



**State of Wisconsin**  
**Department of Employee Trust Funds**  
 4822 Madison Yards Way  
 Madison, WI 53705-9100  
 P. O. Box 7931  
 Madison, WI 53707-7931

**Contract**

**Commodity or Service:**

Korn Ferry Success Profiles / Talent HUB

**Cost:** \$28,531.20

**Contract No.:**

ETA0045

**Contract Period:** One year subscription starting on the date the services described in the attached Statement of Work are made available to the Department and ending one year thereafter

1. This Contract is entered into by the State of Wisconsin Department of Employee Trust Funds (Department) and Korn Ferry (US) (Contractor). Contractor's address and authorized representative appear below. The Department is the sole point of contact for this Contract.
2. Whereby the Department agrees to direct the purchase and Contractor agrees to supply the Contract requirements in accordance with the documents specified in the order of precedence below, which are hereby made a part of this Contract by reference.
3. For purposes of administering this Contract, the Contract is comprised of the documents listed below. In the event of an inconsistency between the terms of the documents listed below, the order of precedence is as follows:
  - a. This Contract cover page;
  - b. Exhibit A - Contract Clarifications;
  - c. Master Services Agreement with effective date March 18, 2021;
  - d. Statement of Work dated March 18, 2021;
  - e. Department Terms and Conditions revised March 24, 2021;
  - f. The Department's Simplified Bid ETA0045 dated February 8, 2021; and,
  - g. Contractor's bid submission received by the Department on February 12, 2021.

**This Contract shall become effective upon the date of last signature below (the "Effective Date").**

<b>State of Wisconsin Department of Employee Trust Funds</b>
By (Name): Pamela S. Henning, Deputy Assistant Secretary
Signature:  <i>/s/</i>
Date of Signature: 3/26/2021

<b>Contractor</b>
Legal Company Name: Korn Ferry (US)
Trade Name: Korn Ferry
Taxpayer Identification Number:
Contractor Address (Street Address, City, State, Zip): For this contract:  233 South Wacker Dr., Suite 700, Chicago, IL 60606
Name & Title (print name and title of person authorized to legally sign for and bind Contractor):  Robb Basler, Director / Client Services
Signature:  <i>/s/</i>
Date of Signature: 3/26/2021

**Exhibit A**  
**Contract Clarifications**  
**ETA0045**

This document contains the understanding and agreement of Korn Ferry (US) (“Korn Ferry”) and the State of Wisconsin Department of Employee Trust Funds (“Department”) regarding the conflict of terms and conditions found in the documents authored by Korn Ferry and the Department, which are listed in the order of precedence in the Contract cover page.

Korn Ferry and the Department (the “Parties”) agree as follows:

1. **Intellectual Property** – Korn Ferry utilizes extensive pre-existing intellectual property to provide its services and create deliverables for its clients. The Department shall not obtain any right or ownership in or to Korn Ferry intellectual property. Section 21 (Ownership of Materials) in the Departments’ terms and conditions will not apply.
2. **Indemnification** – As a State agency, the Department cannot and will not indemnify Korn Ferry on behalf of either the Department or the State of Wisconsin. Korn Ferry will only indemnify for third party claims. Any claims for direct damages would be handled as a direct claim, not for indemnification. Korn Ferry disclaims any liability with regard to the Department’s employment related decisions including decision to hire, not to hire, terminate employment of or take any other employment action with regard to any individual, whether or not related to the Services provided by Korn Ferry.
3. **Penalties and Limitations of Liability** – Pre-determined penalties or liquidated damages are inappropriate and not customary for SaaS related services or consulting or training services (services that will be provided to the Department as described in the Statement of Work). The penalties listed in Section 12. Discount for Late Delivery, of the Department Terms and Conditions do not apply to the Contract.
4. **Subcontractors** – Korn Ferry is responsible for the actions or inactions of its subcontractors. Korn Ferry has the right to utilize third parties without providing prior notice to the Department to the extent subcontractors are utilized to provide administrative, clerical, or technical services, which includes cloud services, as part of Korn Ferry’s operations.
5. **Security** – Korn Ferry will not have access to ETF systems, and no ETF information will be shared with Korn Ferry. Korn Ferry is ISO certified and provides services in a standard fashion and on a global basis. Because Korn Ferry is ISO certified, it does not conduct SOC audits, and the Department will not require Korn Ferry to conduct SOC audits, under Section 6 of the Department Terms and Conditions or otherwise. SOC reports of certain vendors used in delivering services may be made available in certain circumstances, subject to consent of those providers (e.g AWS, MS Azure).

6. **Background checks** – Background checks on Korn Ferry employees are conducted in accordance with Korn Ferry’s standard policy and process. Korn Ferry is not required to provide background check information as stated in the Department Terms and Conditions. Korn Ferry will consider additional background checks should Korn Ferry employees require access to the Department’s premises to perform the services.
7. **Audit** – Given the scope of the services Korn Ferry will provide to the Department (as described in the SOW) it is highly unlikely an audit pertaining to the Contract would be required. However, as a state agency, the Department is subject to state and Legislative Audit Bureau rules and regulations regarding audits. Should an audit be required, the Department would be responsible for the costs of such audit(s) except for any and all costs incurred by Korn Ferry or Korn Ferry subcontractors and related third parties to supply the information and data to conduct the audit(s). Audits will be no more frequent than once per year. Advanced notice must be given to Korn Ferry should an audit be required, as stated in the Department Terms and Conditions. Any audits will be subject to the terms of Section 17 (Audits) of the MSA, to the fullest extent permitted by applicable law.
8. **Termination for Convenience** – The Department is purchasing a single year subscription from Korn Ferry, as described in the SOW. Single year subscriptions are billed in advance for the year and those fees are non-refundable if there is a termination for reasons other than a material breach by Korn Ferry. Cancellation fees may apply in certain situations when the Department terminates the Contract for convenience. In addition, all fees are non-contingent, non-refundable, and non-transferable. Furthermore, Korn Ferry requires the right to terminate the Contract for the Department’s uncured breach of the Contract. The “Rescheduling or Cancelling” policy that appears in the SOW does not apply to the Department’s purchase.
9. **Purchase Order Terms and Conditions** – Purchase order standard terms and conditions and terms and conditions included in the Department’s vendor set up process, if any, will be without effect and superseded by the terms and conditions of the Contract. Each purchase order must be accompanied by a mutually agreed upon SOW. In addition, any change orders must be mutually agreed upon in writing by the Parties.
10. **Data Protection** – The Department will not provide any protected health information (“PHI”) to Korn Ferry, and therefore Korn Ferry will not be a Business Associate, therefore, Section 22 of the Department’s Terms and Conditions will not apply. With the exception of relevant log in information for one Department employee, Korn Ferry will also not host any personally identifiable information (PII) from the Department. Korn Ferry will treat all personal information (as defined by applicable law) in accordance with the Data Protection Exhibit attached to the MSA. As a state agency, the Department is also subject to the Wisconsin Public Records Law.

11. **Governing Law / Controlling Law** – The Contract shall be construed in accordance with the laws of the State of Wisconsin.
12. **Jury Trial** – The Department does not waive its right to a trial by jury in respect to any dispute related to the Contract.
13. **Transitional Services** – Section 19 (Transitional Services) of the Department’s Terms and Conditions does not apply to the service provided by Korn Ferry.
14. **Taxes** – The Department is a state government entity and as such is tax exempt.

## MASTER SERVICES AGREEMENT

This Master Services Agreement (“**Agreement**”), effective as of March 18, 2021 (“**Effective Date**”), is between **Korn Ferry (US)**, on behalf of itself and its Affiliates and doing business as Korn Ferry, with an office at 233 South Wacker dr., Suite 700, Chicago, IL 60606, (“**Korn Ferry**”) and the Wisconsin Department of Employee Trust Funds located at 4822 Madison Yards Way, Madison, WI 53705-9100 (“**Client**”). Korn Ferry and Client are referred to individually as a “**Party**” and collectively as the “**Parties**.”

**1. Statements of Work.** This Agreement applies to any Statement of Work (“**SOW**”) the Parties enter into that references this Agreement. A description of the services Korn Ferry will provide (“**Services**”) and associated fees and expenses must be set out in an SOW signed by both Parties. Services may be performed by one or more Korn Ferry Affiliates. A sample SOW is attached to this Agreement as Exhibit A. The terms of a particular SOW apply to that SOW only. Either Party may request revisions to an SOW; all revisions must be agreed to in writing by both Parties and documented in a change order (“**Change Orders**”). A sample Change Order is attached to this Agreement as Exhibit B.

### **2. Professional Fees and Expenses.**

**a.** Korn Ferry will invoice Client for, and Client will pay, the fees in the applicable SOW (“**Fees**”). Client will reimburse Korn Ferry for all engagement-related direct out-of-pocket expenses, including candidate and consultant travel, accommodation and meals, courier, shipping, reproduction, and video-conferencing (collectively “**Expenses**”) included in an SOW. The Fees and Expenses will be invoiced and paid as described in the applicable SOW. All professional fees are non-contingent, non-transferable, and non-refundable unless specifically stated otherwise in an applicable SOW. Invoices are due upon Client’s receipt of the invoice. Unless otherwise required by law, Korn Ferry will assess a service charge of one and a half percent (1.5%) per month for past due amounts. Invoices not objected to in writing within thirty (30) days of Client’s receipt will be deemed approved.

**b.** Client will pay all reasonable attorneys’ fees and court costs Korn Ferry incurs in collecting undisputed Fees and Expenses.

**c.** All Fees and Expenses will be invoiced and paid in the local currency of Korn Ferry or Korn Ferry’s Affiliate providing Services, or other mutually agreed upon currency, as identified on the SOW.

### **3. Taxes.**

**a.** Client will be responsible for all applicable taxes (excluding taxes imposed on Korn Ferry’s net income) imposed by any taxing authority, whether designated as value-added (VAT), goods and services (GST), sales, use, or other similar taxes (“**Transaction Taxes**”), now in effect or hereafter imposed, resulting from the Fees. If Client is exempt from Transaction Taxes, Client must inform Korn Ferry of its exemption and provide to Korn Ferry complete and proper documentation evidencing the exemption.

**b.** If Client is required by applicable law to deduct or withhold taxes from any payment due to Korn Ferry, Client will: (i) withhold the legally required amount from payment; (ii) remit the withheld tax to the applicable taxing authority; and (iii) promptly deliver to Korn Ferry original documentation or a certified copy evidencing remittance of withheld tax. If Client does not provide evidence of payment of withheld taxes, Client will reimburse Korn Ferry for the tax withheld from payment to Korn Ferry. Client will comply with all applicable income tax treaties and protocols in determining the amount of tax to withhold.

**4. Affiliates.** Client and Client’s Affiliates may purchase Services from Korn Ferry and Korn Ferry’s Affiliates. “**Affiliates**” means any legal entity that, directly or indirectly: (a) is owned or controlled by; (b) owns or controls; or (c) is under common ownership or control with Client or Korn Ferry respectively. Any Client Affiliate executing an SOW will be Client for the purposes of the applicable SOW; any Korn Ferry Affiliate executing an SOW will be Korn Ferry for the purposes of the applicable SOW.

**5. Term and Termination.** This Agreement begins on the Effective Date and ends when terminated under this Section 5 (“**Term**”). Either Party may terminate this Agreement or any SOW, unless otherwise stated in the applicable SOW, for convenience by providing at least sixty (60) days’ prior written notice of termination to the other Party. Client is obligated to pay for Services rendered and any other Fees and Expenses that accrue up to and including the date of termination. Either Party may terminate this Agreement immediately if: (a) a Party is in breach, the non-breaching Party has provided the breaching Party with a written notice and the breaching Party has failed to cure the breach within thirty (30) days of its receipt of notice; or (b) the other Party enters into bankruptcy proceedings, becomes insolvent, or there is an appointment of a receiver for the benefit of creditors, or cessation of business. To

the extent an SOW does not have a termination date, the SOW will be subject to price renegotiation after one year. Unless the Parties otherwise agree, termination of this Agreement will not affect any SOW not completed by the date of termination; SOWs are governed by this Agreement until completed or earlier terminated by either Party in accordance with this Section 5.

**6. Method of Performing Services; Responsibilities.** Korn Ferry will perform the Services in a competent and professional manner and in accordance with generally acceptable industry standards. Korn Ferry may remove and replace any Korn Ferry Employee performing the Services; any Korn Ferry Employee removed will be replaced by a Korn Ferry Employee of comparable training and experience. Client will notify Korn Ferry in writing if Client determines, in compliance with all applicable laws, that a Korn Ferry Employee is not appropriate for the Services based on the Korn Ferry Employee's skills, experience, or performance. Korn Ferry will make a good faith determination whether replacement of the Korn Ferry Employee is reasonably required and commercially feasible. Korn Ferry's good faith determination will be final and binding on Client. "**Korn Ferry Employee**" means a Korn Ferry employee, agent or independent contractor who is providing the Services. Client will timely provide Korn Ferry with the documentation, information, access to its personnel and cooperation Korn Ferry reasonably requires to provide the Services. The Services are not intended as a substitute for professional judgment. Client will not use the Services, New Materials, or Korn Ferry Materials as the sole source for any decision relating to any of its employees or candidates, including reprimand, termination, compensation, employment status or work opportunities.

**7. Representations and Warranties.**

**a.** Each Party represents and warrants that: (i) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation or organization, and has full power and authority to perform all of its obligations under this Agreement; and (ii) the person executing this Agreement on its behalf is duly authorized and empowered to bind the Party to this Agreement.

**b.** Client further represents and warrants that: (i) it has provided the required notices and obtained all necessary rights and consents to provide to Korn Ferry, or to permit Korn Ferry to collect on Client's behalf, an individual's Personal Data, for the purposes stated in this Agreement; and (ii) the transfer to, collection of, and use by Korn Ferry of Personal Data in accordance with this Agreement does not violate any applicable laws or any third party rights. "**Personal Data**" means any information that Korn Ferry has access to, obtains, uses, maintains or otherwise handles in connection with the performance of the Services that identifies an individual or relates to an identifiable individual.

**c. EXCEPT AS PROVIDED IN THIS AGREEMENT, KORN FERRY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**8. Intellectual Property.**

**a.** Client retains ownership of all materials, and the intellectual property rights in those materials, provided to Korn Ferry by or on behalf of Client ("**Client Materials**"). Subject to Section 8.b., Client will also own copies of reports and analyses Korn Ferry delivers to Client under this Agreement ("**New Materials**"). Client may use the New Materials in the form provided for its internal purposes only; Client may not use the New Materials for any other purpose or permit any other person, firm or entity to use the New Materials.

**b.** The performance of the Services and creation of the New Materials will require the use of Korn Ferry Materials. "**Korn Ferry Materials**" include methodologies, preexisting programs, instruments, models, proprietary information, patents, registered and unregistered trademarks, trade names, trade secrets, copyrights, prototypes, inventions, algorithms, designs, compilations, computer software programs, tools, databases, evaluation guides, report forms, scoring guides, scoring algorithms, scoring instructions, scoring software and norms. Korn Ferry may customize, modify, translate, or expand Korn Ferry Materials to apply to Client's unique requirements (collectively, a "**Customization**"). Any Customization will be Korn Ferry Materials exclusive of any Client Materials included therein. Korn Ferry owns Korn Ferry Materials at all times, and reserves all rights not expressly granted under this Agreement. Licenses to Korn Ferry Materials must be procured through a separate license agreement. This Agreement will not be construed as a license to copy, modify, create derivative works from, publish, disclose or otherwise use Korn Ferry Materials. Client will not download, copy, publish, disclose, create derivative works of, disassemble, decompile or otherwise attempt to reverse engineer Korn Ferry Materials, nor will Client permit any other person to do so. Client will be liable for all violations of these restrictions by its employees, subcontractors, or agents.

**c.** If a Customization includes Client Materials, Client grants to Korn Ferry a non-exclusive, limited, non-transferable license to use the Client Materials solely to provide the Services. Client represents and warrants that it has all the necessary rights to include the Client Materials in the Customization.

## 9. Confidential Information.

a. One Party (“**Discloser**”) may disclose Confidential Information to the other Party (“**Recipient**”) in connection with this Agreement. “**Confidential Information**” means all oral or written information concerning the Discloser, including the Discloser’s business and business activities (past, present and future), financial information, technical information, customer information, intellectual property, methodologies, strategies, plans, documents, drawings, designs, tools, models, inventions, and patent disclosures, whether or not marked or identified as “confidential,” that may be obtained from any source as a result of this Agreement. Confidential Information does not include information, technical data, or know-how that: (i) is or becomes a matter of public knowledge through no fault of Recipient; (ii) was lawfully in Recipient’s possession or known by it prior to its receipt from Discloser; (iii) was rightfully disclosed to Recipient by another person without restriction; (iv) Recipient independently develops without use of Discloser’s Confidential Information; or (v) Discloser approves in writing for release.

b. Recipient will not use any Discloser Confidential Information for any purpose other than to perform its obligations under this Agreement. Recipient will not disclose any Discloser Confidential Information to third parties or to its employees, other than employees or third parties who are required to have the Confidential Information to perform obligations under this Agreement and who are bound by confidentiality terms substantially similar to those in this Section 9. Recipient and Discloser will each be responsible for any breach of this Agreement by its representatives. Recipient will protect Confidential Information from disclosure to others using the same degree of care it uses to protect its own confidential information, but in any case no less than a commercially reasonable degree of care. If Recipient is required by law, regulations, or court order to disclose any of Discloser’s Confidential Information, Recipient, where legally allowed, will promptly notify Discloser in writing prior to making any disclosure. Discloser may, at its sole expense, seek a protective order or other appropriate remedy from the proper authority.

c. Services may include coaching services (“**Coaching Services**”) for specific individual(s) (each a “**Coachee**”). Korn Ferry and the Coachee must have open and frank communications for the Coaching Services to be effective. Communications between Korn Ferry and a Coachee will be, so far as is reasonably possible, confidential. Korn Ferry will not be asked or allowed to disclose information provided to Korn Ferry in confidence by a Coachee, except information which Korn Ferry in good faith believes is in one of the following categories: (i) information that the Coachee or some other person is, has, or may become engaged in illegal activity; (ii) information that the Coachee or some other person is, has, or may become a danger or health and safety risk to himself or herself or third persons; (iii) information that the Coachee authorizes Korn Ferry to release; (iv) information that generally informs Client of the scope, nature and timing of any activity, the goals in the development and coaching plan for the Coaching Services, or the progress being made in attaining the established goals or as otherwise required in connection with the engagement; or (v) information that may have a material or adverse effect on Client, the Korn Ferry coach or Korn Ferry. Korn Ferry and the Korn Ferry coach may obtain information from the Coachee’s supervisors, co-workers and other persons concerning the Coachee’s work performance. This information, including the identity of any person providing the information, is and will remain so far as is reasonably possible confidential and neither Client nor the Coachee will have access to this information. The Coachee will be advised of these coaching rules prior to participating in the coaching assignment. If any information arising from the Coaching Services is required to be disclosed by any subpoena or other court order, under any applicable law or regulation, Korn Ferry will be entitled to make any required disclosure. Korn Ferry will undertake to notify Client or the Coachee prior to disclosing the Confidential Information, unless prohibited by the terms of the order or legal requirement.

d. Nothing in this Agreement prohibits, or is intended in any manner to prohibit, Recipient from reporting possible violations of federal law or regulations to any governmental agency or entity, including the Department of Justice, the Securities and Exchange Commission, Congress, and any agency Inspector General, or making other disclosures that are protected under the whistleblower provisions of federal law or regulations. Recipient does not need Discloser’s prior authorization to make any protected reports or disclosures; nor is Recipient required to notify Discloser that protected reports or disclosures have been made. Without limiting the foregoing, nothing in this Agreement is intended to interfere with or restrain the immunity provided under 18 U.S.C. Section 1833(b) for confidential disclosures of trade secrets to government officials or lawyers, solely to report or investigate a suspected violation of law or included in a sealed filing in court or other proceeding.

e. Upon Discloser’s written request, Recipient will destroy Discloser’s Confidential Information in its possession, but Recipient may: (i) retain copies of Confidential Information that it is required to retain by law or regulation; (ii) retain copies of its work product that contain Confidential Information for archival purposes or to defend its work product; and (iii) store copies made as part of routine back up of its information technology systems but the Confidential Information must continue to be handled in accordance with this Section 9.

## 10. Personal Data.

a. Korn Ferry will not disclose to Client an individual's item level responses to assessments and surveys or composite components and intermediate data points (e.g., intermediate numeric scores, ratings, evaluation guides, integration grids, or interview/simulation notes), including Personal Data, that Korn Ferry collects in providing the Services, and upon which the New Materials will be based (the "**Raw Data**"). Korn Ferry will use Raw Data to provide the Services as specified in this Agreement or as otherwise instructed and permitted by Client. The Parties agree that the Services include archiving the Raw Data and using de-identified and aggregated Raw Data for research, studies, development, benchmarking, statistics, analytics, and to develop, improve, and enhance Korn Ferry's products and services. Any published end product will not identify, or include any results attributable to, Client or a specific individual. Raw Data will be treated in accordance with Korn Ferry's Global Privacy Policy, which is available on Korn Ferry's website and incorporated into this Agreement by reference. Where legally allowed, Korn Ferry will promptly notify Client of any legally binding request from a law enforcement authority for disclosure of Personal Data before making any disclosure and will reject any non-legally binding requests.

b. Where Korn Ferry processes Personal Data as a data processor, or equivalent under applicable data protection law, on Client's behalf in its performance of the Services, the Privacy and Data Protection Exhibit C ("**DPE**") will apply. Where the Parties process Personal Data as independent data controllers, or equivalent under applicable data protection law, the Parties will comply with applicable law and maintain adequate security controls relevant to the Personal Data processed.

**11. Security.** Having regard to the available technology, cost of its implementation, the nature, scope, context and purposes of the Personal Data processing, and taking into account the harm that might result from accidental loss, destruction, disclosure or damage of Personal Data, Korn Ferry will implement appropriate technical and organizational measures designed to prevent any accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data.

**12. Indemnification.**

a. **By Client.** Client will indemnify and defend Korn Ferry, its parent, Affiliates, and their respective directors, officers, partners, employees, shareholders and agents and their respective successors and permitted assigns, from and against all third party suits, claims, actions, and proceedings and all related liabilities, losses, judgments, damages, costs and expenses (including interest, penalties, fines, legal fees and other litigation expenses) that are or are alleged to arise from: (i) Client's decision to take any employment action with regard to any individual identified, evaluated, assessed, or coached by Korn Ferry; (ii) Korn Ferry's use of Client Materials in accordance with this Agreement; or (iii) Client's breach of its representations and warranties.

b. **By Korn Ferry.** Korn Ferry will indemnify and defend Client, its parent, Affiliates, and their respective directors, officers, partners, employees, shareholders and agents and their respective successors and permitted assigns, from and against all third party suits, claims, actions, and proceedings and all related liabilities, losses, judgments, damages, costs and expenses (including interest, penalties, fines, legal fees and other litigation expenses) that are or are alleged to arise from: (i) Korn Ferry's gross negligence, willful misconduct, or fraud; (ii) Korn Ferry's breach of its representations and warranties; or (iii) intellectual property infringement. Korn Ferry has no obligation regarding any infringement claim based upon services or materials which are modified, combined, operated, or used with any product, data, apparatus, software, or program not provided by Korn Ferry or authorized by Korn Ferry in writing, or which are a result of Client's design specifications. If an infringement claim is made relating to the New Materials, Korn Ferry Materials, or Services (the "**Infringing Content**"), Korn Ferry will: (w) procure for Client the right to continue to use the Infringing Content; (x) replace the Infringing Content with non-infringing materials; (y) modify the Infringing Content to make it non-infringing; or (z) terminate this Agreement and refund all pre-paid amounts paid by Client for which Client has not received Services.

**13. Limitations of Liability. NEITHER PARTY WILL BE LIABLE TO ANY PARTY FOR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES OF ANY TYPE, INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION, RELATING TO THIS AGREEMENT. KORN FERRY'S MAXIMUM TOTAL LIABILITY FOR ANY CLAIMS RELATING TO THIS AGREEMENT IS LIMITED TO THE FEES PAID OR PAYABLE BY CLIENT TO KORN FERRY UNDER THE SOW GIVING RISE TO THE LIABILITY. THIS SECTION 13 APPLIES REGARDLESS OF THE LEGAL THEORY ASSERTED AND EVEN IF THE PARTY KNOWS THAT THESE DAMAGES MIGHT OCCUR.**

**14. Informal Dispute Resolution.** If a dispute related to this Agreement arises between the Parties ("**Dispute**"), either Party may provide written notice of the Dispute to the other Party. The Parties will work in good faith to resolve the Dispute. If the Dispute involves an invoice, Client will pay the non-disputed portions of the invoice in accordance with Section 2.

**15. Relationship of the Parties.** Korn Ferry is at all times an independent contractor. Korn Ferry Employees  
ETF ETA0045



remain in Korn Ferry's employ and will not be deemed Client's agents or employees. Neither Party is authorized to bind or commit the other Party in any respect or to accept legal process on the other Party's behalf. Neither Party will be liable to any agent, subcontractor, supplier, employee, or customer of the other Party for any commission, compensation, remuneration, or similar benefit of any nature whatsoever. This Agreement is not intended to, and does not, create or impose any fiduciary relationship between the Parties.

**16. Subprocessing.** Client consents to, and authorizes Korn Ferry's use of subprocessors, including Korn Ferry Affiliates, in connection with the provision of the Services. Processing activities may include accessing, storing, handling or otherwise using Personal Data Korn Ferry remains responsible for the work and activities of its subprocessors to the same extent Korn Ferry would be liable if performing the Services. Korn Ferry is responsible for all payments to its subprocessors. Korn Ferry has entered into a written agreement with subprocessors containing equivalent data protection obligations as in this Agreement. An inclusive list of Korn Ferry's current subprocessors is available on its corporate website at <https://cdn.kornferry.com/privacy/subprocessor.pdf>. The published list is incorporated into this Agreement by reference. Client may subscribe for notifications of changes to subprocessors through Korn Ferry's corporate website at <https://www.kornferry.com/privacy/security>. Client will be deemed to have approved changes to subprocessors where Korn Ferry notifies Client via the subscription service and no written objection is received from Client within fifteen (15) days of written notification. If Client objects (on commercially reasonable grounds) in writing within fifteen (15) days of written notification, Korn Ferry may cease to provide or Client may agree not to use, on a temporary or on-going basis, the particular Service that would involve the use of the new subprocessor. Suspension of Services or partial termination by either Party subject to this Section 16 will not be deemed a breach of the Agreement. If the Standard Contractual Clauses, as defined in Exhibit C, apply, this Section 16 constitutes Client's prior written consent pursuant to Clause 5(h) of the Standard Contractual Clauses.

**17. Audits.**

**a. General Audit Terms.** Client may conduct audits as described in this Section 17. Permitted audits will be completed in a professional and ethical manner which does not, in Korn Ferry's reasonable judgment, compromise the integrity of Korn Ferry's (or its other customers') data, system security, or operational performance. Client will notify Korn Ferry in writing at least twenty (20) business days prior to any audit taking place. Audits will be conducted during Korn Ferry's normal business hours. Client will bear all costs and expenses relating to each audit. Client and its agents must keep confidential all information learned during any audit. Korn Ferry may require outside auditors to sign an appropriate confidentiality agreement. Korn Ferry will not provide Client or its agents with access to proprietary or confidential information concerning its other customers. All information learned or acquired by Client during any audit is Korn Ferry Confidential Information. If the Standard Contractual Clauses apply, the audit rights described in Clause 5(f), Clause 11 and Clause 12(2) of the Standard Contractual Clauses will be conducted in accordance with this Section 17. Nothing in this Section varies or modifies the Standard Contractual Clauses nor affects any supervisory authority's or data subject's rights under the Standard Contractual Clauses.

**b. Security and Compliance Audit.** Client may conduct one security and compliance audit in any rolling 12-month period. Client may perform an assessment, audit, inspection, examination, or review of relevant security controls and processing activity in Korn Ferry's physical and technical environment in relation to Client's Personal Data processed by Korn Ferry pursuant to this Agreement and as is reasonably necessary to demonstrate Korn Ferry's compliance with the Agreement. Requests to conduct security and compliance audits must be made in writing to [Security@kornferry.com](mailto:Security@kornferry.com). Korn Ferry will provide access, at Korn Ferry's discretion, to relevant documentation, knowledgeable personnel, physical premises, summary audit reports, ISO 27001 and 27018 annual certifications, and infrastructure and application software that process Client's Personal Data. Client may not perform or disclose any of the following security testing of the system environment or associated infrastructure without first signing Korn Ferry's Audit Compliance Agreement: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, penetration testing, service denial attack or other testing which by its application may cause impact to Korn Ferry's data, its customers' data, its operations or security. If security testing is permitted, Client assumes sole and total responsibility and risk for any damages or liabilities arising directly or indirectly as a result of the testing.

**c. Security Questionnaire.** Upon Client's written request but no more than once in any rolling 12-month period, Korn Ferry will complete Client's written information security questionnaire regarding Korn Ferry's processing of Client's Personal Data.

**18. Assignment; Subcontracting.** Neither Party may sell, assign, or transfer this Agreement without the other Party's written consent, but no consent is required if the assignment: (a) results from the assignor's merger, consolidation, spin-off, split-off or acquisition but the assignment must be limited to the assignor's survivor, subsidiary or successor; or (b) is to an Affiliate capable of performing the assignor's duties and obligations under this Agreement. Subject to the foregoing, this Agreement will inure to the benefit of and will be binding upon Korn Ferry, Client, and ETF ETA0045

their respective successors and permitted assigns. Korn Ferry will not subcontract the performance of Services without Client's prior authorization. This provision applies to subcontractors engaged specifically to provide Services for Client.

**19. Governing Law.** This Agreement will in all respects be governed by and construed in accordance with the laws of the State of New York, excluding any choice of law provisions and without effect to principles of conflicts of law, regardless of the place of making or performance. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement requires Korn Ferry to do any act or refrain from doing any act which would result in Korn Ferry violating (or becoming subject to any penalty under) any laws to which it is subject. The Parties disclaim the applicability of the United Nations' Convention on the International Sale of Goods.

**20. Notices.** Any notice either Party is required or permitted to give under this Agreement must be in writing and will be deemed to have been received when personally delivered, twenty-four (24) hours after it has been sent via overnight express courier, or seventy-two (72) hours after it has been deposited in the United States Mail, registered or certified, postage pre-paid, properly addressed to the Party to whom it is intended at the address set forth at the beginning of this Agreement or any other addresses that either Party may hereafter designate in writing.

**21. Non-Waiver.** A Party's failure at any time to enforce any of the provisions of, or any right or remedy available to it under, this Agreement or at law or in equity, or to exercise any option provided, will not constitute a waiver of that provision, right, remedy or option or in any way affect the validity of this Agreement. A Party's waiver of any default by either Party will not be deemed a continuing waiver, but will apply solely to the instance to which that waiver is directed.

**22. Severability; Interpretation.** Every provision of this Agreement will be construed, to the extent possible, to be valid and enforceable. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, that provision will be deemed severed from this Agreement, and all other provisions will remain in full force and effect.

**23. No Third-Party Beneficiary Rights.** This Agreement is not intended to be for the benefit of any person other than Client and Korn Ferry. No other person, including any candidates or prospective candidates, will be considered a third-party beneficiary of or otherwise entitled to any rights or benefits arising in connection with this Agreement.

**24. Force Majeure.** Neither Party will be considered to be in default as a result of its delay or failure to perform its obligations under this Agreement when the delay or failure arises out of causes beyond that Party's reasonable control. Causes may include acts of God or a public enemy, acts of the state or the government in its sovereign or contractual capacity, fires, floods, epidemics, strikes, and unusually severe weather; in every case, delay or failure to perform must be beyond the reasonable control of and without the fault or negligence of the Party claiming a force majeure event to excuse its performance.

**25. Jury Trial Waiver. Each Party irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any dispute related to this Agreement.**

**26. Entire Agreement; Conflicts.** This Agreement contains the entire agreement between the Parties regarding the subject matter hereof and supersedes any prior representations, advertisements, statements, proposals, negotiations, discussions, understandings, or agreements regarding the same subject matter. The Parties will not be bound by any representation, promise, or condition not expressly set forth in this Agreement. Preprinted terms and conditions on any purchase order issued by Client, or terms and conditions included in Client's vendor set up process, under this Agreement are superseded in their entirety by this Agreement and without force or effect, even if Korn Ferry signs the purchase order or acknowledges such terms to be set up as a vendor in Client's systems and whether such signature or acknowledgement occurs prior to or after the execution of this Agreement. Under no circumstances will Korn Ferry's acknowledgement of any such terms be considered an amendment to this Agreement. All purchase orders must include a reference to this Agreement. Neither Party has been induced to enter into this Agreement by any representations or statements, oral or written, not expressly contained in this Agreement. This Agreement may only be modified by the written agreement of both Parties. Unless otherwise expressly provided in the SOW, Exhibit or attachment, if there is a conflict or inconsistency between this Agreement and any SOW, Exhibit or attachment, the order of precedence will be this Agreement, then the Exhibit or other attachment, and then the SOW.

**27. Compliance with Legal and Regulatory Requirements.**

a. Each Party represents and warrants that it:

i. will comply with all applicable legal and regulatory requirements in connection with this Agreement, which

include: (a) information privacy and data protection laws and regulations relating to the protection, disclosure and use of individuals' personal data including the General Data Protection Regulation (GDPR) and other laws and regulations that mandate the protection of personal data; and (b) anti-bribery, anti-corruption, anti-money laundering, and international trade laws and regulations ("**Sanctions**") of the US, EU, UK, UN and any other governmental or supranational body with jurisdiction over this Agreement or either party;

ii. is not a subject of Sanctions;

iii. is not owned or controlled by any person or entity subject to Sanctions; and

iv. is not located or organized in, or owned or controlled by persons or entities in a jurisdiction subject to Sanctions (including Cuba, Iran, North Korea, Syria, and the Crimea Region of the Ukraine).

**b.** Client further represents and warrants that it will not transfer, provide access, or use the Services or work product (including tools and intellectual property): to or for the benefit of any Specially Designated National (as designated by the U.S. Department of the Treasury's Office of Foreign Assets Control), to or in any jurisdiction subject to Sanctions, or to any other party if such transfer, access, or use would constitute a violation of Sanctions.

**c.** Any breach of this Section 27 is a material breach of this Agreement and grounds for immediate termination by the non-breaching Party.

**28. Miscellaneous.** No provision of this Agreement will be construed against or interpreted to the disadvantage of any Party because that Party has or is deemed to have drafted the provision. All section headings and captions are for the Parties' convenience only, are not part of the text, and will not be deemed in any way to limit or affect the meaning of this Agreement. When used in this Agreement, "including" means "including without limitation." Client permits Korn Ferry to include Client's company name as a participant in products and services. The Parties may execute this Agreement in any number of counterpart copies, which may be delivered by PDF or other electronic means, each of which will be deemed an original, but which taken together constitute a single instrument. Except as expressly provided in this Agreement, all remedies available to either Party for breach of this Agreement or at law or in equity are cumulative and may be exercised concurrently or separately. Those sections of this Agreement that are intended by their nature to survive termination or expiration of this Agreement will survive.

**Accepted by:**

**Korn Ferry (US)**

**Wisconsin Department of Employee Trust Funds**

By: \_\_\_\_\_/s/\_\_\_\_\_

By: \_\_\_\_\_/s/\_\_\_\_\_

Name: Robb Basler\_\_\_\_\_

Name: Pamela S. Henning

Title: Director / Client Services\_\_\_\_\_

Title: Assistant Deputy Secretary\_\_\_\_\_

Date: \_\_\_3/26/2021\_\_\_\_\_

Date: \_\_\_3/26/2021\_\_\_\_\_

**KORN FERRY**  
**EXHIBIT C**  
**DATA PROTECTION EXHIBIT**

This Exhibit C is governed by and subject to the Master Services Agreement in place between the Parties.

**1. INTERPRETATION**

1.1 Capitalized terms used but not defined in this Exhibit have the meanings given to them in the Agreement unless the context requires otherwise.

1.2 In this Exhibit:

**Agreement** means the Master Services Agreement to which this Exhibit is attached;

**Approved Subprocessors** means the subprocessors that have been approved by Client in accordance with Section 16 of the Agreement;

**Data Protection Legislation** means any law, enactment, regulation, regulatory policy, by law, ordinance or subordinate legislation relating to the processing of Personal Data, as applicable to Client, Korn Ferry and/or the Services, including, but not limited to the Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (GDPR), and any corresponding or equivalent national laws or regulations, in each case, as in force and applicable, and as may be amended, supplemented or replaced from time to time;

**Data Subject** means any person in respect of whom Personal Data is processed;

**Personnel** means officers, employees, workers or independent contractors; and

**Standard Contractual Clauses** means the standard contractual clauses issued pursuant to the European Commission Decision 2010/87/EU of 5 February 2010 (notified under document C(2010)593), pre-signed by Korn Ferry as the data importer available on Korn Ferry's corporate website at <https://www.kornferry.com/privacy/security>.

**2. SCOPE AND PURPOSE**

2.1 Where Korn Ferry processes Personal Data on Client's behalf as a data processor or equivalent under applicable data protection law, Korn Ferry will process Personal Data: (a) in the manner and for the purposes set out in this Exhibit and as documented in the Agreement; (b) upon other specific reasonable documented instruction of Client; or (c) as needed to comply with law. The foregoing constitutes Client's written instructions for purposes of Clause 5(a) of the Standard Contractual Clauses if applicable. Korn Ferry certifies its understanding that it is restricted from selling, or disclosing in exchange for consideration, Personal Data to a third party. This Exhibit does not apply where the Parties process Personal Data as independent data controllers, or equivalent, under applicable data protection law.

2.2 The types of Personal Data that may be processed by Korn Ferry are those provided by Client through its use of the Services, including Personal Data comprising business contact information of Client employees and contact information, survey responses and assessment evaluation data of Client-nominated assessment participants, including information on race, ethnic origin, sexual orientation, disability and veteran status, if requested by Client. Personal Data will be processed for the purposes of communication, assessment, analysis and generating reports in the course of providing the Services. The duration of the processing will be until the deletion of the Personal Data in accordance with Section 9 of this Exhibit.

2.3 Client hereby:

2.3.1 instructs Korn Ferry to take such steps in the processing of Personal Data on behalf of Client as are reasonably necessary for the provision of the Services;

2.3.2 ensures that all fair processing notices have been given (and/or, where necessary, valid consents have been obtained and not withdrawn) and are sufficient in scope and kept up-to-date in order to enable Korn Ferry to process the Personal Data in accordance with the Data Protection Legislation; and

2.3.3 authorizes Korn Ferry to provide to the Approved Subprocessors and on behalf of Client instructions that are equivalent to the instructions set out in Section 2.3.1.

2.4 Where either party is responsible for collecting and transferring Personal Data for the purposes of the provision of the Services, it shall use its reasonable endeavors to ensure that it is not subject to any prohibition or restriction which would prevent the other party from processing that Personal Data in the manner reasonably necessary for Korn Ferry to perform, or Client to benefit from, the Services.

2.5 Korn Ferry will inform Client if it believes that any Client instructions regarding Personal Data processing would violate the GDPR.

### **3. CONFIDENTIALITY AND SECURITY**

3.1 Korn Ferry undertakes to treat all Personal Data as confidential. Korn Ferry will ensure that persons authorized to process Personal Data are bound by obligations of confidentiality consistent with those imposed upon Korn Ferry under this Exhibit and under the Agreement.

3.2 Where legally allowed, Korn Ferry will promptly notify Client of any legally binding request from a law enforcement authority or others for disclosure of Personal Data before making any disclosure and will reject any non-legally binding requests.

3.3 Refer to Sections 10 and 11 of the Agreement for further security requirements.

### **4. SECURITY BREACH**

Korn Ferry will provide Client with written notice as soon as reasonably possible upon becoming aware of any actual breach of security that leads to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, any Personal Data processed by Korn Ferry (a Security Breach). Korn Ferry shall assist or support Client at Client's request in complying with Client's notification obligations regarding a Security Breach.

5. **SUBPROCESSING.** Refer to Section 16 of the Agreement.

### **6. CROSS-BORDER TRANSFERS OF PERSONAL DATA**

Korn Ferry may transfer Personal Data to various locations, which may include locations both inside and outside of the European Economic Area. Korn Ferry will ensure that any cross-border transfers of Personal Data comply with applicable Data Protection Legislation. At Client's request, Korn Ferry and any relevant Korn Ferry Affiliate will enter into an additional data processing agreement, if appropriate. The Standard Contractual Clauses are incorporated by reference and apply to Personal Data that is transferred outside of the European Union, European Economic Area (EEA), and Switzerland, either directly or via onward transfer, to any country not recognized by the European Commission as providing an adequate level of protection for Personal Data. Notwithstanding the foregoing, the Standard Contractual Clauses will not apply if Korn Ferry has adopted an alternative recognized compliance standard for the lawful transfer of Personal Data outside the EEA. For the purpose of the Standard Contractual Clauses and this Exhibit C, Client and its Affiliates established in the European Union, EEA, and Switzerland are deemed "data exporters." Korn Ferry and its Affiliates established outside of the European Union, EEA, and Switzerland are deemed "data importers."

7. **AUDIT.** Refer to Section 17 of the Agreement.

### **8. KORN FERRY ASSISTANCE**

Taking into account the nature of the Personal Data processing and the information available to Korn Ferry, Korn Ferry will assist Client with Client's obligation to respond to Data Subjects' requests to exercise their rights under the GDPR; and, at Client's request using appropriate technical and organization measures, assist Client in meeting its compliance obligations regarding carrying out privacy and data protection impact assessments and related consultations of data protection authorities. Korn Ferry may charge a reasonable fee to Client for requested assistance, to the extent permitted by applicable law and as agreed to by the Parties.

### **9. LIMITATION OF LIABILITY**

Any claims brought under Clause 6 of the Standard Contractual Clauses between the data exporter and the data importer will be subject to the Agreement, but neither Party may limit its liability with respect to any data subject rights.

## **10. DESTRUCTION OF PERSONAL DATA**

Upon request from Client, Korn Ferry will destroy all Personal Data processed by Korn Ferry on behalf of Client that is in the possession or under the control of Korn Ferry. In the event that the Client does not make such request, Korn Ferry will destroy all Personal Data in accordance with its business practices. Korn Ferry shall be entitled to retain such back-ups of Personal Data to the extent it is not technologically feasible to delete such Personal Data provided that if it becomes technologically feasible, Korn Ferry will delete such information. Korn Ferry will provide the certification of deletion of Personal Data as described in Clause 12(1) of the Standard Contractual Clauses to Client only upon Client's written request. For the avoidance of doubt, the foregoing specifically excludes information provided by Korn Ferry to Client regarding candidates in connection with an executive or professional search.

## STATEMENT OF WORK

This Statement of Work (“**SOW**”) dated March 18, 2021 is entered into between the Wisconsin Department of Employee Trust Funds (“**Client**”) and **Korn Ferry (US)** (“**Korn Ferry**”) and shall be effective as of the date of last signature below. This SOW, the Master Services Agreement (“**Agreement**”) with effective date March 18, 2021, and the other documents listed in the order of precedence in Client’s contract cover page are made a part of the contract between Client and Korn Ferry (Client Contract ETA0045). This SOW is null and void without the signed Client Contract.

In the event of a conflict between this SOW and the Agreement or purchase order, this SOW will prevail with respect to the Programs and Services.

### **Our Understanding of Your Needs**

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### **Our Response to Your Needs**

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Product Name	<b>Profile Manager with Content Library</b>
Number of Employees	251 - 500
Yearly Subscription Fee	\$23,531.20
Service Level	<b>Gold</b>
Description of Services	See Schedule A

- Grant of License.** Upon the execution of this SOW and payment of the Yearly Subscription Fee, Korn Ferry grants to Client, and Client purchases from Korn Ferry, a limited, non-exclusive, non-transferable, non-assignable, renewable license to use the licensed software accessible via the site in accordance with this SOW. Use of the licensed software is limited to the number of Participants purchased by Client. Client will not use the Services or Korn Ferry Material as the sole basis for any employment action, including hiring or termination relating to any actual or potential Employees. During the Subscription Period client is allowed to: (i) create printed and electronic materials derived from or incorporating the text of the Korn Ferry Material (collectively, the “Derivatives”); (ii) reproduce the Derivatives in paper and electronic form; (iii) use and provide access to the Korn Ferry Material and Derivatives for the Number of Employees listed on this SOW; and (iv) use and display the Korn Ferry Material and Derivatives for Client’s internal business purposes only. Absent any additional license, neither the Korn Ferry Material nor the Derivatives may be used in any multi-rater assessment including a 360-degree or other multi-rater feedback instrument; the only feedback use permitted under this SOW is use of the Derivatives for annual performance appraisal involving the Employee who is the subject of the appraisal and his/her supervisor(s). Unless otherwise authorized by Korn Ferry in writing, only Employees may access the Services or utilize the Korn Ferry Material.
- Content Subscription Period.** The initial subscription period will begin on the Start Date and continue for 3 (three) years. Thereafter, subscriptions will automatically renew for additional one (1) year terms at Korn Ferry’s then-current rates unless either party provides notice of termination at least thirty (30) days prior to the expiration of the then-current term (the initial subscription period and any renewal terms are collectively the “Subscription Period”). Client’s notice of termination must include written verification, executed by a corporate officer, that all Korn Ferry Material and Derivatives: (i) are no longer being used by Client; and (ii) have been destroyed in accordance this SOW. Client is responsible for all fees due until the effective date of termination. For the avoidance of doubt and notwithstanding the previous sentence, at the conclusion of the Subscription Period, client is not required to delete or destroy the following items (collectively, “Insubstantially Derivative Materials”): role names, or role identifiers found in the Korn Ferry Material; generic job descriptions; or material that is not protected by Korn Ferry’s copyrights. Korn Ferry will provide a unique password to each user; these are Korn Ferry confidential information and may only be provided to Client Employees. Client is responsible for all activities that occur through the use of password(s) and must notify Korn Ferry of any unauthorized use of which it becomes aware or if any user is no longer employed by Client.
- Invoicing.** Korn Ferry will invoice Client upon the Effective Date of this Statement of Work. All fees are non-contingent and non-refundable. Client is responsible for all applicable taxes and fees. Invoices are due upon receipt. Unless

otherwise required by law, Korn Ferry may assess a service charge of one and a half percent (1.5%) per month for past due charges. Client is responsible for all applicable taxes. Client is a government entity and as such is tax-exempt. All fees and expenses will be invoiced and paid in the local currency of Korn Ferry or Korn Ferry's affiliate providing Services, or other mutually agreed upon currency, as identified on this Statement of Work.

4. **“Employee”** means: (i) Client's employees, and (ii) Client's independent contractors who perform services on behalf of Client and have entered into written agreements with Client no less restrictive than this SOW. Independent contractors may not be competitors of Korn Ferry or its parent company, subsidiaries or affiliates.
5. **“Actual Expenses”** means amounts Korn Ferry pays to others in anticipation of the Services (e.g., hotels, airlines) that Korn Ferry cannot recover on its termination of the bookings or that Korn Ferry incurs due to changes or cancellations. Korn Ferry will charge Client for costs incurred for any materials Korn Ferry prepares (e.g., for events, workshops, meetings) if the engagement is not rescheduled within two months of the original date.

## Outline of Project

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This SOW is for a 1-year Korn Ferry Talent HUB (Intelligence Cloud) license.

The cost for the Talent HUB would be **\$23,531.20** a year (plus set up fee). This fee includes the following:

- Profile Manager with almost 5,000 customizable Success Profiles along with correlating...
  - Job Descriptions
  - Interview Guides
  - Market Insights – Data
    - **\$9,130** a year (included in price above)
- Korn Ferry Competency Library
  - **\$2,750** a year (included in price above)
- Development Content
  - **\$9,130**
- Gold service package which includes 10 hours of dedicated consulting/onboarding support (see attached Schedule A)
  - a year (included in price above)

Sub-total: \$21,010

- 12% administration fee
  - **\$2,521** a year

Sub-total: \$23,531.20

- One-time new client set up fee
  - **\$5,000**

**Total: \$28,531.20**

Fees of **\$28,531.20** will be invoiced upon final signature of this SOW.

## Deliverables

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See outline above.

## Term

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Start Date: Last date of signature below

End Date: 12 months

## Professional Fees and Expenses

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- The cost (or “professional fees”) of Talent Hub is \$21,010 as listed above. Korn Ferry assesses an administrative fee equal to twelve percent (12%) of professional fees (\$2,521.20) for a total of \$ 23,531. The one-time new client set up fee is \$5,000. All professional fees are non-contingent, non-transferable, and non-refundable unless specifically stated otherwise in this SOW. Professional fees and the one-time new client set up fee will be invoiced 100% upon signature of this SOW.
- Korn Ferry will invoice direct out-of-pocket expenses, including consultant travel, accommodation and meals, courier, shipping, reproduction, and video-conferencing, on a monthly basis as incurred. No such expenses



may be billed to the Client unless prior written approval is given by the Client.

- Korn Ferry will notify Client when the number of hours of dedicated consulting/onboarding support nears the maximum allowed under the service package purchased by the Client.

Client is not responsible for expenses that are over and above the costs listed above. Any services beyond the services listed above for which Korn Ferry and the Client agree should be undertaken must be included in a new SOW and pre-approved, in writing, by both parties.

**Rescheduling or Cancelling**

Korn Ferry will schedule and commit personnel and resources to provide the Services. Korn Ferry understands that Client’s business conditions may change; however, rescheduling or cancelling on short notice impacts Korn Ferry’s business and its ability to provide outstanding service to all of its customers. Client may reschedule or cancel the provision of Services by paying the following fees in addition to the associated fees for any Services rendered. These fees are a genuine pre-estimate of Korn Ferry’s losses as a result of such rescheduling or cancellation, and are reflective of the value of the lost bookings for Korn Ferry for the time scheduled and fees which otherwise have been earned by the team leader, team members and other resources, and are not penalties. If Client fails to provide Korn Ferry with documentation, information, or access to its personnel that impacts Korn Ferry’s ability to meet the completion date or Client otherwise delays the completion date, Korn Ferry reserves the right to charge Client a rescheduling fee as set forth below. If Client fails to provide Korn Ferry with documentation, information, or access to its personnel that impacts Korn Ferry’s ability to meet the completion date or Client otherwise delays the completion date, Korn Ferry reserves the right to charge client a rescheduling fee as set forth below.

1. If rescheduling or cancelling more than 20 business days before the scheduled program, meeting or session, Client will pay the Actual Expenses incurred as a result of the rescheduling or cancellation.
2. If rescheduling or cancelling 20 or fewer business days before the scheduled program, meeting or session, cancellation/rescheduling fees will be calculated based on the number of business days’ notice provided as shown in the table below, plus Actual Expenses incurred.

		Length of Program		
		Less than 1 day	1-2 days	3-5 days
<b>Notice from Client (business days)</b>	<b>16-20</b>	0	0	25%
	<b>11-15</b>	0	25%	50%
	<b>6-10</b>	0	50%	75%
	<b>3-5</b>	50%	75%	75%
	<b>Less than 3</b>	100%	100%	100%

**Invoicing Information**

Invoices will be sent to the following address:

Company:	Wisconsin Department of Employee Trust Funds
Address:	4822 Madison Yards Way, Madison, WI 53705-9100
Address:	[INSERT]
Attn (Name, Title):	[INSERT]
Email, Phone:	send all invoices to <a href="mailto:ETFSMBAccountsPayable@etf.wi.gov">ETFSMBAccountsPayable@etf.wi.gov</a>

Korn Ferry will be provided with banking forms that must be completed and returned to the Department in order for

Korn Ferry to be set up as payee. The Department will issue all payments via ACH.

Accounts Payable Contact:

Company:	Wisconsin Department of Employee Trust Funds
Address:	[INSERT]
Address:	[INSERT]
Attn (Name, Title):	[INSERT]
Email, Phone:	send all invoices to <a href="mailto:ETFSMBAccountsPayable@etf.wi.gov">ETFSMBAccountsPayable@etf.wi.gov</a>

Purchase Order:

If Client's internal policies require that a Purchase Order number appear on invoices, Client must provide the Purchase Order Number with or immediately after signing this SOW. Please indicate below if a Purchase Order Number is required on an invoice and if so, insert the Number. If Client has not provided a Purchase Order Number within 10 business days of signature, Client will accelerate payment of any invoices delayed by Client's failure to provide a Purchase Order Number by the same number of days as the delay.

PO # [INSERT]

**Accepted by:**

**Korn Ferry (US)**

**Wisconsin Department of Employee Trust Funds**

By: \_\_\_\_\_/s/\_\_\_\_\_

By: \_\_\_\_\_/s/\_\_\_\_\_

Name: Robb Basler \_\_\_\_\_

Name: Pamela S. Henning \_\_\_\_\_

Title: Director of Client Solutions \_\_\_\_\_

Title: Assistant Deputy Secretary \_\_\_\_\_

Date: \_\_\_\_\_ 3/26/2021 \_\_\_\_\_

Date: \_\_\_\_\_ 3/26/2021 \_\_\_\_\_

## SCHEDULE A

Korn Ferry offers a consistent tiered structure of Silver, Gold, and Platinum services, with each level providing increasing service across enablement, enhancements, and insights. We also provide comprehensive implementation services to set our clients up for success related to their investment in Korn Ferry.

The following chart shows the current Service features available in each level:

Service Level	Silver (“Self Sufficient”)
Analytics and insight	<ul style="list-style-type: none"> <li>▪ Access to knowledge base resource for user guides, market data, and thought leadership papers</li> </ul>
Training and enablement	<ul style="list-style-type: none"> <li>▪ Access to Client Service Portal for e-learning training modules and documentation.</li> <li>▪ Monthly ‘Meet the Expert’ regional webinars to enhance user experience and value.</li> <li>▪ Recorded monthly feature release webinar covering new features and functionality and roadmap updates accessible.</li> <li>▪ 24x5 platform support</li> </ul>

Service Level	Gold (“Enhanced Services”) everything from Silver+
Dedicated Client Management	<ul style="list-style-type: none"> <li>▪ Your dedicated project delivery resource.</li> <li>▪ Welcome/orientation call.</li> <li>▪ Up to 45 hours of consultative delivery by the digital services consultant</li> <li>▪ Quarterly success review call with your key stakeholder</li> </ul>
Platform Enhancement	<ul style="list-style-type: none"> <li>▪ Introduction to user access module (virtual).</li> <li>▪ Bi-annual administrator access review.</li> <li>▪ Live regional monthly ‘Platform Enhancements’ webinars covering new features and functionality and roadmap updates</li> </ul>
Training and enablement	<ul style="list-style-type: none"> <li>▪ HR administrator enablement (virtual).</li> <li>▪ Discounted pricing on public certifications</li> </ul>

Service Level	Platinum (“Personalized Services”) everything from Gold+
Dedicated Client Management	<ul style="list-style-type: none"> <li>▪ Tailored internal communications to support change management.</li> <li>▪ Quarterly HR focus groups to improve system adoption and value</li> <li>▪ Up to 90 hours of consultative delivery by the digital services consultant</li> </ul>
Platform Enhancement	<ul style="list-style-type: none"> <li>▪ Biannual roadmap review with Korn Ferry Digital Leadership.</li> <li>▪ Biannual success profile review.</li> <li>▪ Annual platform personalization re-refresh</li> </ul>
Analytics and insight	<ul style="list-style-type: none"> <li>▪ Quarterly Talent Insight Report</li> <li>▪ Custom data analysis</li> </ul>
Training and enablement	<ul style="list-style-type: none"> <li>▪ Discounted pricing on public certification and in-house masterclass’.</li> </ul>

Service Level	Implementation Services (up-front activities to configure and personalize your platform to make it your own)
Subscription Setup & Support (\$5,000 additional fee)	<ul style="list-style-type: none"> <li>▪ Setup and creation of an administrator account</li> <li>▪ Connectivity testing</li> <li>▪ DCT Upload &amp; Mapping</li> <li>▪ Standard Branding</li> <li>▪ Onboarding and Platform Training (1-2 hour session)</li> <li>▪ SSO (participants and rater assessment only, not administrators)</li> </ul>
Personalization, Configuration add-ons (priced separately)	<ul style="list-style-type: none"> <li>▪ Custom Competency mapping (lite)</li> <li>▪ KF360 Custom Model implementation</li> <li>▪ Report Configuration</li> <li>▪ Customized norms</li> <li>▪ KF360 Address Book Set up Email address book set-up</li> <li>▪ Translation of custom content</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Success Profile Personalization</li> </ul>
Full Customizations (priced separately)	<ul style="list-style-type: none"> <li>▪ Statistical Competency Mapping</li> <li>▪ Custom Assessments (SJT, RP, Validations Studies)</li> </ul>
Integrations (priced separately)	<ul style="list-style-type: none"> <li>▪ HRIS Integration</li> <li>▪ ATS Integration</li> </ul>

## Department Terms and Conditions

- 1.0 ENTIRE AGREEMENT:** The following terms and conditions are hereby made a part of the underlying contract. These Department Terms and Conditions, the underlying contract, its exhibits, subsequent amendments and other documents incorporated by order of precedence in the contract encompass the entire contract ("Contract") and contain the entire understanding between the Wisconsin Department of Employee Trust Funds ("Department") and the contractor named in the Contract ("Contractor") on the subject matter hereof, and no representations, inducements, promises, or agreements, oral or otherwise, not embodied herein shall be of any force or effect. The Contract supersedes any other oral or written agreement entered into between the Department and the Contractor on the subject matter hereof. The terms "State" and "Department" may be used interchangeably herein.

The Contract may be amended at any time by written mutual agreement of the Department and Contractor, but any such amendment shall be without prejudice to any claim arising prior to the date of the change. No one, except duly authorized officers or agents of the Contractor and the Department, shall alter or amend the Contract. No change in the Contract shall be valid unless evidenced by an amendment that is signed by such officers of the Contractor and the Department.

- 2.0 COMPLIANCE WITH THE CONTRACT AND APPLICABLE LAW:** In the event of a conflict between the Contract and any applicable federal or state statute, administrative rule, or regulation; the statute, rule, or regulation will control.

In connection with the performance of work under the Contract, the Contractor agrees not to discriminate against employees or applicants for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Wis. Stat. § 51.01(5); sexual orientation as defined in Wis. Stat. § 111.32(13m), or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Contractor further agrees to take affirmative action to ensure equal employment opportunities.

Pursuant to 2019 Wisconsin Executive Order 1, the Contractor agrees it will hire only on the basis of merit and will not discriminate against any persons performing a contract, subcontract or grant because of military or veteran status, gender identity or expression, marital or familial status, genetic information or political affiliation.

Contracts estimated to be over fifty thousand dollars (\$50,000) require the submission of a written affirmative action plan by the Contractor. Contractors with an annual work force of less than fifty (50) employees are exempt from this requirement. Contractor shall provide the plan to the Department within fifteen (15) business days of the Department's request for such plan after the award of the Contract.

The Contractor shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA) of 1990. Evidence of compliance with ADA shall be made available to the Department upon request.

The Contractor acknowledges that Wis. Stat. § 40.07 specifically exempts information related to individuals in the records of the Department of Employee Trust Funds from the Wisconsin Public Records Law. Contractor shall treat any such records provided to or accessed by Contractor as non-public records as set forth in Wis. Stat. § 40.07.

Contractor will comply with the provisions of Wis. Stat. § 134.98 **Notice of Unauthorized Acquisition of Personal Information.**

- 3.0 LEGAL RELATIONS:** The Contractor shall at all times comply with and observe all federal and State laws, local laws, ordinances, and regulations which are in effect during the period of the Contract and which in any manner affect the work or its conduct. This includes but is not limited to laws regarding compensation, hours of work, conditions of employment and equal opportunities for employment.

In carrying out any provisions of the Contract or in exercising any power or authority granted to the Contractor thereby, there shall be no liability upon the Department, it being understood that in such matters the Department acts as an agent of the State.

The Contractor accepts full liability for any act or omission of the Contractor, or any of its employees, in connection with the Contract.

No employee of the Contractor may represent himself or herself as an employee of the Department or the State.

- 4.0 CONTRACTOR:** The Contractor will be the sole point of contact with regard to contractual matters, including the performance of services specified in the Contract (the "Services") and the payment of any and all charges resulting from contractual obligations.

None of the Services to be provided by the Contractor shall be subcontracted or delegated to any other organization, subdivision, association, individual, corporation, partnership or group of individuals, or other such entity without prior written notification to, and acknowledgement of, the Department. If the Department has concerns regarding the subcontractors a meeting will be scheduled to discuss a resolution. This provision applies to subcontractors engaged specifically to provide Services for the Department.

After execution of the Contract, the Department and the Contractor will provide each other with the name of their designated contact persons.

The Contractor shall be solely responsible for its actions and those of its agents, employees or subcontractors under the Contract. The Contractor will be responsible for Contract performance when subcontractors are used. Subcontractors must abide by all terms and conditions of the Contract.

Neither the Contractor nor any of the foregoing parties has the authority to act or speak on behalf of the State.

The Contractor will be responsible for payment of any losses by its subcontractors or agents.

Any notice required or permitted to be given shall be deemed to have been given on the date of delivery or three (3) business days after mailing by the United States Postal Service, certified or registered mail-receipt requested. In the event the Contractor moves or updates contact information, the Contractor shall inform the Department of such changes in writing within ten (10) business days. The Department shall not be held responsible for payments delayed due to the Contractor's failure to provide such notice.

- 5.0 CONTRACTOR PERFORMANCE:** Work under the 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 the work of the type specified in the Contract. The Contractor shall be solely responsible for controlling the manner and means by which it and its employees or its subcontractors perform the Services, and the Contractor shall observe, abide by, and perform all of its obligations in accordance with all legal and Contract requirements.

Without limiting the foregoing, the Contractor shall control the manner and means of the Services so as to perform the work in a reasonably safe manner and comply fully with all applicable codes, regulations and requirements imposed or enforced by any government agencies. Notwithstanding the foregoing, any stricter standard provided in plans, specifications or other documents incorporated as part of the Contract shall govern.

The Contractor shall provide the Services with all due skill, care, and diligence, in accordance with accepted industry practices and legal requirements, and to the Department's satisfaction; the Department's decision in that regard shall be final and conclusive.

All Contractor's Services under the Contract shall be performed in material compliance with the applicable federal and state laws and regulations in effect at the time of performance, except when imposition of a newly enacted or revised law or regulation would result in an unconstitutional impairment of the Contract.

The Contractor will make commercially reasonable efforts to ensure that Contractor's professional and managerial staff maintain a working knowledge and understanding of all federal and state laws, regulations, and administrative code appropriate for the performance of their respective duties, as well as contemplated changes in such law which affect or may affect the Services delivered under the Contract.

The Contractor shall maintain a written contingency plan describing in detail how it will continue operations and Services under the Contract in certain events including, but not limited to, strike and disaster, and shall submit it to the Department upon request.

- 6.0 AUDIT PROVISION:** The Contractor and its authorized subcontractors are subject to audits by the State, the Legislative Audit Bureau (LAB), an independent Certified Public Accountant (CPA), or other representatives as authorized by the State. The Contractor will cooperate with such efforts and provide all requested information permitted under the law.

**6.1 SOC 1/Type 2 Report:** If the Department requires Contractor or Contractor's subcontractors to provide a Service Organization Control (SOC) audit report, Contractor will furnish or assist in furnishing the Department with a copy of Contractor's annual independent service auditor's report on management's description of Contractor's system and the suitability of the design and operating effectiveness of controls (SOC 1, Type 2). This independent audit of the Contractor's controls must be completed in accordance with the American Institute of Certified Public Accountants' (AICPA) Statements on Standards for Attestation Engagements (SSAE) No. 18 (SOC 1, Type 2). The SSAE 18 (SOC 1, Type 2) annual audit will include all programs under the Contract and will be conducted at the Contractor's expense. If the Contractor's or Contractor's subcontractor(s)' SSAE 18 (SOC 1, Type 2) audit covers less than twelve (12) months of a calendar year, the Contractor will provide or assist in providing a bridge letter to the Department, stating whether processes and controls have changed since the SSAE 18 (SOC 1, Type 2) audit. In addition, the Department requires Contractor to submit a letter of attestation indicating Contractor's receipt of management's assertion of control compliance from Contractor's subcontractors, when applicable.

**6.2 SOC 2/Type 2 Report:** If the Department requires Contractor or its subcontractors to provide a SOC audit report, Contractor will furnish or assist in providing the Department with a copy of Contractor's annual independent service auditor's report on Contractor's controls relevant to security, availability, processing integrity, confidentiality, and privacy. The SOC audit report must be a type 2 report that includes management's description of Contractor's system and the suitability of the design controls set forth in AICPA Trust Services Criteria Section 100 (2017). This independent audit of the Contractor's controls must be completed in accordance with the AICPA SSAE No. 18 (SOC 2, Type 2). The SSAE 18 (SOC 2, Type 2) annual audit will

include all programs under the Contract and will be conducted at the Contractor's expense. If the Contractor's SSAE 18 (SOC 2, Type 2) audit covers less than twelve (12) months of a calendar year, the Contractor will provide or assist in providing a bridge letter to the Department, stating whether processes and controls have changed since the SSAE 18 (SOC 2, Type 2) audit.

**6.3 Contract Compliance Audit:** The Department may schedule and arrange for an independent certified public accountant to perform agreed upon procedures or consulting work related to the Contractor's compliance with the Contract on a periodic basis (not more than annual), as determined by the Department. The audit scope will be determined mutually by the Department and Contractor and may include recordkeeping, participant account activity, claims processing, administrative performance standards, and any other relevant areas to the programs under the Contract. The timeline of the audit will be mutually agreed upon by the Department and the Contractor. A minimum twenty (20) business day notice is required.

**6.4 Open Access:** Upon request, redacted copies of relevant Contractor books, records, ledgers, data, and journals relating to the programs directly applicable to the Services provided under the Contract will be available for inspection and audit by the Department, its designees, or the State of Wisconsin Legislative Audit Bureau, at any time during normal working hours. A minimum twenty (20) business day notice will be provided. Records or data requested shall be provided electronically in a format mutually agreed upon by the Department and Contractor. Upon request, the Department shall have commercially reasonable access to interview any employee and authorized agent of the Contractor directly involved with the Contract in conjunction with any audit, review, or investigation deemed necessary by the Department or the State. Any such audit will be performed during normal working hours and not interfere with Contractor's business.

**6.5 LAB Audit:** The Department is audited by the State of Wisconsin Legislative Audit Bureau annually, as required by Wis. Stat. § 13.94(1)(dd). The Contractor agrees to provide necessary information related to any such audit for all programs under the Contract, as requested by the Department or auditor.

**7.0 CRIMINAL BACKGROUND VERIFICATION:** The Department follows the provisions in the Wisconsin Human Resources Handbook Chapter 246, Securing Applicant Background Checks (see: [https://dpm.wi.gov/Hand%20Book%20Chapters/WHRH\\_Ch\\_246.pdf](https://dpm.wi.gov/Hand%20Book%20Chapters/WHRH_Ch_246.pdf)). The Contractor is expected to perform background checks that, at a minimum, adhere to those standards. This includes the criminal history record from the Wisconsin Department of Justice (DOJ), Wisconsin Circuit Court Automation Programs (CCAP), and other state justice departments for persons who have lived in a state(s) other than Wisconsin. More stringent background checks are permitted. Details regarding the Contractor's background check procedures should be provided to the Department regarding the measures used by the Contractor to protect the security and privacy of program data and participant information. The Department reserves the right to conduct its own criminal background checks on any or all employees or subcontractors of and referred by the Contractor for the delivery or provision of Services.

**8.0 COMPLIANCE WITH ON-SITE PARTY RULES AND REGULATIONS:** Contractor and the Department agree that their employees, while working at or visiting the premises of the other party, shall comply with all internal rules and regulations of the other party, including security procedures, and all applicable federal, state, and local laws and regulations applicable to the location where said employees are working or visiting.

The Department is responsible for allocating building and equipment access, as well as any other necessary services available from the Department that may be used by the Contractor. Any use of the Department facilities, equipment, internet access, and/or services shall only be to assist Contractor in providing the Services, as authorized by the Department. The Contractor will provide its own personal computers, which must comply with the Department security policies before connection to the Department's local computer network.

**9.0 SECURITY OF PREMISES, EQUIPMENT, DATA AND PERSONNEL:** The Department shall have the right, acting by itself or through its authorized representatives, to enter the premises of the Contractor at mutually agreeable times to inspect and copy the records of the Contractor and the Contractor's compliance with this Section. In the course of performing Services under the Contract, the Contractor may have access to the personnel, premises, equipment, and other property, including data files, information, or materials (collectively referred to as "data") belonging to the Department.

The Contractor shall be responsible for damage to the Department's equipment, workplace, and its contents, or for the loss of data, when such damage or loss is caused by the Contractor, contracted personnel, or subcontractors, and shall reimburse the Department accordingly upon demand. This remedy shall be in addition to any other remedies available to the Department by law or in equity.

**10.0 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 or in the Contract shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The making of any payment to the Contractor under the Contract shall not constitute a waiver of default, evidence of proper Contractor performance, or acceptance of any defective item or Services furnished by the Contractor.

**11.0 SEVERABILITY:** The provisions of the Contract shall be deemed severable and the unenforceability of any one or more provisions shall not affect the enforceability of any of the other provisions. If any provision of the Contract, for any

reason, is declared to be invalid, unenforceable, or illegal, the parties shall substitute an enforceable provision that, to the maximum extent possible in accordance with applicable law, preserves the original intentions and economic positions of the parties.

**12.0 DISCOUNT FOR LATE DELIVERY:** The Contractor agrees to accept a discount in the fees due to the Contractor under the Contract in the event any of the major deliverables is delivered by Contractor more than twenty-five (25) business days after the delivery date set forth in the then-current project work plan. The parties agree that the Contractor shall discount its fees, beginning on the twenty-sixth (26th) business day after the delivery date set forth in the then current project work plan, by an amount of one thousand dollars (\$1,000) for each business day Contractor fails to deliver any or all major deliverables until such major deliverable is delivered as mutually agreed, up to a total of one hundred twenty thousand dollars (\$120,000) per major deliverable. Any such discount is not a penalty, and shall be in addition to all other legal or equitable remedies that may be available to the Department. Notwithstanding the foregoing, Contractor shall not owe any discount to the extent that any late delivery of a major deliverable was the result of a Department-caused delay. In the event that Contractor provides a discount under this Section, then the timeline set forth in the project work plan for each subsequent major deliverable shall be extended by the number of days for which the discount was applied.

**13.0 CONTRACT DISPUTE RESOLUTION:** In the event of a dispute between the parties under the Contract, whether with respect to the interpretation of any provision of the Contract, or with respect to the performance of either party thereto, except for breach of Contractor's intellectual property rights, each party shall reserve the right to appoint a representative to meet for the purpose of endeavoring to resolve such dispute or negotiate for an adjustment to such provision.

Contractor shall continue without delay to carry out all its responsibilities under the Contract, which are not affected by the dispute. Should Contractor fail to perform its responsibilities under the Contract that are not affected by the dispute without delay, the Department reserves the right to pursue recovery of any and all additional costs incurred by the Department as a result of such failure to proceed. Any costs incurred by the Contractor shall be borne by the Contractor and the Contractor shall not make any claim against the Department for such costs. The Department's non-payment of fees in breach of the Contract that are overdue by sixty (60) calendar days is a dispute that will always be considered to affect Contractor's responsibilities.

No legal action of any kind, except for the seeking of equitable relief in the case of the public's health, safety or welfare, may begin in regard to the dispute until this dispute resolution procedure has been elevated to the Contractor's highest executive authority and the equivalent executive authority within the Department, 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.

The party believing itself aggrieved (the "Invoking Party") shall call for progressive management involvement in the dispute negotiation by delivering written notice to the other party. Such notice shall be without prejudice to the Invoking Party's right to any other remedy permitted by the Contract. After such notice, the parties shall use all reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between authorized negotiators for the parties at the following successive management levels, each of which shall have a period of allotted time as specified below in which to attempt to resolve the dispute:

Level	Contractor	The Department	Allotted Time
First	Level 1 entity	Level 1 entity	20 business days
Second	Level 2 entity	Level 2 entity	30 business days

The allotted time for the First Level negotiations shall begin on the date the Invoking Party's notice is received by the other party. Subsequent allotted time is the number of days from the date that the Invoking Party's notice was originally received by the other party. If the Second Level parties cannot resolve the issue within thirty (30) business days of the Invoking Party's original notice, then the issue shall be designated as a dispute at the discretion of the Invoking Party and, if so, shall be resolved in accordance with the appropriate Sections herein. The allotted time periods above are in addition to those periods for a party to cure provided elsewhere herein or in the Contract, and do not apply to claims for equitable relief (e.g., injunction to prevent disclosure of Confidential Information). The Department may withhold payments on disputed items pending resolution of the dispute.

**14.0 CONTROLLING LAW:** All questions as to the execution, validity, interpretation, construction and performance of the Contract shall be construed in accordance with the laws of the State of Wisconsin, without regard to any conflicts of laws or choice of law principles. Any court proceeding arising or related to the Contract or a party's obligations under the Contract shall be exclusively brought and exclusively maintained in the State of Wisconsin, Dane County Circuit Court, or in the District Court of the United States Western District (if jurisdiction is proper in federal court), or upon appeal to the appellate courts of corresponding jurisdiction, and Contractor hereby consents to the exclusive jurisdiction and exclusive venue therein and waives any right to object to such jurisdiction or venue. To the extent that in any jurisdiction Contractor may now or hereafter be entitled to claim for itself or its assets immunity from suit, execution, attachment (before or after judgment) or other legal process, Contractor, to the extent it may effectively do so, irrevocably agrees not to claim, and it hereby waives, the same.

**15.0 RIGHT TO SUSPEND OPERATIONS:** If, at any time during the period of the Contract, the Department determines that the best interest of the Department or its governing boards would be best served by the Contractor temporarily



suspending all Services, the Department will promptly notify the Contractor. Upon receipt of such notice, the Contractor shall suspend all Services.

**16.0 TERMINATION OF THE CONTRACT:** The Department may terminate the Contract at any time at its sole discretion by delivering one-hundred eighty (180) calendar days written notice to the Contractor.

Upon termination, the Department's liability shall be limited to the prorated cost of the Services performed as of the date of termination plus expenses incurred with the prior written approval of the Department.

If the Contractor terminates the Contract, the Contractor shall refund all payments made under the Contract by the Department to the Contractor for work not completed or not accepted by the Department. Such termination shall require written notice to that effect to be delivered by the Contractor to the Department not less than one-hundred eighty (180) calendar days prior to said termination.

Upon any termination of the Contract, the Contractor shall perform the Services specified in a transition plan if so requested by the Department; provided, however, that except as expressly set forth otherwise herein, the Contractor shall not be obligated to perform such Services unless all amounts due to the Contractor under the Contract, including payment for the transition Services, have been paid. Failure of the Contractor to comply with a transition plan upon the Department's request and upon payment shall constitute a separate breach for which the Contractor shall be liable.

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

**17.0 TERMINATION FOR CAUSE:** If the Contractor fails to perform any material requirement of the Contract, breaches any material requirement of the Contract, or if the Contractor's full and satisfactory performance of the Contract is substantially endangered, the Department may terminate the Contract. Before terminating the Contract, the Department shall give written notice of its intent to terminate to Contractor after a thirty (30) calendar day written notice and cure period.

The Department reserves the right to cancel the Contract in whole or in part without penalty in the event one (1) or more of the following occurs:

- (a) If the Contractor intentionally furnished any statement, representation, warranty, or certification, in connection with the Contract which is materially false, incorrect, or incomplete;
- (b) If applicable, if the Contractor fails to follow the sales and use tax certification requirements of Wis. Stat. § 77.66;
- (c) If the Contractor incurs a delinquent Wisconsin tax liability;
- (d) If the Contractor fails to submit a non-discrimination or affirmative action plan per the requirements of Wis. Stat. § 16.765 and Wis. Stat. § 111 Subchapter II, Wisconsin's Fair Employment Law, as required herein;
- (e) If the Contractor is presently identified on the list of parties excluded from State of Wisconsin procurement and non-procurement contracts;
- (f) If the Contractor becomes a state or federal debarred Contractor, or becomes excluded from State contracts;
- (g) If the Contractor fails to maintain and keep in force all required insurance, permits and licenses as required per the Contract;
- (h) If the Contractor fails to maintain the confidentiality of the Department's information that is considered to be Confidential Information or Protected Health Information;
- (i) If the Contractor files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity;
- (j) If at any time the Contractor's performance threatens the health or safety of a State employee, citizen, or customer;
- (k) If the Contractor violates any requirements in Section 22.0 below regarding Confidential Information; or
- (l) If the Department or State fails to appropriate funds for the project described in the Contract.

In the event of a termination for cause by the Department, the Department shall be liable for payments for any work accepted by the Department prior to the date of termination.

**17.1 BREACH BY PATTERN OR PRACTICE:** The Department has the right to terminate the Contract and/or pursue all available legal and equitable remedies if the Contractor, by pattern or practice, materially breaches any provision of the Contract. Actions that shall constitute a material breach include, but are not limited to, neglect, failure, or refusal to perform in accordance with any of the terms of the Contract. The Department may provide the Contractor with an opportunity to cure the material breach. Such cure period would be thirty (30) calendar days after the Contractor's receipt of the Department's written notice, as noted above. If Contractor's efforts to cure are unsuccessful, as determined by the Department in its sole discretion, the Department may terminate the Contract as soon as administratively feasible and/or pursue all available legal and equitable remedies.

**18.0 REMEDIES OF THE DEPARTMENT:** The Department shall be free to invoke any and all remedies permitted under Wisconsin law. In particular, if the Contractor fails to perform as specified in the Contract, the Department may issue a written notice of default providing for at least a thirty (30) business day period in which the Contractor shall have an opportunity to cure, provided that cure is possible, feasible, and approved in writing by the Department. Time allowed for cure of a default shall not diminish or eliminate the Contractor's liability. If the default remains, after opportunity to

cure, then the Department may: (1) exercise any remedy provided in law or in equity and/or (2) terminate Contractor's Services.

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

In case of failure to deliver Services in accordance with the Contract, or services from other sources as necessary to fulfill the Contract, the Contractor shall be responsible for the additional cost of such services, including purchase price and administrative fees. This remedy shall be in addition to any other legal remedies available to the Department.

**19.0 TRANSITIONAL SERVICES:** Upon cancellation, termination, or expiration of the Contract for any reason, the Contractor shall provide reasonable cooperation, assistance and Services, and shall assist the Department to facilitate the orderly transition of the work under the Contract to the Department and/or to an alternative contractor selected for the transition upon written notice to the Contractor at least thirty (30) business days prior to termination or cancellation, and subject to the terms and conditions set forth in the Contract.

**20.0 ADDITIONAL INSURANCE RESPONSIBILITY:** The Contractor shall exercise due diligence in providing the Services under the Contract. In order to protect the Department's governing boards and any Department employee against liability, cost, or expenses (including reasonable attorney fees), which may be incurred or sustained as a result of Contractor's errors or other failure to comply with the terms of the Contract, the Contractor shall maintain errors and omissions insurance including coverage for network and privacy risks, breach of privacy and wrongful disclosure of information in an amount acceptable to the Department with a minimum of **\$1,000,000** per claim and **\$5,000,000** aggregate in force during the Contract period and for a period of three (3) years thereafter for Services completed. Contractor shall furnish the Department with a certificate of insurance for such amount. Further, this certificate shall designate the State of Wisconsin Department of Employee Trust Funds and its affiliated boards as additional insured parties. The Department reserves the right to require higher or lower limits where warranted.

**21.0 OWNERSHIP OF MATERIALS:** Except as otherwise provided in Section 22, Subsection (v), all information, data, reports and other materials as are existing and available from the Department and which the Department determines to be necessary to carry out the scope of Services under the Contract shall be furnished to the Contractor and shall be returned to the Department upon completion of the Contract. The Contractor shall not use such materials for any purpose other than carrying out the work described in the Contract.

The Department will be furnished without additional charge all data, models, information, reports, and other materials associated with and generated under the Contract by the Contractor.

The Department shall solely own all customized software, documents, and other materials developed under the Contract. Use of such software, documents, and materials by the Contractor shall only be with the prior written approval of the Department.

The Contract shall in no way affect or limit the Department's rights to use, disclose or duplicate, for any purpose whatsoever, all information and data pertaining to the Department, employees or members and generated by the claims administration and other Services provided by Contractor under the Contract.

All files (paper or electronic) containing any Wisconsin plan member, claimant or employee information and all records created and maintained in the course of the work specified by the Contract are the sole and exclusive property of the Department. Contractor may maintain copies of such files during the term of the Contract as may be necessary or appropriate for its performance of the Contract. Moreover, Contractor may maintain copies of such files after the term of the Contract (i) for one hundred twenty (120) days after termination, after which all such files shall be transferred to the Department or destroyed by Contractor, except for any files as to which a claim has been made, and (ii) for an unlimited period of time after termination for Contractor's use for statistical purposes, if Contractor first deletes all information in the records from which the identity of a claimant or employee could be determined and certifies to the Department that all personal identifiers have been removed from the retained files.

**22.0 CONFIDENTIAL INFORMATION, PRIVACY AND HIPAA BUSINESS ASSOCIATE AGREEMENT:** This Section is intended to cover handling of Confidential Information under State and federal law, including, where applicable, the requirements of the Health Insurance Portability and Accountability Act (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH), the Genetic Information Nondiscrimination Act (GINA), and the federal implementing regulations for those statutes requiring a written agreement with business associates.

**(a) DEFINITIONS:** As used herein, unless the context otherwise requires:

(1) Business Associate. "Business Associate" has the meaning ascribed to it at 45 CFR 160.103 and refers to the Contractor.

(2) Confidential Information. "Confidential Information" means all tangible and intangible information and materials being disclosed in connection with the 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 of the following criteria: (i) Individual Personal Information; (ii) Personally Identifiable Information under Wis. Stat. § 19.62(5); (iii) Protected Health Information under HIPAA, 45 CFR 160.103; (iv); proprietary information; (v) non-public information related to the State of Wisconsin's employees, customers, technology (including

databases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; (vi) information expressly designated as confidential in writing by the State of Wisconsin; (vii) all information that is restricted or prohibited from disclosure by state or federal law, including Individual Personal Information and Medical Records as governed by Wis. Stat. §§ 40.07, ETF 10.70(1) and ETF 10.01(3m); or (viii) any material submitted by the Contractor in response to a Department solicitation that the Contractor designates confidential and proprietary information and which qualifies as a trade secret, as provided in Wis. Stat. § 19.36(5) or material which can be kept confidential under the Wisconsin public records law.

- (3) Covered Entity. "Covered Entity" has the meaning ascribed to it at 45 CFR 160.103 and refers to the Department of Employee Trust Funds.
  - (4) HIPAA Rules. "HIPAA Rules" mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
  - (5) Individual Personal Information. "Individual Personal Information" has the meaning ascribed to it at Wis. Admin. Code ETF § 10.70 (1).
  - (6) Medical Record. "Medical Record" has the meaning ascribed to it at Wis. Admin. Code ETF § 10.01(3m).
  - (7) Protected Health Information. "Protected Health Information" has the meaning ascribed to it under 45 CFR 160.103.
- (b) **PROVISION OF CONFIDENTIAL INFORMATION FOR CONTRACTED SERVICES:** The Department, a different business associate of the Department or a contractor performing services for the Department may provide Confidential Information to the Contractor under the Contract as the Department determines is necessary for the proper administration of the Contract, as provided by Wis. Stat. § 40.07 (1m) (d) and (3).
- (c) **DUTY TO SAFEGUARD CONFIDENTIAL INFORMATION:** The Contractor shall safeguard Confidential Information supplied to the Contractor or its employees under the Contract. In addition, the Contractor will only share Confidential Information with its employees on a need-to-know basis. Should the Contractor fail to properly protect Confidential Information, any cost the Department pays to mitigate the failure will be subtracted from the Contractor's invoice(s).
- (d) **USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION:** Contractor shall:
- (1) Not use or disclose Confidential Information for any purpose other than as permitted or required by the Contract or as required by law. Contractor shall not use or disclose member or employee names, addresses, or other information for any purpose other than specifically provided for in the Contract;
  - (2) Make uses and disclosures and requests for any Confidential Information following the minimum necessary standard in the HIPAA Rules;
  - (3) Use appropriate safeguards to prevent use or disclosure of Confidential Information other than as provided for by the Contract, and with respect to Protected Health Information, comply with Subpart C of 45 CFR Part 164;
  - (4) Not use or disclose Confidential Information in a manner that would violate Subpart E of 45 CFR Part 164 or Wis. Stat. § 40.07;
  - (5) If applicable, be allowed to use or disclose Confidential Information for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor, provided the disclosures are required by law, or Contractor obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Contractor of any instances of which it is aware the confidentiality of the information has been or is suspected of being breached;
  - (6) Not use for its own benefit Confidential Information or any information derived from such information; and
  - (7) If required by a court of competent jurisdiction or an administrative body to disclose Confidential Information, Contractor will notify the Department in writing immediately upon receiving notice of such requirement and prior to any such disclosure, to give the Department an opportunity to oppose or otherwise respond to such disclosure (unless prohibited by law from doing so).
- (e) **REQUIREMENT TO KEEP CONFIDENTIAL INFORMATION WITHIN THE UNITED STATES:** The Contractor's transmission, transportation or storage of Confidential Information outside the United States, or access of Confidential Information from outside the United States, is prohibited except on prior written authorization by the Department.

- (f) **COMPLIANCE WITH ELECTRONIC TRANSACTIONS AND CODE SET STANDARDS:** The Contractor shall comply with each applicable requirement of 45 C.F.R. Part 162 if the Contractor conducts standard transactions, as that term is defined in HIPAA, for or on behalf of the Department.
- (g) **MANDATORY REPORTING:** Contractor shall report to the Department in the manner set forth in Subsection 22(m) any use or disclosure or suspected use or disclosure of Confidential Information not provided for by the Contract, of which it becomes aware, including breaches or suspected breaches of unsecured Protected Health Information as required at 45 CFR 164.410.
- (h) **DESIGNATED RECORD SET:** Contractor shall make available Protected Health Information in a designated record set to the individual as necessary to satisfy the Department's obligations under 45 CFR 164.524.
- (i) **AMENDMENT IN DESIGNATED RECORD SET:** Contractor shall make any amendment to Protected Health Information in a designated record set as directed or agreed to by the Department pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy the Department's obligations under 45 CFR 164.526.
- (j) **ACCOUNTING OF DISCLOSURES:** Contractor shall maintain and make available the information required to provide an accounting of disclosures to the individual as necessary to satisfy the Department's obligations under 45 CFR 164.528.
- (1) Contractor shall keep all HIPAA logs (logs of any systems that have information relating to HIPAA) for six (6) years.
- (k) **COMPLIANCE WITH SUBPART E OF 45 CFR 164:** To the extent Contractor is to carry out one or more of the Department's obligations under Subpart E of 45 CFR Part 164, Contractor shall comply with the requirements of Subpart E that apply to a covered entity in the performance of such obligation.
- (l) **INTERNAL PRACTICES:** Contractor shall make its internal practices, books, and records available to the Secretary of the United States Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.
- (m) **CONTRACTOR REPORTING OF BREACH OR SUSPECTED BREACH OR DISCLOSURE TO THE DEPARTMENT:**
- (1) Within twenty-four (24) hours after Contractor becomes aware of a suspected breach, impermissible use, or impermissible disclosure, Contractor shall notify in writing the Department Privacy Officer at [ETFSMBPrivacyOfficer@etf.wi.gov](mailto:ETFSMBPrivacyOfficer@etf.wi.gov), and the Department Program Manager. A suspected breach, impermissible use, or impermissible disclosure is considered to be discovered as of the first day on which such occurrence is known to Contractor, or, by exercising reasonable diligence, would have been known to Contractor. The notification must contain details sufficient for the Department Program Manager and Privacy Officer to determine the Department's response. Sufficient details include, without limitation:
- The nature of the unauthorized access, use or disclosure;
  - A list of any persons affected (if available);
  - A description of the information included in the breach, impermissible use, or impermissible disclosure;
  - The date or dates of the suspected breach, impermissible use, or impermissible disclosure;
  - The date of the discovery by Contractor;
  - A list of the proactive steps taken by Contractor and being taken to correct the breach, impermissible use or impermissible disclosure; and
  - Contact information at Contractor for affected persons who contact the Department regarding the issue.
- (2) Not less than one (1) business day before Contractor makes any external communications to the public, media, federal Office for Civil Rights (OCR), other governmental entity, or persons potentially affected by the breach, impermissible use, or impermissible disclosure, provide a copy of the planned communication to the Department Program Manager and Privacy Officer.
- (3) Within thirty (30) business days after Contractor makes the initial report under this Section, Contractor shall research the suspected breach, impermissible use, or impermissible disclosure of Confidential Information and provide a report in writing to the Department Program Manager. The report must contain, at a minimum:
- A complete list of any persons affected (whose Confidential Information was supplied to Contractor by the Department) and their contact information;
  - Copies of correspondence or notifications provided to the public, media, OCR, other governmental entity, or persons potentially affected;
  - Whether Contractor's Privacy Officer has determined there has been a reportable breach under HIPAA, or an unauthorized acquisition under Wis. Stat. §134.98 and the reasoning for such determination;
  - If Contractor determines there has been a breach, impermissible use, or impermissible disclosure, an explanation of the root cause of the breach, impermissible use, or impermissible disclosure;
  - A list of the corrective actions taken to mitigate the suspected breach, impermissible use, or impermissible disclosure; and
  - A list of the corrective actions taken to prevent a similar future breach, impermissible use, or impermissible disclosure.

**(n) COORDINATION OF BREACH RESPONSE ACTIVITIES:**

- (1)** Contractor will fully cooperate with the Department's investigation of any breach of Confidential Information involving Contractor, including but not limited to making witnesses, documents, HIPAA logs, systems logs, video recordings, or other pertinent or useful information available immediately upon Contractor's reporting of the breach and throughout the investigation. Contractor's full cooperation will include but not be limited to Contractor:
  - a.** Immediately preserving any potential forensic evidence relating to the breach, and remedying the breach as quickly as circumstances permit;
  - b.** Within forty-eight (48) hours designating a contact person to whom the Department will direct inquiries, and who will communicate Contractor responses to Department inquiries; Contractor will designate a Privacy Officer and Security Officer to serve as contacts for the Department;
  - c.** As rapidly as circumstances permit, applying appropriate resources to remedy the breach condition, investigate, document, restore the Department service(s) as directed by the Department, and undertake appropriate response activities such as working with the Department, its representative, and law enforcement to identify the breach, identify the perpetrator(s), and take appropriate actions to remediate the security vulnerability;
  - d.** Providing status reports to the Department at least every two (2) hours until the root cause of the breach is identified and a plan is devised to fully remediate the breach;
  - e.** Once the root cause of the breach is identified and a plan is devised to fully remediate the breach, providing status reports to the Department daily or at mutually agreed upon timeframes, to the Department on breach response activities, findings, analyses, and conclusions;
  - f.** Coordinating all media, law enforcement, or other breach notifications with the Department in advance of such notification(s), unless expressly prohibited by law; and
  - g.** Ensuring that knowledgeable Contractor staff is available on short notice, if needed, to participate in Department-initiated meetings and/or conference calls regarding the breach.
- (o) CLASSIFICATION LABELS:** Contractor shall ensure that all data classification labels contained on or included in any item of Confidential Information shall be reproduced by Contractor on any reproduction, modification, or translation of such Confidential Information. Contractor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of the Department, as directed by the Department.
- (p) SUBCONTRACTORS:** If applicable, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit Confidential Information on behalf of Contractor agree to the same restrictions, conditions, and requirements that apply to Contractor with respect to such information.
- (q) NOTICE OF LEGAL PROCEEDINGS:** If Contractor or any of its employees, agents, or subcontractors is legally required in any administrative, regulatory or judicial proceeding to disclose any Confidential Information, Contractor shall give the Department prompt notice (unless it has a legal obligation to the contrary) so that the Department may seek a protective order or other appropriate remedy. In the event that such protective order is not obtained, Contractor 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.
- (r) MITIGATION:** The Contractor shall take immediate steps to mitigate any harmful effects of the suspected or actual unauthorized use, disclosure, or loss of any Confidential Information provided to Contractor under the Contract. The Contractor shall reasonably cooperate with the Department's efforts to comply with the breach notification requirements of HIPAA, to seek appropriate injunctive relief or otherwise prevent or curtail such suspected or actual unauthorized use, disclosure or loss, or to recover its Confidential Information, including complying with a reasonable corrective action plan, as directed by the Department.
- (s) COMPLIANCE REVIEWS:** The Department may conduct a compliance review of the Contractor's security procedures before and during the Contract term to protect Confidential Information.
- (t) AMENDMENT:** The parties agree to take such action as is necessary to amend the Contract as necessary for compliance with the HIPAA Rules and other applicable law.
- (u) SURVIVAL:** The obligations of Contractor under this Section shall survive the termination of the Contract.
- (v) RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION:** Upon termination of the Contract for any reason, Contractor, with respect to Confidential Information received from the Department, another contractor of the Department, or created, maintained, or received by Contractor on behalf of the Department, shall:
  - (1)** Retain only that Confidential Information which is necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities;
  - (2)** Return to the Department or, if agreed to by the Department, destroy the remaining Confidential Information that Contractor still maintains in any form;
  - (3)** Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Subsection, for as long as Contractor retains the Protected Health Information;

- (4) Not use or disclose the Confidential Information retained by Contractor other than for the purposes for which such Confidential Information was retained and subject to the same conditions set out under Subsection 22(d) which applied prior to termination;
  - (5) Return to the Department or, if agreed to by the Department, destroy the Protected Health Information retained by Contractor when it is no longer needed by Contractor for its proper management and administration or to carry out its legal responsibilities; and
  - (6) If required by the Department, transmit the Confidential Information to another contractor of the Department.
- (w) **ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS:** Contractor will make itself and any employees, subcontractors, or agents assisting Contractor in the performance of its obligations available to the Department at no cost to the Department to testify as witnesses, or otherwise, in the event of a breach or other unauthorized disclosure of Confidential Information caused by Contractor that results in litigation, governmental investigations, or administrative proceedings against the Department, its directors, officers, agents or employees based upon a claimed violation of laws relating to security and privacy or arising out of these Terms and Conditions or the Contract.

### 23.0 INDEMNIFICATION:

- 23.1 SCOPE OF INDEMNIFICATION FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT:** In the event of a claim against the parties for Intellectual Property Rights Infringement associated with a claim for benefits, Contractor agrees to defend, indemnify and hold harmless the Department and its governing boards ("Indemnified Parties") from and against any and all claims, actions, loss, damage, expenses, costs (including reasonable fees for Department's staff attorneys and/or attorneys from the Wisconsin Attorney General's Office) reasonable attorneys' fees otherwise incurred by the Department, its governing boards, and/or the Wisconsin Attorney General's Office, court costs, and related reasonable legal expenses whether incurred in defending against such claims or enforcing this Section.
- 23.2 SCOPE OF OTHER INDEMNIFICATION:** In addition to the foregoing Section, Contractor shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, actions, loss, damage, expenses, costs (including reasonable fees for the Department's staff attorneys and/or attorneys from the Wisconsin Attorney General's Office), court costs, and related reasonable legal expenses whether incurred in defending against such claims or enforcing this Section, or liability arising from or in connection with the following: (a) Contractor's performance of or failure to perform any duties or obligations under any agreement between Contractor and any third party; (b) injury to persons (including death or illness) or damage to property caused by the act or omission of Contractor, Contractor employees or subcontractors; (c) any claims or losses for Services rendered by any subcontractor, person, or firm performing or supplying Services, materials, or supplies in connection with the Contractor's performance of the Contract; (d) any claims or losses resulting to any person or third party entity injured or damaged by the Contractor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by federal or State statutes or regulations; and (e) any failure of the Contractor, its officers, employees, or subcontractors to observe State and federal laws including, but not limited to, labor and wage and hour laws.
- 23.3 INDEMNIFICATION NOTICE:** The Department shall give the Contractor prompt written notice of such claim, suit, demand, or action (provided that a failure to give such prompt notice will not relieve the Contractor of its indemnification obligations hereunder except to the extent Contractor can demonstrate actual, material prejudice to its ability to mount a defense as a result of such failure). The Department will cooperate, assist, and consult with the Contractor in the defense or investigation of any claim made or suit filed against the Department resulting from Contractor's performance under the Contract.
- 23.4 NO INDEMNIFICATION OBLIGATIONS:** Contractor shall, as soon as practicable, notify the Department of any claim made or suit filed against Contractor resulting from Contractor's obligations under the Contract if such claim may involve the Department. The Department has no obligation to provide legal counsel or defense to Contractor if a suit, claim, or action is brought against Contractor or its subcontractors as a result of Contractor's performance of its obligations under the Contract. In addition, Department has no obligation for the payment of any judgments or the settlement of any claims against Contractor arising from or related to the Contract. Department has not waived any right or entitlement to claim sovereign immunity under the Contract.
- 23.5 CONTRACTOR'S DUTY TO INDEMNIFY:** The Contractor shall comply with its obligations to indemnify, defend and hold the Indemnified Parties harmless with regard to claims, damages, losses and/or expenses arising from a claim. The Contractor shall be entitled to control the defense of any such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing; however, the Contractor shall consult with the Department regarding its defense of any claim and not settle or compromise any claim or action in a manner that imposes restrictions or obligations on Department, requires any financial payment by the Department, or grants rights or concessions to a third party without first obtaining the Department's prior written consent. Contractor shall have the right to assert any and all defenses on behalf of the Indemnified Parties, including sovereign immunity.

In carrying out any provision of the Contract or in exercising any power or authority granted to the Contractor thereby, there shall be no liability upon the Department, it being understood that in such matters the Department acts as an agent of the State.

The Contractor shall at all times comply with and observe all federal and State laws and regulations which are in effect during the period of the Contract and which in any manner affect the work or its conduct.

**24.0** **EQUITABLE RELIEF:** The Contractor acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose information is disclosed and to the State, which injury shall not be compensable by money damages and for which there is not an adequate remedy available at law. Accordingly, the Department and the Contractor specifically agree that the Department, on its own behalf or on behalf of the affected individuals, shall be entitled to obtain injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under the Contract or under applicable law.

**25.0** **RIGHT TO PUBLISH OR DISCLOSE:** Throughout the term of the Contract, the Contractor must secure the Department's written approval prior to the release of any information which pertains to work or activities covered by the Contract.

The Department and the Contractor agree that it is a breach of the Contract to disclose any information to any person that the Department or its governing boards may not disclose under Wis. Stat. § 40.07. Contractor acknowledges that it will be liable for damage or injury to persons whose Confidential Information is disclosed by any officer, employee, agent, or subcontractor of the Contractor without proper authorization.

**26.0** **TIME IS OF THE ESSENCE:** Timely provision of the Services required under the Contract shall be of the essence of the Contract, including the provision of the Services within the time agreed or on a date specified in the Contract.

**27.0** **IDENTIFICATION OF KEY PERSONNEL AND PERSONNEL CHANGES:** The Department will designate a contract administrator, who shall have oversight for performance of the Department's obligations under the Contract. The Department shall not change the person designated without prior written notification to the Contractor.

The State of Wisconsin reserves the right to approve all individuals assigned to the project described in the Contract. The Contractor agrees to use its best efforts to minimize personnel changes during the Contract term.

At the time of Contract negotiations, the Contractor shall furnish the Department with names of all key personnel assigned to perform work under the Contract and furnish the Department with criminal background checks.

The Contractor will designate a contract administrator who shall have executive and administrative oversight for performance of the Contractor's obligations under the Contract. The Contractor shall not change this designation without prior written notice to the Department.

The Contractor may not divert key personnel for any period of time except in accordance with the procedure identified in this Section. The Contractor shall provide a notice of proposed diversion or replacement to the Department Program Manager and Contract Manager at least sixty (60) calendar days in advance, together with the name and qualifications of the person(s) who will take the place of the diverted or replaced staff. At least thirty (30) calendar days before the proposed diversion or replacement, the Department shall notify the Contractor whether the proposed diversion or replacement is approved or rejected, and if rejected shall provide reasons for the rejection. Such approval by the Department shall not be unreasonably withheld or delayed.

Replacement staff shall be on-site within two (2) weeks of the departure date of the person being replaced. The Contractor shall provide the Department with reasonable access to any staff diverted by the Contractor.

Replacement of key personnel shall be with persons of equal ability and qualifications. The Department has the right to conduct separate interviews of proposed replacements for key personnel. The Department shall have the right to approve, in writing, the replacement of key personnel. Such approval shall not be unreasonably withheld. Failure of the Contractor to promptly replace key personnel within thirty (30) calendar days after departure shall entitle the Department to terminate the Contract. The Contractor's notice and justification of a change in key personnel must include identification of proposed substitute key personnel and must provide sufficient detail to permit the Department to evaluate the impact of the change on the project and/or maintenance.

Any of the Contractor's staff that the Department deems unacceptable shall be promptly and without delay removed from the project by the Contractor and replaced by the Contractor within thirty (30) calendar days by another employee with acceptable experience and skills subject to the prior approval of the Department. Such approval by the Department will not be unreasonably withheld or delayed.

For any unauthorized change by the Contractor of any contracted personnel designated as key personnel, the Contractor will pay the Department a replacement fee of ten thousand dollars (\$10,000) per occurrence.

## **28.0 INFORMATION SECURITY AGREEMENT**

- (a) **PURPOSE AND SCOPE OF APPLICATION:** This Information Security Agreement (“Agreement”) is designed to protect the Department’s Confidential Information (defined above in Section 22.0) and Department Information Resources (defined below). This Agreement describes the information security obligations of Contractor, its employees, contractors and third-party users that connect to Department Information Resources and/or gain access to Confidential Information.
- (b) **DEFINED TERMS:**
- (1) Department Information Resources. “Department Information Resources” means those devices, networks and related infrastructure that the Department has obtained for use to conduct Department business. Devices include but are not limited to, Department-owned devices; devices managed or used through service agreements; storage, processing, and communications devices and related infrastructure on which Department data is accessed, processed, stored, or communicated; and may include personally owned devices. Data includes, but is not limited to, Confidential Information, other Department-created or managed business and research data, metadata, and credentials created by or issued on behalf of the Department.
- (c) **ACCESS TO DEPARTMENT INFORMATION RESOURCES:** In any circumstance when Contractor is provided access to Department Information Resources, it is solely Contractor’s responsibility to ensure that its access does not result in any access by unauthorized individuals to Department Information Resources. Contractors who access the Department’s Information Resources from any Department location must at a minimum conform with Department security standards that are in effect at the Department location(s) where the access is provided. Any Contractor technology and/or systems that gain access to Department Information Resources must comply with, at a minimum, the elements in the Information Security Plan Requirements set forth in this Agreement.
- (d) **COMPLIANCE WITH APPLICABLE LAWS:** Contractor agrees to comply with all applicable state and federal laws, as well as industry best practices, governing the collection, access, use, disclosure, safeguarding and destruction of Confidential Information.
- (e) **SAFEGUARD STANDARD:** Contractor agrees to protect the security of Confidential Information according to all applicable laws and regulations by generally accepted information risk management security control frameworks, standards or guidelines such as the ISO/IEC 27000-series, NIST800-53, CIS Critical Security Controls for Effective Cyber Defense or HIPAA Security Rule – 45 CFR Part 160 and Subparts A and C of Part 164 and no less rigorously than it protects its own confidential information, but in no case less than reasonable care. Contractor will implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of the Confidential Information. Contractor will ensure that all security measures are regularly reviewed including ongoing monitoring, monthly vulnerability testing and annual penetration and security incident response tests, revised, no less than annually, to address evolving threats and vulnerabilities while Contractor has responsibility for the Confidential Information under the terms of this Agreement.
- (f) **INFORMATION SECURITY PLAN:**
- (1) Contractor acknowledges that the Department is required to comply with information security standards for the protection of Confidential Information as required by law, regulation and regulatory guidance, as well as the Department’s internal security program for information and systems protection.
- (2) Contractor shall develop, implement, and maintain a comprehensive Information Security Plan that contains administrative, technical, and physical safeguards designed to ensure the privacy, security, integrity, availability, and confidentiality of the Confidential Information. Contractor must provide evidence to the Department of one or more of the following for the plan:
- a. Certification in, or compliance with, generally accepted information risk management security control frameworks, standards or guidelines such as:
    - i. ISO/IEC 27000-series;
    - ii. NIST800-53;
    - iii. CIS Critical Security Controls for Effective Cyber Defense; or
    - iv. HIPAA Security Rule - 45 CFR Part 160 and Subparts A and C of Part 164; and
  - b. Compliance with any state or federal regulations by which the person or entity who owns or licenses such information may be regulated; or
  - c. At a minimum, include the elements listed in the Information Security Plan Requirements set forth below.
- (3) Upon the Department’s request, Contractor shall submit one of the following documents to the Department:
- a. Independent attestation of certification;
  - b. Information Security Plan scope statement;
  - c. Information Security Plan statement of applicability; or
  - d. SOC 2, Type 2 audit and letter of attestation indicating Contractor’s receipt of management’s assertion of control compliance from Contractor’s subcontractors as described in Section 6 Audit Provision.



The Department reserves the right to require the Contractor to provide more than one of the above documents. If Contractor is unable to produce one of the above documents, Contractor may satisfy the requirement by providing the assurances in Section 28.0(h) below.

- (4) Annually, or upon a significant change in risk posture, Contractor will review its Information Security Plan and update and revise it as needed. If at any time there are any material reductions to Contractor's Information Security Plan, Contractor will notify the Department within two weeks of the completion of the review and prior to implementation. In such instances, the Department will require an explanation of the reductions. At the Department's request, Contractor will make modifications to its Information Security Plan or to the procedures and practices thereunder to conform to the Department's security requirements as defined herein.
- (g) **ADDITIONAL INSURANCE:** In addition to the insurance required under the Contract, Contractor, at its sole cost and expense, will obtain, keep in force, and maintain an insurance policy (or policies) that provides coverage for privacy and data security breaches. This specific type of insurance is typically referred to as Privacy, Technology and Data Security Liability, Cyber Liability, or Technology Professional Liability. In some cases, Professional Liability policies may include some coverage for privacy and/or data breaches. Regardless of the type of policy in place, it needs to include coverage for reasonable costs in investigating and responding to privacy and/or data breaches with the following minimum limits unless the Department specifies otherwise: \$1,000,000 Each Occurrence and \$5,000,000 Aggregate. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the Department requires and is entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Department.

(h) **INFORMATION SECURITY PLAN REQUIREMENTS:**

**If Contractor cannot provide evidence of its Information Security Plan as required in Section 28.0(f)(2)a above, Contractor shall provide the following assurances to the Department:**

**(1) Security Policies:**

- a. Contractor's security policy is documented, has obtained management approval, is reviewed no less frequently than annually and is maintained to ensure its continuing suitability, adequacy and effectiveness; and
- b. Contractor's operational, technical and administrative policies, standards and guidelines are documented, have obtained management approval, are reviewed no less frequently than annually and are maintained to ensure their continuing suitability, adequacy and effectiveness.

**(2) Security Organization:**

- a. The Contractor's security organization is governed and overseen by Contractor's senior leadership;
- b. Contractor's security organization includes representation from across Contractor's organization with defined roles and responsibilities;
- c. Contractor has clearly defined information security responsibilities;
- d. Contractor has confidentiality or non-disclosure agreements in place with the appropriate external entities;
- e. Contractor's management and implementation of information security (i.e. control objectives, controls, policies, processes, and procedures for information security) are reviewed independently at planned intervals, or when significant changes to the implementation of information security occur; and
- f. Contractor's agreements with third parties involving accessing, processing, communicating or managing the Contractor's information or information processing facilities, cover all relevant security requirements.

**(3) Asset Management:**

- a. Contractor has identified, inventoried, assigned ownership and established rules for acceptable use for information and associated assets; and
- b. Contractor has a process in place to classify information in terms of its value, legal requirements, sensitivity and criticality to Contractor.

**(4) Human Resources:**

- a. Security roles and responsibilities of Contractor's employees, contractors and third-party users have been defined and documented in accordance with Contractor's information security policy;
- b. Contractor performs background verification checks on all candidates for employment, contractors, and third-party users in accordance with relevant laws, regulations and ethics, and proportional to the business requirements, the classification of the information to be accessed, and the perceived risks;
- c. All Contractor's employees and, where relevant, contractors and third-party users, shall receive appropriate security awareness training and regular updates regarding Contractor's security policies and procedures, as relevant for their job function;
- d. Contractor has a formal disciplinary process in place for employees who have committed a security breach;

- e. Contractor's employees' responsibilities for performing employment terminations and changes of employment status are clearly defined and assigned;
- f. All Contractor's employees, contractors and third-party users shall return all Contractor's and the Department's assets in their possession upon termination of their employment, contract or agreement; and
- g. The access rights of all Contractor employees, contractors and third-party users to information and information processing facilities are removed upon termination of their employment, contract or agreement, or adjusted upon a status change.

**(5) Physical and Environmental Security:**

**a. Secure Areas**

- i. Contractor has a physical and environmental policy in place, with standards and guidelines that have been documented and obtained management approval, that is reviewed no less frequently than annually and is maintained to ensure its continuing suitability, adequacy and effectiveness;
- ii. Contractor's secure areas are protected by appropriate entry controls to ensure that only authorized personnel are allowed access; and
- iii. Contractor's physical protection and guidelines for working in secure areas have been adequately designed and applied.

**b. Equipment security**

- i. Contractor's equipment, and the equipment Contractor may utilize in its operations that is owned by a third party, is maintained to ensure its continued availability and integrity; and
- ii. Contractor's security measures have been applied to off-site equipment to address the risks of working outside the Contractor's premises.

**c. Operations management**

- i. Contractor's operating procedures have been documented, maintained, and made available to all users who require them;
- ii. Contractor controls changes to information processing facilities and systems; and
- iii. Contractor has segregated duties and areas of responsibility to reduce opportunities for unauthorized or unintentional modification or misuse of Contractor's assets.

**d. Third party service delivery management**

- i. Security controls, service definitions and delivery levels included in Contractor's third-party service delivery agreements are implemented, operated, and maintained by the third party; and
- ii. The services, reports and records provided by third parties are regularly monitored, reviewed and audited by Contractor.

**e. Back-up**

- i. Contractor regularly makes and tests back-up copies of information and software in accordance with Contractor's backup policy.

**f. Network security management**

- i. Networks are managed and controlled, either by Contractor or a third party under contract with Contractor; and
- ii. Security features, service levels, and management requirements of all Contractor's network services have been identified and included in any network services agreement, whether these services are provided in-house by Contractor or outsourced.

**g. Media handling**

- i. Contractor has procedures in place to prevent unauthorized disclosure, modification, misuse, removal or destruction of assets, and interruption to business activities; and
- ii. Contractor has procedures in place for the management of removable media, including the secure and safe disposal of media when no longer required.

**h. Exchange of information**

- i. Contractor has established agreements for the secure exchange of information and software between Contractor and appropriate external parties;
- ii. Contractor shall ensure information involved in electronic messaging is protected;
- iii. Contractor has developed and implemented policies and procedures to protect the exchange of information; and
- iv. Contractor shall ensure the integrity of information being made available on a publicly available system is protected to prevent unauthorized modification.

**i. Monitoring**

- i. Contractor shall produce and keep a rolling twelve (12) consecutive months of audit logs recording user activities, exceptions, and information security events to assist in future investigations and access control monitoring;
- ii. Contractor's logging facilities and log information are protected against tampering and unauthorized access; and
- iii. Contractor's system administrator and system operator activities are logged.

**(6) Access Management:**

**a. Access control**

- i. Contractor has an established and documented access control policy that is reviewed regularly based on business and security requirements for access;

- ii. Contractor has a formal user registration and de-registration procedure in place for granting and revoking access to all information systems and services;
  - iii. Contractor restricts and controls the allocation and use of access privileges;
  - iv. Contractor controls the allocation of passwords through a formal management process; and
  - v. Contractor's management reviews users' access rights at regular intervals using a formal process.
- b. User responsibilities**
- i. Users are required to follow good security practices in the selection and use of passwords;
  - ii. Users shall ensure that unattended equipment is protected; and
  - iii. Users shall adopt a clear desk policy for papers and removable storage media and a clear screen policy for information processing facilities.
- c. Network access control**
- i. Contractor's users shall only be provided with access to the services that they have been specifically authorized to use;
  - ii. Contractor has implemented appropriate authentication methods to control access by remote users;
  - iii. Contractor has segregated groups of information services, users, and information systems on networks;
  - iv. For shared networks, especially those extending across Contractor's boundaries, Contractor has restricted the capability of users to connect to the network, in line with Contractor's access control policy; and
  - v. Contractor has implemented routing controls for networks to ensure that computer connections and information flows do not breach Contractor's access control policy.
- (7) Security Requirements of Information Systems:**
- a. Correct processing in applications**
- i. Contractor shall validate data input to applications to ensure the data is correct and appropriate, and incorporate validation checks to detect any corruption of information through processing errors or deliberate acts;
  - ii. Contractor has identified the requirements for ensuring authenticity and protecting message integrity in applications, and identified and implemented appropriate controls; and
  - iii. Contractor has validated the data output from an application to ensure that the processing of stored information is correct and appropriate to the circumstances.
- b. Cryptographic controls**
- i. Contractor has a cryptographic controls policy in place that is documented, has obtained management approval, is reviewed no less frequently than annually and is maintained to ensure its continuing suitability, adequacy and effectiveness.
- c. Security of system files**
- i. Contractor has procedures in place to control the installation of software on operational systems;
  - ii. Contractor selects test data carefully, and the test data is protected and controlled; and
  - iii. Contractor restricts access to program source code.
- d. Security in development and support processes**
- i. Contractor has implemented procedures to maintain the security of application system software and information;
  - ii. Contractor utilizes formal change control procedures to implement changes; and
  - iii. Contractor supervises and monitors outsourced software development.
- e. Technical Vulnerability Management**
- i. Contractor documents the technical vulnerabilities, the exposure evaluated, and the appropriate measures taken to address the associated risk.
- (8) Information Security Incident Management:**
- a.** Contractor communicates information security events and weaknesses associated with information systems in a manner allowing timely corrective action to be taken;
- b.** All Contractor's employees, contractors and third-party users of information systems and services are provided awareness training on reporting an observed or suspected incident; and
- c. Management of information security incidents and improvements**
- i. The responsibilities and procedures of Contractor's management have been established to ensure timely, effective, and orderly response to information security incidents;
  - ii. Contractor has mechanisms in place to enable the security incidents to be quantified and monitored; and
  - iii. Where a follow-up action against a person or organization after an information security incident involves legal action (either civil or criminal), Contractor shall collect, retain and present evidence in conformance with the rules for evidence established in the relevant jurisdiction(s).

**(9) Business Continuity Management:**

- i. Contractor has implemented one or more business continuity plans, including an information security plan, to maintain or restore operations and ensure availability of information at the required level and in the required timeframe following interruption to, or failure of, critical business processes;
- ii. Contractor tests and updates its business continuity plans regularly to ensure that they are up to date and effective; and
- iii. Contractor shall include the Department's designated contact in Contractor's business continuity plans for notification concerning any disruption that may impact the Services.

**(10) Compliance:**

**a. Identification of applicable legislation**

- i. Contractor understands all relevant statutory, regulatory and contractual requirements under the Contract, and Contractor's approach to meet these requirements has been explicitly defined, documented, and kept up to date;
- ii. Contractor has implemented appropriate procedures to ensure compliance with legislative, regulatory, and contractual requirements under the Contract on the use of material which may be afforded intellectual property rights;
- iii. Contractor shall ensure that important records are protected from loss, destruction and falsification, in accordance with the statutory, regulatory, contractual, and business requirements under the Contract; and
- iv. Contractor shall ensure the protection and privacy of data as required in relevant legislation, regulations, and, as applicable, the Contract.

**29.0 DISCLOSURE:** If a State public official (Wis. Stat. § 19.42), a member of a State public official's immediate family, or any organization in which a State public official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to the Contract, and if the Contract involves payment of more than three thousand dollars (\$3,000) within a twelve (12) month period, the Contract is voidable by the Department unless appropriate disclosure is made according to Wis. Stat. § 19.45(6), before the Contract is signed. Disclosure must be made to the Department or the State of Wisconsin Ethics Commission, P.O. Box 7125, Madison, Wisconsin 53703 (telephone: 608-266-8123; fax: 608-264-9319; email: Ethics@wi.gov).

**30.0 DISCLOSURE OF INDEPENDENCE AND RELATIONSHIP:**

**30.1** Contractor certifies that no relationship exists between Contractor and the Department that interferes with fair competition or is a conflict of interest, and no relationship exists between the Contractor and another person or organization that constitutes a conflict of interest with respect to a State contract. The Department may waive this provision, in writing, if those activities of the Contractor will not be adverse to the interests of the State.

**30.2** Contractor agrees that during performance of the Contract, the Contractor will neither provide contractual services nor enter into any agreement to provide services to a person or organization that is regulated or funded by the Department or has interests that are adverse to the Department. The Department may waive this provision, in writing, if those activities of the Contractor will not be adverse to the interests of the State.

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

**32.0 EMPLOYMENT:** The Contractor will not engage the services of any person or persons now employed by the State, including any department, commission or board thereof, to provide services relating to the Contract without the written consent of the employing agency of such person or persons and of the Department.

**33.0 INDEPENDENT CAPACITY OF CONTRACTOR:** The Department and the Contractor agree that the Contractor, its officers, agents, and employees, in the performance of the Contract shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the State. The Contractor agrees to take such steps as may be necessary to ensure that each subcontractor of the Contractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the State.

**34.0 TAXES:** The State and its agencies are exempt from payment of all federal tax and State and local taxes on its purchases except Wisconsin excise taxes as described below.

The State is exempt from payment of Wisconsin sales or use tax on its purchases. The State may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay State use tax on the cost of materials.

**35.0 VENDOR TAX DELINQUENCY:** The State may offset Contractor's payments if Contractor has a delinquent State tax liability. If such action is taken by the State, the Department will not be liable for any impact sustained by the Contractor due to any delay, or total offset, of any payment owed to the Contractor under the Contract by the Department.

**36.0 FOREIGN CORPORATION:** If Contractor is a foreign corporation (any corporation other than a Wisconsin corporation), Contractor is required to conform to all the requirements of Chapter 180, Wis. Stats., relating to a foreign

corporation and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority. Any foreign corporation which desires to apply for a certificate of authority should contact the Department of Financial Institutions, Division of Corporations, P. O. Box 7846, Madison, WI 53707-7846; telephone (608) 261-7577.

- 37.0 RECORDKEEPING AND RECORD RETENTION:** The Contractor shall establish and maintain adequate records of all expenditures incurred under the Contract. All records must be kept in accordance with generally accepted accounting procedures. All procedures must be in accordance with federal, State and local ordinances.

Upon request and the audit clause in this agreement, The Department shall have the right to audit, review, examine, copy, and transcribe redacted copies of documents relating to the Contract held by the Contractor.

It is the intention of the State to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities. Records may not be available for public inspection prior to issuance of the notice of intent to award or the award of a contract. Pursuant to Wis. Stat. §19.36(3), all records of the Contractor that are produced or collected under the Contract are subject to disclosure pursuant to a public records request. Upon receipt of notice from the State of a public records request for records produced or collected under the Contract, the Contractor shall provide the requested records to the Department. The Contractor, following final payment, shall retain all records produced or collected under the Contract for six (6) years or as long as the Contractor's industry standards dictate.

- 38.0 ANTITRUST ASSIGNMENT:** The Contractor and the State recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State (purchaser). Therefore, the Contractor hereby assigns to the State any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

- 39.0 ASSIGNMENT:** No right or duty in whole or in part of the Contractor under the Contract may be assigned or delegated without the prior written consent of the Department.

- 40.0 PATENT INFRINGEMENT:** If goods, products, or articles are provided under the Contract, the Contractor guarantees such items were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of such items described in the Contract will not infringe any United States patent. The Contractor covenants that it will, at its own expense, defend every suit which shall be brought against the State (provided that the Contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such items, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.

- 41.0 SAFETY REQUIREMENTS:** All materials, equipment, and supplies provided to the Department must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code and all applicable OSHA Standards.

- 42.0 FORCE MAJEURE:** Neither the Contractor nor the Department shall be in default by reason of any failure in performance of the 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 non-performing party.

- 43.0 SURVIVAL:** The obligations and terms listed in this Section shall survive termination of the Contract in perpetuity unless otherwise noted. Contractor's duty to cooperate with audits under Sections 6.3 and 6.4 shall survive for one year after termination of the Contract or until the resolution of any Contract dispute, whichever is longer. Contractor's duties under Section 28.0 shall survive for as long as the Contractor has access to Department Information Resources and Department data. Payment obligations that accrue prior to the date of termination, or as part of a transition plan, shall survive termination of the Contract. Section 1.0, Section 10.0, Section 11.0, Section 13.0, Section 14.0, Section 18.0, Section 21.0, Section 22.0, Section 23.0, Section 25.0, Section 31.0, Section 35.0, Section 37.0, Section 39.0, and this Section 43.0 shall also survive termination of the Contract.