



Scott Walker
Governor

Kitty Rhoades
Secretary

State of Wisconsin

Department of Health Services

**AGREEMENT FOR STATE-LEVEL HEALTH INFORMATION
EXCHANGE (HIE) GOVERNANCE AND SERVICES
BETWEEN
THE DEPARTMENT OF HEALTH SERVICES (DHS)
AND
THE WISCONSIN STATEWIDE HEALTH INFORMATION NETWORK (WISHIN)**

This Agreement is entered into by and between the State of Wisconsin, represented by its Department of Health Services whose principal business address is 1 West Wilson Street, P.O. Box 309, Madison, Wisconsin 53701-0309, hereinafter referred to as the "Department" or "DHS," and the Wisconsin Statewide Health Information Network, Inc., whose principal place of business is 5510 Research Park Drive, Madison, WI 53711, hereinafter referred to as "WISHIN." The Agreement is effective February 8, 2014.

WHEREAS, by a Request for Applications (RFA) dated June 29, 2010, the Department requested applications from qualified organizations to be considered for designation as the permanent, state-level, private-public, non-profit governing entity for statewide HIE (the "state-designated entity" or "SDE");

WHEREAS, through the competitive RFA process, the Department selected and designated WISHIN to be the SDE and assume the state-level role of governing the implementation and operation of statewide HIE services on December 21, 2010 and provided federal State HIE grant funds to WISHIN; and WISHIN assumed such role and received such grant funds through the end of the federal grant award period, i.e., February 7, 2014;

WHEREAS, WISHIN continues to satisfy the requirements for designation and funding as the SDE in accordance with Wisc. Stats. §153.81 and the Department wishes to continue WISHIN's designation as the SDE for governance of state-level HIE and development of statewide HIE infrastructure and services and provide funding for engagements that further development of the statewide HIE infrastructure and services and that will 1) increase Wisconsin health care provider participation in health information exchange for patient care and other authorized purposes; 2) assist health care professionals and hospitals participating the Medicare and/or Medicaid EHR Incentive Program in meeting the meaningful use objectives that require health information exchange; and 3) support required health information sharing between Wisconsin health care providers and entities and the health-related program areas managed by the State agencies, such as medical assistance, public health, prescription drug monitoring, etc., in accordance with the terms and conditions of this Agreement and as is authorized by Wisconsin law;

WHEREAS WISHIN is engaged in performing the desired state-level HIE governance and services;

NOW, WHEREFORE, in consideration of the mutual undertaking and agreements hereinafter set forth, the Department and WISHIN agree as follows:

I. DEFINITIONS

“*Agreement*” means the collected documents describing the agreement between the Department and WISHIN, including this base agreement, its attached exhibits and attachments, and any documents specifically incorporated herein.

“*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 (1) 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 network 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.

“*Deliverables*” means the deliverables to be provided by WISHIN under this Agreement and the respective Engagement Letter and SOW with a Purchaser for an HIE project.

“*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 publically available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable: (a) the individual’s Social Security Number; (b) the individual’s driver’s license number or state identification number; (c) the number of the individual’s financial account, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual’s financial account; (d) the individual’s DNA profile; or (e) the individual’s unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation, and any other information protected by state or federal law.

“*Purchaser*” means any authorized manager representing a State agency, University of Wisconsin campus, or other public body in Wisconsin, including Federally recognized Indian tribes and bands in this State that have a legitimate business need to connect to the Statewide Health Information Network (SHIN) and use the HIE services governed and operated by WISHIN for the purpose of securely exchanging health information electronically with authorized entities through the SHIN.

“*Services*” means the services to be performed by WISHIN under this Agreement and the respective Engagement Letter and SOW with a Purchaser for an HIE project.

II. DESIGNATION OF THE STATE-LEVEL GOVERNANCE ENTITY

The Department hereby designates WISHIN, and WISHIN accepts such designation, as the state-level governance entity for HIE in Wisconsin. WISHIN shall maintain its designation as the governance entity and be eligible under this Agreement to provide the Deliverables and perform

the Services only as long as the Department determines that WISHIN meets the conditions set forth in Wisc. Stats. §153.81(1).

III. RESPONSIBILITIES OF WISHIN

As the SDE, WISHIN shall provide state-level governance of the SHIN and advance information sharing across the health care continuum by developing and maintaining a statewide health information network and HIE services consistent with Federal and Wisconsin State laws. As the SDE, WISHIN shall fulfill purposes stated in Wisc. Stats. §153.81(1)(f) with particular emphasis on the following HIE governance-related responsibilities:

- A. Facilitating the collaborative development of public policy to advance HIE in Wisconsin;
- B. Developing, maintaining, and enforcing participant agreements for the SHIN;
- C. Establishing and maintaining necessary policies and procedures related to privacy, security, audits, access, authorization, and authentication for the SHIN;
- D. Governing the selection, adoption, and implementation of HHS-approved standards for interoperability by SHIN participants and WISHIN's HIE vendors; and
- E. Developing and operating the SHIN and state-level HIE Services in accordance with federal interoperability standards and specifications.

IV. SERVICES TO BE PROVIDED BY WISHIN

HIE Services to be provided by WISHIN shall be determined by WISHIN's Board of Directors (BoD), of which the State shall hold three BoD seats (Wisc. Stats. §153.81(c)1-3). Purchasers under this Agreement will participate financially in mutually agreed upon SDE projects approved by WISHIN's BoD that connect the Purchaser's programs to the SHIN and enable secure, electronic health information sharing among health care providers and payors, and between health care providers and payors and the Purchaser's agency through the SHIN for purposes permitted or required by Federal and State law.

V. CONTRACT ADMINISTRATION

The Department's Acting Contract Administrator is Tricia LaPlant, whose principal business address is 1 West Wilson Street, P.O. Box 309, Madison, Wisconsin 53701-0309. In the event the Department's Contract Administrator is unable to administer this Agreement, the Department will notify WISHIN and designate a new Contract Administrator.

WISHIN's Contract Administrator is Joseph Kachelski, whose principal business address is 5510 Research Park Drive, Madison, WI 53711. In the event that WISHIN's Contract Administrator is unable to administer this Agreement, WISHIN will contact the Department and designate a new Contract Administrator.

VI. ENGAGEMENT LETTER/STATEMENT OF WORK

Each HIE project proposal a Purchaser engages in with WISHIN will be performed under an executed Engagement Letter (see template at Exhibit A) with an accompanying Statement of Work (SOW). WISHIN shall complete and maintain a SOW Excel workbook (Exhibit B) in coordination with the Purchaser for each HIE project proposal the Purchaser agrees to participate in and fund. The Scope and Deliverables and the Cost Allocation worksheets in the SOW workbook must be completed prior to receiving project approval and a funding commitment from

the Purchaser. Each Engagement Letter and SOW shall be approved and executed by the Purchaser's assigned project lead, the Purchaser, and WISHIN's authorized representative.

VII. DELIVERABLES

WISHIN shall produce any Deliverables for each approved HIE project in accordance with the respective Engagement Letter and SOW. WISHIN's Deliverables, Services, and obligations are subject to the respective Purchaser timely providing such information, approvals, and other cooperation as is required for the HIE project or is reasonably requested by WISHIN and any assumptions set forth in the Engagement Letter and/or SOW.

- A. The Purchaser shall have a reasonable opportunity to timely review and approve an HIE project's Deliverables following WISHIN's delivery of each Deliverable to the Purchaser to determine whether the Deliverable conforms in all material respects to the requirements and criteria specified in the Engagement Letter and SOW, which approval shall not be unreasonably withheld.
- B. Except as otherwise stated in the respective Engagement Letter or SOW, Purchaser shall have ten (10) business days to complete review of each Deliverable. The count of such days shall begin on the first business day after Purchaser receives each Deliverable. The Purchaser shall either: reject the Deliverable if it fails to materially conform to the specifications or has material defects (collectively, "errors"); or to accept the Deliverable if it has no such errors ("Acceptance"). If the Purchaser rejects a Deliverable, Purchaser shall provide a written statement ("Notice") to WISHIN specifying the error(s), and WISHIN shall, at Purchaser's request, promptly correct such errors and, thereafter, Purchaser shall again have the opportunity to review the Deliverable. If Purchaser fails to either provide such Notice or accept the Deliverable in writing to WISHIN within the ten (10) business days or other mutually agreed upon timeframe, the Deliverable shall be deemed to have been accepted by the Purchaser.

If WISHIN is not able to correct all errors in a Deliverable within thirty (30) business days following WISHIN's receipt of the written Notice of required corrective actions or changes or within such other period of time as is specified in the Engagement Letter or SOW or is otherwise agreed upon by Purchaser and WISHIN, the Purchaser shall have the right to terminate the HIE project being implemented through the Engagement Letter and SOW. In the event of any such termination, the Purchaser shall immediately cease using WISHIN's Services and return to WISHIN all Deliverables, information, and other materials that have been provided by WISHIN, and WISHIN shall return all payments previously made to WISHIN by the Purchaser for the specific HIE project/engagement.

- C. Purchaser shall have ten (10) business days to complete a review of the corrective actions or changes made to the Deliverable in response to Purchaser's written Notice of errors and notify WISHIN in writing of acceptance or rejection. The count of such days shall begin on the first business day after Purchaser receives the corrected or changed Deliverable from WISHIN. If Purchaser fails to give WISHIN written Notice of acceptance or rejection within the ten (10) business days or other mutually agreed upon timeframe, the corrected or changed Deliverable shall be deemed to have been accepted by Purchaser.
- D. Purchaser and WISHIN may mutually agree to extend the period of time allotted for any review, correction, or change under this Section VII. Any such extension of time may extend

the schedule for subsequent Deliverables by a corresponding amount of time. All such extensions shall be done in writing.

VIII. COST FOR SERVICES

- A. The Purchaser will reimburse WISHIN for its costs in accordance with the budget set and agreed upon for each project a Purchaser engages in with WISHIN through an executed Engagement Letter and SOW, and only for those costs that are consistent with state and federal allowable cost policies.
- B. WISHIN understands this Agreement does not bind any Purchaser to provide WISHIN any funding except as specified for an approved HIE project in an Engagement Letter and SOW and as set forth above in this Article VIII.
- C. The Purchaser will not reimburse WISHIN for costs in excess of the amount approved for each project unless pre-approved by Purchaser in writing. The Purchaser will not reimburse WISHIN for costs incurred outside the Agreement period, as defined in Section XXV.G of this Agreement or outside the term specified in an Engagement Letter, which shall not be a date beyond the term of this Agreement. Expenses incurred by WISHIN for a project during the Engagement Letter period but reported more than 90 days after the Engagement Letter ending date will not be recognized, allowed, or reimbursed by the Purchaser. Further, the Purchaser will not reimburse WISHIN for costs that are inconsistent with applicable state and federal allowable cost policies. For further information on state and federal allowable cost policies, please refer to the Department's Allowable Cost Policy Manual that is available online at: <http://www.dhs.state.wi.us/grants/Administration/ACPM.HTM>.
- D. WISHIN may alternatively request a hard copy of the above manual from the Department's Contract Administrator or from the Office of Program Review and Audit, Department of Health Services, 1 West Wilson Street, P.O. Box 7850, Madison, WI 53707-7850. The stipulations of the Allowable Cost Policy Manual are incorporated into this Agreement by reference.
- E. Any additional costs to those stated in Section VIII.A (Cost for Services) will not be reimbursed unless WISHIN requests and the Purchaser submits prior written approval of such expenditures.
- F. WISHIN agrees not to use any funds supplied under this Agreement through an Engagement Letter to engage in any of the following activities: (i) propagandizing, lobbying, or other attempts to influence legislation, within the meaning of Section 501(c)(3) of the Internal Revenue Code, and (ii) participation or intervention in, including the publication or distribution of statements, any political campaign on behalf of any candidate for public office, within the meaning of Section 501 (c)(3) of the Internal Revenue Code.
- G. WISHIN agrees not to use any funds provided under this Agreement through an Engagement Letter to subsidize any individual for costs of his or her health care (except in connection with health care benefits generally provided to WISHIN's employees and except to the extent that a subcontractor's or vendor's fees are partially based on its or its employees health care insurance or costs), to support clinical trials of unapproved drugs or devices, or to construct or renovate facilities. Further, WISHIN agrees not to use these funds as a substitute for funds currently being used to support similar activities.

IX. CONFIDENTIALITY

The following requirements apply to confidential information the Purchaser provides to WISHIN.

- A. WISHIN may not use either personal or demographic member data for any purpose that is not directly related to the fulfillment of SDE's responsibilities under the terms of this Agreement and any Engagement Letter and SOW.
- B. WISHIN shall not use confidential information for any purpose other than the limited purposes set forth in this Agreement and any Engagement Letter and SOW, and all related and necessary actions taken in fulfillment of the obligations there under. WISHIN shall hold all 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.
- C. WISHIN will institute and maintain such security procedures as are commercially reasonable to maintain the confidentiality of the confidential information while in its possession or control including transportation, whether physically or electronically.
- D. WISHIN shall ensure that all indications of confidentiality contained on or included in any item of confidential information shall, when reasonably practicable, be reproduced by WISHIN on any reproduction, modification, or translation of such confidential information. If requested by the Purchaser, WISHIN shall, to the extent reasonably practicable, 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 Purchaser, as directed.
- E. Unauthorized Use, Disclosure, or Loss

If WISHIN becomes aware of any threatened or actual use or disclosure of any confidential information that is not specifically authorized by this Agreement and any Engagement Letter and SOW, or if any confidential information is lost or cannot be accounted for, WISHIN shall promptly notify the Contract Administrator for this Agreement and the affected Purchaser(s) within one (1) business day of when WISHIN becomes aware of such use, disclosure, or loss. Such Notice shall include, to the best of WISHIN's knowledge at that time, the persons affected, their identities, and the confidential information disclosed.

WISHIN shall take immediate steps to mitigate any harmful effects of the unauthorized use, disclosure, or loss. WISHIN shall reasonably cooperate with the State's or Purchaser's (other than a state agency) 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 requested by the State or a Purchaser other than a state agency, WISHIN shall destroy all Individually Identifiable Health Information and Personally Identifiable Information it holds upon termination of this Agreement.

X. HIPPA COMPLIANCE

WISHIN agrees to comply with the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to the extent those regulations apply to the Services WISHIN provides under this Agreement and any Engagement Letter. WISHIN shall execute a Business Associate Agreement (BAA) with each Purchaser if applicable. WISHIN shall use the DHS BAA at Exhibit C for engagements with DHS Purchasers.

XI. PAYMENT FOR SERVICES

- A. Payment to WISHIN shall be in accordance with the terms in each Engagement Letter and, as applicable, Section VIII.B. of this Agreement and initiated upon receipt of an invoice by the Purchaser from WISHIN itemizing expenditures for each project. Expenditures MUST be split out by each individual engagement/project.
- B. Expenditure reports related to WISHIN's invoiced costs for each approved project shall be assembled by WISHIN and forwarded to the Purchaser at the address specified in the respective Engagement Letter.

XII. PROGRAM ACTIVITY REPORTING

WISHIN must comply with the Department's program activity reporting requirements on SDE and subcontractor activities related to WISHIN's responsibilities under Section III of this Agreement. WISHIN shall annually evaluate, analyze, and report to the Department Secretary on the progress toward implementing statewide HIE and how the HIE efforts are enabling meaningful use of certified electronic health record technology, as defined in 42 USC 300jj and by the U.S. department of health and human services by regulation, by health care providers (Wisc. Stats. §153.81(1)(b)). The Department's staff will specify and coordinate the contents of the required report with WISHIN's staff and obtain agreement by WISHIN's staff. WISHIN shall submit its report for the Secretary to the Department's Contract Administrator no later than January 31 each year for the previous calendar year.

- A. WISHIN must comply with any Purchaser's reporting requirements for HIE projects being performed through an executed Engagement Letter and SOW under this Agreement. WISHIN must complete all required activity reports according to the specifications and schedule established in each Engagement Letter and SOW and forward the reports to the Purchaser's project lead designated in the respective Engagement Letter. WISHIN agrees to forward the required reports to a third party, if requested by the Purchaser to do so.
- B. WISHIN must provide the Department with information about HIE projects being performed through any executed Engagement Letter and SOW under this Agreement upon request. WISHIN will also meet with the Department if requested.
- D. At the request of the Department, WISHIN will appear in person to clarify required reports or to answer any questions at any time during the Agreement period or within three (3) years of termination of this Agreement.
- E. Failure to submit the program reports specified herein or in any subsequent relevant communications may result in the enforcement of sanctions against WISHIN, as followed

by and described in Noncompliance, Sanctions, and Remedial Measures Section of this Agreement.

XIII. AFFIRMATIVE ACTION PLAN AND CIVIL RIGHTS COMPLIANCE

A. Affirmative Action Plan

1. In connection with the performance of work under this Agreement through Engagement Letters, WISHIN 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 Wis. Stat. § 51.01(5), sexual orientation 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, WISHIN further agrees to take affirmative action to ensure equal employment opportunities. WISHIN agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.
2. If WISHIN will receive over \$50,000 under this Agreement through Engagement Letters AND has a work force of 50 or more employees as of the effective date of this Agreement, WISHIN must submit an affirmative action plan to the Department in accordance with the Wisconsin Office of Contract Compliance instructions posted on the following website:

<http://vendornet.state.wi.us/vendornet/contract/contcom.asp>

If a plan is required, the plan is due to the Department within fifteen (15) business days of the effective date of this Agreement. The plan must have been prepared or revised not more than one year prior to the effective date of this Agreement. WISHIN must submit its affirmative action plan in accordance with the instructions to the Wisconsin Office of Grant Compliance within 15 business day to:

DHS/DES/BSS
AA Coordinator
1 W. Wilson Street, Room 655
P.O. Box 7850
Madison, WI 53707-7850

Or submit a PDF file to DHSSStrategicSourcing@wisconsin.gov

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

B. Civil Rights Compliance

1. If as part of this Agreement and any Engagement Letter, WISHIN provides services to clients, WISHIN must comply with the Civil Rights requirements. Contractors with an annual work force of less than 25 employees, regardless of the contract amount, and Contractors with contracts of less than \$50,000 are not

required to complete and maintain on file a Civil Rights Compliance Plan that covers the length of the contract or the most recent published Civil Rights Compliance Requirements for the Department. However, they must submit a Civil Rights Compliance Letter of Assurance to the Office of Affirmative Action and Civil Rights Compliance. Contractors with an annual work force of 25 or more employees and contracts of \$50,000 or more shall complete and keep on file a Civil Rights Compliance Plan compliant with the most recent Department Civil Rights Compliance Requirements publication. All Contractors must submit a Civil Rights Compliance Letter of Assurance to the Office of Affirmative Action and Civil Rights Compliance and complete their Civil Rights Compliance Plan within 15 working days of the contract effective date. The most recent published Civil Rights Compliance Requirements are outlined on the following website: <http://dhs.wisconsin.gov/civilrights/CRC/requirements.htm>.

2. WISHIN should send its Civil Rights Compliance Letters of Assurances to:

DHS
Office of AA and Civil Rights Compliance
1 W. Wilson Street, Room 561
P.O. Box 7850
Madison, WI 53707-7850
Telephone: (608) 266-9372 (Voice)
1-888-701-1251 (TTY)
Fax: (608) 267-2147
Email: David.Duran@wi.gov

3. WISHIN agrees that it will comply with all Equal Opportunity Requirements under Title VI and VII of the Civil Rights Act of 1964; Sections 503 and 504 of the Rehabilitation Act of 1973; Title VI and XVI of the Public Health Service Act; the Age Discrimination in Employment Act of 1967; the Age Discrimination Act of 1975; the Omnibus Reconciliation Act of 1981; the American with Disabilities Act (ADA) of 1990; the Wisconsin Fair Employment Act and applicable amendments; and other Federal Civil Rights laws listed in the Civil Rights Compliance Plan.
4. No qualified person shall be excluded from participation in the SHIN and HIE Services, be denied the benefits of the SHIN and HIE Services, or otherwise be subjected to discrimination in any manner on the basis of race, color, national origin, religion, sex, disability or age. This policy covers eligibility for and access to service delivery, and treatment in all programs and activities. All employees of WISHIN are expected to support the goals and programmatic activities relating to nondiscrimination in service delivery.
5. No qualified person shall be excluded from employment, be denied the benefits of employment or otherwise be subjected to discrimination in employment in any manner or team of employment on the basis of age, race, religion, sexual orientation, color, sex, national origin or ancestry, disability or association with a person with a disability, arrest or conviction record, marital status, political affiliation, or military participation, unfair honesty testing and genetic testing, and use or non-use of lawful products outside of working hours. Unless otherwise exempted under Executive Order 11246, as amended, and Section 503

of the Rehabilitation of 1973, or if WISHIN is considered to be a federal Contractor, WISHIN assures that it will comply with these requirements. All employees of WISHIN are expected to support the goals and programmatic activities relating to non-discrimination in employment.

6. WISHIN shall post the Equal Opportunity Policy and the name of the Equal Opportunity Coordinator, and the Limited English Proficiency Coordinator if WISHIN is engaged in the provision of service delivery. The discrimination complaint process must be posted in conspicuous places available to applicants and recipients of services, and applicants for employment and employees. The complaint process will be according to the Department's standards, and WISHIN shall post the complaint process notice translated into the major primary languages of the Limited English Proficient participants in their service area. The notice will announce the availability of free oral interpretation of services if needed. WISHIN shall not request interpretation services from family members, friends and minors. However, the participant may request a family member or friend to serve as interpreter. Under no circumstance will a minor be allowed to serve as interpreter.
7. WISHIN agrees to comply with the Department's guidelines for ensuring Access and Equal Opportunity in Service Delivery and Employment by Recipients of Federal and State Funded Programs, Services and Activities issued by the State of Wisconsin, Department of Health Services, Department of Children and Families, and Department of Workforce Development; which can be found on the following website:
<http://dhs.wisconsin.gov/civilrights/CRC/requirements.htm>
8. Requirements herein stated apply to any of WISHIN's subcontracts or contracts. WISHIN has primary responsibility to take constructive steps to ensure the compliance of its subcontractors. However, where the Department has a direct Contract with any of WISHIN's subcontractors, the Department will assume direct responsibility for monitoring and assuring compliance of the mutual subcontractors.
9. The Department will monitor the Civil Rights Compliance of WISHIN. The Department may conduct reviews to ensure WISHIN is ensuring compliance by its subcontractors according to guidelines in the State of Wisconsin Department of Workforce Development's, Department of Children and Families', and Department of Health Services' most recent Civil Rights Compliance Plan requirements. WISHIN agrees to comply with Civil Rights monitoring reviews, including the examination of records and relevant files maintained by WISHIN, as well as interviews with staff, clients, and applicants for services, subcontractors, Contractor, and referral agencies. The reviews will be conducted according to Department procedures. The Department will also conduct reviews to address immediate concerns of complainants.
10. Where the Department has a direct contract with any of WISHIN's subcontractors, WISHIN does not need to monitor the subcontractor's compliance with the Civil Rights Compliance Plan.

11. WISHIN agrees to cooperate with the Department in developing, implementing, and monitoring corrective action plans that result from complaint investigations or monitoring efforts.

XIV. SUBCONTRACTS

A. Upon written approval of the Purchaser, WISHIN may subcontract project work agreed to in an executed Engagement Letter and SOW under this Agreement. DHS acknowledges that WISHIN currently has subcontracts with Medicity, Inc. Orion Health, Inc. and agrees that WISHIN's subcontracting with both of those subcontractors is hereby approved. When WISHIN enters into other subcontracting relationships, the Purchaser reserves the right to approve any of the following:

1. The process used by WISHIN to solicit proposals or bids.
2. The criteria used by WISHIN in choosing a subcontractor.
3. The terms and conditions of the subcontract(s).
4. The subcontractor(s) selected.

Approval of the processes used by WISHIN to select a subcontractor and of the subcontractor(s) chosen by WISHIN will not be unreasonably withheld, nor will WISHIN invoke its approval right in order to reject procedures or subcontractors on unlawful grounds.

- B. WISHIN retains responsibility for fulfillment of all terms and conditions of this Agreement and any applicable Engagement Letters/SOWs when it enters into any subcontracts. WISHIN continues to be subject to the enforcement of all terms and conditions of this Agreement and the Engagement Letters/SOWs, even when issues of non-compliance are attributable to WISHIN's subcontractors rather than WISHIN.
- C. If a state public official or an organization in which a state public official holds at least a 10 percent interest is or becomes a party to this Agreement or any Engagement Letters, WISHIN must disclose the potential conflict of interest to the State of Wisconsin Ethics Board. The State of Wisconsin Ethics Board can be contacted at 44 East Mifflin Street, Suite 601, Madison, Wisconsin 53703, telephone (608) 266-8123. For additional information on requirements governing the disclosure of a potential conflict of interest, refer to Wis. Stats., s. 19.41-19.49. If WISHIN fails to make proper disclosure of a potential conflict of interest held by any parties to this Agreement and any Engagement Letters, the Department may, at its discretion, void this Agreement and/or Engagement Letters.
- D. If a foreign corporation, which is defined as any corporation that does not originate in the State of Wisconsin, is or becomes a party to this Agreement and any Engagement Letters, it must demonstrate the following: 1) possession of a certificate of authority from the Wisconsin Secretary of State, and 2) maintenance of a registered resident agent. In addition to demonstrating fulfillment of the above-named points, foreign corporations must conform to all requirements of Wis. Stats., Chapter 180, Subchapter XV.
- E. WISHIN agrees that funds provided through Engagement Letters under this Agreement will be used to supplement and expand WISHIN's efforts, not to replace or to allow the release for alternative uses of available local SDE funds.

- F. WISHIN may not issue news releases or other public statements pertaining to any services provided under this Agreement or through Engagement Letters without the prior written approval of the Department or Purchaser in the case of specific projects/engagements.

XV. ACCOUNTING REQUIREMENTS

- A. WISHIN must maintain a uniform double-entry, full-accrual accounting system and a financial management information system that complies with generally accepted accounting principles. For more information on compliance with generally accepted accounting principles, refer to the Department's *Allowable Cost Policy Manual*.
- B. Under the accounting system used by WISHIN, WISHIN must be able to account for individual projects executed under an Engagement Letter as well as prepare and submit expense reports in a timely manner, as described above in the Payment for Services Section of this Agreement.
- C. All costs reported to a Purchaser for reimbursement must be reconciled with the expenses recorded in WISHIN's accounting system on an ongoing and periodic basis. WISHIN agrees to complete a reconciliation and to document the completion of such reconciliation at least quarterly. WISHIN further agrees to supply the Department, upon request, with either or both of the following: 1) documentation indicating that the quarterly reconciliation has been completed, or 2) the results of such reconciliation. WISHIN must retain the results of each quarterly reconciliation in accordance with the records retention requirements specified in the Records Section of this Agreement.

XVI. CHANGES IN ACCOUNTING PERIOD

- A. WISHIN's accounting records must be maintained on a fiscal year basis. During the Agreement period, the accounting period may be changed only with the prior written approval from the Department. The Department may approve a change in accounting period, if WISHIN further agrees to submit a close-out audit, as defined in the Audit Requirement Section of this Agreement, within 90 days after the first day of the new accounting period.
- B. If WISHIN can submit proof of approval from the Internal Revenue Service to change its accounting period, such proof will be accepted as evidence of WISHIN's substantial verifiable business need to change its accounting period.
- C. A change in accounting period will not relieve WISHIN of the reporting or audit requirements of this Agreement. An audit of the original accounting period that meets the requirements of this Agreement, as described in the Audit Requirements Section must be submitted within 90 days of the first day of the start of the new accounting period. An audit of the new accounting period that meets the requirements of this Agreement, as described in Audit Requirement Section, must be submitted within 180 days of the close of the new accounting period. For purposes of determining the specific audit requirements that apply to WISHIN's type of organization, expenses and revenues incurred during the short accounting period will be annualized.

XVII. AUDIT REQUIREMENTS

- A. Requirements to Have an Audit: Unless waived by the Department, WISHIN shall submit an annual audit to the Department if the total amount of annual funding provided by the State (from any and all state agency Purchasers taken collectively) through this Agreement and other contracts is \$25,000 or more. In determining the amount of annual funding provided by the State, WISHIN shall consider both: (a) funds provided through direct contracts with the State; and (b) funds from the State passed through another agency which has one (1) or more contracts with WISHIN.
- B. Audit Requirements: The audit shall be performed in accordance with auditing standards generally accepted in the United States of America, Wis. Stats., s. 46.036, *Government Auditing Standards*, and other provisions in this Agreement. In addition, WISHIN is responsible for ensuring the audit complies with other standards that may be applicable depending on the type of Contractor and the nature and amount of financial assistance received from all sources, including the following state audit requirements:
- The *State Single Audit Guidelines (SSAG)*, which are applicable to nonprofits, such as WISHIN, having audits in accordance with OMB Circular A-133 “Audits of States, Local Governments and Nonprofit Organizations.”
- C. Reporting Package: WISHIN shall submit to the Department a reporting package which includes the following:
1. Financial statements and other audit schedules and reports required for the type of audit applicable to WISHIN.
 2. The Management Letter (or similar document conveying auditor’s comments issued as a result of the audit) or written assurance that a Management Letter was not issued with the audit report.
 3. Management responses/corrective action plan for each audit issue identified in the audit report and the Management Letter.
- D. Submitting the Reporting Package: WISHIN shall submit the required reporting package to the Department within 180-days of the end of WISHIN’s fiscal year. Two (2) copies of the audit report must be sent to the Department at the following address:
- Department of Health Services
Division of Enterprise Services
Office of Audit
P.O. Box 7850
Madison, WI 53707-7850
- E. Access to Auditor’s Work Papers: When contracting with an audit firm, WISHIN shall authorize its auditor to provide access to work papers, reports, and other materials generated during the audit to the appropriate representatives of the Department. Such access shall include the right to obtain copies of the work papers and computer discs, or other electronic media, upon which records/working papers are stored.
- F. Access to SDE’s Records: WISHIN shall permit appropriate representatives of the Department to have access to WISHIN’s records and financial statements as necessary to

review WISHIN's compliance with the federal and state requirements for the use of the funding.

G. Failure to Comply with the Requirements of this Section: In the event WISHIN fails to have an appropriate audit performed or fails to provide a complete audit report to the Department within the specified time frame, in addition to applying one (1) or more of the sanctions available in the Noncompliance, Sanctions, and Remedial Measures Section of this Agreement, the Department may:

1. Conduct an audit or arrange for an independent audit of WISHIN and charge the cost of completing the audit to WISHIN;
2. Charge WISHIN for all loss of federal or state aid or for penalties assessed to the Department because WISHIN did not submit a complete audit report within the required time frame; and/or
3. Disallow the cost of audits that do not meet these standards.

H. Close-Out Audits:

1. A purchase of services audit of an accounting period of less than 12 months is required when a purchase of services contract is terminated for cause, when WISHIN ceases operations, or when WISHIN changes its accounting period (fiscal year). The purpose of the audit is to close-out the short accounting period. The required close-out contract specific audit may be waived by the Department upon written request from WISHIN, except when the contract is terminated for cause. The required close-out audit may not be waived when a contract is terminated for cause.
2. WISHIN shall ensure that its auditor contacts the Department prior to beginning the audit. The Department, or its representative, shall have the opportunity to review the planned audit program, request additional compliance or internal control testing, and attend any conference between WISHIN and the auditor. Payment of increased audit costs, as a result of the additional testing requested by the Department, is the responsibility of WISHIN.
3. The Department may require a close-out audit that meets the audit requirements specified in the Audit Requirements Section. In addition, the Department may require the auditor to annualize revenues and expenditures for the purposes of applying OMB Circular A-133 and determining major federal financial assistance programs, when applicable. This information shall be disclosed in a note to the schedule of federal awards.
4. All other provisions in the Audit Requirements Section apply to close-out audits unless in conflict with the specific close-out audits requirements.

XVIII. OTHER ASSURANCES

A. If WISHIN incurs past-due liabilities to the federal government, state government, or these entities' agents for sales tax, business income tax, employee income tax withholding, FICA, Workers' Compensation, Unemployment Compensation, or

garnishments or other employee-related liabilities, WISHIN must notify the Department in writing of the past-due liability within 30 days of the date that payment was due. This stipulation applies to liabilities incurred on behalf of any employee, whether that employee is assigned to a Purchaser's project or not. WISHIN's written Notice of past-due liabilities must include the amount(s) owed, the reason the payment(s) is/are owed, the reason the payment(s) is/are past due, the due date(s) of the payment(s), the amount(s) of any known or estimated penalties or interest, the unit(s) of government to which the payment(s) is/are owed, the anticipated date of payment, and any other related information requested by the Department or considered by WISHIN be relevant to the past-due liabilities.

- B. If WISHIN incurs past-due undisputed liabilities of more than \$500 to an individual vendor who provides services or products related to this Agreement and any Engagement Letters, the costs of which will be or have been reimbursed by a Purchaser, WISHIN must notify the Department in writing of the past-due undisputed liability within 30 days of the date that payment was due. Likewise, if WISHIN incurs more than \$1,000 in past-due liabilities to multiple vendors who provide services or products related to this Agreement and any Engagement Letters, the costs of which will be or have been reimbursed by a Purchaser, WISHIN must notify the Department in writing of the past-due liability within 30 days of the date(s) that payments were due. In both cases, WISHIN's written Notice to the Department must include the amount(s) owed, the reason the payment(s) is/are owed, the reason the payment(s) is/are past due, the due date(s) of the payment(s), the amount(s) of any known or estimated penalties or interest, the name(s) of Contractor(s) to which the payment(s) is/are owed, the anticipated date of payment, and any other related information requested by the Department or considered by WISHIN to be relevant to the past-due liabilities. If a past-due liability is in dispute, WISHIN's written Notice must contain a description of the facts related to the dispute and a summary of the steps being taken by WISHIN to resolve the dispute.
- C. At signing of this Agreement, the Department may, at its sole discretion, request written assurance that WISHIN currently enforces employee dishonesty bonding and will maintain such bonding for the duration of this Agreement. The amount of such bonding will be determined by Department and will not exceed usual and customary amounts.
- D. By signing this Agreement, WISHIN certifies that neither WISHIN organization nor any of its principals is currently excluded from, has been proposed for exclusion from, or is expected to be proposed for exclusion from the receipt of federal financial and nonfinancial assistance and benefits. For more information and a list of those organizations or individuals who have been excluded from or are proposed for exclusion from the receipt of federal financial and nonfinancial assistance and benefits, please refer to the General Services Administration's List of Parties Excluded from Federal Procurement and Non-Procurement Programs, available online at <http://www.epls.gov>. WISHIN further certifies that potential sub-recipients, subcontractors, and all principals of such organizations are not currently excluded from, have not been proposed for exclusion from, nor are expected to be proposed for exclusion from the receipt of federal financial and nonfinancial assistance and benefits.

XIX. RECORDS

- A. WISHIN must maintain such financial and program administrative records as are required by the terms of this Agreement and any Engagement Letters, and by the state

and federal laws applicable to WISHIN's type of organization. Such records may be maintained in either electronic or paper format. Records must be retained for at least the number of years specified by the applicable state and federal laws or policies. Records pertaining to a fiscal period that is under audit or is subject to dispute or litigation must be retained until the audit, dispute, or litigation and any associated appeal periods have come to a close.

- B. WISHIN must allow inspection of records and program operations by the Department, Purchasers under this Agreement, federal agencies, or the authorized representatives of either entity at any time throughout the duration of this Agreement or during the course of a subsequent audit, insofar as such inspections are permitted by the state and federal laws applicable to WISHIN's type of organization.
- C. WISHIN and its subcontractors, if applicable, must comply with all state and federal laws pertaining to the confidentiality of data as well as with the confidentiality guidelines stated above in the Confidentiality Section. This stipulation applies not only to the data contained within the patient records maintained by WISHIN or its subcontractors, if applicable, but also to the data contained within those records or databases that are maintained by the Department or any other Purchasers and that may, upon the Department's or other Purchase authorization, be accessed by WISHIN or its subcontractor(s), as applicable, in order to facilitate the performance of the services.

XX. AGREEMENT REVISIONS AND/OR TERMINATION

- A. WISHIN and, as applicable, DHS or Purchasers shall agree to renegotiate in good faith this Agreement and any Engagement Letters or any part thereof in such circumstances as:
 - Increased or decreased need for services.
 - Changes required by state and federal law or regulations, or court action.
 - Reduction in the monies available that affect the substance of any Engagement Letters under this Agreement.
- B. A Purchaser may terminate its Engagement Letter and SOW in whole or, with WISHIN's consent, in part due to a non-appropriation of sufficient federal and/or state funds to carry out the respective HIE project. In the event of a partial termination, the parties will discuss the impact on the scope of services given the remaining available funds and in good faith attempt to renegotiate the terms of the Engagement as necessary. Should such renegotiation fail or either party determine that the core functions of the Engagement will not be able to be performed with the remaining available funds, either party or that party, respectively, may provide sixty (60) days Notice, or a shorter time as mutually agreed, that it will terminate the Engagement.
 - 1. Unless otherwise specified in such Notice, upon receipt of the Notice, WISHIN shall then wind down its work on the HIE project as soon as reasonably practicable and cancel any third-party vendor contracts relating to the HIE project, to the extent cancelable. The Purchaser will pay WISHIN as follows:
 - a. Purchaser shall pay WISHIN for all approved Deliverables, milestones reached, and for other Services performed up to the effective date of

termination to the extent payment for such Deliverables, milestones, and Services has not already been received by WISHIN.

- b. With respect to those Deliverables for which performance had commenced but approval by Purchaser had not been given and for work in progress on milestones that had not yet been reached, Purchaser shall pay WISHIN an amount calculated by multiplying the labor hours for such Deliverables and milestone work prior to the effective date of termination times the then-current applicable Contractor hourly rates for the applicable positions plus any non-cancelable expenses incurred by WISHIN and not reimbursed by a Purchaser at or prior to the effective date of termination; provided, however, that the total amount (excluding the non-cancelable expenses) shall not exceed the total price (excluding the non-cancelable expenses) the parties agreed upon in writing that would be payable by Purchaser for the applicable Deliverables, if so approved, and milestones, if reached, multiplied by a percentage equal to the percentage of work completed for such Deliverables or milestones as of the effective date of termination.
2. In the event the Engagement is terminated, Purchaser shall be entitled to a refund for Services for which the Purchaser advanced funds for but which were not received or implemented, and such refund shall be paid by WISHIN within 30 days' written Notice to WISHIN by Purchaser requesting the refund. This refund provision does not apply to amounts paid by the Purchaser under Section XX.B.1.
 3. Notwithstanding such Notice of termination by WISHIN, WISHIN will continue to perform services, on a time and materials basis, until the Purchaser or a successor is prepared to assume performance of the Services, for a period not to exceed six (6) months.
- C. The Department or WISHIN may terminate this Agreement for any reason by providing a written Notice to the other party at least sixty (60) days in advance of the intended termination date. Upon receiving or delivering the Notice, unless otherwise specified in such Notice, WISHIN shall wind down its work on all HIE projects in progress that were commenced through an Engagement Letter under this Agreement as soon as reasonably practicable and cancel any third-party vendor contracts relating to the HIE projects, to the extent cancelable.
1. If the Department terminates under this Section XX.C, Purchasers with HIE projects in progress shall cancel their Engagement Letters under this Agreement and pay WISHIN in accordance with Section XX.B.1 and shall be entitled to any refund due in accordance with Section XX.B.2.
 2. If WISHIN terminates under this Section XX.C., Purchasers with HIE projects in progress shall cancel their Engagement Letters under this Agreement and Purchasers shall pay WISHIN in accordance with Section XX.B.1.a and shall be entitled to any refund due in accordance with Section XX.B.2.
- D. A Purchaser or WISHIN may terminate an HIE Project for any reason by providing a written Notice to the other party at least sixty (60) days in advance of the intended termination date. Upon receiving or delivering the Notice, unless otherwise specified in such Notice, WISHIN shall wind down its work on the HIE project in progress as soon as

reasonably practicable and cancel any third-party vendor contracts relating to the HIE project, to the extent cancelable.

1. If a Purchaser terminates under this Section XX.D, Purchaser shall pay WISHIN in accordance with Section XX.B.1 and shall be entitled to any refund due in accordance with Section XX.B.2.
 2. If WISHIN terminates under this Section XX.D., Purchaser shall pay WISHIN in accordance with Section XX.B.1.a and shall be entitled to any refund due in accordance with Section XX.B.2.
- E. The Department reserves the right to terminate this Agreement, in whole or in part, and a Purchaser reserves the right to terminate an HIE project commenced through an Engagement Letter under this Agreement, without penalty, if WISHIN:
1. Fails to satisfy the requirements for designation and funding in accordance with Wis. Stats. §153.81 and fails to cure any deficiencies within thirty (30) days after written Notice from DHS specifying the deficiencies;
 2. Fails to perform any material obligation required under the Agreement or an Engagement Letter and SOW and fails to cure such failure within thirty (30) days of WISHIN's receipt of written Notice specifying such failure from DHS or Purchaser; provided, however, for a failure that cannot reasonably be cured within thirty (30) days, DHS or Purchaser cannot terminate the Agreement or Engagement respectively at the end of the thirty (30)-day period unless DHS or Purchaser reasonably determines WISHIN has failed to take good faith actions during the Notice period to remedy the failure. In such event, DHS or Purchaser will set a new cure period that will run from the end of this thirty (30)-day Notice period;
 3. Files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity;
 4. Makes an assignment for the benefit of creditors;
 5. Fails to follow the sales and use tax certification requirements of s. 77.66, Wisconsin Statutes;
 6. Incurs a delinquent Wisconsin tax liability;
 7. Fails to submit a non-discrimination or affirmative action plan as required herein;
 8. Fails to follow the non-discrimination or affirmative action requirements of Chapter 111, subch. II, Wisconsin Statutes (Wisconsin's Fair Employment Law);
 9. Becomes a state or federally debarred contractor;
 10. Is excluded from federal contracts;
 11. Fails to maintain and keep in force all required insurance, permits and licenses;
 12. Fails to maintain the confidentiality of the State's information that is considered to be Confidential Information, proprietary, or containing Personally Identifiable Information, or otherwise breach the terms of the Business Associate Agreement and fails to cure any such failure or breach within the time period reasonably specified by DHS or Purchaser in a written Notice to WISHIN that specifies such failure or breach; or
 13. If at any time WISHIN's performance threatens the health or safety of a State or local government employee, citizen, or customer and WISHIN fails to eliminate such threat within the time period reasonably specified in written Notice from DHS or Purchaser that specifies such threat(s).

If the Department notifies WISHIN it will terminate the Agreement under this Section XX.E., WISHIN shall wind down its work on all HIE projects in progress that were commenced through an Engagement Letter under this Agreement as soon as reasonably practicable and cancel any third-party vendor contracts relating to the HIE project(s), to the extent cancelable. Purchasers with HIE projects in progress shall cancel their Engagement Letters under this Agreement and pay WISHIN in accordance with Section XX.B.1.a and shall be entitled to any refund due in accordance with Section XX.B.2.

If a Purchaser notifies WISHIN it will terminate an HIE project commenced through an Engagement Letter under this Agreement under this Section XX.E., WISHIN shall wind down its work on the HIE project in progress as soon as reasonably practicable and cancel any third-party vendor contracts relating to the HIE project, to the extent cancelable. Purchaser shall pay WISHIN in accordance with Section XX.B.1.a and shall be entitled to any refund due in accordance with Section XX.B.2.

- F. WISHIN may terminate this Agreement or an HIE project commenced through an Engagement Letter under this Agreement for the Department's or Purchaser's failure to perform under the terms of this Agreement or the Engagement Letter after providing thirty (30) days written Notice of the Department's or Purchaser's right to cure such failure. For a breach that cannot reasonably be cured within thirty (30) days, WISHIN cannot terminate at the end of the Notice period if WISHIN determines the Department or Purchaser was taking good faith actions during the Notice period to remedy the breach. In such event, WISHIN will set a new cure period that will run from the end of this thirty (30)-day Notice period. If WISHIN terminates under this Section XX.F, the Purchaser shall pay WISHIN in accordance with Section XX.B.1 and shall be entitled to any refund due in accordance with Section XX.B.2.
- G. Revision of this Agreement or any Engagement Letters may be made by mutual agreement. The revision will be effective only when the Department or Purchaser in the case of an Engagement Letter attaches an addendum or amendment to this Agreement or respective Engagement Letter which is signed by the authorized representatives of both parties, except in circumstances where an increase in funds is provided by the Purchaser for the same purpose as originally agreed upon, the Engagement Letter may be amended by a unilateral amendment. The SOW included with an Engagement Letter will be a dynamic project document and will be revised and updated by mutual agreement of the Purchaser's and SDE's project leads.
- H. WISHIN must notify a Purchaser if it is unable to provide the required quality or quantity of services specified. Upon receipt of such notification, the Purchaser will determine whether such inability will require revision or termination of the Engagement Letter.

XXI. NONCOMPLIANCE, SANCTIONS AND REMEDIAL MEASURES

- A. Failure to materially comply with any part of this Agreement or the requirements of an Engagement Letter may be considered cause for revision, suspension, or termination of this Agreement, provided that: (1) WISHIN is first given written Notice of such non-compliance and at least thirty (30) days to cure the non-compliance, and (2) WISHIN fails to so cure the non-compliance. Suspension includes, but is not limited to, the following activities:

1. Withholding part or all of the payments that would otherwise have been paid to WISHIN under the Engagement Letter involving the non-compliance, and
2. Temporarily requesting others to perform and receive reimbursement for the performance of work described in an Engagement Letter, if feasible.

These or other measures designed to suspend WISHIN's participation in this Agreement will be made if reasonably deemed necessary by the State to protect the State's interests.

- B. If WISHIN or subcontractor, if applicable, fails to comply with any of the terms of this Agreement or the terms any Engagement Letters, including allowable cost provisions, WISHIN must provide written Notice of each instance of noncompliance to the Department and/or the Purchaser for Engagement Letters. Notice must be given as soon as practicable, but in no case later than 30 days after WISHIN becomes aware of or could reasonably have been expected to be aware of the instance of noncompliance. This written Notice must include information on the reason(s) for and predicted or actual effect(s) of the noncompliance. WISHIN must provide the Department or Purchaser with a plan indicating how each instance of noncompliance will be corrected. This plan must include timelines for the implementation of corrective action measures. If the Department or any Purchaser has just cause to believe that the instances of noncompliance are continuing or will recur, the Department or Purchaser, at its sole discretion, may take whatever action it deems necessary to protect its interests, including the withholding of part or all of WISHIN's funding committed in an Engagement Letter(s).
- C. If the Department or any Purchaser determines that noncompliance with this Agreement or any Engagement Letter has occurred or is occurring, the Department or Purchaser will demand immediate correction of such and may, at its discretion, impose those sanctions or remedial measures permitted by this Agreement and deemed necessary to protect the interests of the State. Such sanctions and measures may include the termination of the Agreement, the suspension of the Agreement, the imposition of additional reporting requirements, and/or the direct monitoring of subcontractors' activities and expenditures.
- D. If audits are not submitted within the established time frames, the Department may take action as allowed by and described in the Audit Requirements, Other Assurances and Noncompliance, Sanctions, and Remedial Measures Sections of this Agreement.
- E. If required statistical data, reports, and other required non audit-related information are not submitted within the time frames established in an Engagement Letter and SOW, the Purchaser may withhold, until such time as the required reports and information are submitted by WISHIN, all payments that would otherwise have been paid to WISHIN under the terms of the Engagement Letter.

XXII. DISPUTE RESOLUTION

In the case of a dispute between the Department or a Purchaser and WISHIN regarding the terms of this Agreement or terms of an Engagement Letter and SOW, the Deliverables and provision of the Services under this Agreement, and/or the imposition of sanctions or remedial measures, the following process may be followed:

1. The Department's Contract Administrator in consultation with any affected Purchaser and SDE's Contract Administrator will attempt to resolve the dispute.
2. If the dispute cannot be resolved by negotiation between both parties' Contract Administrators, WISHIN may request an initial review by the Administrator of the Division in which the Department's Contract Administrator is employed. If the Contract Administrator is the Administrator of the Division, WISHIN may request an initial review by the Deputy Secretary of the Department.
3. If the dispute remains unresolved after the initial review, WISHIN may request a final review by the Secretary of the Department.

XXIII. INDEMNITY/LIABILITY

- A. The Department, Purchasers, and WISHIN each agree that it will be solely responsible for any losses or expenses, and agree to indemnify the other for third-party claims, arising from the performance of duties related to this Agreement and any Engagement Letters, including court and other legal costs, damages, and attorney's fees, to the extent such losses or expenses are due solely to its breach of this Agreement or Engagement Letter or its negligent acts or omissions of its officers, employees, or agents.
- B. Notwithstanding anything to the contrary in this Agreement or in any Engagement Letter or SOW and except for WISHIN's indemnification obligation under Section XX.A for third-party claims or refund of payments made for non-allowable costs, in no event shall WISHIN's aggregate liability for Purchasers' claims for damages resulting from any non-compliance with this Agreement or otherwise relating to the HIE projects exceed the fees received by WISHIN under this Agreement in the preceding twelve (12) months or, in the case of claims relating to any HIE project, exceed the fees received by WISHIN for such project in the preceding twelve (12) months.

XXIV. CONDITIONS OF THE PARTIES' OBLIGATIONS

- A. The validity of this Agreement is contingent upon the continued authority of applicable Wisconsin and United States laws. Any material amendment or repeal of such laws that affects relevant funding or authority of the Department will serve to revise or terminate this Agreement, except as further agreed by the parties hereto.
- B. The Department and WISHIN understand and agree that no clause, term, or condition of this Agreement will be construed to supersede the lawful powers or duties of either party.
- C. It is understood and agreed that the entire Agreement between the parties is contained herein, except for those materials incorporated herein by reference, and that this Agreement supersedes all oral contracts and negotiations between the parties relating to the subject matter hereof.

XXV. MISCELLANEOUS

- A. Employment.

WISHIN shall not engage the services of any person or persons while employed by the State, including any department, commission or board thereof, to provide services relating to this Agreement, without the written consent of the employer of such person or persons and of the Departments.

B. Applicable Law; Venue.

The laws of the State of Wisconsin shall govern this Agreement. The venue of any action will be in Dane County, Wisconsin.

C. Independent Contractor.

WISHIN shall exercise control over the means and manner in which any work is performed under this Agreement, and in all respects, the relationship to the Department shall be that of an independent contractor, not an employee of the State.

D. Nonwaiver.

Except as otherwise specifically provided herein, any failure or delay by either party to exercise or partially exercise any right, power, or privilege under the Agreement shall not be deemed a waiver of any such right, power, or privilege under the Agreement. Any waivers granted by either party to the other for breaches hereof shall not indicate a course of dealing of excusing other or subsequent breaches.

E. Notice of Delay.

When either a Purchaser or WISHIN has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of any obligation under an Engagement Letter and SOW, that party shall, within five (5) working days, give Notice thereof, including all relevant information with respect thereto, to the other party.

F. Notices.

Notice will be deemed to be given by the parties under the Agreement if in writing and delivered personally or by email or facsimile and confirmed, or mailed by first-class, registered, or certified mail, postage prepaid, to the addresses noted in the Contact Information in Section of this Agreement. Notices for a project engagement will go to the addresses noted in the Contact Information of the Engagement Letter. Each party will provide Notice to the other of changes to such addresses.

G. Period of Performance.

The terms of this Agreement shall begin on the date specified in the first paragraph of the Agreement and shall continue as long as WISHIN meets the requirements of Wis. Stats. §153.81, unless otherwise terminated earlier as provided herein. Any determination by the Department that WISHIN is not meeting the requirements of Wis. Stats. §153.81 shall be subject to the Notice and opportunity-to-cure provisions of Section XX.E.2.

H. Severability.

If any term or condition of the Agreement shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall not be affected and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

I. Survival.

The terms and conditions contained in this Agreement that by their sense and context are intended to survive the performance by the parties shall so survive the completion of the performance, expiration, or termination of the Agreement.

J. Conflicts Between Documents; Order of Precedence.

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

1. Executed Engagement Letter
2. Purchaser's Business Associate Agreement
3. Body of Base Agreement
4. State of Wisconsin Standard Terms and Conditions (Exhibit D)
5. State of Wisconsin Supplemental Standard Terms and Conditions (Exhibit E)

XXVI. CONTACT INFORMATION

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

WISHIN Program Manager	Name: Jean Doeringsfeld, COO Address: 5510 Research Park Drive Fitchburg, WI 53719 Phone: 608-274-1820 E-mail: jdoeringsfeld@wishin.org
DHS Program Manager	Name: Denise B. Webb, eHealth Program Director Address: Wisconsin Department of Health Services, Division of Health Care Access and Accountability, 1 W. Wilson St., Room 465, Madison, WI 53703 Phone: (608) 267-6767 E-mail: ehealth@wisconsin.gov

XXVII. TIMELY SIGNING OF AGREEMENT

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

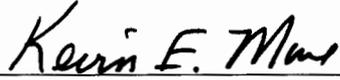
Signatures:



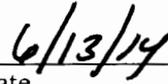
WISHIN Authorized Representative



Date



Kevin E. Moore
Deputy Secretary
Department of Health Services



Date

Exhibit A – HIE Engagement Letter Template



Scott Walker
Governor

Kitty Rhoades
Secretary

State of Wisconsin

Department of Health Services

HEALTH INFORMATION EXCHANGE (HIE) ENGAGEMENT LETTER

Project Title – [Enter Name]

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

Project Deliverables – See SOW, Attachment 1

SDE Key Staff – [List SDE’s key project staff.]

Purchaser’s Key Staff and Staff Support [List Purchaser’s key project staff and describe any support to be provided by Purchaser’s staff for the project.]

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

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

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

Term of the Agreement

This Engagement Letter will be in effect until [Date].

This Engagement Letter is only effective to the extent the current Agreement for State-Level HIE Governance and Services (“Agreement”) is in effect.

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

Engagement

All terms and conditions outlined in the Agreement that by their language or context apply to Purchaser and its HIE project are incorporated into this Engagement Letter.

Additional Obligations

Page # of #
HIE Engagement Letter
[Project Title]
[Date]

[Reserved]

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

SDE Project Lead	Name: Address: Phone: E-mail:
Purchaser Project Lead	Name: Address: Phone: E-mail:

With the signatures affixed below, WISHIN is granted written authorization to proceed with the engagement and commence with project initiation and implementation. As per Section VI of the Agreement, the Engagement Letter and SOW will serve as the contractual instrument for this specific engagement. The services performed under this Engagement Letter shall provide the Purchaser with the identified deliverables.

Approvals

_____ Date _____
Purchaser's Project Lead

_____ Date _____
Purchaser

_____ Date _____
WISHIN Representative

Enclosures
Attachment 1, SOW Excel Workbook

Exhibit B – Statement of Work Excel Workbook



SOW Template.xlsx

Exhibit C – DHS Business Associate Agreement F-00759 -- Modified

Contract Name: [Enter Text]
Contract Number: [Enter text]

BUSINESS ASSOCIATE AGREEMENT
With Contract

This Business Associate Agreement is incorporated into the underlying contract known as [Enter Text] (the "Contract") and is made between the Wisconsin Department of Health Services, [Enter Text] ("Covered Entity"), and the [Enter text] ("Business Associate"), collectively the "Parties."

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), including all pertinent regulations (45 CFR Parts 160 and 164) issued by the U.S. Department of Health and Human Services. Services, activities, or functions covered by this Agreement include, but are not limited to:

[Describe Services/Functions]

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 the Agreement will be governed by the terms of the Agreement.

1. DEFINITIONS

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (except that term shall be limited to Covered Entity's Protected Health Information), Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific Definitions:

- a. Business Associate: "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103 and, in reference to the party to this Agreement, shall mean Enter text.
- b. Covered Entity: "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103 and, in reference to the party in this Agreement, shall mean the Wisconsin Department of Health Services.
- c. HIPAA Rules: "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2. CERTAIN RESPONSIBILITIES OF BUSINESS ASSOCIATE AND COVERED ENTITY

- a. Business Associate shall not use or disclose any Protected Health Information except as permitted or required by the Agreement, as permitted or required by law, or as otherwise authorized in writing by the Covered Entity. Business Associate may use or disclose Protected Health Information for Business Associate's proper management and administrative services, to carry out legal responsibilities of Business Associate, and to provide data aggregation services relating to health care operations of the Covered Entity if required under the Agreement.

- b. Business Associate shall make reasonable efforts to request, use, and disclose only the minimum amount of Protected Health Information necessary to accomplish the purpose of the use or disclosure, except that Business Associate will not be obligated to comply with this minimum-necessary limitation if neither Business Associate nor Covered Entity is required to limit its use, disclose or request to the minimum necessary.
- c. Business Associate shall inform the Covered Entity if it or its subcontractors will perform any work outside the U.S. that involves access to, or the disclosure of, Protected Health Information.
- d. Covered Entity shall promptly notify Business Associate of the following:
 - Any limitation(s) in Covered Entity's notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
 - Any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
 - Any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associates use or disclosure of Protected Health Information.

3. SAFEGUARDING AND SECURITY OF PROTECTED HEALTH INFORMATION

- a. Business Associate shall use appropriate safeguards, including complying with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent use or disclosure of Protected Health Information other than as provided for by the Agreement.
- b. Business Associate shall cooperate in good faith in response to any reasonable requests from the Covered Entity to discuss, review, inspect, and/or audit Business Associate's safeguards.

4. REPORTING OF A VIOLATION TO COVERED ENTITY BY BUSINESS ASSOCIATE

The Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information not provided for by this Agreement of which it becomes aware, including breaches of unsecured Protected Health Information as required at 45 CFR 164.410 and any security incident (a "Violation").

- a. **Discovery of a Violation.** The Business Associate must inform the Covered Entity by telephone call, plus email or fax, within one (1) business day following the discovery of any Violation.
 - i. The Violation shall be treated as "discovered" as of the first day on which the Violation is known to the Business Associate or, by exercising reasonable diligence would have been known to the Business Associate.
 - ii. Notification shall be provided to one of the contact persons as listed in section 4.d.
- b. **Mitigation.** The Business Associate shall take immediate steps to mitigate any harmful effects of the unauthorized use, disclosure, or loss. The Business Associate shall reasonably cooperate with the Covered Entity's efforts to prevent or curtail such threatened or actual breach, or to recover its Protected Health Information, including complying with a reasonable Corrective Action Plan.
- c. **Investigation of Breach.** The Business Associate shall immediately investigate the Violation and report in writing within one (1) week the information known at that point in time and within ten (10) days of discovery of the Violation to a contact listed in section 4.d. with the following information:
 - i. Each Individual whose Protected Health Information has been or is reasonably to have been accessed, acquired, or disclosed during the Incident;

- ii. A description of the types of Protected Health Information that were involved in the Violation (such as full name, social security number, date of birth, home address, account number);
- iii. A description of unauthorized persons known or reasonably believed to have improperly used or disclosed Protected Health Information or confidential data;
- iv. A description of where the Protected Health Information or confidential data is believed to have been improperly transmitted, sent, or utilized;
- v. A description of probable causes of the improper use or disclosure;
- vi. A brief description of what the Business Associate is doing to investigate the Incident, to mitigate losses, and to protect against further Violations;
- vii. The actions the Business Associate has undertaken or will undertake to mitigate any harmful effect of the occurrence; and
- viii. A Corrective Action Plan that includes the steps the Business Associate has taken or shall take to prevent future similar Violations.

d. **Covered Entity Contact Information.** To direct communications to above-referenced Covered Entity’s staff, the Business Associate shall initiate contact as indicated herein. The Covered Entity reserves the right to make changes to the contact information by giving written notice to the Business Associate.

Covered Entity Program Manager:	DHS Privacy Officer	DHS Security Officer
Enter text	c/o Office of Legal Counsel	Department of Health Services
Enter text	Department of Health Services	1 W. Wilson Street
Enter text	1 W. Wilson Street	Madison, WI 53707
Enter text	Madison, WI 53707	608-261-8310
	608-266-5484	

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

In accordance with 45 CFR 164.502(e)(1) and 164.308(b), if applicable, the Business Associate shall ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.

6. COMPLIANCE WITH ELECTRONIC TRANSACTIONS AND CODE SET STANDARDS

If the Business Associate conducts any Standard Transaction for, or on behalf of, Covered Entity, the Business Associate shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, with each applicable requirement of Title 45, Part 162, of the Code of Federal Regulation. The Business Associate shall not enter into, or permit its subcontractors or agents to enter into, any Agreement in connection with the conduct of Standard Transactions for, or on behalf of, Covered Entity that:

- a. Changes the definition, Health Information condition, or use of a Health Information element or segment in a Standard;
- b. Adds any Health Information elements or segments to the maximum defined Health Information Set;
- c. Uses any code or Health Information elements that are either marked “not used” in the Standard’s Implementation Specification(s) or are not in the Standard’s Implementation Specifications(s); or
- d. Changes the meaning or intent of the Standard’s Implementations Specification(s).

7. ACCESS TO PROTECTED HEALTH INFORMATION

At the direction of the Covered Entity, the Business Associate agrees to provide access, in accordance with 45 CFR 164.524, to any Protected Health Information held by the Business Associate, which Covered Entity has determined to be part of Covered Entity’s Designated Record Set, in the time and manner reasonably designated by the Covered Entity. This access will be provided to Covered Entity, or (as directed by Covered Entity) to an Individual, in order to meet requirements under the Privacy Rule.

8. AMENDMENT OR CORRECTION TO PROTECTED HEALTH INFORMATION

In the event that Covered Entity needs to amend or correct Protected Health Information contained in a Designated Record Set provided to Business Associate by Covered Entity, the Business Associate agrees to work with the Covered Entity to submit corrected information using standard correcting transactions. Business Associate shall not modify any data submitted by the Covered Entity. Business Associate shall process Covered Entity's correcting transactions within ten (10) business days of receipt of such corrections from the Covered Entity provided they are submitted in the correct format.

9. DOCUMENTATION OF DISCLOSURES OF PROTECTED HEALTH INFORMATION BY THE BUSINESS ASSOCIATE

The Business Associate agrees to document and make available to the Covered Entity, or (at the direction of the Covered Entity) to an Individual, such disclosures of Protected Health Information to respond to a proper request by the Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

10. INTERNAL PRACTICES

The Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the federal Secretary of Health and Human Services (HHS) in a time and manner determined by the HHS Secretary, or designee, for purposes of determining compliance with the requirements of HIPAA.

11. TERM AND TERMINATION OF AGREEMENT

- a. 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 may:
 - i. Exercise any of its rights to reports, access, and inspection under this Agreement;
 - ii. Require the Business Associate within a 30-day period to cure the breach or end the violation;
 - iii. Terminate this Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity;
 - iv. Immediately terminate this Agreement if the Business Associate has breached a material term of this Agreement and cure is not possible.
- b. Before exercising either 11.ii. or 11.iii, 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.

12. 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 or, if return is not feasible, destroy all Protected Health Information and any compilation of Protected Health Information in any media or form that is in the possession of Business Associate. The Business Associate agrees to ensure that this provision also applies to Protected Health Information of the Covered Entity in possession of subcontractors and agents of the Business Associate. The Business Associate agrees that any original record or copy of Protected Health Information in any media is included in and covered by this provision, as well as all originals or copies of Protected Health Information provided to subcontractors or agents of the Business Associate. The Business Associate agrees to complete the return or destruction as promptly as possible, but not more than 30 business days after the conclusion of this Agreement. The Business Associate will provide written documentation evidencing that return or destruction of all Protected Health Information has been completed.
- b. If the Business Associate destroys Protected Health Information, it shall be done with the use of technology or methodology that renders the Protected Health Information unusable, unreadable, or undecipherable to

unauthorized individuals as specified by HHS in HHS guidance. Acceptable methods for destroying Protected Health Information include:

- i. For paper, film, or other hard copy media: shredding or destroying in order that Protected Health Information cannot be read or reconstructed and
- ii. For electronic media: clearing, purging, or destroying consistent with the standards of the National Institute of Standards and Technology (NIST).

Redaction is specifically excluded as a method of destruction of Protected Health Information unless the information is properly redacted so as to be fully de-identified.

- c. If the Business Associate believes that the return or destruction of Protected Health Information 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 Protected Health Information is not feasible, the Business Associate shall extend the protections of this Agreement to Protected Health Information and prohibit further uses or disclosures of the Protected Health Information of the Covered Entity without the express written authorization of the Covered Entity. Subsequent use or disclosure of any Protected Health Information subject to this provision will be limited to the use or disclosure that makes return or destruction not feasible.

13. COMPLIANCE WITH STATE LAW

The Business Associate acknowledges that Protected Health Information from the Covered Entity may be subject to state confidentiality laws. Business Associate shall comply with the more restrictive protection requirements between state and federal law for the protection of Protected Health Information.

14. MISCELLANEOUS PROVISIONS

- a. Indemnification for Breach. Business Associate shall, to the extent allowed by Wisconsin law, indemnify the Covered Entity for costs associated with any Incident, to the extent caused by Business Associate's breach of this Agreement and involving the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under HIPAA Rules.
- b. Automatic Amendment. This Agreement shall automatically incorporate any change or modification of applicable state or federal law as of the effective date of the change or modification. The Business Associate agrees to maintain compliance with all changes or modifications to applicable state or federal law.
- c. 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 applicable state and federal law.
- d. Survival. All terms of this Agreement that by their language or nature would survive the termination or other conclusion of this Agreement shall survive.

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

COVERED ENTITY

BUSINESS ASSOCIATE

Print Name: _____

Print Name: _____

SIGNATURE: _____

SIGNATURE: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT D

**Standard Terms And Conditions
(Request For Bids / Proposals)**

- 1.0 SPECIFICATIONS:** The specifications in this request are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. The State of Wisconsin shall be the sole judge of equivalency. Bidders/proposers are cautioned to avoid bidding alternates to the specifications which may result in rejection of their bid/proposal.
- 2.0 DEVIATIONS AND EXCEPTIONS:** Deviations and exceptions from original text, terms, conditions, or specifications shall be described fully, on the bidder's/proposer's letterhead, signed, and attached to the request. In the absence of such statement, the bid/proposal shall be accepted as in strict compliance with all terms, conditions, and specifications and the bidders/proposers shall be held liable.
- 3.0 QUALITY:** Unless otherwise indicated in the request, all material shall be first quality. Items which are used, demonstrators, obsolete, seconds, or which have been discontinued are unacceptable without prior written approval by the State of Wisconsin.
- 4.0 QUANTITIES:** The quantities shown on this request are based on estimated needs. The state reserves the right to increase or decrease quantities to meet actual needs.
- 5.0 DELIVERY:** Deliveries shall be F.O.B. destination freight prepaid and included unless otherwise specified.
- 6.0 PRICING AND DISCOUNT:** The State of Wisconsin qualifies for governmental discounts and its educational institutions also qualify for educational discounts. Unit prices shall reflect these discounts.

 - 6.1** Unit prices shown on the bid/proposal or contract shall be the price per unit of sale (e.g., gal., cs., doz., ea.) as stated on the request or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price, the unit price shall govern in the bid/proposal evaluation and contract administration.
 - 6.2** Prices established in continuing agreements and term contracts may be lowered due to general market conditions, but prices shall not be subject to increase for ninety (90) calendar days from the date of award. Any increase proposed shall be submitted to the contracting agency thirty (30) calendar days before the proposed effective date of the price increase, and shall be limited to fully documented cost increases to the contractor which are demonstrated to be industry wide. The conditions under which price increases may be granted shall be expressed in bid/proposal documents and contracts or agreements.
 - 6.3** In determination of award, discounts for early payment will only be considered when all other conditions are equal and when payment terms allow at least fifteen (15) days, providing the discount terms are deemed favorable. All payment terms must allow the option of net thirty (30).
- 7.0 UNFAIR SALES ACT:** Prices quoted to the State of Wisconsin are not governed by the Unfair Sales Act.
- 8.0 ACCEPTANCE-REJECTION:** The State of Wisconsin reserves the right to accept or reject any or all bids/proposals, to waive any technicality in any bid/proposal submitted, and to accept any part of a bid/proposal as deemed to be in the best interests of the State of Wisconsin.

Bids/proposals MUST be date and time stamped by the soliciting purchasing office on or before the date and time that the bid/proposal is due. Bids/proposals date and time stamped in another office will be rejected. Receipt of a bid/proposal by the mail system does not constitute receipt of a bid/proposal by the purchasing office.
- 9.0 METHOD OF AWARD:** Award shall be made to the lowest responsible, responsive bidder unless otherwise specified.
- 10.0 ORDERING:** Purchase orders or releases via purchasing cards shall be placed directly to the contractor by an authorized agency. No other purchase orders are authorized.
- 11.0 PAYMENT TERMS AND INVOICING:** The State of Wisconsin normally will pay properly submitted vendor invoices within thirty (30) days of receipt providing goods and/or services have been delivered, installed (if required), and accepted as specified.

Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing.

A good faith dispute creates an exception to prompt payment.
- 12.0 TAXES:** The State of Wisconsin and its agencies are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below.

The State of Wisconsin, including all its agencies, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. The State of Wisconsin may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials.
- 13.0 GUARANTEED DELIVERY:** Failure of the contractor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the contractor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include the administrative costs.
- 14.0 ENTIRE AGREEMENT:** These Standard Terms and Conditions shall apply to any contract or order awarded as a result of this request except where special requirements

are stated elsewhere in the request; in such cases, the special requirements shall apply. Further, the written contract and/or order with referenced parts and attachments shall constitute the entire agreement and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the contracting authority.

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

on preparing the plan and technical assistance regarding this clause are available from the contracting state agency.

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

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

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

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

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

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

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

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

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

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

30.0 MATERIAL SAFETY DATA SHEET: If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29CFR 1910.1200, provide one (1)

copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).

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

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

EXHIBIT E

State of Wisconsin
Department of Administration
DOA-3681 (01/2001)
Wis. Stat. §§ 16, 19, and 51

**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.