Record Sets of the programs covered by the Agreement. Access to PHI will be provided to the Covered Entity or to an Individual as directed by the Covered Entity to comply with applicable HIPAA requirements. The Covered Entity may delegate to the Business Associate responsibility for performing any or all obligations related to the Designated Record Set, including those activities required under HIPAA to permit an individual to exercise their HIPAA privacy rights.

7. AMENDMENT OR CORRECTION TO PROTECTED HEALTH INFORMATION

At the direction of the Covered Entity, the Business Associate agrees to amend or correct PHI that the Covered Entity determines is included in the Designated Record Set held by the Business Associate. The Business Associate agrees to complete any amendment or correction to PHI in accordance with HIPAA requirements.

8. REPORTING OF INCIDENTS TO COVERED ENTITY BY BUSINESS ASSOCIATE

The Business Associate agrees to inform the Covered Entity of any Incident covered by this Agreement within one (1) business day of becoming aware of such Incident. The Covered

Entity, at its discretion, may require a written report. If a written report is requested by the Covered Entity, the Business Associate agrees to forward a written report to the Covered Entity not more than one (1) business day after such request is made. Written and verbal reports of Incidents will include:

- a. a complete description of the circumstances of the Incident;
- b. the name of persons assigned to review and investigate the Incident;
- c. a description of all PHI used or disclosed during the Incident;
- d. the names of persons and organizations involved in the Incident;
- e. the actions the Business Associate has undertaken or will undertake to mitigate any harmful effect of the Incident; and,
- f. a corrective action plan that includes steps the Business Associate has taken or will take to prevent future similar Incidents from occurring.

9. MITIGATING EFFECT OF UNAUTHORIZED DISCLOSURES OR MISUSE OF PROTECTED HEALTH INFORMATION

The Business Associate agrees to mitigate, to the extent practicable, any harmful effect known to the Business Associate created by an improper use or disclosure of PHI by the Business Associate in violation of the requirements of this Agreement.

10. STATUTORY DUTY OF COVERED ENTITY TO REPORT MATERIAL BREACHES BY BUSINESS ASSOCIATE TO SECRETARY OF HEALTH AND HUMAN SERVICES (HHS)

Business Associate and Covered Entity agree that if the Business Associate engages in a pattern of activity or practice that constitutes a material breach or violation of this Agreement, and the Covered Entity becomes aware of such pattern or practice, the Covered Entity is required to take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are not successful and termination of the Contract is not feasible, the Covered Entity is required to report the problem to the Secretary of HHS.

11. TRACKING AND ACCOUNTING OF DISCLOSURES OF PROTECTED HEALTH INFORMATION BY THE BUSINESS ASSOCIATE

- a. The Business Associate agrees to track disclosures of PHI as required by the applicable provisions of HIPAA and applicable Wisconsin State law. Specifically, the Business Associate agrees that it will maintain a record of all PHI disclosures made to third parties, except as provided for by the subsections to this paragraph below. The Business Associate agrees that the following information will be recorded:
 - (i) the date the PHI was disclosed;
 - (ii) the name and address, if known, of the person or entity that the PHI was disclosed to;

- (iii) a brief description of the PHI disclosed; and
 - (iv) a brief statement describing the purpose for the disclosure.
- b. For repetitive disclosures that the Business Associate makes to the same person or entity for a single purpose, the Business Associate will provide:
 - (i) the disclosure information as specified in paragraph 13(a)(i-iv) of this Agreement for the first of such repetitive disclosures;
 - (ii) the frequency, periodicity or number of such repetitive disclosures; and
 - (iii) the date of the most recent of such repetitive disclosures.
- c. The Business Associate will make the record of disclosures available to the Covered Entity within one (1) business day after receiving a request by the Covered Entity.
- d. Exceptions from Disclosure Tracking.

The Business Associate is not required to track or record disclosures of PHI, or to provide an accounting of disclosures for PHI meeting the following conditions:

 - (i) disclosures of PHI that are permitted under this Agreement, or otherwise expressly authorized by the Covered Entity in writing; and
 - (ii) disclosures of PHI for the following:
 - (1) for purposes of treatment, payment or health care operations activity of the Covered Entity;
 - (2) in response to a request from an Individual who is the subject of the disclosed PHI, or to that Individual's Personal Representative;
 - (3) made to persons involved in health care or payment for health care of the Individual;
 - (4) for disaster relief notification purposes;
 - (5) for national security or intelligence purposes; or,
 - (6) to law enforcement officials or correctional institutions regarding Individuals in custodial situations.
- e. Agreement to Obtain Valid Authorization or Informed Written Consent Prior to Disclosure of PHI.

Business Associate agrees to obtain a valid authorization or informed written consent from the individual that is the subject of the PHI disclosure or a personal representative of such individual except for those exceptions listed in this Agreement or otherwise required by law.

f. Disclosure Tracking Time Periods.

Business Associate agrees to maintain and make available to the Covered Entity upon its request information on disclosures of PHI made by the Business Associate for the six-year period preceding the request, but not including disclosures made prior to April 14, 2003, or the date that the Business Associate began performing covered services, activities, or functions on behalf of the Covered Entity, whichever is later.

12. ACCOUNTING TO THE COVERED ENTITY AND TO GOVERNMENT AGENCIES

The Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI available to the Covered Entity, or to the Secretary of Health and Human Services (HHS) in a time and manner determined by the Covered Entity or the Secretary or designee, for purposes of determining compliance by the Covered Entity with the requirements of HIPAA. Further, the Business Associate agrees to promptly notify the Covered Entity of communications with HHS regarding PHI and will provide the Covered Entity with copies of any PHI or other information the Business Associate has made available to HHS under this provision.

13. TERM AND TERMINATION OF AGREEMENT

- a. The Business Associate and Covered Entity agree that this Agreement becomes effective on December 1, 2008.
- b. The Business Associate agrees that if in good faith the Covered Entity determines that the Business Associate has materially breached any of its obligations under this Agreement, the Covered Entity at its discretion, has the right to:
 - (i) exercise any of its rights to reports, access and inspection under this Agreement, and, or
 - (ii) require the Business Associate to conduct monitoring and reporting, as the Covered Entity determines reasonably necessary to maintain compliance with this Agreement; and, or
 - (iii) provide the Business Associate with a defined time period to cure the breach; or
 - (iv) terminate the Agreement in accordance with applicable state statutes.
- c. Before exercising any of these options, the Covered Entity will provide written notice of preliminary determination to the Business Associate describing the violation and the action the Covered Entity intends to take.

14. RETURN OR DESTRUCTION OF PROTECTED HEALTH INFORMATION

Upon termination, cancellation, expiration or other conclusion of this Agreement, the Business Associate will:

- a. Return to the Covered Entity, in accordance with Section VIII. of the Contract, or if return is not feasible, destroy all PHI and any compilation of PHI in any media or form. The Business Associate agrees to ensure that this provision also applies to PHI in

possession of subcontractors and agents of the Business Associate provided to the agent or subcontractor by the Business Associate. The Business Associate agrees that any original record or copy of PHI in any media is included in and covered by this provision, as are all original or copies of PHI provided to subcontractors or agents of the Business Associate by the Business Associate. The Business Associate agrees to complete the return or destruction as promptly as possible, but not more than sixty (60) calendar days after the effective date of termination of this Agreement. The Business Associate will provide written documentation evidencing that return or destruction of all PHI has been completed. Business Associate agrees to extend the requirements of this provision to contracts entered into with subcontractors and agents that create, receive, or maintain PHI on behalf of the Business Associate.

- b. If the Business Associate believes that the return or destruction of PHI is not feasible, the Business Associate shall provide written notification of the conditions that make return or destruction not feasible. If the Business Associate and Covered Entity agree that return or destruction of PHI is not feasible, the Business Associate shall extend the protections of this Agreement to PHI and prohibit further uses or disclosures of the PHI of the Covered Entity without the express written authorization of the Covered Entity. Subsequent use or disclosure of any PHI subject to this provision will be limited to the use or disclosure that makes return or destruction not feasible.

15. MISCELLANEOUS PROVISIONS

- a. Automatic Amendment: This Agreement shall automatically incorporate any change or modification to HIPAA as of the effective date of the change or modification. The Business Associate agrees to maintain compliance with all changes or modifications to HIPAA as required.
- b. Interpretation of Terms or Conditions of Agreement: Any ambiguity in this Agreement shall be construed and resolved in favor of a meaning that permits the Covered Entity and Business Associate to comply with HIPAA.
- c. Submission of Compliance Plan: The Business Associate agrees that a HIPAA compliance plan may be requested by the Covered Entity. If requested by the Covered Entity, the Business Associate agrees to provide periodic reports of the progress of the compliance plan. Further, the Business Associate agrees that the plan and progress reports will comply with the requirements of the Covered Entity.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed by their respective representatives.

Business Associate's Authorized Representative
Name:
Title:

Date

Business Associate's Contract Administrator
Name:
Title:

Date

Covered Entity's Authorized Representative
Name: Jason A. Helgerson
Title: State Medicaid Director

Date

Covered Entity's Contract Administrator
Name: Title: Director, Bureau of Fiscal Management

Date