

## Contract

Contract # S-0122 DLTC-14

### Electronic Person Centered Active Treatment Planning and Case Management IT System

This Contract ("Contract"), dated 12/31/2014, is made and entered into by and between the State of Wisconsin Department of Health Services ("DHS") and Therap Services, LLC ("Vendor"), hereinafter collectively referred to as "the Parties." The principal business address of DHS is 1 West Wilson Street, Madison, WI 53707. The principal business address of the Vendor is 562 Watertown Avenue, Suite 3, Waterbury, CT 06708-2240. This Agreement will run for three (3) years from the Effective Date with an option to renew for two (2) additional one-year periods upon mutual agreement, for a total potential period of five (5) years.

Effective Date: December 31, 2014

Initial Agreement Term: December 31, 2014 - December 31, 2017

**WHEREAS**, DHS issued RFP S-0122 DLTC-14 on 05/22/2014, soliciting bids/proposals to provide an information technology system to create and manage the Active Treatment planning and case management process for Individuals with Intellectual Disabilities in Intermediate Care Facilities (ICF/IID) operated by DHS.

**WHEREAS**, Vendor responded to said solicitation, and as a result of a formal competitive procurement process, DHS has elected to enter into an arrangement whereby Vendor will provide specific IT services to the three ICF/IID facilities operated by the State of Wisconsin.

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

1. **CONTRACT EXHIBIT MAP.** The following Exhibits are attached to, and incorporated as part of this Contract.
  - a. Exhibit A - "Statement of Work"
  - b. Exhibit B - "Cost Schedule"
  - c. Exhibit C - "Business Associate Agreement"
  - d. Exhibit D - "Service Level Agreement"
2. **DESCRIPTION OF WORK AND RESPONSIBILITIES.** The Vendor will provide services or products in accordance with the documents that comprise this Contract.
3. **INVOICING AND PAYMENTS.** Invoices will be provided to DHS on a quarterly basis and will include any and all deliverables/services, as outlined by Exhibit A, that have been approved by DHS during that period.
  - a. The Vendor must provide all Deliverables to the DHS Contract Administrator, who will review (or delegate review of) the materials or documents within a reasonable time after receipt.
    - i. Deliverables must be submitted on or before the completion date outlined in Exhibit A.
    - ii. The Parties may extend the due date of any deliverable if decided mutually and in writing.
  - b. If the State determines that a Deliverable is not in compliance, the DHS Contract Administrator will note the reason for non-compliance on the deliverable approval form, found in Exhibit A, and send the form to the Vendor Project Manager. At no expense to the State, the Vendor then must bring the Deliverable into conformance and re-submit the Deliverable to the DHS Contract Administrator within ten (10) business days, or if ten days is not feasible, a mutually agreed upon schedule.
    - i. If Vendor is unable to produce an acceptable deliverable, DHS will be under no obligation to pay costs associated with that deliverable. Failure to produce an acceptable deliverable is grounds for Contract termination, as outlined in §8(a).



termination or expiration, except for those that by their terms survive such termination or expiration.

- ii. In the event of termination for cause by either party,, the Vendor shall be entitled to receive compensation for any payments owed under the Contract only for deliverables that have been approved and accepted by DHS.

**b. TERMINATION FOR BEST INTEREST.** DHS may terminate this Contract at any time, without cause, by providing a written notice to Vendor at least thirty (30) days in advance of the intended date of termination, if DHS determines that such cancellation is in the best interest of the State of Wisconsin. Vendor may terminate this Contract at any time, without cause, by providing a written notice to DHS at least ninety (90) days in advance of the intended date of termination, if Vendor determines that such cancellation is in their best interest.

- i. In the event of termination for best interest by either party, the Vendor shall be entitled to receive compensation for any payments owed under the Contract only for deliverables that have been approved and accepted by DHS.

**c. CONTRACT CANCELLATION.** DHS reserves the right to immediately cancel this Contract, in whole or in part, without penalty and without an opportunity for Vendor to cure if the Vendor:

- i. Files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity;
  1. If during the initial term or any subsequent renewal of this Agreement, the Contractor files or otherwise become the subject of any case under the federal bankruptcy laws, the Purchaser shall retain all rights and remedies afforded to the Purchaser pursuant to Section 365(n) of the Bankruptcy code and all other applicable provisions of the Bankruptcy Code, the terms and conditions of this Agreement notwithstanding.
  2. If Vendor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets.
- ii. Makes an assignment for the benefit of creditors;
- iii. Fails to follow the sales and use tax certification requirements of s. 77.66, Wisconsin Statutes;
- iv. Incurs a delinquent Wisconsin tax liability;
- v. Fails to submit a non-discrimination or affirmative action plan as required herein;
- vi. Fails to follow the non-discrimination or affirmative action requirements of Chapter 111, subch. II, Wisconsin Statutes (Wisconsin's Fair Employment Law);
- vii. Becomes a state or federally debarred Vendor;
- viii. Is excluded from federal contracts;
- ix. Fails to maintain and keep in force all required insurance, permits and licenses as provided in this Contract;
- x. 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 (Exhibit C);
- xi. If at any time the Vendor's performance threatens the health or safety of a State employee, citizen, or customer.

**9. VENDOR COMPLIANCE.** The Vendor 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 Contract that may affect the Vendor's work or obligations hereunder.

**10. NON-APPROPRIATION.** DHS reserves the right to cancel this Contract 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 Contract.

**11. PAYMENT OFFSETS FOR VENDOR'S DELINQUENCY.** DHS shall offset payments made to the Vendor under this Contract 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 Contract as provided in Section 10, Contract Cancellation, if the delinquency is not satisfied by the offset or other means during the Contract Term.

**12. CONFIDENTIAL, PROPRIETARY, AND PERSONALLY IDENTIFIABLE INFORMATION.** In connection with the performance of work hereunder, it may be necessary for DHS to disclose to Vendor certain information that is considered to be Confidential, Proprietary, or containing Personally Identifiable Information ("Confidential Information").

- a. The Vendor shall not use such Confidential Information for any purpose other than the limited purposes set forth in this Contract, and all related and necessary actions taken in fulfillment of the obligations herein. The Vendor 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 Contract and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Contract.
- b. Vendor 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.
- c. Vendor shall ensure that all indications of confidentiality contained on or included in any item of Confidential Information shall be reproduced by Vendor on any reproduction, modification, or translation of such Confidential Information. If requested by DHS, Vendor 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.
- d. *Indemnification:* In the event of a breach of this Section by Vendor, Vendor 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 Vendor, 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.
- e. *Equitable Relief:* The Vendor 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 Contract or under applicable law.
- f. If requested by the Purchaser, Contractor shall return or destroy all Individually Identifiable Health Information and Personally Identifiable Information it holds upon termination of this Contract.
- g. The Contractor shall take immediate steps to mitigate any harmful effects of the unauthorized use, disclosure, or loss. The Contractor shall reasonably cooperate with the Purchaser's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such threatened or actual breach, or to recover its Confidential Information. In addition, the Contractor will implement a corrective action plan developed by the Purchaser in consultation with Contractor. Unless the cause of the unauthorized use, disclosure, or loss is beyond the reasonable control of the Contractor, Contractor will bear the costs of the actions taken by it under this paragraph.

- 13. REFUND OF CREDITS.** Within sixty (60) days of DHS' request, the Vendor 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.
- 14. 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 Vendor moves or updates contact information, the Vendor 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 Vendor's failure to provide such notice.
- 15. 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 Vendor's premises, any of the Vendor's records and computer data storage media involving transactions directly pertinent to this Contract. If the material is on computer data storage media, the Vendor 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 Vendor shall not exceed the actual cost to the Vendor. This provision shall survive the termination, cancellation, or expiration of this Contract.
- 16. 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 Vendor under this Contract shall not constitute a waiver of default, evidence of proper Vendor performance, or Acceptance of any defective item or work furnished by the Vendor.
- 17. CONTRACT AMENDMENT.** This Contract (including Exhibits) may not be modified or amended unless amendment language is in writing and signed by an authorized representative of both parties.
- 18. SEVERABILITY.** If any provision of this Contract is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract 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.
- 19. SOVEREIGN IMMUNITY.** Nothing in this Contract 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.
- 20. DISPUTE RESOLUTION.** In the event of any dispute or disagreement between the parties under this Contract, whether with respect to the interpretation of any provision of this Contract, or with respect to the performance of either party hereto, except for breach of Vendor'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 Vendor'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.

- 21. NO QUANTITY GUARANTEES.** DHS may obtain related products and Services from other sources during the term of the Contract. DHS makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products or Services will be procured through this Contract.
- 22. TIME IS OF THE ESSENCE.** Timely provision of the Services required under this Contract shall be of the essence of the Contract, including the provision of the Services within the prioritized timeframes agreed herein.
- 23. DEFAULT AND REMEDY.** If the Vendor fails to remedy any delay or other problem in its performance of this Contract after receiving reasonable notice from DHS to do so, the Vendor shall reimburse DHS for all reasonable costs incurred as a direct consequence of the Vendor's delay, action, or inaction.

In case of failure to deliver Services in accordance with this Contract, DHS, upon written notice to the Vendor, may procure such Services from other sources as necessary, and the Vendor 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 Vendor.

- 24. ENTIRE CONTRACT.** This Contract, including all documents incorporated herein by reference, constitutes the final and complete Contract of the Parties in connection with the subject matter hereof, and supersedes all prior and contemporaneous Contracts, understandings, negotiations, and discussions, whether oral or written, by the Parties. This Contract shall be construed as a fully integrated Contract. There are no warranties, representations, or Contracts among the parties in conjunction with the subject matter hereof, except as specifically set forth or referred to herein.
- 25. APPARENT AGENCY.** The Vendor shall not take any action, or make any omission, that may imply, or cause others to reasonably infer, that the Vendor is acting as DHS' agent in any matter or in any way not expressly authorized by this Contract.
- 26. RESPONSIBILITY FOR ACTIONS.** The Vendor shall be solely responsible for its actions and those of its agents, employees, or Subcontractors under this Contract, and neither the Vendor nor any of the foregoing parties has authority to act or speak on behalf of DHS.
- 27. SECURITY OF PREMISES, EQUIPMENT, DATA AND PERSONNEL.** During the performance of Services under this Contract, the Vendor 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 Vendor 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 Vendor 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 Vendor, 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.
- a. SECURITY OF SYSTEM AND SYSTEM DATA** In addition to the security requirements outlined by all applicable Federal, State, and local laws, including HIPAA and HITECH, vendor must meet the following security requirements:
- i. Provide a Statement on Standards for Attestation Engagements No. 16 (SSAE 16) report, or comparable third-party security and compliance audit documentation.
  - ii. Provide a summary of System Architecture (not to include proprietary or confidential information) for DHS technical review.
  - iii. Provide a summary of system Security Model, including the user authentication model (not to include proprietary or confidential information) for DHS technical review.

- 28. SOFTWARE ENVIRONMENTS.** Contractor shall provide separate hosted environments for, at minimum, Testing and Production. Functions that are specific to one environment should not be conducted in another, for example, there should be no development testing conducted in the production environment.
- a. Any and all hosted environments being used for this project shall securely segregate DHS data from any other data, and shall meet or exceed requirements established by HIPAA and HITECH.
  - b. DHS will have the ability to conduct training in the system without risking the integrity of production data.
- 29. ROYALTY-FREE RIGHTS TO USE SOFTWARE OR DOCUMENTATION DEVELOPED.** TO THE EXTENT REQUIRED UNDER 45 C.F.R. §95.617, the federal government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes, the copyrights in any work developed under a grant, sub-grant, or contract under a grant or sub-grant or any rights of copyright to which a Vendor purchases ownership.
- 30. PROVISION OF SERVICES.** The Vendor 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 Vendor's Services at reasonable times, without notice, at any other premises.
- a. If DHS notifies the Vendor that any part of the Services rendered are inadequate or in any way differ from the Contract requirements for any reason other than as a result of DHS' default or negligence, the Vendor 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. VENDOR PERSONNEL.**
- a. DHS reserves the right to refuse to admit to DHS premises any person employed or contracted by the Vendor whose admission in the opinion of DHS would be undesirable. If requested by DHS, the Vendor shall provide a list of the names and addresses of all Vendor'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 Vendor, the role the person is to take in the performance of the Contract, and other particulars as DHS may require.
  - b. The Vendor positions specified below are considered to be "key personnel" for the project under this Contract. Vendor must always have personnel assigned to each of these roles. Vendor shall notify Purchaser in writing of each replacement including the relevant qualifications of such replacement, which shall be comparable to the qualifications of the prior key personnel being replaced.
    - i. Key Personnel: Project Sponsor; Project Manager; Solution/Data Architect; Technical Lead; Quality Assurance Lead; Business Analyst; and Help Desk Lead.
- 32. BACKGROUND OR CRIMINAL HISTORY INVESTIGATION.** Prior to the commencement of any Services under this Contract, DHS may request a background or criminal history investigation of any of the Vendor's employees, Contracted Personnel, and Subcontractor's employees, who will be providing Services to DHS under the Contract. If any of the stated personnel providing Services to DHS under this Contract 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 Contract and any related Service Contract.

**33. PERFORMANCE.** Work under this Contract 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.

- a. The Vendor 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 Vendor shall observe, abide by, and perform all of its obligations in accordance with all legal requirements and State or Agency work rules.
- b. Without limiting the foregoing, the Vendor 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 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 Contract shall govern.

**34. WARRANTY.**

- a. Services rendered and Software provided shall be strictly in accordance with the order placed and may not deviate in any way from the terms, conditions or specifications of this Contract, without the prior written approval of DHS.
- b. Vendor warrants that Services performed, and Software provided by Vendor under this Contract shall be performed with skill, care, diligence, and in a professional manner and staffing that are in accordance with generally accepted industry practices.
- c. All Services and Software provided under this contract must conform to the specifications outlined in the original solicitation and in all documents incorporated under this Contract or subsequently issued by Service Level Agreement(s). Deviations in Services provided may only be made with written agreement between the State and the Vendor.
- d. The Software must perform in a manner that is reasonably quick, responsive, and usable for all DHS personnel accessing the system, provided that DHS provides reasonable bandwidth and hardware accommodations to facilitate such performance.
  - i. Usability will be determined at the sole discretion of DHS, will be in accordance with industry standards and best practices, and will not be held to an unreasonably high standard.
- e. Any deviation from this Warranty is cause for contract termination in accordance with §8 of this Contract.

**35. VENDOR'S INSURANCE RESPONSIBILITY.** The Vendor shall maintain the following insurance coverage:

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

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

- 36. VENDOR INDEMNIFICATION.** Vendor 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 any injury or damage to property arising from the acts or omissions of the Vendor, its agents, officers, employees, or Subcontractors, including harm resulting from negligent or willful violation of the confidentiality provisions of this Contract, to the extent resulting from the negligence or willful violation of the Vendor, or of any of its Subcontractors, in performing work under this Contract.
- a. Vendor will defend, at its own expense, any suit or proceeding brought against DHS to the extent that it is based on a claim that the Software, Deliverables, or Services provided hereunder by Vendor directly and solely infringed or violated any patent, copyright or trade secret in the United States, provided that (i) Vendor is notified promptly in writing by DHS (ii) Vendor is furnished with each communication, notice, pleading and other document relating to such claim and (iii) Vendor is given full and complete authority, information and assistance in connection with the defense of such claim.
  - b. Should DHS be prevented from using Software via a formal injunction, due to a circumstance resulting from §36(a), Vendor will, at its expense, either (i) obtain for Purchaser the right to continue using Software, or (ii) take requisite steps, if available, to remove the issue that resulted in such injunction from being issued. If, despite all Vendor's efforts, DHS is permanently enjoined from using Software, Vendor will refund the most recent two (2) years of license fees paid to Vendor by DHS.

**37. INDEPENDENT CONTRACTOR.** The Vendor shall act as an independent Contractor in performing all Services under this Contract and, except as otherwise outlined herein, shall maintain complete control over its employees, Contracted Personnel, and Subcontractors, if any.

**38. STATE EMPLOYEES.** The Vendor 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 Vendor by the State, during the term of this Contract.

**39. DEBARMENT CERTIFICATION.** The Primary Vendor certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of certification; and
- d. Have not within a three- year period preceding this Contract had one or more public transaction (Federal, State, or local) terminated for cause or default.

If the prospective primary Vendor is unable to certify to any of the statements in this certification, such prospective Vendor shall attach an explanation to this response.

**40. ANTITRUST ASSIGNMENT.** By entering into this Contract, the Vendor 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 Contract.

**41. OWNERSHIP RIGHTS.** Notwithstanding intellectual property owned by Vendor prior to the execution of this Contract, to the extent required under 45 C.F.R. §95.617, all deliverables (including any custom development done by Therap under this Contract), data, documentation, or other writings, in any format, delivered to DHS under this Contract shall become the property of DHS and shall not be copyrighted, trademarked, or patented by the Vendor.

- A. DHS RETAINS FULL, COMPLETE, AND SOLE OWNERSHIP OF ALL DATA ENTERED INTO THE THERAP SYSTEM.** IF REQUESTED BY DHS, THERAP MUST, WITHIN 15 BUSINESS DAYS, DELIVER ALL OF DHS'S DATA IN AN XML DATABASE FORMAT, AND VIA A HIPAA COMPLIANT, SECURE, METHOD.
- b.** Vendor shall provide DHS with, and maintain provision of, a current and complete data dictionary of the System.

**42. PROMPT PAYMENT.** DHS shall pay properly submitted Vendor 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 Contract 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.

**43. STATE TAX EXEMPTION.** DHS is exempt from payment of Wisconsin sales or use tax on all purchases.

**44. 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 without the express, written consent of DHS. News releases or release of broadcast e-mails pertaining to this Contract shall not be made without prior written approval of DHS. The Vendor may identify the State of Wisconsin as a client when the Vendor provides a list of Vendor's clients.

**45. RECORDS, RECORDKEEPING AND RECORD RETENTION.** Under §19.36 (3), Wis. Stats., all records of the Vendor that are produced or collected under this Contract are subject to disclosure pursuant to a public records request. The Vendor shall establish and maintain adequate records of all documentation developed or compiled and expenditures incurred under this Contract. 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 Vendor, following final payment, shall retain all records produced or collected under this Contract for three (3) years.

**46. COOPERATION WITH OTHER VENDORS OR CONTRACTORS.** DHS may purchase related goods or services from other vendors during the course of this Contract. In that event, the Vendor agrees that its personnel will reasonably cooperate with such other vendors or contractors to the extent that such other vendors or contractors do not interfere with Vendor's performance under this Contract.

**47. ASSIGNMENT OF CONTRACT.** No right or duty in whole or in part of either party under this Agreement may be assigned or delegated without the prior written consent of the other party.

**48. CROSS PROGRAMATIC USE.** In the event that DHS notifies Contractor in writing that DHS wishes to extend the use of Software, or similar or related software or software modules to DHS programs or State of Wisconsin agencies, other than the program as to which this Contract pertains, Vendor agrees that it shall, in good faith, enter into discussions with DHS regarding such other use and the price and other terms and conditions thereof; it being understood, however, that neither DHS nor Vendor is legally obligated to enter into a Contract regarding such use, and DHS and Vendor may each, at any time and without any liability, discontinue discussions regarding such use.

**49. FORCE MAJEURE.** Neither party shall be in Default by reason of any failure in performance of this Contract in accordance with incidents outside of a party's reasonable control and without fault or negligence of any kind 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 any kind of the party.

- a. If a force majeure events subsists for three (3) continuous months, either party will have the option to terminate this agreement with thirty (30) day notice.
- b. If termination as a result of force majeure occurs, termination will follow the procedures set for in §8 of this Contract.
- c. DHS will not be responsible for license fees of any kind that would have accrued after the effective termination date.

**50. EQUAL EMPLOYMENT OPPORTUNITY.** As directed per Federal Executive Order 11246 and amended by Executive Order 11375 and as supplemented by the Department of Labor Regulations (41 CFR Part 60): the Executive Order prohibits federal Vendors and Subcontractors who do over \$10,000 in Government business in one year from discriminating in employment decision on the basis of race, color, religion, sex or national origin. This Executive Order also requires Government Vendor to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.  
(<http://www.dol.gov/compliance/laws/comp-eeo.htm>)

**51. AMERICANS WITH DISABILITIES.** This Act (28 CFR Part 35, Title II, Subtitle A) prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public and State and local governments, except public transportation services.

**52. AFFIRMATIVE ACTION PLAN (AA).** As required by Wisconsin's Contract Compliance Law (s. 16.765, Wis. Stats.), every Vendor contracting with the State must agree to equal employment and affirmative action policies and practices in its employment programs. The Vendor must submit an Affirmative Action Plan within **fifteen (15) working days** of the signed Contract. Exemptions exist, and are noted in the Instructions for Vendors posted on the following website:  
<http://vendornet.state.wi.us/vendornet/contract/contcom.asp>.

The Vendor must submit its affirmative Action plan or request for exemption from filing an affirmative action plan in accordance to the Wisconsin Office of Contract 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

and send a pdf copy to [DHSAAPlan@dhs.wisconsin.gov](mailto:DHSAAPlan@dhs.wisconsin.gov)

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

**53. CIVIL RIGHTS COMPLIANCE (CRC).**

All primary recipients and sub-recipients of DHS must file a new Civil Rights Compliance Letter of Assurance (CRC LOA) for the compliance period of 2014 – 2017 regardless of the number of employees and the amount of the funding received. Primary recipients and sub-recipients with 50 or more employees and who receive over \$50,000 in funding must complete a Civil Rights Compliance Plan (CRC Plan). The CRC Plan **should not** be sent to the state department, but must be submitted upon request or available for review during an on-site monitoring visit. Complete Instructions and Templates for CRC Letter of Assurance and CRC Plans can be located at the following link:

<http://www.dhs.wisconsin.gov/Publications/P0/p00164.pdf> (717KB)

For technical assistance on all aspects of the Civil Rights Compliance, the Vendor is to contact the DHS' AA/CRC Office at the address listed in section 50 Affirmative Action Plan.

All Vendors 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>.

Failure to comply with the Section 50 or 51 provisions may result in the following consequences:

- termination of this Contract as provided in Section 7 Cancellation and Termination;
- designation of the Vendor as "ineligible" for future consideration as a responsible qualified bidder or proposer for State contracts;
- withholding of payment(s) due under the Contract until the Vendor is in compliance.

**54. DISCLOSURE STATEMENTS.** Throughout the course of the engagement described by the Contract, Vendor must keep DHS apprised of any legal or financial occurrences or conditions that could impact the ability of Vendor to perform its obligations herein. If applicable, the Vendor must provide a statement that discloses any administrative action or lawsuit, threatened or pending, that regards (1) a financial matter that could significantly affect the organization's solvency or financial ability to successfully perform under this contract; (2) a matter that has been or would be brought against the organization as a party to a contract by another party to that contract; or (3) a licensing or regulatory matter that would affect the organization's credentials or ability to perform under this contract, including any type of intellectual property dispute.

**55. FINANCIAL STATEMENTS.** Vendor and each Subcontractor (if any) must be able to substantiate their financial stability. If requested by DHS, Independently audited financial statements for up to the last three completed fiscal years, along with additional supporting documentation (Income Statement, Statement of Cash Flows, Balance Sheet, and Statement of Change in Financial Position along with all auditors' notes) must be submitted. If the Vendor is a subsidiary, the parent company must be identified and the consolidated audited financial statements of the parent company must be submitted. The State may request reports on financial stability from independent financial rating services to substantiate the Vendor's stability. Vendor's name is to be included on each page submitted.

If no audit was required, please explain why and submit two years of financial statements certified by two officers of the Board of Directors, and the chief financial officer/financial manager.

**56. 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 Vendor under the Contract. 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 Contract.

**"Base Contract"** means the Contract document, without the inclusion of any Exhibits.

**"Confidential Information"** means all tangible and intangible information and materials, including all Personally Identifiable Information, being disclosed in connection with this Contract, 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.

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

**"Center or Centers"** means one or all of the DHS operated Centers for People with Intellectual Disabilities. Further definition can be accessed at the DHS website:

[http://www.dhs.wisconsin.gov/Disabilities/dd\\_ctrs/index.htm](http://www.dhs.wisconsin.gov/Disabilities/dd_ctrs/index.htm)

**"Contract"** means this Base Contract, as well as all of the contract documents referred to in §4, in the order of precedence referred to in §5.

**"Contracted Personnel"** means Vendor's employees or other personnel (including officers, agents and Sub) provided by the Vendor to perform work under this Contract.

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

**"Day"** means calendar day unless otherwise specified in this Contract.

**"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.

**"HIPAA"** means Health Insurance Portability and Accountability Act of 1996

**"HITECH"** means Health Information Technology for Economic and Clinical Health Act of 2009

**"Inspection"** means a careful examination of Goods, commodities, or items produced under this Contract 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.

**"Proposal"** means the written response provided by Vendor in reply to RFP # S-0122 DLTC-14, submitted by Vendor on June 24, 2014, and all associated documentation provided by Vendor.

**"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 Vendor necessary to fulfill that which the Vendor is obligated to accomplish under this Contract.

**"Software"** means the product owned and operated by Therap Services, LLC that is the subject of this procurement. Software will be as defined in the Vendor's Proposal and associated documents.

**"State"** means the State of Wisconsin.

**"Subcontract"** means a Contract, written or oral, financial or non-financial, between the Vendor and any other party to fulfill the requirements and performance obligations of this Contract.

**"Subcontractor"** means an entity that enters into a Contract with the Vendor for the purpose of delivering Goods or providing Services to the State.

**57. PARTIES' CONTACT INFORMATION.** Communications to either the Vendor 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.

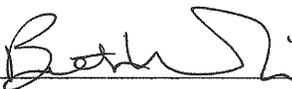
<b>Vendor Program Manager (Chief Operating Officer, Therap Services, LLC)</b>	Name: Justin Brockie Address: 562 Watertown Ave, Suite 3, Waterbury, CT 06708 Phone: (203) 596-7553 Email: Justin.brockie@therapservices.net
<b>DHS Contract Manager / Administrator</b>	Name: Jacob Webb-White Address: 1 W. Wilson St., Room 627, Madison, WI 53707 Phone: (608) 267-8799 Email: Jacob.webbwhite@dhs.wisconsin.gov
<b>DHS Program Manager (Acting Deputy Administrator, Division of Long Term Care)</b>	Name: Beth Wroblewski Address: 1 W. Wilson St., Room 550, Madison, WI 53707 Phone: (608) 267-7379 Email: Beth.Wroblewski@dhs.wisconsin.gov

IN WITNESS WHEREOF, DHS and Therap Services, LLC have executed this Contract as of the day and year first above written.

  
\_\_\_\_\_  
James M Kelly, Vice-Chairman  
Vendor Authorized Signature

\_\_\_\_\_  
February 4, 2015  
Date

Justin Brockie, Chief Operating Officer, Therap Services, LLC

  
\_\_\_\_\_

\_\_\_\_\_  
2/3/2015

DHS Authorized Signature

Date

Beth Wroblewski, Chief Policy Officer / Deputy Administrator – Acting  
Division of Long Term Care, Department of Health Services

EXHIBIT A

**PROJECT MILESTONES / STATEMENT OF WORK**

#	Milestone / Deliverable	Anticipated Completion Date
1	Project Plan Completed	1/2/2015
2	Training Plan Completed	1/26/2015
3	System Configuration Completed	3/1/2015
4	Train Super Users	2/9/2015
5	Train Application Administrators	2/9/2015
6	Functional Testing Completed	3/1/2015
7	Train All Staff	3/31/2015
8	Submit Final Disaster Recover / Business Continuity Plan	3/16/2015
9	Implementation – Southern Wisconsin Center	4/1/2015
10	Implementation – Northern Wisconsin Center	4/1/2015
11	Implementation – Central Wisconsin Center	5/1/2015
12	Verify / Approve Implementation – Southern Wisconsin Center	6/1/2015
13	Verify / Approve Implementation – Northern Wisconsin Center	6/1/2015
14	Verify / Approve Implementation – Central Wisconsin Center	7/1/2015

The Scope of Vendor's Statement of Work for this Contract will be consistent with the services required in the DHS RFP in conjunction with the services represented in the Vendor's Proposal; this Exhibit is not an exhaustive list of Vendor's Statement of Work responsibilities in connection with this Contract.

Vendor's Statement of Work includes, **but is not limited to**:

- I. Providing License to use the Therap Electronic Documentation / Case Management Software at three (3) State of Wisconsin DHS operated ICF/IID Centers.
  - a. This includes entry of all clients / potential clients of each facility, regardless of whether the number increases or decreases through the course of this engagement.
  - b. This includes all access for all staff at each Center as well as applicable staff at the DHS central office.
- II. Providing Implementation Services for each of the three ICF/IID Centers.
  - a. This includes applicable business analysis to verify that Vendor is able to meet all DHS requirements.
  - b. This includes assisting / facilitating system configuration at each Center.
  - c. This includes provision and maintenance of applicable system documentation.

- d. This includes support and maintenance of DHS's data, within a database that may be accessed by the Therap Software.
- III. Providing Training to ensure users the ability to use the Therap Software in a manner that is consistent with Local, State, and Federal laws applicable to the operation of an ICF/IID facility, and meets the needs of the user and the applicable center to which the user is assigned.
  - a. If DHS would like to engage with Vendor to provide training that is above and beyond what is described in section III, DHS will pay Vendor for additions, out of scope training in accordance with the cost structure outlined in Exhibit B.
- IV. Providing on-going support and maintenance of the System, including the System database, through the length of this Contract.
  - a. This includes providing assistance and guidance in maintaining proper system configuration and functionality throughout this engagement.
  - b. This includes correcting any deficiencies in accordance with Exhibit D, the Service Level Agreement.
  - c. This includes providing access to the latest version of the Software as it becomes publically available, for no additional fees of any kind.

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**Deliverable Approval Form**

To: Therap Services, LLC, ATTN: Contract Administrator

[MM/DD/YYYY]

From: State of Wisconsin DHS/DLTC, Contract Administrator

Deliverable Name: [Insert Deliverable Name From Exhibit A Here]

By signing the form below, the DHS Contract Administrator certifies that the deliverable referenced above has been completed by Therap Services, LLC.

Authorized Signature:

\_\_\_\_\_

\_\_\_\_\_

Name:

Date

DHS / DLTC Contract Administrator

**EXHIBIT B**

**COST SCHEDULE**

<b>Item</b>	<b>Cost</b>
Annual License Fee – 2015	\$12,000.00
Annual License Fee – 2016	\$12,240.00
Annual License Fee – 2017	\$12,484.80
Annual License Fee – 2018	\$12,734.50
Annual License Fee – 2019	\$12,989.19
Hourly Labor Rate – Custom Development	\$60.00
Hourly Labor Rate – Data Migration / Cleansing	\$60.00
Hourly Labor Rate – Additional Training (Outside Proposal Scope)*	\$50.00
Hourly Labor Rate – Additional Implementation Services (Outside Proposal Scope)*	\$50.00
Flat Fee / Custom Interface with Future DHS EHR System	\$10,000.00

Travel costs may only be reimbursed in accordance with current State of Wisconsin Travel rates, as defined below. These rates are subject to change. If rates change, Vendor's program manager will be notified accordingly. A Contract Amendment will not be necessary to update travel reimbursement rates.

**Meals:**

Breakfast- \$8.00  
Lunch- \$10.00  
Dinner- \$20.00

**Lodging:**

\$70.00 / night

**Airfare:**

DHS will only reimburse up to "coach" or "economy" class; lowest cost reasonably available.

\*As per Vendor's response ("Proposal") to RFP S-0122 DLTC-14, annual license fees include all travel and labor costs necessary for successful implementation of the Therap Software at all three DHS ICF/IID facilities. DHS may, at their sole discretion, request additional training or implementation assistance that goes above and beyond what would be required for a successful implementation. If DHS chooses to request these additional services, they will be compensated according to the schedule presented above. Labor hours may not exceed 8 hours per day, per person. DHS will reimburse travel expenses, but will not pay an hourly rate for travel or time not spent on site at a DHS facility.

EXHIBIT C

**BUSINESS ASSOCIATE AGREEMENT  
With Contract**

**Contract Name:** Electronic Person Centered Active Treatment Planning and Case Management IT System

**Contract Number:** S-0122 DLTC-14

This Business Associate Agreement is made between the Wisconsin Department of Health Services, Division of Long Term Care ("Covered Entity"), and Therap Services, LLC ("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:

The following activities, as they relate to RFP S-0122 DLTC-14

- 1) Business Analysis
- 2) Requirements Gathering
- 3) Software Implementation Services
- 4) Software Development and Configuration Services
- 5) Training
- 6) Other activities, as required to serve the purpose of IT systems development and Implementation.

The Covered Entity and Business Associate agree to modify the Contract to incorporate the terms of this Agreement and the comply with the requirements of HIPAA addressing confidentiality, security, and the transmission of individually identifiable 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, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

- 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 Therap Services, LLC.
- 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. RESPONSIBILITIES OF BUSINESS ASSOCIATE

- 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, if done by the Covered Entity. Unless otherwise limited herein, 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 not request, use, or disclose more than the minimum amount of Protected Health Information necessary to accomplish the purpose of the use or disclosure.
- 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.

## 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 the 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. **Discovery of a Violation.** The Business Associate must inform the Covered Entity by telephone call, plus email or fax, within the next 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.
  - iii. Notification shall occur within the first business day that follows discovery of the Violation.
- 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 seek appropriate injunctive relief or otherwise 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 week 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.

<p><b>Covered Entity Program Manager</b>  Beth Wroblewski  Acting Deputy Administrator  Division of Long Term Care  Department of Health Services  1 W. Wilson Street, Room 550  Madison, WI 53707  608-267-7379</p>	<p><b>DHS Privacy Officer</b>  c/o Office of Legal Counsel  Department of Health Services  1 W. Wilson Street  Madison, WI 53707  608-266-5484</p>	<p><b>DHS Security Officer</b>  Department of Health Services  1 W. Wilson Street  Madison, WI 53707  608-261-8310</p>
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**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, a 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 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**

At the direction of the Covered Entity, the Business Associate agrees to amend or correct Protected Health Information held by the Business Associate, which the Covered Entity has determined is part of the Covered Entity's Designated Record Set, in the time and manner designated by the Covered Entity in accordance with 45 CFR 164.526.

## **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 Covered Entity, or to the federal Secretary of Health and Human Services (HHS) in a time and manner determined by the Covered Entity or 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. 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.

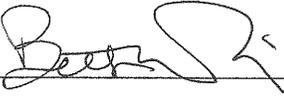
### 13. COMPLIANCE WITH STATE LAW

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 arising from the acquisition, access, use, or disclosure of Protected Health Information by the Business Associate 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.

Covered Entity	Business Associate
<p>Beth Wroblewski Chief Policy Officer Deputy Administrator - Acting Division of Long Term Care Department of Health Services</p> <p>Signature: </p> <p>Date: <u>2/3/2015</u></p>	<p>Printed Name: <u>James M Kelly</u></p> <p>Title: <u>Vice-Chairman</u></p> <p>Signature: </p> <p>Date: <u>February 4, 2015</u></p>

**EXHIBIT D**

**SERVICE LEVEL AGREEMENT (SLA)**

<b><u>Incident Severity</u></b>	<b><u>Definition &amp; Examples</u></b>	<b><u>Response</u></b>
<b>Critical</b>	An issue that causes software failure or inoperability.  •System failure •System Error •Database failure •Database error •Critical performance failure	<ul style="list-style-type: none"><li>• Response Time: Within 30 minutes of receipt of incident report, available 24 hours / day.</li><li>• Assignment: Within 90 minutes of receipt</li><li>• Status Reporting: Every 3 hours until resolved</li><li>• Target Resolution: Within 12 hours of receipt.</li><li>• Work will continue outside of business hours until situation is resolved.</li></ul>
<b>High</b>	An issue that materially impacts performance, materially impacts functionality, or materially impacts a specific user group.  •Loss of mandatory functionality •Field errors that prevent creation or editing of records. •Continued performance problems.	<ul style="list-style-type: none"><li>• Response Time: Within 1 hour of receipt of incident report during support Hours.</li><li>• Assignment: Within 4 hours of receipt during support Hours.</li><li>• Status Reporting: Every 8 business hours until resolved.</li><li>• Target Resolution: 2 business days.</li><li>• Work will continue outside of business hours until situation is resolved.</li></ul>

## Medium

An issue that affects multiple users of the Software, but where there are alternate methods or viable workaround available to mitigate the issue.

- Loss of non-mandatory functionality.
- Intermittent performance problems.
- Field errors that do not prevent creation or editing of records.

- Response Time: Within 4 hours of receipt of incident report during support hours.
- Assignment: within 1 business day of receipt during support hours.
- Status Reporting: Once every 3 business days.
- Target Resolution: Within 8 business days.
- Work Hours: normal business hours.

## Low

An issue that has minor impact on overall Software use.

- Cosmetic issues
- Enhancement requests
- Information requests
- Non-critical Isolated errors in a specific process

- Response Time: Within 1 Business Day during support Hours.
- Assignment: Within 1 business week of receipt.
- Status Reporting: Bi-Weekly
- Target Resolution: Next scheduled code drop or as determined by agreement with Purchaser.
- Work Hours: normal business house.