



**CONTRACT FOR IRIS SELF-DIRECTED PERSONAL CARE
OVERSIGHT**

between

Wisconsin Department of Health Services (DHS)

and

**<<NAME OF IRIS SELF DIRECTED PERSONAL CARE (SDPC)
AGENCY>>**

This Contract is between the State of Wisconsin Department of Health Services (DHS), at 1 West Wilson Street, Madison, Wisconsin 53703, and <<Name of IRIS SDPC Agency>>.

Contract Term: 1/1/2019 – 06/30/2020

Optional Renewal Terms: Four additional one-year terms

Department of Health Services Division: Division of Medicaid Services

Department of Health Services Contract Administrator: Amy Chartier

Supplier Contract Administrator:

This Contract will become effective on the date of mutual execution by the parties' authorized representatives. By signing below, the parties acknowledge that this Contract is executed with full knowledge of and agreement with the terms and conditions of this Contract.

**State of Wisconsin
Department of Health Services**

**Supplier
<<Name of IRIS SDPC Agency>>**

Name:

Name:

Title: Medicaid Director,
Division of Medicaid Services

Title:

Signature: _____

Signature: _____

Date: _____

Date: _____

1. DEFINITIONS

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

Acceptance: a manifestation of assent by DHS to the terms, Services, Goods or other items offered by the Supplier 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 DHS' satisfaction and acceptance, and payment has been made.

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

Business Day: any day on which the State of Wisconsin is open for business, generally Monday through Friday unless otherwise specified in this Contract.

Confidential Information: all tangible and intangible information and materials being disclosed in connection with this Contract, in any form or medium without regard to whether the information is owned by the State of Wisconsin or by a third party, which satisfies at least one (1) of the following criteria: (i) Personally Identifiable Information; (ii) Protected Health Information under HIPAA, 45 CFR §160.103; (iii) non-public information related to DHS' employees, customers, technology (including databases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; or (iv) information expressly designated as confidential in writing by DHS. Confidential Information includes all information that is restricted or prohibited from disclosure by state or federal law.

Contract Administrator: the DHS staff member responsible for the implementation, administration, and completion of the Contract.

Day: calendar day unless otherwise specified in this Contract.

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

DHS: Wisconsin Department of Health Services.

Goods: articles of trade or items of merchandise, supplies, raw materials, or finished products; may also include incidental or related Services.

Inspection: a careful examination of Goods, commodities, and items produced under this Contract or the site that provides Services or Goods in order to determine their fitness for use.

Municipality: a county, city, village, town, school district, board of school directors, sewer district, drainage district, technical college district or any other public or quasi-public corporation, officer, board or other body having the authority to award public contracts. (§ 16.70(8), Wis. Stats.).

Personally Identifiable Information: 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.

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

Publicly Available Information: any information that an entity reasonably believes is one of the following: a) lawfully made widely available through any media; b) lawfully made available to the general public from federal, state, or local government records or disclosures to the general public that are required to be made by federal, state, or local law.

State Purchase Order: State of Wisconsin's standard document of purchase.

Services: all actions, recommendations, plans, research, customizations, modifications, documentation and maintenance and support provided by the Supplier necessary to fulfill that which the Supplier is obligated to accomplish under this Contract.

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

Subcontractor: an entity that enters into a Contract with the Supplier for the purpose of delivering Goods or providing Services to DHS.

Supplier: an individual, business, or agency that enters into a written Contract to provide Products or Services to the State. A Contractor may be a service provider, a supplier of products, a manufacturer, or a consultant. For this Contract, the Contractor is <<Name of SDPC Agency>>.

2. ORDER OF PRECEDENCE

This Contract and the following documents incorporated by reference into the Contract constitute the entire agreement of the parties and supersedes all prior communications, representations or agreements between the parties, whether oral or written. Any conflict or inconsistency will be resolved by giving precedence in the following descending order:

1. The Business Associate Agreement (BAA).
2. The terms of this Contract.
3. Any and all exhibits or attachments to this Contract.
4. The official purchase order.
5. The terms of **solicitation #S-0704 DMS-18**, including all attachments, addenda, and revisions.
6. The terms of Supplier's solicitation response as accepted by DHS of Wisconsin.

3. SCOPE

A detailed description of the services to be provided and Supplier's means of delivering them is included in SDPC Request for Bid S-0704 DMS-18, the response submitted to DHS by <<Name of SDPC Agency>> and the IRIS 1915(j) Self-Directed Personal Care State Plan Amendment, which is incorporated in this contract by reference. Exhibit 1 and 2 include additional contractual obligations.

No services are to be provided until an official State of Wisconsin Purchase Order is issued by the DHS to Supplier.

3.1. List of Exhibits

4. APPLICABLE LAW AND VENUE

This Contract shall be governed by the laws of the State of Wisconsin. The venue for any actions brought under this Contract shall be the Circuit Court of Dane County, Wisconsin or the U.S. District Court for the Western District of Wisconsin, as applicable.

5. INVOICING AND PAYMENTS

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

5.1. Cost of Services

Payment for services provided in accordance with the terms and conditions of this Contract shall be calculated pursuant to a monthly rate of service/per person per month. The monthly rate of service for IRIS Self-Directed Personal Care Oversight for the period of this contract is **\$137.85** for oversight services and **\$1.50** for nurse consultation services.

The rate for nurse consultation services is based on the total monthly IRIS participant enrollment, as nurse consultation services are available to all IRIS participants regardless of whether personal care services are included on their IRIS service plan.

The rate for oversight services applies only to IRIS participants with personal care services included on their IRIS service plan and with an SDPC status of Yes or Suspended (suspended status must be equal to or less than 90 days to be eligible for payment) unless the participant has a set discharge date/plan for day 91 and over. The IRIS SDPC Oversight Agency must provide justification to receive payments for suspensions over 90 days.

The IRIS SDPC Oversight Agency must also identify participants with a suspend status greater than 90 days than has a set discharge date/plan by COB of the 14th of the month. The identification information must include the following information:

1. Last Name
2. First Name
3. MCI ID
4. Social Security Number
5. Date of Birth
6. Gender
7. Discharge Date and Plan
8. Justification

5.2. Payment for Services

- A. Payment is for services provided in accordance with the terms and conditions of this contract.
- B. Enrollment data reflecting the total number of IRIS participants is extracted from the Wisconsin Self-Directed IT System (WISITS) data system on approximately the second day of each month and will be sent to the SDPC Agency or designee by the 10th day of the month.
- C. The claim file extract will be extracted from the WISITS data system on the 15th day of every month and will be sent to the SDPC Agency or designee by the 20th day of the month.
- D. This number will include all IRIS participants who have a Self-Directed Personal Care status of Yes or Suspended (suspended status must be equal to or less than 90 days to be eligible for payment) unless the participant has a set discharge date/plan for days 91 and over. The SDPC Oversight Agency must provide the same identification information outlined above under Cost of Services by the close of business on the 14th of every month.

- E. The SDPC Oversight Agency designee will send the IRIS Management Section Chief or designee an invoice separated into two line items.
 - a. Total number of participants eligible for SDPC per Cost of Services section of this contract multiplied by the monthly rate of service of **\$137.85** for SDPC oversight services.
 - b. Total number of IRIS participants per Cost of Services section of this contract multiplied by the monthly rate of service of **\$1.50** for nurse consultation services.
- F. The IMS Section Chief or designee will review and approve appropriate invoices and forward to Long-Term Care Financing operations section for payment.
- G. Supplier shall return to DHS any funds paid to Supplier in excess of the allowable costs of services provided under this agreement. If Supplier fails to return funds paid by DHS in excess of the allowable costs of the services provided, DHS may recover from Supplier any money paid in excess of the conditions of this agreement from subsequent payments made by Purchaser to Provider or may recover such funds by any legal means.

5.3. Reporting

Supplier and DHS agree to finalize reporting requirements and related deliverables. Once the requirement has been defined, the requirement will be implemented via contract amendment. Any required reports shall be forwarded to DHS's Contract Administrator or designee.

5.4. Prompt Payment Law

DHS shall pay properly submitted Supplier invoices within 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 good faith dispute in regard to an invoice creates an exception to prompt payment pursuant to Wis. Stat. § 16.528.

5.5. Invoicing

The Supplier will provide monthly invoices to DHS within 30 days from invoice date and will include the level of detail agreed upon by the Supplier and the Contract Administrator. The Supplier will submit monthly invoices to DHS electronically to the Contract Administrator and DHSSTARDLTC@dhs.wisconsin.gov.

5.6. State Tax Exemption

DHS is exempt from payment of Wisconsin sales or use tax on all purchases.

5.7. Payment Offsets for Supplier's Delinquency

The State of Wisconsin may offset payments made to the Supplier 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 reserves the right to cancel this Contract as provided in Section 36.4, Contract Cancellation, if the delinquency is not satisfied by the offset or other means during the Contract term.

5.8. Refund of Credits

DHS may request a refund of credits owed at any time. Supplier agrees to refund credits owed within 60 days of DHS' request.

6. CONTRACT AMENDMENT

This Contract may not be modified or amended except by mutual agreement of both parties in writing.

7. 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 purchased through this Contract.

8. SUPPLIER COMPLIANCE AND RESPONSIBILITY FOR ACTIONS

The Supplier shall at all times comply with and observe all federal, state, and local laws, ordinances, regulations, program policy, work instructions, and DHS work rules that are in effect during the term of this Contract that may affect the Supplier's work or obligations hereunder. The Supplier shall be solely responsible for its actions and those of its agents, employees, or Subcontractors.

9. INDEPENDENT CONTRACTOR AND APPARENT AGENCY

The Supplier, its officers, agents, and employees, in the performance of this Contract, shall act in the capacity of an independent contractor and not as an officer, employee, or agent of DHS. To the extent within its reasonable control, the Supplier agrees to take such steps as may be necessary toward assuring that each Subcontractor under this Contract will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venture, or partner of DHS.

The Supplier shall not take any action, or make any omission, that may imply, or cause others to reasonably infer, that the Supplier is acting as a DHS agent in any matter or in any way not expressly authorized by this Contract. The Supplier shall be solely responsible for its actions and those of its agents, employees, or Subcontractors under this Contract, and neither the Supplier nor any of the foregoing parties has authority to act or speak on behalf of DHS.

10. SUPPLIER PERSONNEL

10.1. Identification of Supplier Personnel

If requested by DHS, the Supplier will provide a list of the names of all Supplier's employees, contracted personnel, or Subcontractor's employees who may at any time require admission to the State's premises in connection with the rendering of Services, specifying each such person's connection to the Supplier, the role the person is to take in the performance of the Contract, and other information as requested by DHS. DHS reserves the right to refuse to admit to the State's premises any person employed or contracted by the Supplier.

The Supplier shall furnish each contracted personnel with a means of identifying themselves as agents, Subcontractors, or employees of the Supplier assigned to perform Services under the Contract, and furnish DHS with security credentials on these contracted personnel, if requested.

10.2. Right to Approve Changes of Supplier Personnel

DHS shall be apprised of any change of contracted personnel. Any changes in personnel must ensure compliance with this Contract. DHS shall notify Supplier if it determines that any change in personnel may interfere with performance of this Contract and Supplier shall take appropriate and timely action to cure by making personnel changes as it deems necessary to perform this Contract.

10.3. Removal of Supplier Personnel

DHS shall make Supplier aware of any business concerns with Supplier's/Subcontractor's personnel and Supplier shall take necessary action to insure that its employees do not interfere with the operations of DHS, including removing Supplier's/Subcontractor's personnel from the DHS facility or site, if necessary. DHS' right to do so does not implicate DHS as a party to any of the Supplier's obligations in the Contract. DHS may request that key personnel or personnel that will perform Services on-site at a DHS facility be replaced within thirty (30) Calendar Days from such removal.

11. BACKGROUND CHECKS

Prior to the commencement of any Services under this Contract, in order to ensure safety and security at its premises, DHS may request a background or criminal history investigation of contracted personnel at any time during the term of this Contract for any of Suppliers' contracted personnel and Subcontractor's employees, who will be providing Services to DHS under the Contract. If any contracted personnel, including Subcontractor's employees, providing Services to DHS under this Contract are not acceptable to DHS to ensure safety and security in its premises, in its sole discretion as a result of the background or criminal history investigation, DHS shall provide notice to the Supplier that the contracted personnel do not meet DHS' safety and security needs and that the

personnel will not be allowed on DHS premises. Supplier shall as soon as practicable replace the contracted personnel with another of its contracted personnel in order to ensure compliance with this Contract.

12. PERFORMANCE OF SERVICES

Timely provision of Services required under this Contract is of the essence, including the provision of Services within any time frames specified as a part of this Contract. The Supplier shall render Services with all due skill, care, and diligence, in accordance with standard industry practices and legal requirements to the satisfaction of DHS. DHS may inspect, observe, and examine the performance of the Services rendered on the State's premises at any time. DHS may inspect, observe, and examine the performance of Supplier's Services on any other premises at reasonable times, without notice.

If DHS notifies the Supplier 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 Supplier shall at its own expense re-schedule and re-perform the work correctly within the time period specified by DHS. This remedy shall be in addition to any other remedies available to DHS by law or in equity. If requested by DHS, Supplier shall supply a Corrective Action Plan (CAP) which will outline the Supplier's solution to the non-complying issue. Acceptance of this CAP will be at the sole discretion of DHS.

13. COOPERATION WITH OTHER SUPPLIERS

In the event that DHS enters into a Contract with another Supplier for additional services, the Supplier will ensure that Supplier's personnel fully cooperate with said other Supplier. Contracted personnel shall not commit any act that interferes with the rendering of Services by any other Supplier or by DHS. Contracted personnel shall cooperate with State personnel, hardware manufacture representatives, system software suppliers, and communications systems suppliers in the provision of Services under this Contract.

14. SPECIFICATIONS

The apparent silence of the DHS' specifications as to any detail, or the apparent omission of a detailed description concerning any matter, shall be regarded as meaning that only the best commercial practice shall be followed and only material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by DHS, Supplier shall supply proof of compliance with the specifications or provide written notice of their intent to deliver alternate or substitute Services or deliverables. Alternate or substitute Services or deliverables may be accepted or rejected in the sole discretion of DHS, and any such alternates or substitutes shall be accompanied by Supplier's certification and evidence satisfactory to DHS that the function, characteristics, performance and endurance shall be equal or superior to the original Services or deliverables specified. DHS will not unreasonably withhold the approval of alternates or substitutes under this section.

15. INSURANCE RESPONSIBILITY

The Supplier shall maintain the following insurance coverage:

- a) Worker's compensation insurance, as required by Wis. Stat. ch. 102 or applicable state law where contracted personnel are employed, for Supplier's contracted personnel engaged in work performed under this Contract;
- b) As the employer of the contracted personnel, Supplier shall fund an account with the Wisconsin unemployment reserve fund or, if the Supplier employs contracted personnel to work under this Contract in another state, the reserve fund in the state where the contracted employees are employed, as required by applicable statutes and regulations;
- c) 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; and
- d) 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.

The Supplier shall maintain a Certificate of Insurance, showing up-to-date coverage, and shall be made available to DHS upon request.

16. WARRANTY AND LIENS

The Supplier warrants and represents that all deliverables ordered under this Contract are free and clear of all liens, claims or encumbrances of any kind.

Deliverables and 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 Contract, without the prior written approval of DHS. Deliverables delivered under this Contract may be subject to inspection and testing upon receipt.

The Supplier warrants that the deliverables provided shall conform to the specifications in this Contract, are fit and sufficient for the purpose manufactured, of good material and workmanship, and free from defect. Deliverables offered must be new and unused and of the latest model or manufacture, unless otherwise specified by DHS. Items shall be equal in quality and performance to the standards indicated herein. Deliverables delivered that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at the Supplier's expense. Supplier shall assign to DHS its right to recover under any warranties applicable to the deliverables offered.

17. CONFLICT OF INTEREST

Supplier represents and warrants the following: That Supplier has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Contract.

17.1. Notice of Potential Conflict

If any such actual or potential conflict of interest arises under this Contract, Supplier shall immediately inform DHS in writing of such conflict. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant information.

If any such actual or potential conflict of interest is identified by DHS under this Contract, DHS shall immediately inform the Supplier in writing of such conflict and request a full investigation. A request for investigation must include a written disclosure that contains, but is not limited to, identification of all persons implicated and a complete description of all relevant information.

If any such actual or potential conflict of interest is identified by either DHS or the Supplier, a final determination will be made, at the sole discretion of DHS, as to whether a conflict exists, and, if so, what mitigation activities shall be taken.

Additionally, if either DHS or the Supplier identifies required work functions that present an actual or potential conflict of interest internally to the Supplier and/or externally to DHS, the Supplier shall immediately make full written disclosure of such facts to DHS. Full written disclosure shall include, but will not be limited to, identification of all persons implicated, a complete description of all relevant information and a potential resolution of the conflict describing assurance that the required work functions will not pose additional conflicts on an ongoing basis.

18. OWNERSHIP RIGHTS

Unless an ownership interest is granted or reserved in this Contract, a State Purchase Order issued under this Contract shall allow DHS unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to DHS as part of the performance of the Contract.

19. CONFIDENTIAL, PROPRIETARY, AND PERSONALLY IDENTIFIABLE INFORMATION

In connection with the performance of the work prescribed in this Contract, it may be necessary for DHS to disclose to Supplier certain information that is considered to be confidential, proprietary, or containing Personally Identifiable Information (Confidential Information). The Supplier 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 Supplier 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.

Supplier 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.

Supplier shall ensure that all indications of confidentiality contained on or included in any item of Confidential Information shall be reproduced by the Supplier on any reproduction, modification, or translation of such Confidential Information. If requested by DHS, the Supplier 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.

Supplier or its employees and Subcontractors will not reuse, sell, make available, or make use in any format the data researched or compiled for this Contract for any venture, profitable or not, outside this Contract.

The restrictions herein shall survive the termination of this Contract for any reason and shall continue in full force and effect and shall be binding upon the Supplier or its agents, employees, successors, assigns, Subcontractors, or any party claiming an interest in this Contract on behalf of or under the rights of Supplier following any termination. Supplier shall advise all of their agents, employees, successors, assigns and Subcontractors which are engaged by the State of the restrictions, present and continuing, set forth herein. Supplier shall defend and incur all costs, if any, for actions that arise as a result of noncompliance by Supplier, its agents, employees, successors, assigns and Subcontractors regarding the restrictions herein.

Reporting to DHS: Supplier shall immediately report within five (5) business days to DHS any use or disclosure of Confidential Information not provided for by this Contract, of which it becomes aware. Supplier shall cooperate with DHS' investigation, analysis, notification and mitigation activities, and shall be responsible for all costs incurred by DHS for those activities.

Corrective Action Plan: Supplier may be issued or required to develop a Corrective Action Plan, which is defined in this section as a plan required by the State for the Supplier to follow in the event of any threatened or actual use or disclosure of any Confidential Information that is not specifically authorized by this contract, or in the event that any Confidential Information is lost or cannot be accounted for by the Supplier.

Indemnification: In the event of a breach of this section by Supplier, Supplier shall indemnify and hold harmless DHS and any of its officers, employees, or agents from any claims arising from the acts or omissions of the Supplier, and its Subcontractors, employees and agents, in violation of this section, including but not limited to, costs of credit monitoring and identity theft restoration coverage for one (1) year of coverage from the date the individual enrolls, 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 DHS in the enforcement of this section.

Limitation on Obligations: The obligations of confidentiality assumed by Supplier pursuant to this contract shall not apply to the extent Supplier can demonstrate that such information:

- Is part of the public domain without any breach of this Contract by Supplier;
- Is or becomes generally known on a non-confidential basis, through no wrongful act of Supplier;
- Was known by Supplier prior to disclosure hereunder without any obligation to keep it confidential;
- Was disclosed to it by a third party which, to the best of Supplier's knowledge, is not required to maintain its confidentiality;
- Was independently developed by Supplier; or

- Is the subject of a written agreement whereby the State consents to the disclosure of such Confidential Information by Supplier on a non-confidential basis.

Legal Disclosure: If Supplier or any of its representatives shall be under a legal obligation in any administrative, regulatory, or judicial circumstance to disclose any Confidential Information, Supplier shall give the State prompt notice thereof (unless it has a legal obligation to the contrary) so that the State may seek a protective or other appropriate remedy. In the event that such protective order is not obtained, Supplier and its Representatives shall furnish only that portion of the information that is legally required and shall disclose the Confidential Information in a manner reasonably designed to preserve its confidential nature.

Equitable Relief: The Supplier 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 DHS, 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 DHS, 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 applicable law.

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

- i. \$1,000 for each individual whose Confidential Information was used or disclosed;
- ii. \$2,500 per day for each day that the Supplier fails to substantially comply with the Corrective Action Plan under this Section

DHS may conduct a compliance review of the Supplier's security procedures to protect Confidential Information under Section 33 (Audit) of this Contract.

HIPAA: The Supplier is a "business associate" pursuant to the definition under the Health Insurance Portability and Accountability Act (HIPAA) and the regulations promulgated thereunder specifically 45 CFR 160.103. If the parties are business associates, then the parties shall comply with DHS' Business Associate Agreement.

If Supplier is a business associate, Supplier agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 applicable to business associates. As defined herein, "Business Associate" shall mean the Supplier and Subcontractors and agents of the Supplier that receive, use or have access to protected health information under this Agreement and "Covered Entity" shall mean the State of Wisconsin, Department of Health Services.

In agreements for the provision of services, activities, or functions covered by the Health Insurance Portability and Accountability act of 1996 (HIPAA), the Supplier as a business associate must complete a Business Associate Agreement (BAA) [F-00759](#). This document must be fully executed before Contract performance begins.

This Section shall survive the termination of the Contract.

20. SECURITY OF PREMISES, EQUIPMENT, DATA, AND PERSONNEL

During the performance of services under this Contract, the Supplier 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 Supplier 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 Supplier 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 Supplier, contracted personnel, or Subcontractors, and shall reimburse DHS accordingly upon demand. This remedy shall be in addition to any other remedies available to the DHS by law or in equity.

21. INTELLECTUAL PROPERTY INFRINGEMENT AND LABOR STANDARDS

The Supplier guarantees that any items provided to DHS under this Contract were manufactured or produced in accordance with applicable state and federal labor laws, and the sale or use of said items shall not infringe any United States patent, copyright, or other intellectual property rights of others. The Supplier shall at its own expense indemnify, defend and hold DHS harmless from any claims brought against DHS for any alleged patent, copyright or other intellectual property right infringement due to the sale or use of such items, provided that the Supplier is promptly notified of such suit, and is given all related documents. The Supplier shall pay all costs, damages, and profits recoverable in any such infringement lawsuit.

22. RECORDS RETENTION

Pursuant to §19.36 (3) of the Wisconsin Statutes, all records of the Supplier that are produced or collected under this Contract are subject to disclosure pursuant to a public records request. The Supplier 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 Supplier, following final payment, shall retain all records produced or collected under this Contract for six (6) years after final payment is made.

23. 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 Supplier's premises, any of the Supplier’s records and computer data storage media involving transactions directly pertinent to this Contract. If the material is on computer data storage media, the Supplier shall provide copies of the data storage media or a computer printout of such if DHS requests. Any charges for copies of books, documents, papers, records, computer data storage media or computer printouts provided by the Supplier shall not exceed the actual cost to the Supplier. This provision shall survive the termination, cancellation, or expiration of this Contract.

24. 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 Supplier under this Contract shall not constitute a waiver of default, evidence of proper Supplier performance, or acceptance of any defective item or work furnished by the Supplier.

25. SEVERABILITY

If any provision of this Contract is found to be invalid, illegal or unenforceable under any applicable statute or law, it is to that extent deemed to be omitted and the remaining provisions of this Contract will not be affected in any way.

26. SURVIVAL

The provisions regarding Confidential Information, Examination of Records, and Indemnification shall survive the termination, expiration or conclusion of the Contract, along with any other provisions contained in this Contract that by their language, sense and context are intended to survive.

27. SOVEREIGN IMMUNITY

Nothing in this Contract may be construed to constitute a waiver of the State of Wisconsin's sovereign immunity under the Eleventh Amendment to the United States Constitution and Article IV, Section 27 of the Wisconsin Constitution.

28. INDEMNIFICATION AND LIMITED LIABILITY

28.1. Supplier shall hold DHS harmless and shall defend and indemnify DHS, 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 Supplier, its agents, officers, employees or Subcontractors.

28.2. Except for sections 21, 22, and 28.1, the cumulative liability of Supplier to DHS for actual or alleged damages arising out of, based on, or relating to this agreement, whether based upon breach of Contract, tort (including negligence), warranty or any other legal theory, will not exceed the amount invoiced by the Supplier for services rendered during the twelve (12) calendar months immediately preceding the calendar month in which such losses occurred or, for losses that occur in the first year of the Contract, the amount in the Reimbursement Plan for the first twelve (12) calendar months of the Contract.

In addition, the Supplier shall indemnify DHS for any Federal funding disallowances or sanctions imposed on DHS for reasons attributable to the Supplier's failure to perform in compliance with this Contract.

29. STATE EMPLOYEES

The Supplier may not contract with or employ a State employee or an individual retained as a full-time Supplier by DHS during the term of this Contract.

30. PROMOTIONAL ADVERTISING AND NEWS RELEASES

Reference to, or use of, the Great Seal of Wisconsin, the Wisconsin Coat of Arms, the DHS logo, or the name or likeness of any state official or employee for commercial promotion is strictly prohibited. News releases or release of broadcast e-mails pertaining to this Contract shall not be made without prior written approval of DHS. The Supplier may identify DHS of Wisconsin as a client when the Supplier provides a list of Supplier's clients.

31. ASSIGNMENT

No right or duty in whole or in part of either party under this Contract may be assigned or delegated without the prior written consent of the other party.

32. FORCE MAJEURE

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

33. AUDITS

33.1. Requirement to Have an Audit

Unless waived by DHS, the Supplier shall submit an annual audit to DHS if the total amount of annual funding provided by DHS (from any and all of its Divisions or subunits taken collectively) through this and other Grants is \$25,000 or more. In determining the amount of annual funding provided by DHS, the Supplier shall consider both: (a) funds provided through direct Grants with the DHS; and (b) funds from DHS passed through another agency which has one or more Grants with the Supplier.

33.2. Audit Requirements

The audit shall be performed in accordance with generally accepted auditing standards, Wisconsin Statute § 46.036, Government Auditing Standards as issued by the U.S. Government Accountability Office, and other provisions specified in this Contract. In addition, the Supplier is responsible for ensuring that the audit complies with other standards and guidelines that may be applicable depending on the type of services provided and the amount of dollars received. Please reference the following audit documents for complete audit requirements:

- 2 Code of Federal Regulations (CFR), Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart F - Audits. The guidance also includes an Annual Compliance Supplement that details specific federal agency rules for accepting federal sub-awards.
- The State Single Audit Guidelines (SSAG) expand on the requirements of 2 CFR Part 200 Subpart F by identifying additional conditions that require a state single audit. Section 1.3 of the SSAG lists the required conditions.
- The DHS Audit Guide is an appendix to the SSAG and contains additional DHS-specific audit guidance for those entities that meet the SSAG requirements. It also provides guidance for those entities that are not required to have a Single Audit but need to comply with DHS sub-recipient/contractor audit requirements. An audit report is due DHS if a Supplier receives \$25,000 or more in direct funding from DHS as determined by Wisconsin Statute § 46.036.

33.3. Source of Funding

DHS shall provide funding information to all Suppliers for audit purposes, including the name of the program, the federal agency where the program originated, the CFDA number and the percentages of federal, state and local funds constituting the Contract.

33.4. Audit Reporting Package

The Supplier that is required to have a Single Audit based on 2 CFR Part 200 Subpart F and the State Single Audit Guidelines is required to submit an audit reporting package which includes all of the following:

1. General-Purpose Financial Statements of the overall agency and a Schedule of Expenditures of Federal and State Awards, including the independent auditor's opinion on the statements and schedule.
2. Schedule of Findings and Questioned Costs, Schedule of Prior Audit Findings, Corrective Action Plan and the Management Letter (if issued).
3. Report on Compliance and on Internal Control over Financial Reporting based on an audit performed in accordance with Government Auditing Standards.
4. Report on Compliance for each Major Program and a Report on Internal Control over Compliance.
5. Report on Compliance with Requirements Applicable to the Federal and State Program and on Internal Control over Compliance in Accordance with the Program-Specific Audit Option.
6. * DHS Cost Reimbursement Award Schedule. This schedule is required by DHS if the Supplier is a non-profit, for-profit, a governmental unit other than a tribe, county, Chapter 51 board or school district; if the Supplier receives funding directly from DHS; if payment is based on or limited to an actual allowable cost basis; and if the auditee reported expenses or other activity resulting in payments totaling \$100,000 or more for all of its grant(s) or contract(s) with DHS.
7. *Reserve Schedule is only required if the Supplier is a non-profit and paid on a prospectively set rate.
8. *Allowable Profit Schedule is only required if the Supplier is a for-profit entity.
9. *Additional Supplemental Schedule(s) required by Funding Agency may be required. Check with the funding agency.

*NOTE: These schedules are only required for certain types of entities or specific financial conditions.

For Suppliers that do not meet the single audit requirements of 2 CFR Part 200 and the SSAG, the audit reporting package to DHS may include all of the above items except items 4 and 5.

33.5. Audit Due Date

Audits that must comply with 2 CFR Part 200 and the SSAG are due to the funding agencies nine months from the end of the fiscal period or 30 days from completion of the audit, whichever is sooner. For all other audits, the due

date is six months from the end of the fiscal period unless a different date is specified within the Contract or grant agreement.

33.6. Submitting the Audit Reporting Package

For audits that comply with 2 CFR Part 200 and the SSAG, reference 2 CFR §200.512 for complete submission requirements regarding the single audit reporting package. The Supplier/auditee is responsible for ensuring that the Federal Audit Clearinghouse (FAC) receives a complete, electronically submitted audit reporting package by the audit's due date. Please ensure that the FAC's website is fully functional and enables complete viewing access to the audit-reporting package. If the audit-reporting package is not viewable on the FAC's website, then it is the Supplier's/auditee's responsibility to submit the audit-reporting package to DHSAuditors@wisconsin.gov. If a management letter was issued by the auditor, it is also the responsibility of the auditee to provide this document to DHS.

Audit reporting packages that are not single audits shall be sent by the auditor via email to DHSAuditors@Wisconsin.gov with the Supplier /auditee copied. The audit reports shall be electronically created pdf files that are text searchable, unlocked, and unencrypted. (Note: To ensure that pdf files are unlocked and text-searchable, do not scan a physical copy of the audit report and do not change the default security settings in your pdf creator.)

33.7. Access to Supplier Records

The Supplier/auditee must provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the required audit.

The auditee shall permit appropriate representatives of DHS to have access to the auditee's records and financial statements as necessary to review the auditee's compliance with federal and state requirements for the use of the funding. Having an independent audit does not limit the authority of DHS to conduct or arrange for other audits or review of federal or state programs. DHS shall use information from the audit to conduct its own reviews without duplication of the independent auditor's work.

33.8. Access to Auditor's Work Papers

The auditor shall make audit work papers available upon request to the auditee, DHS or their designee as part of performing a quality review, resolving audit findings, or carrying out oversight responsibilities. Access to work papers includes the right to obtain copies of work papers.

33.9. Failure to Comply with the Audit Requirements

DHS may impose sanctions when needed to ensure that auditees have complied with the requirements to provide DHS with an audit reporting package that meets the applicable standards and to administer state and federal programs in accordance with the applicable requirements. Examples of situations when sanctions may be warranted include:

1. The auditee did not have an audit.
2. The auditee did not submit the audit reporting package to the FAC, DHS or another granting agency within the original or extended audit deadline.
3. The auditor did not perform the audit in accordance with applicable standards, including the standards described in the SSAG and DHS Audit Guide.
4. The audit reporting package is not complete; for example, the audit reporting package omitted the corrective action plan or other required elements.
5. The auditee does not cooperate with DHS or another granting agency's audit resolution efforts; for example, the auditee does not take corrective action or does not repay disallowed costs to the granting agency.

33.10. Sanctions

DHS will choose sanctions that suit the particular circumstances and also promote compliance and/or corrective action. Possible sanctions may include:

1. Requiring modified monitoring and/or reporting provisions;

2. Delaying payments, withholding a percentage of payments, withholding or disallowing overhead costs, or suspending the award until the auditee is in compliance;
3. Disallowing the cost of audits that do not meet these standards;
4. Conducting an audit or arranging for an independent audit of the auditee and charging the cost of completing the audit to the auditee;
5. Charging the auditee for all loss of federal or state aid or for penalties assessed to DHS because the auditee did not comply with audit requirements;
6. Assessing financial sanctions or penalties;
7. Discontinuing contracting with the auditee; and/or
8. Taking other action that DHS determines is necessary to protect federal or state pass-through funding.

33.11. Closeout Audits

A Contract specific audit of an accounting period of less than 12 months is required when a Contract is terminated for cause, when the auditee ceases operations or changes its accounting period (fiscal year). The purpose of the audit is to close-out the short accounting period. The close-out audit may be waived by DHS upon written request from the Supplier, except when the Contract is terminated for cause.

The auditee shall ensure that its auditor contacts DHS prior to beginning the audit. DHS, or its representative, shall have the opportunity to review the planned audit program, request additional compliance or internal control testing and attend any conference between the auditee and the auditor. Payment of increased audit costs, as a result of the additional testing requested by DHS, is the responsibility of the auditee.

DHS may require a close-out audit that meets the audit requirements specified in 2 CFR Part 200 Subpart F. In addition, DHS may require that the auditor annualize revenues and expenditures for the purposes of applying 2 CFR Part 200 Subpart F and determining major federal financial assistance programs. This information shall be disclosed in a note within the schedule of federal awards. All other provisions in 2 CFR Part 200 Subpart F- Audit Requirements apply to close-out audits unless in conflict with the specific close-out audit requirements.

34. DEFAULT AND REMEDY

If the Supplier fails to remedy any delay or other problem in its performance of this Contract after receiving reasonable notice from DHS to do so, the Supplier shall reimburse DHS for all reasonable costs incurred as a direct consequence of the Supplier's delay, action, or inaction.

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

35. SANCTIONS FOR VIOLATION, BREACH, OR NON-PERFORMANCE

A. Authority to Impose Sanctions

DHS may impose sanctions or terminate the Contract, as set forth herein, if it determines the Supplier has failed to meet the performance expectations described herein. DHS may base its determinations on findings from any source.

DHS may pursue all sanctions and remedial actions with the Supplier that are taken with Medicaid fee-for-service providers, including any civil penalties not to exceed the amounts specified in the Balanced Budget Amendment of 1997, § 4707(a). If a basis for imposition of a sanction exists as described herein, the Contractor may be subject to sanctions as described herein.

B. Bases for Imposing Sanctions

DHS may impose sanctions if it determines the Supplier has failed to meet any of the following performance expectations:

- a. The Supplier shall provide all necessary services that the Supplier is required to provide under law or under this Contract to any participant covered under the contract.
- b. The Supplier shall not impose premiums or charges on participants that are in excess of the premiums or charges permitted under the Medicaid program.
- c. The Supplier shall not act to discriminate among participants on the basis of their health status or need for health care services. This includes, but is not limited to, termination of enrollment or refusal to reenroll a participant, except as permitted under the Medicaid program, or any practice that would reasonably be expected to discourage enrollment by participants whose medical condition or history indicates probable need for substantial future contractual services.
- d. The Supplier shall not misrepresent or falsify information that it furnishes to CMS or to DHS.
- e. The Supplier shall not misrepresent or falsify information that it furnishes to a participant, potential participant, or a provider.
- f. The Supplier shall not distribute directly or indirectly through any agent or independent contractor, marketing materials that have not been approved by DHS or that contain false or materially misleading information.
- g. The Supplier shall meet financial performance expectations for solvency and financial stability.
- h. The Supplier shall meet the quality standards and performance criteria of this Contract such that participants are not at substantial risk of harm.
- i. The Supplier shall not distribute directly or indirectly through any agent or independent contractor, any materials that describe or provide information regarding the IRIS Program that have not been approved by DHS.
- j. The Supplier shall meet all obligations described in order to prevent the unauthorized use, disclosure, or loss of confidential information.
- k. The Supplier shall meet all other obligations described in federal law, state law, or the contract not otherwise described above.

C. Types of Sanctions

DHS may impose the civil monetary penalties for the violations described above, as well as one or more of the following:

- a. Appointment of temporary management for Supplier.
- b. Suspension of payment for participants enrolled after the effective date of the sanction and until CMS or DHS is satisfied that the reason for imposition of the sanction no longer exists and is not likely to recur.
- c. Imposition of a plan of correction and/or intensive oversight of Supplier operations by DHS without appointment of a temporary manager.
- d. Withholding or recovering of per person per month (PMPM)/monthly rate of service (MROS) payments.
- e. Termination of the contract.
- f. Any other sanctions that DHS determines, in its sole discretion, to be appropriate.

D. Notice of Sanctions

- b. Notice to provider—Before imposing any of the sanctions described above, DHS must give the affected Contractor written notice that explains the following:
 - i. The basis and nature of the sanction.
 - ii. Any other due process protections that DHS elects to provide.

- c. Notice to CMS—DHS must notify CMS no later than 30 calendar days after the imposition or lifting of any sanction described above. The notice shall include the name of the Contractor, the kind of sanction, and the reason for DHS’s decision to impose or lift the sanction.

E. Amounts of Civil Monetary Penalties

Civil monetary penalties may be imposed as follows:

- a. A maximum of \$25,000 for each of the following violations, as defined above:
 - i. Failure to provide services.
 - ii. Misrepresentation or false statements to participants, potential participants, or providers.
 - iii. Marketing violations.
- b. A maximum of \$100,000 for each violation of:
 - i. Discrimination
 - ii. Misrepresentation or false statements to CMS or DHS
- c. A maximum of \$15,000 for each participant DHS determines was not enrolled because of a discriminatory practice (subject to the \$100,000 overall limit above).
- d. A maximum of \$25,000 or double the amount of the excess charges, (whichever is greater) for premiums or charges in excess of the amounts permitted under the Medicaid program. DHS must deduct from the penalty the amount of overcharge and return it to the affected participant(s).
- e. A maximum of \$50,000 per incident for a violation of HIPAA confidentiality and security, consisting of:
 - i. \$100 for each individual whose confidential information was used, disclosed, or lost; and
 - ii. \$100 per day for each day that the Contractor fails to substantially comply with the DHS directives.
 - iii. In addition, in the event of a federal citation for a breach of confidentiality caused by an action or inaction of the Contractor, the Contractor is responsible for the full amount of any federal penalty imposed without regard to the limit set forth above.
- f. A maximum of \$100,000 for any other violation described above.

F. Recovery of Damages

In any case under this contract where DHS has the authority to withhold MROS payments, DHS also has the authority to use all other legal processes for the recovery of damages.

DHS may withhold or recover portions of the MROS payments in liquidated damages or otherwise recover damages from the Supplier notwithstanding the provisions of this contract. The withholding or recoveries will be made absent the Supplier’s prompt and reasonable efforts to remove the grounds described.

36. TERMINATION/CANCELLATION

36.1. Non-Appropriation

DHS reserves the right to cancel this Contract in whole or in part without penalty if the Legislature fails to appropriate funds necessary to complete the Contract.

36.2. Termination for Cause

DHS may terminate this Contract after providing the Supplier with thirty (30) calendar days written notice of the Supplier’s right to cure a failure of the Supplier to perform under the terms of this Contract, if the Supplier fails to so cure or commence to cure.

The Supplier may terminate the Contract after providing DHS one hundred and twenty (120) calendar days written notice of DHS’ right to cure a failure of DHS to perform under the terms of this Contract.

Upon the termination of this Contract for any reason, or upon Contract 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.

Upon termination for cause, the Supplier shall be entitled to receive compensation for any deliverables' payments owed under the Contract only for deliverables that have been approved and accepted by DHS.

36.3. Termination for Convenience

Either party may terminate this Contract at any time, without cause, by providing a written notice. DHS must notify the Supplier at least thirty (30) calendar days prior to the desired date of termination for convenience. The Supplier must notify DHS at least one hundred and twenty (120) calendar days prior to the desired date of termination for convenience. During this notification period, the Supplier will continue providing services in accordance with the Contract requirements.

In the event of termination for convenience, the Supplier shall be entitled to receive compensation for any fees owed under the Contract. The Supplier shall also be compensated for partially completed services. 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 Contract. Alternatively, at the sole discretion of DHS, the Supplier may be compensated for the actual service hours provided. DHS shall be entitled to a refund for goods or services paid for but not received or implemented, such refund to be paid within thirty (30) days of written notice to the Supplier requesting the refund.

36.4. Cancellation

DHS reserves the right to immediately cancel this Contract, in whole or in part, without penalty and without an opportunity for Supplier to cure if the Supplier:

- a) Files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity;
- b) Allows any final judgment not to be satisfied or a lien not to be disputed after a legally-imposed, 30-day notice;
- c) Makes an assignment for the benefit of creditors;
- d) Fails to follow the sales and use tax certification requirements of § 77.66 of the Wisconsin Statutes;
- e) Incurs a delinquent Wisconsin tax liability;
- f) Fails to submit a non-discrimination or affirmative action plan as required herein;
- g) Fails to follow the non-discrimination or affirmative action requirements of subch. II, Chapter 111 of the Wisconsin Statutes (Wisconsin's Fair Employment Law);
- h) Becomes a federally debarred Supplier;
- i) Is excluded from federal procurement and non-procurement contracts;
- j) Fails to maintain and keep in force all required insurance, permits and licenses as provided in this Contract;
- k) Fails to maintain the confidentiality of DHS' information that is considered to be Confidential Information, proprietary, or containing Personally Identifiable Information; or
- l) Supplier performance threatens the health or safety of a State employee or State customer.

37. TRANSITION SERVICES

In the event that the Supplier terminates this Contract, the Supplier will continue providing services until DHS notifies it that a successor Supplier will be ready to assume services ('transition services'). DHS will pay the Supplier at the rates payable for the month immediately preceding the start of the continuation period.

38. ANTITRUST ASSIGNMENT

The Supplier and DHS recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by DHS. Therefore, if appropriate and if permissible under governing law, the Supplier hereby assigns to DHS any and all claims for such overcharges as to Goods or Services purchased in connection with this Contract.

39. ANTI-LOBBYING ACT

Supplier shall certify to DHS that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Supplier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

Supplier shall use Standard Form LLL for Disclosure of Lobbying Activities available at: <https://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/SFLLL.PDF>. A completed disclosure must be provided upon DHS request.

40. AFFIRMATIVE ACTION

As required by Wisconsin's Contract Compliance Law, Wis. Stat. § 16.765 and Wis. Admin. Code § Adm 50.04, the Supplier must agree to equal employment and affirmative action policies and practices in its employment programs:

The Supplier agrees to make every reasonable effort to develop a balance in either its total workforce or in the project-related workforce that is based on a ratio of work hours performed by handicapped persons, minorities, and women except that, if DHS finds that the Supplier is allocating its workforce in a manner which circumvents the intent of this chapter, DHS may require the Supplier to attempt to create a balance in its total workforce. The balance shall be at least proportional to the percentage of minorities and women present in the relevant labor markets based on data prepared by the Department of Industry, Labor and Human Relations, the Office of Federal Contract Compliance Programs or by another appropriate governmental entity. In the absence of any reliable data, the percentage for qualified handicapped persons shall be at least 2% for whom a Supplier must make a reasonable accommodation.

The Supplier must submit an Affirmative Action Plan within fifteen (15) working days of the signed Agreement. Exemptions exist, and are noted in the Instructions for Sub-recipients posted on the following website: <http://vendornet.state.wi.us/vendornet/doaforms/DOA-3021P.pdf>

The Supplier must submit its Affirmative Action Plan or request for exemption from filing an Affirmative Action Plan to:

Department of Health Services
Division of Enterprise Services
Bureau of Strategic Sourcing
Affirmative Action Plan/CRC Coordinator
1 West Wilson Street, Room 672
P.O. Box 7850
Madison, WI 53707
dhscontractcompliance@dhs.wisconsin.gov

41. CIVIL RIGHTS COMPLIANCE

As required by Wis. Stat. § 16.765, in connection with the performance of work under this Contract, the Supplier agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Wis. Stat. § 51.01 (5), sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Supplier further agrees to take affirmative action to ensure equal employment opportunities. The Supplier agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

In accordance with the provisions of Section 1557 of the Patient Protection and Affordable Care Act of 2010 (42 U.S.C. § 18116), Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et

seq.), and regulations implementing these Acts, found at 45 C.F.R. Parts 80, 84, and 91 and 92, Supplier shall not exclude, deny benefits to, or otherwise discriminate against any person on the basis of sex, race, color, national origin, disability, or age in admission to, participation in, in aid of, or in receipt of services and benefits under any of its programs and activities, and in staff and employee assignments to patients, whether carried out by Supplier directly or through a subcontractor or any other entity with which Supplier arranges to carry out its programs and activities.

The Supplier must file a Civil Rights Compliance Letter of Assurance (CRC LOA) within fifteen (15) working days of the effective date of the Contract. If the Supplier employs fifty (50) or more employees and receives at least \$50,000 in funding, the Supplier must complete a Civil Rights Compliance Plan (CRC Plan). The current Civil Rights Compliance Requirements and all appendices for the current Civil Rights Compliance period, are hereby incorporated by reference into this Contract and are enforceable as if restated herein in their entirety. The Civil Rights Compliance Requirements, including the template and instructions for the CRC Plan, can be found at <https://www.dhs.wisconsin.gov/civil-rights/requirements.htm> or by contacting:

Department of Health Services
Civil Rights Compliance
Attn: Attorney Pamela McGillivray
1 West Wilson Street, Room 651
P.O. Box 7850
Madison, WI 53707-7850
Telephone: (608) 266-1258 (Voice)
711 or 1-800-947-3529 (TTY)
Fax: (608) 267-1434
Email: DHSCRC@dhs.wisconsin.gov

The CRC Plan must be kept on file by the Supplier and made available upon request to any representative of DHS. Civil Rights Compliance Letters of Assurances should be sent to:

Department of Health Services
Division of Enterprise Services
Bureau of Strategic Sourcing
Affirmative Action Plan/CRC Coordinator
1 West Wilson Street, Room 672
P.O. Box 7850
Madison, WI 53707
-or-
dhscontractcompliance@dhs.wisconsin.gov

The Supplier agrees to cooperate with DHS in any complaint investigations, monitoring or enforcement related to civil rights compliance of the Supplier or its Subcontractor under this Agreement.

42. FEDERAL CONTRACT REQUIREMENTS

Appendix II to Part 200 of the Code of Federal Regulations provides requirements for Contracts. The following clauses are incorporated into this Contract and are enforceable as if restated herein in their entirety by reference to the following link:

http://www.ecfr.gov/cgi-bin/text-idx?SID=b27236fcef475f27add88705061aab21&mc=true&node=ap2.1.200_1521.ii&rgn=div9

43. DRUG FREE WORKPLACE

Supplier, agents, employees, or Subcontractors under this Contract shall follow the guidelines established by the Drug Free Workplace Act of 1988.

44. CONTACT INFORMATION

In the event the Supplier moves or updates contact information, the Supplier 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 Supplier's failure to provide such notice.

Exhibit 1: IRIS Self-Directed Personal Care Oversight

A. GENERAL REQUIREMENTS

Purchaser (DHS – Bureau of Adult Programs and Policy, IRIS Management Section) will define the role of the Supplier <<Name of SDPC Agency>> as it relates to the scope of activities, management of assignments, and processes to assure accuracy in the completion of activities. All services provided under this contract will align with maintaining the integrity of self-direction within the IRIS Program with the foremost goal of providing IRIS Participants with the most effective, comprehensive, and economical tools, resources and information in order that IRIS Participants can make informed choices related to allowable long term care services under the Home and Community Based Services Waiver. The following outlines expectation of contract items, including deliverables, as outlined in this contract:

1. Completion and Approval of Deliverables:

DHS reserves the right to approve all deliverables described under this contract.

- a. DHS shall provide Supplier with written descriptions of deliverables for which written products are required and dates the deliverables are due.
- b. Not later than 30 days after deliverables are submitted, DHS will accept deliverable or advise the Supplier in writing why the deliverable is not acceptable.
- c. Supplier will correct deliverable in conformity with information provided by DHS and resubmit deliverable within 30 days of written notice of non-compliance.
- d. If the deliverable is still not acceptable, the process in b. and c. will be repeated.

For contract deliverables with an assigned completion and/or delivery timeline identified in the contract and/or work plan, the Supplier will invoice the DHS based upon project payroll costs, actual costs, and expenditures.

The DHS and Supplier will meet quarterly, or as needed, to discuss progress, deliverables, and budget adjustments as the IRIS Self-Directed Supports Program continues to grow and progress. This budget and work plan are based upon a reasonable projection of growth and function in the contracted year. The budget and work plan will be revised based upon actual experience during the contract year. The Supplier and the DHS will meet weekly to review and revise the needed staffing, deliverables and progress to address actual experience in view of long-term care expansion planning for the year. DHS will notify the Supplier if there are terms and conditions under which the Supplier may submit the late deliverables and receive a full or partial reimbursement.

B. ONGOING IRIS SDPC OVERSIGHT ADMINISTRATION OBLIGATIONS

Supplier shall be responsible for:

1. **Model Development** - The development and implementation of the value based IRIS Program model will continue throughout this contract period with a goal of defining direct service components of this contract in order to appropriately bill those costs as Medicaid Home and Community-Based Services Waiver cost rather than administrative costs.
2. **HIPAA Compliance** – Purchaser shall educate Supplier in HIPAA compliance requirements. Supplier will be considered a Business Associate and shall sign a Business Associate Agreement (BAA) as required under the Health Insurance Portability and Accountability Act of 1996, as amended.

C. ADDITIONAL CONTRACTUAL OBLIGATIONS

1. Additional ongoing contractual obligations are identified in the IRIS SDPC Oversight Request for Bid S-0704 DMS-18 and the response submitted to DHS by <<Name of SDPC Agency>>.
2. RFB S-0704 DMS-18 Mandatory Specifications include, but are not limited to:
 - a. Completing all processes and requirements specified in Chapter 13 of the IRIS Policy Manual (P-00708) and IRIS Work Instructions (P-00708A).
 - i. Per Section 13.7 of the IRIS Policy Manual, the IRIS SDPC nurses must conduct face-to-face visits with participants every 60 days.
 - b. Having enough RNs on staff to maintain a (maximum) ratio of one (1) RN to every 100 SDPC participants, ensuring that IRIS participants are never more than 60 miles away from an RN.
 - i. If the RN staff falls below the required RNs based upon enrollment, the Vendor must identify and be able to backfill said RN staff by another RN within 24 business hours to maintain the minimum number of RNs required statewide.
3. Supplier is responsible for establishing and maintaining a website for the IRIS SDPC Oversight Agency and Nurse Consultation services.
 - a. The website must be named and housed separate from the IRIS Consultant Agency website for <<Name of SDPC Agency>>. The existing website's content may be migrated to a new site separate from the ICA website.
 - i. The site URL must distinguish itself as being specific to IRIS SDPC Oversight services.
 - b. New content, not already approved by DHS, must be approved pursuant to marketing and outreach guidelines in advance of web deployment. This would not be inclusive of technical resources for IRIS participants utilizing IRIS SDPC services.
 - c. Supplier must provide information on the website reiterating procedures for agencies to be able to properly access and utilize SDPC oversight and/or nurse consultation services, as well as clarifying the limitations on nurse consultation services.

Exhibit 2: IRIS Nurse Consultation Services

The following information clarifies the Nurse Consultation requirements of RFB S-0704 DMS-18.

IRIS Self-Directed Personal Care Oversight Agency provides nursing consultation when medical expertise is needed. Consultation is available to ICAs regarding all individuals enrolled in IRIS, not just those that receive SDPC services. In addition to providing consultation on individuals, nurse consultation may be used for trainings, and other projects.

Each month, ICAs will be provided with an established amount of hours based on size and the designated Nurse Consultant will track usage of hours.

Nurse consultation includes consultation to the ICA staff, providing information to guide the ICA in decision-making but not directly to participants. The Nurse Consultant does not have any decision-making authority.

Monthly, the assigned Nurse Consultant for the ICA will meet with the ICA's SDPC appointed contact to go over consultation needs. The designated Nurse Consultant will provide consultation and support as identified. An ICA will also be able to access this consultation through an email to:

ClinicalServices@wisconsin-iris.com

ICA staff requesting consultation must ensure that the staff maximizes current nursing resources. For example, if a person has Self-Directed Personal Care, Medical Assistance Personal Care, Home Health, Hospice, or Private Duty Nursing, there is a nurse already working with the individual and typically this is where the first contact for consultation should begin.

Examples of Individual Consultation:

- Individual consultation and discharge planning cares assessment when a person is being discharged from an institutional setting, such as a state operated facility, behavioral health unit, nursing home (SNF), hospital or other institution to a community setting and is deemed medically fragile or complex.
- All Private Duty Nursing Cases (nurses in independent practice) are reviewed by the nurse consultant prior to putting any other waiver services on an ISSP.
- Cases when individuals are asking for an adjustment to their IRIS budget related to medical staffing or specialized equipment that is not customary.
- Request to add any nursing tasks/services to a plan (in the waiver the SDPC Agency Staff must prior authorize Nursing Services).
- Situations where a person is wanting to forgo medical care that is ordered by a physician. Those enrolled in IRIS SDPC are handled by the IRIS SDPC RN; those outside of IRIS SDPC should come to the nurse consultant for review.
- Consult with ICs on issues a person may have as they go through the dementia or hospice process.
- Ideas in care delivery that are needed "outside the box" in relation to provision of "medically necessary" cares. Examples may include consultation in obtaining a special lift, extra-large hospital bed, access to a clinic or provider, or individuals with complex care needs.

- Determining a “safe plan” as it relates to medical issues (e.g., refusing cares, wound issues, self-neglect, travel out of state, refusing to see a physician).
- Interpretation of labs, medical tests, or medical orders.
- Assistance in finding MA services for home care, in home assessments, etc.

Examples of ICA Consultation for Trainings or Projects

- ICA trainings on skilled care and HRS table.
- Standard Precautions, Communicable Diseases (for ICA staff, not participant caregivers).
- Medical Considerations within Target Groups.
- Dual Eligible, SSI Managed Care, Medicare Managed Care Projects.
- Nurse delegation, skilled nursing, scope of practice.
- Training on common medical issues (diabetes, hypertension, fall prevention, etc.)
- Training on various disabilities (spinal cord injuries, multiple sclerosis, dementia, etc.)
- Pre-qualification estimates for personal care.

Limitations in Consultation

- Individual consultation where a RN or physician are already managing a case.
- Individual consultation where medical advice or diagnosis is being sought.
- Requests for nursing/health physical assessment (card service).
- Performing any hands-on nursing task or service (card service).
- Supplying written order for a medical service (no prescriptive authority).
- Psychiatric-related consultations (card service).
- Wound care consultation (card service).
- One-on-One participant, guardian, or health care power of attorney consultation or education (covered by MAPC and SDPC or other FFS provider).
- Individual medication consultation.



CONTRACT FOR SERVICES
between
State of Wisconsin Department of Health Services (DHS)
and
<<Name of IRIS SDPC Agency>>
for
IRIS Self-Directed Personal Care Oversight

This Contract is between the State of Wisconsin Department of Health Services (DHS), at 1 West Wilson Street, Madison, Wisconsin 53703, and <<Name of IRIS SDPC Agency>>. With the exception of the terms being modified by this Contract modification, all other terms and conditions of the existing contract, including funding, remain in full force and effect. This Modification, including any and all attachments herein and the existing contract, collectively, are the complete contract of the parties and supersede any prior contracts or representations. DHS and the Contractor acknowledge that they have read the Modification and understand and agree to be bound by the terms and conditions of the existing contract as modified by this action. This Modification becomes null and void if the time between the earlier dated signature and the later dated signature exceeds sixty (60) days, unless waived by DHS.

Contract ID Number:

Contract Amount: No Max Spend

Contract Term: 7/1/2021 through 6/30/2022

Optional Renewal Terms: Two One-Year Renewal Terms

DHS Division: Medicaid Services

DHS Contract Administrator: Amy Chartier

DHS Contract Manager: Scott Coleman

Contractor Contract Administrator:

Contractor Telephone:

Contractor Email:

Modification Description: Contract renewal and amendment to the base contract.

This contract renewal and amendment shall change the base contract in the following manner:

1. Exercise the second of four one-year contract renewal options for the period of 7/1/2021 through 6/30/2022.
2. Replace 'Exhibit 1 – Scope of Work' with updated 'Exhibit 1 – Scope of Work'
3. All other terms and conditions of the contract remain unchanged.

Department of Health Services

Contractor Name: <<Name of IRIS SDPC Agency>>

Authorized Representative

Authorized Representative

Name: _____

Name: _____

Title: Medicaid Director

Title: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

SUPPLIER DIVERSITY AMENDMENT

The Wisconsin Department of Health Services (DHS) and Contractor agree to the below change to the Agreement. The below Agreement amendment is hereby incorporated by reference into the Agreement and is enforceable as if restated therein in its entirety.

The Agreement is hereby amended by incorporating and adding the following Section:

SUPPLIER DIVERSITY AND REPORTING REQUIREMENTS

Minority-Owned Business Enterprises (MBE) and Disabled Veteran-Owned Businesses (DVB) are certified by the Wisconsin Department of Administration (DOA). This program can be found at: <https://doa.wi.gov/Pages/DoingBusiness/SupplierDiversity.aspx>

The State of Wisconsin is committed to the promotion of MBEs and DVBS in the State's purchasing program. The Contractor is strongly urged to use due diligence to further this policy by awarding Subcontracts to MBEs and DVBS or by using such enterprises to provide goods and services incidental to this Agreement.

The Contractor shall furnish appropriate monthly information about its efforts to subcontract with MBEs and DVBS, including the identities of such businesses certified by the Wisconsin Supplier Diversity Program, their contract amount, and spend for each period to DHS. A listing of certified MBEs and DVBS, as well as the services and goods they provide, is available at: <https://wisdp.wi.gov/Search.aspx>

In accordance with WI Stats. Ch. 16.75 (3m), after completion of this contract, the Contractor shall report to DHS any amount of this contract that was subcontracted to DOA certified MBEs and DVBS.

DHS shall have the right to request any information regarding the use of subcontractors including, but not limited to, MBEs and DVBS. The Contractor shall provide any such information as requested by DHS and within a time period that is specified by DHS.

The Contractor shall submit monthly reports of efforts to subcontract with MBEs, DVBS, and other diverse entities/suppliers to DHS. A link to the Supplier Diversity PowerForm for submitting these reports can be found on the DHS Compliance Documentation page found here: <https://www.dhs.wisconsin.gov/business/compliance.htm>

For the duration of this Agreement, the Contractor shall provide monthly reporting of efforts to subcontract with MBEs and DVBS no later than the 15th of the following month.

For questions about reporting, please contact DHS Contract Compliance at DHSContractCompliance@dhs.wisconsin.gov