

Scott Walker
Governor



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Kitty Rhoades
Secretary

State of Wisconsin
Department of Health Services

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Contract

Commodity or Service: **Drupal Website Implementation** Contract No.: **S013114**
Request for Bid/Proposal No.: **RFBS0131DES14** Contract Amount: **\$189,000**
Contract Period: **02/21/2014 – 10/31/2015**

1. This Contract is entered into by and between the State of Wisconsin, Department of Health Services, and the contractor/grantee whose name, address, and principal officer appears below;
2. Whereby the Department of Health Services, agrees to direct the purchase and the contractor/grantee agrees to supply the contract requirements cited above in accordance with the terms and conditions of the request for bid/proposal cited above, and in accordance with the contractor's bid/proposal submitted on this request for bid/proposal; which request for bid/proposal is hereby made a part of this contract.
3. In connection with the performance of work under this contract and as required by Wisconsin's Contract Compliance Law (s. 16.765, Wis. Stats.), every Contractor contracting with the State must agree to equal employment and affirmative action policies and practices in its employment programs. The Contractor must submit an Affirmative Action Plan to the State in accordance with the Wisconsin Office of Contract Compliance instructions posted on the following website:
<http://vendornet.state.wi.us/vendornet/contract/contcom.asp>
4. Contracts estimated to be over fifty thousand (\$50,000) requires the submission of a written affirmative action plan. Contractors/grantees with an annual work force of less than fifty (50) employees are exempted from this requirement.

Within fifteen (15) working days after the award of the contract, the plan shall be submitted for approval to the contracting agency. Technical assistance regarding this clause is provided by the office of Affirmative Action and Civil Rights Compliance, 1 W. Wilson Street, Room 655, PO Box 7850, Madison, WI 53707-7850, (608) 266-9372.

For: State of Wisconsin
Department of Health Services

By: Cheryl K Johnson
Name

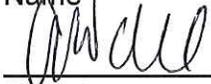
Signature

Title: Division Administrator
Division Enterprise Services

Phone: 608 266-5869

Date: February 27, 2014

For: Contractor/Grantee
Kwall LLC

By: Anita Wall
Name

Signature

Title: Contract Program Manager

Phone: 866-916-1202x707

Date: March 13, 2014

**AGREEMENT FOR SERVICES PERFORMED
BY AND BETWEEN THE DEPARTMENT OF HEALTH SERVICES,
STATE OF WISCONSIN,
AND
KWALL
for
DHS Website Drupal Implementation
Contract Number: S-0131-14**

This Agreement ("Agreement"), dated 2/25/2014, is made and entered into by and between the Department of Health Services (DHS), State of Wisconsin ("the State") and KWALL ("the Contractor"), hereinafter collectively referred to as "the parties."

WHEREAS, DHS issued a Request for Bid (RFB) #S-0131 DES-14 on 11/12/2013 soliciting bids for DHS Website Implementation using Drupal to be performed on behalf of DHS.

WHEREAS, Contractor responded to said solicitation, and DHS has elected to enter into an arrangement whereby Contractor will provide itemized Services.

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

1. **SCOPE OF THIS AGREEMENT.** This Agreement states the terms and conditions under which the Contractor will provide on an expedited timeline: 1) DHS Drupal environment evaluation; 2) Website build and design services for implementation of Drupal; and 3) Migration of website content.

2. **DESCRIPTION OF WORK AND RESPONSIBILITIES.**
 - 2.1. DHS Drupal Environment Evaluation:
 - 2.1.1. Beginning February 25, 2014 and concluding on April 25, 2014; evaluate the DHS Drupal Environment.
 - 2.1.2. Review current DHS Drupal server environment keeping in mind the following:
 - Keep the environment simple
 - Security
 - Performance
 - Reliability
 - Multi-site configuration
 - 2.1.3. Provide an evaluation/recommendation report at the end of the evaluation phase that includes the following:
 - Identify and communicate recommended changes
 - Diagrams, if appropriate
 - Keep in mind the bullets in Section 2.1.2
 - Justification for recommendations
 - Metrics, if recommendations for performance are made
 - Stress test plan to be executed during the design/build phase that includes performance metrics to be achieved
 - 2.2. Drupal Implementation: Design and Build Website
 - 2.2.1. Beginning no later than April 25, 2014 and concluding five (5) months later, complete all of the following.
 - 2.2.2. Create a website design and framework for the new DHS website (see requirements listed in RFB Section 1.5).
 - Must be a responsive web design

- DHS home page to have a different layout than all other pages. To include a rotating slide show featuring up to five slides.
 - Must include all the navigation options listed in RFB Section 4.2.2
 - Must include the placement for Apache Solr search feature
 - Must include “clean URLs”
 - Must include the placement for and configuration for the “sharing” feature for visitors
- 2.2.3. Create the framework in Drupal for the DHS website
- Define and establish user, roles and permissions
 - Integrate permissions with Active Directory/LDAP
 - Advise and create usable Drupal “templates” to meet DHS content needs
 - Install a WYSIWYG editor with limited functionality to meet DHS content management needs
- 2.2.4. Create content management functionality
- Implement Google Analytics
 - Create reports to assist in managing DHS content
 - Create one-level workflow that includes revisioning capabilities
 - Create a robots.txt file for SEO
 - List of modules that are used that are not part of the core Drupal 7. Include the purpose of each module. DHS requests the following evaluation criteria be used when determining which modules will be used for the DHS website.
 - Security history
 - Frequency of updates
 - Size of group of maintainers
 - Future compatibility with Drupal 8.
 - Create custom views to dynamically display DHS content.
- 2.3. Migrate Website
- 2.3.1. Beginning on September 21, 2014 and concluding within eight (8) weeks, migrate the content from current DHS environment to the new Drupal environment as stated in the RFB S-0131 DES-14 Section 4.3.
- 2.3.2. Plan for and communicate the plan to migrate DHS content.
- 2.3.3. Migrate up to 15,000 files. Tag the files as they are being migrated.
- Migration does not include any Flash or Video files.
 - DHS will provide Contractor with counts on file types after obsolete files have been removed.
 - Migration includes up to 5,000 DHS forms and publications from current SQL environment to Drupal. (See appendix A of RFB S-0131 DES-14).
 - Migration includes up to 10,000 htm web pages.
- 2.4. Project Management
- 2.4.1. Contractor is to identify a Project Manager as a single point of contact for the contract.
- 2.4.2. Contractor is to develop a project plan that identifies milestones with delivery dates.
- 2.4.3. Contractor is to conduct weekly conference call on Monday mornings or a day otherwise agreed to with core team members.
- Short weekly meetings:
 - Report on previous week tasks;
 - Report on upcoming weeks plans/tasks;
 - Provide written summary of completed and upcoming tasks.

- 2.4.4. Contractor is to provide monthly status reports to the DHS Project Manager that will include the status of deliverables per project plan agreed upon and current status of any issues reported.
- 2.4.5. The contractor is to report major issues to the DHS Project Manager in a timely manner as these issues are discovered. Report on status and resolution of issues as part of weekly conference call, and to DHS Project Manager as part of the monthly status report, and whenever requested by the DHS Project Manager.
- 2.4.6. The contractor will report any variances of budget and/or schedule to the DHS Project Manager as part of the monthly status report.

3. INVOICING AND PAYMENTS.

- 3.1. Invoice and Payment Schedule.
- 3.2. Invoices will be submitted by the contractor to the State Contract Administrator identified on page 14. Invoices will include the deliverable being invoiced for, and the date the state approved the deliverable.
- 3.3. The contractor will submit invoices for payment on the following incremental schedule as deliverables are accepted by the state:
 - 3.3.1. \$24,000.00 When the Evaluation and Recommendation Report is submitted to and approved by the state.
 - 3.3.2. \$30,000.00 When design options, including specified components, are submitted to and approved by the state.
 - 3.3.3. \$30,000.00 When the Drupal framework is delivered to and accepted by the state.
 - 3.3.4. \$30,000.00 When all final deliverables outlined in section 2.2 Drupal Implementation have been delivered, implemented, and accepted by the state.
 - 3.3.5. \$25,000 When initial 5,000 form and publication files have been tagged and migrated.
 - 3.3.6. \$25,000 When initial 5,000 htm files have been tagged and migrated
 - 3.3.7. \$25,000 When final 5,000 htm files have been tagged and migrated.

4. DELIVERABLES. Contractor will produce the Deliverables in accordance with the terms of this Agreement. Schedule of work to be performed and deliverables is outlined below.

- 4.1. Deliverables are prescribed in the RFB and are to be produced without exception. These include, but are not limited to:
 - 4.1.1. An evaluation and recommendation report at the end of the evaluation phase.
 - 4.1.2. A design options paper for website design.
 - 4.1.3. Design templates based on content types.
 - 4.1.4. Project Plan.
 - 4.1.5. Weekly status meetings
 - 4.1.6. Monthly Status Reports.
 - 4.1.7. Draft schedule by Phase end date is included in the table below. Time segments are fluid and adjustable by mutual consent of the State and the Contractor.

Contract Signed	February 21, 2014	
Phase 1: Completion of Environment Evaluation and Recommendations	April 21, 2014	2 months
Phase 2: Completion of Drupal Design and Build	September 21, 2014	5 months
Phase 3: Migration of Website Content	November 16, 2014	8 weeks

5. **AGREEMENT INCORPORATION.** The parties specifically acknowledge and accept the incorporation of the RFB #S-0131 DES-14 dated 11/12/2013, as an integral and critical provision of this Agreement. The parties further acknowledge and accept the description of Services to be performed, as well as the terms and conditions as set forth in said RFB #S-0131 DES-14 as having the full force and effect as if expressly set forth herein.

This Agreement, together with all incorporated portions thereto, constitutes the entire agreement by and between the parties. Any amendment to this Agreement shall be in writing and signed by all parties. This Agreement may be executed in two or more counterparts, each of which will be deemed an original.

6. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of Wisconsin. The Contractor shall at all times comply with and observe all federal and state laws which are in effect during the period of this contract and which in any manner affect the work or its conduct. The State 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. Any actions arising under this Contract shall be venued in the Circuit Court of Dane County, Wisconsin or in the federal court in the Western District of Wisconsin.

7. **TERM.** The initial term of this Agreement shall be from 2/21/2014 to 12/31/2014. This Agreement is not eligible for automatic renewal. The contract may be extended at the discretion of DHS in which case an amendment to this contract will be made by both parties and will include a revised workplan approved by DHS..

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

8. **TERMINATION FOR CAUSE.** DHS may terminate this Agreement after providing the Contractor with thirty (30) calendar days written notice of the Contractor's right to cure a failure of the Contractor to perform under the terms of this Agreement.

The Contractor may terminate this Agreement after providing DHS with thirty (30) days written notice of DHS' right to cure its failure to perform under the terms of this Agreement.

9. **TERMINATION FOR CONVENIENCE.** Either party may terminate this Agreement at any time, without cause, by providing a written notice to the other party at least thirty (30) days in advance of the intended date of termination.

In the event of termination for convenience by the Contractor, the Contractor shall be entitled to receive compensation for any payments owed under the Agreement only for deliverables that have been approved and accepted by DHS. In the event of termination for convenience by DHS, the Contractor shall be entitled to receive compensation for any payments owed under the Agreement for deliverables that have been approved and accepted by DHS and may be compensated for partially completed Services that have value for DHS going forward. In this event, compensation for such partially completed Services shall be no more than the percentage of completion of the Services requested, at the sole discretion of DHS, multiplied by the corresponding payment for completion of such Services as set forth in the Agreement. Alternatively, at the sole discretion of DHS, the Contractor may be compensated for the actual Service hours provided. DHS shall be entitled to a refund for Services paid for but not received or implemented, such refund to be paid within 30 days' written notice to the Contractor requesting the refund.

- 10. AGREEMENT CANCELLATION.** DHS reserves the right to immediately cancel this Agreement, in whole or in part, without penalty and without an opportunity for Contractor to cure if the Contractor:
- 10.1 Files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity;
 - 10.2 Makes an assignment for the benefit of creditors;
 - 10.3 Fails to follow the sales and use tax certification requirements of s. 77.66, Wisconsin Statutes;
 - 10.4 Incurs a delinquent Wisconsin tax liability;
 - 10.5 Fails to submit a non-discrimination or affirmative action plan as required herein;
 - 10.6 Fails to follow the non-discrimination or affirmative action requirements of Chapter 111, subch. II, Wisconsin Statutes (Wisconsin's Fair Employment Law);
 - 10.7 Becomes a state or federally debarred contractor;
 - 10.8 Is excluded from federal contracts;
 - 10.9 Fails to maintain and keep in force all required insurance, permits and licenses as provided in this Contract;
 - 10.10 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 (Attachment A);
 - 10.11 If at any time the Contractor's performance threatens the health or safety of a State employee, citizen, or customer;
- 11. CONTRACTOR COMPLIANCE.** The Contractor shall at all times comply with and observe all federal, State, and local laws, ordinances, and regulations that are in effect during the term of this Agreement that may affect the Contractor's work or obligations hereunder.
- 12. NON-APPROPRIATION.** DHS reserves the right to cancel this Agreement in writing, in whole or in part, without penalty, if the Wisconsin Legislature, United States Congress, or any other direct funding entity contributing to the financial support of this contract fails to appropriate funds necessary to complete the Agreement.
- 13. PAYMENT OFFSETS FOR CONTRACTOR'S DELINQUENCY.** DHS shall offset payments made to the Contractor under this Agreement in an amount necessary to satisfy a certified or verifiable delinquent payment owed to the State or any state or local unit of government. DHS also reserves the right to cancel this Agreement as provided in Section 10, Agreement Cancellation, if the delinquency is not satisfied by the offset or other means during the Agreement Term.
- 14. CONFIDENTIAL, PROPRIETARY, AND PERSONALLY IDENTIFIABLE INFORMATION.** In connection with the performance of work hereunder, it may be necessary for DHS to disclose to Contractor certain information that is considered to be Confidential, Proprietary, or containing Personally Identifiable Information ("Confidential Information"). The Contractor shall not use such Confidential Information for any purpose other than the limited purposes set forth in this Agreement, and all related and necessary actions taken in fulfillment of the obligations herein. The Contractor 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 who have a business-related need to have access to such Confidential Information in furtherance of the limited purposes of this Agreement and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Agreement.

Contractor shall 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.

Contractor shall ensure that all indications of confidentiality contained on or included in any item of Confidential Information shall be reproduced by Contractor on any reproduction, modification, or translation of such Confidential Information. If requested by DHS, Contractor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of DHS, as directed.

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

Equitable Relief: The Contractor acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose information is disclosed and to the State, which injury will not be compensable by money damages and for which there is not an adequate remedy available by law. Accordingly, the parties specifically agree that the State, in its own behalf or on behalf of the affected individuals, may seek injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Agreement or under applicable law.

15. **REFUND OF CREDITS.** Within sixty (60) days of DHS' request, the Contractor shall pay to DHS any credits resulting from an order that DHS determines cannot be applied to future invoices. DHS shall determine the method of credit.
16. **NOTICE AND CHANGE OF CONTACT INFORMATION.** Any notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery or three (3) Business Days after mailing by postal service, certified or registered mail-receipt requested.

In the event the Contractor moves or updates contact information, the Contractor shall inform DHS of such changes in writing within ten (10) Business Days. DHS shall not be held responsible for payments on Purchase Orders delayed due to the Contractor's failure to provide such notice.
17. **EXAMINATION OF RECORDS.** DHS shall at any time during normal business hours, upon reasonable notice, have access to and the right to examine, audit, excerpt, transcribe, and copy, on Contractor's premises, any of the Contractor's records and computer data storage media involving transactions directly pertinent to this Agreement. If the material is on computer data storage media, the Contractor shall provide copies of the data storage media or a computer printout of such if DHS so requests. Any charges for copies of books, documents, papers, records, computer data storage media or computer printouts provided by the Contractor shall not exceed the actual cost to the Contractor. This provision shall survive the termination, cancellation, or expiration of this Agreement.
18. **BREACH NOT WAIVER.** A failure to exercise any right, or a delay in exercising any right, power or remedy hereunder on the part of either party shall not operate as a waiver thereof. Any express waiver shall be in writing and shall not affect any event or default

other than the event or default specified in such waiver. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The making of any payment to the Contractor under this Agreement shall not constitute a waiver of default, evidence of proper Contractor performance, or Acceptance of any defective item or work furnished by the Contractor.

19. **CONTRACT AMENDMENT.** This Agreement may not be modified or amended except by mutual agreement of both parties in writing.
20. **SEVERABILITY.** If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall remain valid and in full force and effect. The invalid provision shall be replaced by a valid provision that comes closest in intent to the invalid provision.
21. **SOVEREIGN IMMUNITY.** Nothing in this Agreement shall be construed to constitute a waiver of the State's sovereign immunity under the Eleventh Amendment to the United States Constitution and Article IV, Section 27 of the Wisconsin Constitution.
22. **DISPUTE RESOLUTION.** In the event of any dispute or disagreement between the parties under this Agreement, whether with respect to the interpretation of any provision of this Agreement, or with respect to the performance of either party hereto, except for breach of Contractor's intellectual property rights, each party shall appoint a representative to meet for the purpose of endeavoring to resolve such dispute or negotiate for an adjustment to such provision. No legal action of any kind, except for the seeking of equitable relief in the case of the public's health, safety, or welfare, may begin in regard to the dispute until this dispute resolution procedure has been elevated to the Contractor's highest executive authority and the equivalent executive authority within the State, and either of the representatives, in good faith concludes, after a good faith attempt to resolve the dispute, that amicable resolution through continued negotiation of the matter at issue does not appear likely.
23. **NO QUANTITY GUARANTEES.** DHS may obtain related products and Services from other sources during the term of the Agreement. DHS makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products or Services will be procured through this Agreement.
24. **TIME IS OF THE ESSENCE.** Timely provision of the Services required under this Agreement shall be of the essence of the Agreement, including the provision of the Services within the prioritized timeframes agreed herein.
25. **DEFAULT AND REMEDY.** If the Contractor fails to remedy any delay or other problem in its performance of this Agreement after receiving reasonable notice from DHS to do so, the Contractor shall reimburse DHS for all reasonable costs incurred as a direct consequence of the Contractor's delay, action, or inaction.

In case of failure to deliver Services in accordance with this Agreement, DHS, upon written notice to the Contractor, may procure such Services from other sources as necessary, and the Contractor shall be responsible for the additional cost, including purchase price and administrative fees. This remedy shall be in addition to any other legal remedies available to DHS. Prior written notice shall not be required where, in the opinion of DHS, the public health, safety, or welfare is endangered by the act or omission of the Contractor.

26. **ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, constitutes the final and complete agreement of the Parties in connection with the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, by the Parties.

This Agreement shall be construed as a fully integrated Agreement. There are no warranties, representations, or agreements among the parties in conjunction with the subject matter hereof, except as specifically set forth or referred to herein.

27. **APPARENT AGENCY.** The Contractor shall not take any action, or make any omission, that may imply, or cause others to reasonably infer, that the Contractor is acting as DHS' agent in any matter or in any way not expressly authorized by this Agreement.
28. **RESPONSIBILITY FOR ACTIONS.** The Contractor shall be solely responsible for its actions and those of its agents, employees, or Subcontractors under this Agreement, and neither the Contractor nor any of the foregoing parties has authority to act or speak on behalf of DHS.
29. **SECURITY OF PREMISES, EQUIPMENT, DATA AND PERSONNEL.** During the performance of Services under this Agreement, the Contractor may have access to the personnel, premises, equipment, and other property, including data files, information, or materials (collectively referred to as "data") belonging to DHS. The Contractor shall preserve the safety, security, and the integrity of the personnel, premises, equipment, data and other property of DHS, in accordance with the instruction of DHS. The Contractor shall be responsible for damage to DHS' equipment, workplace, and its contents, or for the loss of data, when such damage or loss is caused by the Contractor, Contracted Personnel, or Subcontractors, and shall reimburse the State accordingly upon demand. This remedy shall be in addition to any other remedies available to DHS by law or in equity.
30. **PROVISION OF SERVICES.** The Contractor shall provide the Services with all due skill, care, and diligence, in accordance with accepted industry practices and legal requirements, and to DHS satisfaction; DHS' decision in that regard shall be final and conclusive. DHS may inspect, observe, and examine the Quality of the Goods provided and/or the performance of the Services rendered on DHS premises at any time. DHS may inspect, observe, and examine the performance of Contractor's Services at reasonable times, without notice, at any other premises.

If DHS notifies the Contractor that any part of the Services rendered are inadequate or in any way differ from the Agreement requirements for any reason other than as a result of DHS' default or negligence, the Contractor shall, at its own expense, replace the Services to the satisfaction of DHS, and/or re-schedule and perform the work correctly within such reasonable time as DHS specifies. DHS may implement a Corrective Action Plan (CAP) in an effort to remedy performance deficiencies. This remedy shall be in addition to any other remedies available to DHS by law or in equity.

31. **CONTRACTOR PERSONNEL.** DHS reserves the right to refuse to admit to DHS premises any person employed or contracted by the Contractor whose admission in the opinion of DHS would be undesirable.

If requested by DHS, the Contractor shall provide a list of the names and addresses of all Contractor's employees, Contracted Personnel, or Subcontractor's employees who may at any time require admission to DHS premises in connection with the delivery of Goods to be provided and/or performance of Services, specifying each such person's connection to the Contractor, the role the person is to take in the performance of the Agreement, and other particulars as DHS may require.

32. **BACKGROUND OR CRIMINAL HISTORY INVESTIGATION.** Prior to the commencement of any Services under this Agreement, DHS may request a background or criminal history investigation of any of the Contractor's employees, Contracted Personnel, and Subcontractor's employees, who will be providing Services to DHS under the Agreement. If any of the stated personnel providing Services to DHS under this Agreement is not

acceptable to DHS in its sole opinion as a result of the background or criminal history investigation, DHS may either request immediate replacement of the person in question, or immediately terminate this Agreement and any related Service Agreement.

33. **PERFORMANCE.** Work under this Agreement shall be performed in a timely, professional, and diligent manner by qualified and efficient personnel and in conformity with the strictest quality standards mandated or recommended by all generally-recognized organizations establishing quality standards for work of the type to be performed hereunder. The Contractor shall be solely responsible for controlling the manner and means by which it and its Contracted Personnel or its Subcontractors perform the Services, and the Contractor shall observe, abide by, and perform all of its obligations in accordance with all legal requirements and State or Agency work rules.

Without limiting the foregoing, the Contractor shall control the manner and means of the Services so as to deliver the Goods and/or perform the Services in a reasonably safe manner and comply fully with all applicable codes, regulations, and requirements imposed or enforced by any government agencies, including all applicable requirements of the Occupational Safety and Health Administration (OSHA) and all safety codes and procedures mandated or recommended by insurance underwriting organizations and all generally recognized organizations establishing safety standards, including without limitation the National Fire Protection Association, for work of the type to be performed hereunder. Notwithstanding the foregoing, any stricter standard provided in plans, specifications or other documents incorporated as part of this Agreement shall govern.

34. **WARRANTY & LIENS.** Services rendered shall be strictly in accordance with the order placed and may not deviate in any way from the terms, conditions or specifications of this Agreement, without the prior written approval of DHS.

Services provided under this contract must conform to the specifications outlined in the original solicitation and in all documents incorporated under this Agreement or subsequently issued by Service Level Agreement(s). Deviations in Services provided may only be made with written agreement between the State and the Contractor.

35. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:
- 35.1 Worker's compensation insurance, as required under Chapter 102, Wisconsin Statutes, for all of the Contractor's employees engaged in the work performed under this Agreement;
 - 35.2 Commercial liability, bodily injury and property damage insurance against any claim(s) that may occur in carrying out the terms of this Agreement, with a minimum coverage of one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations;
 - 35.3 Motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out the terms of this Agreement, with a minimum coverage of one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage; and
 - 35.4 A Certificate of Insurance, showing up-to-date coverage, shall be on file in the Agency before the Agreement may commence.

DHS reserves the right to require higher or lower insurance limits when warranted.

36. **CONTRACTOR INDEMNIFICATION.** Contractor shall hold DHS harmless and shall indemnify the State, its Agencies, officers, and employees against any and all claims, suits, actions, liabilities, and costs of any kind, including attorney's fees, for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees, or Subcontractors.

37. **INDEPENDENT CONTRACTOR.** The Contractor shall act as an independent Contractor in performing all Services under this Agreement and, except as otherwise outlined herein, shall maintain complete control over its employees, Contracted Personnel, and Subcontractors, if any.
38. **STATE EMPLOYEES.** The Contractor may not contract with or employ a current State employee, including a member of any State Board or Commission, or an individual retained as a full-time contractor by the State, during the term of this Agreement.
39. **ANTITRUST ASSIGNMENT.** By entering into this Agreement, the Contractor conveys, sells, assigns, and transfers to the State all rights, title, and interest in and to all causes of action, claims, and demands of whatever nature it may now have or hereafter acquire under the antitrust laws of the United States and the State, relating to the particular Services purchased or acquired by the State under this Agreement.
40. **OWNERSHIP RIGHTS.** Unless an ownership interest is granted herein to the Contractor, all deliverables, data, documentation, reports or other writings in any format, and all innovations designed, developed, or delivered to DHS under this Agreement shall become the property of DHS and shall not be copyrighted, trademarked, or patented by the Contractor. If the Contractor is granted an ownership interest, DHS reserves the nonrevocable, nonexclusive right to reproduce, distribute, and use any submitted report, data, material, any software or modifications, and any associated documentation provided hereunder.
41. **PROMPT PAYMENT.** DHS shall pay properly submitted Contractor invoices within thirty (30) days of receipt, providing that the Services to be provided to DHS have been delivered, rendered, or installed (as the case may be), and accepted as specified in this Agreement and all documents incorporated herein by reference.
A properly submitted invoice is defined as one that is submitted in accordance with instructions contained on the State's Purchase Order, includes a reference to the proper Purchase Order number, and is submitted to the proper address for processing.
If DHS fails to pay a properly submitted invoice within thirty (30) days of receipt, it shall pay a late payment penalty as provided in s. 16.528, Wis. Stats. If DHS declares a good faith dispute in regard to an invoice pursuant to s.16.528 (3)(e), Wis. Stats., it may pay any undisputed portion of said invoice, and be exempt from the prompt payment requirement for the disputed portion until the dispute is resolved.
42. **STATE TAX EXEMPTION.** DHS is exempt from payment of Wisconsin sales or use tax on all purchases.
43. **PROMOTIONAL ADVERTISING AND NEWS RELEASES.** Reference to or use of the State of Wisconsin, the Great Seal of the State, the Wisconsin Coat of Arms, any Agency or other sub-units of the State government, or any State official or employee, for commercial promotion is strictly prohibited. News releases or release of broadcast e-mails pertaining to this Agreement shall not be made without prior written approval of DHS.

The Contractor may identify the State of Wisconsin as a client when the Contractor provides a list of Contractor's clients.
44. **RECORDS, RECORDKEEPING AND RECORD RETENTION.** Under §19.36 (3), Wis. Stats., all records of the Contractor that are produced or collected under this Agreement are subject to disclosure pursuant to a public records request. The Contractor shall establish and maintain adequate records of all documentation developed or compiled and expenditures incurred under this Agreement. All expenditure records shall be kept in accordance with Generally Accepted Accounting Procedures (GAAP). All procedures shall be in accordance with federal, State, and local laws or ordinances. The Contractor,

following final payment, shall retain all records produced or collected under this Agreement for three (3) years.

45. **ASSIGNMENT OF AGREEMENT.** The Contractor shall provide prior written notice to DHS before assigning this Agreement to another party. DHS reserves the right to withhold approval of any such assignment. The terms and conditions of this Agreement, as well as any rights obligations and liabilities associated with such, shall survive any and all assignments, mergers, or acquisitions by a third party until cancelled in writing by both parties.
46. **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.
47. **WORK CENTER CRITERIA.** The Contractor shall implement processes that allow DHS to satisfy its obligation to purchase Goods and Services produced by Work Centers certified under the State's Work Center Law, s. 16.752, Wis. Stats. The Contractor shall include products provided by Work Centers in its catalog for DHS and block the sale of comparable items to DHS.
48. **AFFIRMATIVE ACTION PLAN (AA) AND CIVIL RIGHTS COMPLIANCE (CRC).**

48.1 Affirmative Action Plan

As required by Wisconsin's Contract Compliance Law (s. 16.765, Wis. Stats.), every Contractor contracting with the State must agree to equal employment and affirmative action policies and practices in its employment programs. The Contractor must submit an Affirmative Action Plan to the State in accordance with the Wisconsin Office of Contract Compliance instructions posted on the following website: <http://vendornet.state.wi.us/vendornet/contract/contcom.asp> An [affirmative action plan](#) is required from a Contractor who receives a state contract over \$50,000 AND who has a work force of 50 or more [employees](#) as of the award date, unless the Contractor is [exempt by established criteria](#). The plan is due to the State within fifteen (15) working days of the award date of the State's contract. The plan must have been prepared or revised not more than one year prior to the award date of the contract. Universities, other states and local governments, except those of the State of Wisconsin who receive state contracts of over \$50,000, must submit affirmative action plans in the same manner as the Contractor.

The Contractor must submit its affirmative Action plan or request for exemption from filing an affirmative action plan in accordance to the Wisconsin Office of Contract Compliance within fifteen (15) working days to:

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

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

48.2 Civil Rights Compliance

Contractors receiving federal and/or state funding to administer programs, Services and activities through DHS must file a Civil Rights Compliance Letter of Assurance (CRC LOA) for the current compliance period regardless of the number of employees and the amount of funding received. For contracts for the provision of services to clients, the Contractor must comply with all Federal Civil Rights laws applicable to service delivery requirements. All Contractors with twenty-five (25) or more employees AND who receive contracts in excess of \$25,000 in annual value must complete a Civil Rights Compliance (CRC) Plan; however, submission of the CRC Plan is not required. The CRC Plan is to be kept on file and made available upon request to any representative of DHS. For technical assistance on all aspects of the Civil Rights Compliance, the Contractor is to contact the DHS' AA/CRC Office at the above address.

Contractors subcontracting federal or state funding to other entities must obtain a CRC LOA from their subcontractors. The CRC LOA must be kept on file and produced upon request or at the time that an on-site-monitoring visit is conducted. Subcontractors with twenty-five (25) or more employees AND who receive over \$25,000 in annual contract funding must complete CRC Plan. The CRC Plan to be kept on file and produced upon request by the DHS AA/CRC Office, a representative of the DHS or at the time the Contractor conducts an on-site monitoring visit. All Contractors must comply with the CRC Plan requirements within fifteen (15) working days of the award date of the agreement or contract in accordance with the procedures outline on the following website:

<http://dhs.wisconsin.gov/civilrights/CRC/requirements.htm>.

The Contractor 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 CRC Plan. If the Contractor complied with the State's CRC Plan Requirements during the previous year for a contract that covers the applicable compliance period, the Contractor is deemed to be in compliance for the applicable period. The Contractor will further insure that:

No otherwise qualified person will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any manner on the basis of age, race, religion, color, sex, national origin or disability (USDA-FNS program funding protects political belief or political affiliation when Food Stamp Act funding is received). This policy covers eligibility for and access to service delivery, and treatment in all programs and activities. All employees of the Provider are expected to support goals and programmatic activities relating to nondiscrimination in service delivery.

No otherwise 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 term of employment on the basis of age, arrest record, color, conviction record, disability, or association with a person with a disability, honesty testing, genetic testing, marital status, military service membership, national origin or ancestry, political beliefs, pregnancy or childbirth, race, religion, sex, sexual orientation, 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 the

Provider is considered to be a Federal Contractor, the Contractor assures that it will comply with these requirements. All employees are expected to support goals and programmatic activities relating to non-discrimination in employment.

The Contractor shall post its Equal Opportunity Policy, the name of the Equal Opportunity Coordinator, and the Limited English Proficiency (LEP) Coordinator when the Contractor 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. The complaint process notice shall be translated into the major primary languages of the Limited English Proficient (LEP) participants in the service area when the Contractor is engaged in providing services. The notice will announce the availability of free oral interpretation for services if needed. The Contractor 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.

The Contractor agrees to comply with the State'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>.

The State will monitor the Civil Rights Compliance of the Contractor. The State may conduct reviews to ensure that the Contractor is ensuring compliance by its subcontractors or grantees according to guidelines in the State of Wisconsin Department of Health Services, Department of Children and Families, and Department of Workforce Development CRC Plan requirements. The Contractor agrees to comply with Civil Rights monitoring reviews, including allowing the examination of records and relevant files maintained by Contractor, as well as interviews with staff, clients, and applicants for services, and where applicable, subcontractors, grantees, and referral agencies. The reviews will be conducted according to Department procedures. The State will also conduct reviews to address immediate concerns of complainants.

However, where the State has a direct contract with another Contractor's subcontractor, the Contractor need not monitor the Sub-contractor's or Sub-grantee's compliance with the requirements of the CRC Plan.

The Contractor agrees to cooperate with the State in developing, implementing, and monitoring corrective action plans that result from complaint investigations or monitoring efforts. The Contractor agrees that it will:

- hire staff with non-English language skills, sign language skills and or provide staff with special translation or sign language skills training, or find qualified persons who are available within a reasonable period of time and who can communicate accurately, and effectively with limited or non-English speaking or speech or hearing-impaired clients at no cost to the client when the Contractor is engaged in direct service delivery;
- provide reasonable accommodations or language assistance to the clients during the application process, in the receipt of services, and in the process of complaint or appeals when the Contractor is engaged in direct service delivery;

- train staff in human relations techniques, sensitivity to persons with disabilities and cultural sensitivity/cultural competency and Civil Rights laws;
- make facilities accessible, and provide reasonable accommodations as appropriate to its employees and or visitors, e.g., by modifying ramps, doorways, elevators, or ground floor rooms, providing Braille, large print or taped information for the visually or cognitively impaired; and
- post and/or make available vital informational material in languages and formats appropriate to the needs of the client population when Contractor is engaged in direct service delivery.

48.3 Failure to comply with the Section 56 provisions may result in the following consequences:

- termination of this Agreement as provided in Section 10, Agreement Cancellation, herein,
- designation of the Contractor as "ineligible" for future consideration as a responsible, qualified bidder or proposer for State contracts, or
- withholding of payment(s) due under the Agreement until the Contractor is in compliance.

49. **PARTIES' CONTACT INFORMATION.** Communications to either the Contractor 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 ten (10) days' written notice to the other.

Contractor Program Manager	Name: Anita Wall Address: 4100 Newport Place Dr. #250 Newport Beach, CO 92660 Phone: 866-916-1202 x 707 Email: anita@kwallcompany.com
DHS Contract Administrator	Name: Angela Redington Address: 1 W. Wilson St., Room 618 Madison, WI 53707 Phone: 608-266-9613 Email: Angela.Redington@dhs.wisconsin.gov
DHS Contract Manager	Name: Jason Barrett Address: 1 W. Wilson St., Room 655 Madison, WI 53707 Phone: 608-267-9831 Email: JasonA.Barrett@dhs.wisconsin.gov

IN WITNESS WHEREOF, DHS and the Contractor have executed this Agreement as of the day and year first above written.

Anita Wall
Contractor or Designee (Authorization attached if Designee)

2/25/2014
Date

Anita Wall
Printed Name

Cheryl K. Johnson
DHS or Designee (Authorization attached if Designee)

2/27/14
Date

DEFINITIONS

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

"Acceptance" means a manifestation of assent by the State to the terms, Services, Goods or other items offered by the Contractor under the Agreement. Unless the particular methodology and measure of Acceptance of the offered terms, Services, or Goods is set forth herein, Acceptance shall occur, in the case of Goods, after delivery is taken and the Goods are inspected, and payment has been made; or in the case of Services, those Services have been provided to the State's satisfaction and acceptance, and payment has been made.

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

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

"Confidential Information" means all tangible and intangible information and materials, including all Personally Identifiable Information, being 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 satisfies at least one of the following criteria: (i) Personally Identifiable Information; (ii) non-public information related to the State's employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; or (iii) information expressly designated as confidential in writing by the State. Confidential information includes all information that is restricted or prohibited from disclosure by State or federal law.

"Contractor" means an individual, business, or agency that enters into a written contractual Agreement to provide Products or Services to the State. A Contractor may be a service provider, a supplier of products, a manufacturer, or a consultant.

"Contracted Personnel" means Contractor's employees or other personnel (including officers, agents and Subcontractors) provided by the Contractor to perform work under this Agreement.

"Contracting Agency" means the State Agency entering into this Agreement on behalf of the State.

"Day" means calendar day unless otherwise specified in this Agreement.

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

"Default" means the omission or failure to perform a contractual duty or provide Goods or Services as contractually required.

"Goods" means articles of trade or items of merchandise, supplies, raw materials, or finished products, and may also include incidental or related Services as the situation may require.

"Inspection" means a careful examination of Goods, commodities, or items produced under this Agreement in order to determine their fitness for use.

"Personally Identifiable Information" means an individual's last name and the individual's first name or first initial, in combination with and linked to any of the following elements, if that element is not publicly available information and is not encrypted, redacted, or altered in any

manner that renders the element unreadable: (a) the individual's Social Security number; (b) the individual's driver's license number or state identification number; (c) the number of the individual's financial account, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual's financial account; (d) the individual's DNA profile; or (e) the individual's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation, and any other information protected by State or federal law.

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

"State Purchase Order" means the State's standard document of purchase.

"Services" means all actions, recommendations, plans, research, customizations, modifications, documentation and maintenance and support provided by the Contractor necessary to fulfill that which the Contractor is obligated to accomplish under this Agreement.

"State" means the State of Wisconsin.

"Subcontract" means an agreement, written or oral, financial or non-financial, between the Contractor and any other party to fulfill the requirements and performance obligations of this Agreement.

"Subcontractor" means an entity that enters into an agreement with the Contractor for the purpose of delivering Goods or providing Services to the State.

"Work Center" means a charitable organization or nonprofit institution which is licensed under s. 104.07 and incorporated in this State or a unit of county government which is operated for the purpose of carrying out a program of rehabilitation for severely handicapped individuals and for providing the individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature, and which is engaged in the production of materials, supplies or equipment or the performance of contractual Services in connection with which not less than 75% of the total hours of direct labor are performed by severely handicapped individuals.