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State of Wisconsin

Department of Workforce Development

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August 31, 1999

The Honorable Jon Erpenbach, Chair
Senate Committee on Privacy, Electronic Commerce and Financial Institutions
P.O. Box 7882
20 South, State Capitol
Madison, WI 53707-7882

Dear Senator Erpenbach:

Thank you for the opportunity to testify before the Senate Committee on Privacy, Electronic Commerce and Financial Institutions last week regarding data collection and distribution by the Department of Workforce Development (DWD). We appreciate your interest in this important issue.

Please find attached examples of the types of contracts DWD enters into with private companies, local units of government and other state agencies for data sharing and information technology services.

I hope this information is helpful. Please do not hesitate to contact me if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Orlando Canto'. The signature is fluid and cursive, with a large initial 'O' and 'C'.

Orlando Canto
Deputy Secretary

July 1, 1999

MAINTENANCE AND MODIFICATION CONTRACT

#C-775

BETWEEN

THE STATE OF WISCONSIN

AND

IBM GLOBAL SERVICES

FOR

KIDS INFORMATION DATA SYSTEM



State of Wisconsin
Department of Workforce Development

July 1, 1999

DEPARTMENT OF WORKFORCE DEVELOPMENT

LINDA STEWART, Ph.D., SECRETARY

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Kids Information Data System

Contract #C-775

Declarations

THIS contract is made between the State of Wisconsin, hereinafter referred to as the "State," acting through the Department of Workforce Development, duly authorized, hereinafter referred to as the "Department," and IBM Global Services (previously known as Integrated Systems Solutions Corporation or ISSC), a division of International Business Machines Corporation (IBM), having its headquarters at Route 100, Somers, New York 10589, hereinafter referred to as "Contractor" or "IBM Global Services."

Preamble

The purpose of this contract is to define the structure, terms and conditions, process and payment provisions for the Contractor's participation on the Wisconsin Kids Information Data System (KIDS).

Definitions

1. **Contract**

The collected documents describing the agreement between the Department and the Contractor, said documents including the declaration, preamble, definitions, statements of terms and conditions, and the attached Appendix.

2. **KIDS**

The aggregate set of work performed on the Wisconsin Kids Information Data System (KIDS) including maintenance, production support, enhancements, and deliverables developed and/or modified as defined in this Contract.

3. **Scope of Work**

All delivered programs, documentation, reports, procedures, and other items/services provided under this Contract.

4. **Acceptance**

A notice from the Department to the Contractor that a deliverable has met the Department's reasonable satisfaction.

5. **Federal Certification**

The determination by the federal funding agency that an automated system for child support qualifies under Child Support Enforcement Systems (CSES) regulations as meeting the federal requirements necessary for funding an operational CSES system.

6. **Maintenance Support**

Maintenance support is defined as the effort expended to repair errors identified in the KIDS

software which are found not to meet the stated system requirements as defined by the State and approved by a walk-through of the system design

7. Enhancements

Enhancements refer to the activities associated with designing, developing, testing, and implementing new and/or updated functionality.

8. PRWORA-Related Work

This is any work performed or to be performed that is pursuant to a written business requirements statement or proposal agreed to by the parties for the purpose of incorporating into KIDS any changes required as a result of the Personal Responsibilities and Work Opportunities Reconciliation Act of 1996 (PRWORA).

9. Deliverables/Sub-deliverables

Deliverables and sub-deliverables are work products relating to enhancements which meet the following criteria:

- a) PRWORA related system enhancements,
- b) Other enhancements which are identified by the State to be categorized as deliverables.

10. Work products

Work products typically will consist of, but are not limited to, the following items:

- a) Detailed Project Plan
- b) System Design
- c) Source Code
- d) System Test Documentation
- e) Report on the actual vs. estimated effort to complete

11. Original KIDS Contract

The original KIDS development Contract entered into on January 20, 1993, between the State and the Contractor.

12. Warranty

Warranty is system work that is done to repair code associated with a service request. Changes to the approved design of a service request are not to be included in warranty work. Warranty work is reported to the Contractor via a problem tracking report (PTR) that identifies the fix requested, the design inconsistency, and notes the fact that the fix is considered to be warranty work.

13. Amendment to Original KIDS Contract

The Amendment to the original KIDS Contract signed in August 1996 and effective through December 31, 1997, covering certain staffing levels and payments to the Contractor.

Terms and Conditions

1. Term of the Contract

The contract duration is July 1, 1999 through June 30, 2000.

2. Payment Provisions

A payment of \$214,300 per month will be paid to the contractor for fixed expenses such as office and administration, software licenses, voice and data communication charges, and development environment charges.

In addition, a rate of \$89 per hour will be paid to the contractor for all billable hours under this contract. Billable hours excludes the following: Executive Project Manager, Deputy Executive Project Manager, Technical Team Lead, Technical Team Performance Improvement Specialist and all other administrative staff including network management and support staff. Billable hours not associated with a specific deliverable will be invoiced at the end of the month during which the hours were expended. Note: The invoice will be based on actual hours worked.

Billable hours expended on deliverables will be invoiced at the end of the month during which acceptance for the deliverable was given, in accordance with Section 8 of this Contract. Note: The invoice will be based on the approved final estimated hours.

The Department may at any time, with written notice, request the Contractor to make software changes and/or enhancement to KIDS. As soon as possible after receipt of a written service request, but in no event more than thirty (30) days thereafter, the Contractor shall provide the Department with a written estimate using the work measurement methodology employed to bundle the system changes contained in the Child Support Customer Area master list of the scope of work required to complete the change. All service requests must be documented in the contractor's work plan.

No changes are to be made until the Department approves the Contractor's written estimate as described in this Section.

The Contractor will monitor all hours expended through the Bureau of Information Technology Services (BITS) reporting system and provide the Department with a report of these hours on a monthly basis. The Contractor will inform the Department if the non-deliverable software change exceed the original estimate. The Contractor may not proceed with the non-deliverable software change unless the Department approves the Contractor's re-estimate.

In the event that the Department elects to cancel a non-deliverable software change instead of approving a re-estimate, the Contractor may invoice only for expended hours up to the date of cancellation subject to the applicable reviews and approvals of time sheets under this Section of this Contract.

Deliverable software change cost shall be fixed in accordance with Section 6 unless the Department cancels or changes the scope of the deliverable. If the Department cancels the deliverable prior to acceptance, the Contractor may invoice only for expended hours up to the date of cancellation. If the Department changes the scope of the deliverable, a revised deliverable to include cost will be negotiated in accordance with Section 6.

The Contractor and the State expect the total billable hours per month to routinely average 5820 hours. Starting July 1999, if the hours billed fall below 15% of the expected average or above

15% of the expected average for three consecutive months, the hourly rate may be renegotiated.

It is the State's goal for the Contractor hours associated with Production Support activities to average less than fifteen percent of the total hours expended per month by the Contractor. Production support activities will not contribute to the hours counted towards maintenance.

The State agrees to pay Contractor invoices for agreed upon work within thirty (30) days of receipt.

3. Contract Administrator

The Contractor and the Department agree to have specifically named contract administrators at all times. These representatives of the parties will handle day-to-day delivery of services, will be the first contact regarding any proposals, questions, and change orders, and will ensure that problems and conflicts are resolved fairly and promptly. The Department's contract administrator shall approve payments to the Contractor for billable hours and fixed cost infrastructure/support. The Department's contract administrator will have authority for all contract-related functions except those specifically identified in Section 4. The State's Administrator for this Contract will be the Application Development Chief within the Bureau of Information Technology Services (BITS), Division of Administrative Services. The Department's Contract Administrator will be the Contractor's first contact with the State in all matters stated above. In no instance shall the Contractor refer any matter to any other official outside the liaison's management structure, unless an initial contact in writing concerning the individual matter has been presented to the Contract Administrator. The Contractor's Contract Administrator for this Contract shall be the IBM Global Services Executive Project Manager.

4. Contract Obligations, Modifications, and Acceptance

Modifications, extensions, and amendments to the contract; approval of fixed price amounts for contract deliverables; and acceptance of fixed price deliverables will be a shared responsibility between the Division of Administrative Services and the Division of Economic Support. The authority for the Administrative Services Division will be the Director of the Bureau of Information Technology Services or designee. The authority for the Division of Economic Support will be the Division Administrator or designee. Signatures from both shall be required for any amendments or other modifications to the contract, approval of fixed-prices associated with deliverables, and acceptance of fixed-price deliverables. Any direction in writing pursuant to the Contract that includes both the designated representatives of these Divisions shall be binding on the Contractor and the Department. In those individuals' absences or inability to act, such notice shall be signed by the Administrators of the Divisions, the Secretary or Deputy Secretary of the Department. IBM Global Services' Contract Administrator for this Contract shall be the IBM Global Services' Executive Project Manager.

5. System Ownership

The U.S. Department of Health and Human Services and the Wisconsin Department of Workforce Development have a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to do so, all application software including but not limited to all source and object code, instructions, files, and documentation comprising KIDS.

A fundamental obligation to be imposed on the Contractor herein is the licensing by the Contractor to the Department of KIDS, including but not limited to any and all software and operational plans. This obligation applies whether or not the Contractor characterizes any part of the system as proprietary or fails to claim for the cost thereof.

The Contractor will convey to the Department, upon request or as specified below, and in a form and format acceptable to the Department in accordance with the Contract, copies of system documentation, operating instructions and procedures, training materials including video presentations and computer based programs, and all data processing programs, or portions thereof, which are part of KIDS whether developed by the employees of the Contractor or any subcontractor as part of this Contract. This provision extends to and includes requests from either the U.S. Department of Health and Human Services or other Title IV-D jurisdictions, as authorized by the Department.

The Contractor shall provide to the Department one copy of the production system items detailed above prior to December 31 1999 and quarterly thereafter.

Excepted from the provisions of this section are all Contractor proprietary tools, programs, methodologies, systems, and commercially-developed off-the-shelf software products used by the Contractor in the production and creation of KIDS, including Contractor internal work manuals, procedure manuals, and internal writings and materials as long as such items are not needed by the Department in order to maintain and operate the system independently upon conclusion of the Contract.

The provisions of this section shall be incorporated in any subcontract which relates to the subject matter of this section.

6. Approval of Deliverables

A deliverable is composed of many work products which may be reviewed independently or together. Work products include, but are not limited to, a detailed project plan, a system design document, source code, system test documentation and time and cost required to complete the deliverable. In instances where a deliverable is of sufficient magnitude to require system change work to be done in increments, sub-deliverables will be identified by the Department. A sub-deliverable, or deliverable component, will be composed of the same work products that comprise a deliverable and will follow the deliverable approval process.

The process described in this section will be used for the approval of any work product, and for the review and approval of all completed deliverables under this Contract. A detailed listing of the work products for each request, including at a minimum the project plan, system design document, system test documentation, time and cost, by the Department shall be mutually agreed upon.

The Contractor will not commence work beyond the Project Plan prior to receiving written approval from the Department to proceed. The Project Plan, to include the following work products: project plan, system design documents, and estimate of time and cost, will be provided at the time of the scheduled walk-through for the system design change. Once the Project Plan has been provided, unless the Department requests an extension in writing, the Department shall have five (5) working days in which to convey its approval or denial of approval to proceed. This approval shall include a maximum number of hours authorized for the deliverable.

Upon completion, the deliverable, including the system test documentation, shall be subject to review by the Department to verify that the deliverable meets the requirements approved by the Department. The Department will provide the Contractor with either written "Notice of Acceptance" for the deliverable, or a written "Notice of Rejection" citing the specific approved deliverable requirements that were not met.

The review process begins with receipt of a work product from the Contractor. The date of receipt is defined as the first working day after the day of delivery to the Department.

The Department shall have fifteen (15) working days from the date of receipt of the work product to complete its review. Within these fifteen (15) days, the Department shall notify the Contractor of the approval of the work product, or of the rejection of the work product or any portion thereof. The Department shall set forth the reason(s) for rejection of the work product in the "Notice of Rejection" letter.

The Contractor shall have five (5) working days to clarify with the Department the reason(s) for the rejection.

The Contractor shall have fifteen (15) working days from the end of the clarification period to correct the deficiencies identified in the "Notice of Rejection" and to resubmit the work product.

If the work product or any portion thereof is still found unacceptable because of deficiencies, the notification, repair, and review process shall be repeated for those deficiencies until acceptance by the Department.

If, due to the size of the work product or other conflicts or circumstances beyond the Department's control, the Department does not provide the Contractor with a written "Notice of Acceptance" or "Notice of Rejection" within the fifteen (15) day review period, the Department and the Contractor shall negotiate a mutually agreeable time frame for the State review to be completed. In no event shall the new time frame be greater than an additional fifteen (15) days. At the end of the new time frame, if the Department does not provide a written "Notice of Acceptance" or "Notice of Rejection," the Contractor may invoice for the work product without the approval notice.

A deliverable is complete when either a written notice of acceptance or a controlled correspondence identifying that deliverable programs may be migrated to the KIDS production environment is received by the Contractor.

Any defects disclosed after acceptance of a work product are subject to the warranty provisions of Section 28.

7. Planning, Tracking, and Reporting

The planning, tracking, and reporting of work are an integral part of the successful completion of all work under this Contract. As a result, certain standards will be maintained by the Contractor as follows:

A detailed work plan shall be provided to the Department's Contract Administrator and shared with the Bureau of Child Support twice a month. This work plan will include the schedule for completing both system change and maintenance work that have been communicated to the Contractor via Service Requests and Problem Tracking Reports which have been identified as critical or serious. This work plan should contain viable completion dates for those items.

A detailed project plan will be developed for each deliverable. This plan will identify tasks, resource assignments, estimated hours, and estimated duration to completion.

Detailed time records for the effort expended on each deliverable will be maintained and reported to the Department. This time keeping and reporting will be done through the BITS time reporting process currently being utilized by the Contractor. It is acknowledged that this process

will periodically need to be updated to add new deliverables to the current list of those to be tracked.

Upon completion of each deliverable, the Contractor will report to the Department the hours originally estimated and actual hours expended.

Hours not associated with a specific deliverable also will be tracked through the BITS time reporting process and reported to the Department.

8. Approval

The Department and the State of Wisconsin assume no liability for payment under the terms of this Contract until the Contractor is notified, in writing, that the Contract has been approved by the Wisconsin Department of Administration and the U.S. Department of Health and Human Services.

9. Policy Determinations

The Department shall determine all child support policy and operating guidelines for the Wisconsin Kids Information Data System (KIDS). The Contractor shall be entitled to rely upon and act in accordance with such policy determinations and operating guidelines, and shall incur no liability in doing so unless the Contractor acts negligently, maliciously, fraudulently, or in bad faith.

10. Certification Guarantee

Both the State and Contractor agree that all work required to obtain federal certification be given the highest priority, and both parties acknowledge that other work assignments may be delayed as a result of this requirement. The State will develop a work plan for completing system certification requirements. This work plan will be submitted to the Office of Child Support Enforcement for validation.

11. Prime Contractor Responsibilities

The Contractor will be required to assume responsibility for delivery of all work products related to maintenance/production support, enhancements and new deliverables.

12. Independent Capacity of Contractor

The Contractor, its officers, employees, subcontractors, or any other agent of the Contractor in performance of this Contract will act in an independent capacity and not as officers or employees of the State of Wisconsin or the Department.

13. Critical Personnel

The Contractor agrees that all new staff will work on-site in Madison. Exceptions to the foregoing will be by mutual agreement. It is also the Contractor's intent that any vacancy in a position currently being filled by a person who works off-site will be filled with on-site personnel, if possible.

Contractor staff working in the following positions are considered to be essential to the work performed under this Contract:

Executive Project Manager
Technical Team Lead

Finance Team Lead

Case Management Team Lead	Test/Training Team Lead
Deputy Executive Project Manager	System Architect

The incumbents in these positions as of the effective date of this Contract are listed in Appendix A.

The Contractor will assign the critical personnel identified above to the project full-time and on-site, unless otherwise agreed to in writing by the State.

The Contractor may not divert critical personnel except in accordance with the procedure identified in this section. The Contractor shall provide a notice of proposed diversion or replacement to the Department's Contract Administrator at least sixty (60) 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) days before the proposed diversion or replacement, the Department's Contract Administrator will notify the Contractor whether the proposed diversion or replacement is approved or rejected, and if rejected will provide reasons for the rejection.

"Divert" or "diversion" is defined as the transfer of personnel by the Contractor or a subcontractor to another assignment within the control of the Contractor or a subcontractor. "Divert" or "diversion" does not include the resignation, death, disablement, or dismissal for cause of an employee which is beyond the control of the Contractor or subcontractor.

Replacement staff shall be on-site at least two (2) weeks before the date of departure of the staff that is being replaced. The Contractor shall provide the Department with reasonable access to any staff reassigned by the Contractor.

Unapproved diversion of any of the above critical personnel which occur before the expiration of the sixty (60) day advance notice period will cause damage to the Department that would be difficult to determine. Therefore, any such diversion of Contractor staff will result in the imposition of liquidated damages in the amount of \$1,000 per business day for each such offense. The damages will begin on the first business day of the diversion and will continue until the Contractor's replacement is accepted by the Department and begins work, or until the sixty (60) day period from the notice of diversion has expired, whichever is sooner. The maximum assessable damages under this provision would be sixty (60) days. The limitation of liability section of the Original KIDS Contract shall not be a bar to the assessment of liquidated damages under this section.

The Limitation of Liability Section of this Contract shall not be a bar to the assessment of damages pursuant to this Section. No damages other than those specifically set forth in this Section are collectable under this Section.

Replacement of staff identified in this Section who have terminated employment shall be with persons of equal ability and qualifications. The Department shall have the right to conduct separate interviews of proposed replacements for staff identified in this Section. The Department shall have the right to approve, in writing, the replacement of staff identified in this Section.

Staff identified in this Section, reasonably determined by the Department to be non-cooperative, inept, incompetent, or otherwise unacceptable, shall be removed by the Contractor after such problematic behavior has been documented by the Department and the Contractor has been given reasonable time, not less than thirty (30) calendar days, to remedy such problems and has failed to do so. In the event that an individual identified in this Section is removed from the project

pursuant to a request by the Department, the Contractor will have thirty (30) calendar days in which to fill the vacancy with another employee with acceptable experience and skills subject to the prior written approval of the Department. Such approval by the Department will not be unreasonably withheld or delayed.

14. Removal of Non-Critical Personnel

Any employee of the Contractor or of any subcontractor, other than those identified in Section 13, reasonably determined by the Department to be non-cooperative, inept, incompetent, or otherwise unacceptable shall be removed from the KIDS Project after such problematic behavior has been documented by the Department and the Contractor has been given reasonable time, not less than thirty (30) calendar days, to remedy such problems and has failed to do so.

15. Subcontracting

None of the services to be provided by the Contractor and its subcontractors shall be subcontracted or delegated to any other organization, subdivision, association, individual, corporation, partnership, or group of individuals or other such entity without the prior written consent of the Department. The Department shall respond to the Contractor's proposed use of a subcontractor within five (5) business days of receipt of the Contractor's request. Any subcontract must be approved by the Department in writing. The subcontract itself shall be in writing and shall in no way alter the Contract terms and conditions. The Department shall respond to the Contractor regarding approval of any subcontract within twenty (20) business days of receipt by the Department of the proposed subcontract. Said subcontract shall contain provisions for state and federal access to the books, documents, and records, and inspection of work provided for in this Contract. No subcontract or delegation of work shall relieve or discharge the Contractor from any obligation, provision, or liability under this Contract. The Contractor shall provide the Department with a copy of any contract or agreement with any subcontractor within thirty (30) calendar days of the effective date of this contract.

16. Reports

The Contractor will provide access to KIDS source code for the KIDS Reports team staff who will use this information for preparing ad hoc and other required reports.

17. Transfer of Services

It is the intent of the Parties that at the expiration or termination of this agreement, IBM will cooperate with the State of Wisconsin to assist with the orderly transfer of the services provided by IBM hereunder to another services provider or the State of Wisconsin itself. The transfer period shall begin no later than ninety days prior to expiration or termination of the Agreement. During the transfer period the State of Wisconsin may request IBM to perform, and if so requested, IBM shall perform (except in the event of termination for cause by IBM) services in connection with migrating the work of the State of Wisconsin to another service provider or the State of Wisconsin. During the transfer period, contract performance standards will not be relaxed in any way. The requirements for critical personnel as identified in Section 13 apply for the entire transfer period.

A. Service Transfer Assistance shall be provided:

1. until the effective date of expiration or termination with respect to the services and;
2. for expiration and termination related services which are in addition to the services, for up to three months after the effective date of expiration or termination.

B. Transfer Service

Transfer Assistance shall include providing the State of Wisconsin and its Affiliates and their agents, contractors and consultants, as necessary with services such as the following:

1. Pre-migration Services
 - a. developing an overall transition plan;
 - b. freezing of non-critical software changes;
 - c. notifying all IBM employees and subcontractors of procedures to be followed during the turnover phase;
 - d. reviewing software libraries with the new service provider or the State of Wisconsin;
 - e. assisting in establishing naming conventions for the new development site;
 - f. analyzing space required for the databases and software libraries and;
 - g. generating data-files and computer listing of the source code in a form specified by the State of Wisconsin.
2. Migration Services
 - a. unloading of the developed databases and software libraries;
 - b. delivering data-files to the operations staff for loading into the new development environment;
 - c. assisting with the loading of the database and software libraries.
3. Post-migration Services
 - a. answering questions regarding the services on an as needed basis for ninety days after the expiration of the contract. This work will be billable at the current contract hourly rate as identified in Section 2.
 - b. turning over any remaining State of Wisconsin owned documentation still in IBM's possession.
 - c. return to the State any hardware or software provided by the State.
4. Additional Resources

If any Services Transfer Assistance provided by IBM requires the utilization of additional resources for which there is a current baseline, the State of Wisconsin will pay IBM for the incremental resources using the change order process outlined in the contract. If the Service Transfer Assistance requires IBM to incur expenses in excess of the expenses that IBM would otherwise incur in the performance of this Agreement then:

- a. IBM shall notify the State of Wisconsin of any additional expenses associated with the performance of any additional services prior to performing such services;
- b. upon the State of Wisconsin's authorization, IBM shall perform the additional services and invoice the State of Wisconsin for such services; and
- c. The State of Wisconsin shall pay IBM for such additional expenses incurred to provide the additional services per the terms of the contract.

It is the understanding of both parties that IBM will be compensated for these services under Section 17B4 on a time and material basis including those authorized services which extend beyond the expiration of the contract.

18. Skills Transfer

The State intends to work towards the ability to maintain KIDS using State staff. In order for this to happen, certain skills transfer needs to occur from Contractor to State staff.

It is agreed that the State will provide State staff to work with Contractor staff in order to facilitate this transfer of knowledge concerning the maintenance of KIDS. It is understood, however, that the Contractor must have the ability to assign and oversee the day to day work of the State staff in order to make this approach practical.

Skills transfer will fall into the following two areas:

- 1). Movement of production oversight from IBM Global Services to State staff.
- 2). Integration of State programming staff into the IBM Global Services team structure.

The goal of this effort is to provide the State personnel with an overall knowledge of the system as well as to move them towards the ability to assume senior positions and eventual team lead positions on the system.

19. Performance Improvements

The State and the Contractor have continually engaged in the assessment and tuning of KIDS in order to improve system performance. Under this Contract, the Contractor agrees to continue to participate in the planning and execution of changes to further this goal.

The State and the Contractor have agreed upon a plan which is documented in the KIDS Performance and Availability Assessment Report, dated January 1998, which outlines key goals and methods to achieve those goals. The Contractor is required to follow this plan and to submit monthly progress reports to the State which detail the status of their work. Milestones for work have been identified in the report. For any milestone not completed in the time frame defined in the report, the State and the Contractor will establish a new time frame for the completion of that milestone which is mutually agreed upon by both parties.

20. Confidential

This section applies to all Departmental data, whether oral, written, recorded magnetic media, or otherwise which is information about individual citizens, or is identified as internal Department or State information which by its nature requires it be kept confidential, and that is provided to the Contractor by the Department or is acquired by the Contractor in performance of this Contract. Such data shall be regarded as confidential and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such information in conformance with federal and State statutes and regulations. The Contractor agrees not to release any such confidential information without the express written consent of the Department's Contract Administrator. This section does not apply to technical information. This obligation will survive the termination of this Contract.

The Contractor shall sign and adhere to the attached Non-Disclosure Agreement pertaining to **Proprietary Information** of other DWD Contractors when requested by DWD.

21. Change Management

The state and the contractor have agreed to a plan detailing steps to provide the KIDS system with version controls as detailed in the KIDS Version Control Paper dated September 29, 1998. No later than July 31, 1999 IBM will implement the version controls on the development

environment as described in that document. The contractor will comply with the State's schedule for implementation on version controls on the State mainframe.

22. Assignments

The Contractor shall neither assign nor transfer any interest in this Contract without prior written approval of the Department's Contract Administrator. This provision shall not be construed as limiting the Contractor's rights to subcontract some of the services to be performed hereunder in accordance with the provisions of this Contract or to utilize the services of its affiliated corporations to provide some of the services hereunder. The responsibilities of the prime contractor under this Contract shall remain in effect regardless of the purchase or other acquisition of the prime contractor by a firm, corporation, or other legal entity not an original party to this Contract.

23. Change Orders

The Department or the Contractor may at any time, with reasonable and specific written notice, request changes in the scope of the work or in the time frames of the Contract. Within thirty (30) days of a written request the Contractor shall develop a proposal outlining the deliverables to be provided, the time frames and the cost. The change order total cost shall be guaranteed by the Contractor to the Department for sixty (60) days. The decision by the Department whether to accept or reject the proposed change including the proposed rate is final. No work related to the change order is to be done until the Department approves the Contractor's proposed change order.

The Department retains the right to obtain services other than the Contractor's to accomplish change to KIDS through whatever means deemed necessary by the Department. Such means may include, but are in no way limited to, competitive procurement for the required services. In the event that such changes adversely affect the performance of or directly modify the programs, processes, data, files, reports, or the technical environment delivered by the Contractor, all Contractor warranties and certification guarantees for such affected items are void.

24. Testing

The State requires that the Contractor utilize a set of test cases which represent all case conditions and circumstances specified and approved by the State to provide detailed testing of, at a minimum, any financial changes which may modify where money is distributed within the system. The State may add to and/or modify the specifications of the set of test cases at any time. The State may require that this series of test cases be run at their discretion. Output from the Contractor's testing of the test cases will be made available to the State at the time the software change is available for user acceptance testing. The requirement to provide testing output may be waived at the discretion of the State.

25. Inspection of Work Performed

The Department's authorized representatives shall, at reasonable times, have the right to enter into the Contractor's premises, with the exception of equipment manufacturing facilities, where duties under the Contract are being performed, to in a reasonable manner, inspect, monitor, or otherwise evaluate the work being performed. The Contractor and all subcontractors must provide reasonable facilities and assistance for the Department's representatives. Any subcontract approved by the Department must contain a provision which sets forth the subcontractor's agreement with the terms set forth in this paragraph.

26. Federal Inspections

During the term of the Contract, the U.S. Department of Health and Human Services and their authorized representatives shall be allowed access at any time into the Contractor's premises, with the exception of equipment manufacturing facilities, where duties under the Contract are being performed to inspect all Contractor materials, documents, work papers, deliverables, or any other such items which pertain to KIDS. The Contractor and all subcontractors must provide reasonable facilities and assistance for the federal representatives. The Contractor shall cooperate with any federal reviews and supply a copy of any requested materials. This requirement also applies to any subcontractors who may be engaged in the project. Any subcontract permitted by the Department must contain a provision which sets forth the subcontractor's agreement with the terms set forth in this paragraph.

27. Examination of Records

The Contractor agrees that it shall retain and that the State or the U.S. Department of Health and Human Services, and the U.S. Comptroller General, including their duly authorized representatives, until the expiration of three (3) years after conclusion of this Contract, or any extension, and all pending matters are closed, shall have access to and the right to examine any of the Contractor's books, records, including but not limited to financial records, work products, documents and papers, but only those pertinent to the solicitation and performance of this Contract for the purpose of conducting an audit, examination, excerpt and/or transcription of this Contract. This provision also applies to any parent, affiliated or subsidiary organization or any subcontractor approved by the Department pursuant to this Contract, and performing under formal or informal arrangement any service or furnishing any supplies or equipment to the Contractor involving transactions related to this Contract. Any subcontract permitted by the Department must contain a provision specifically authorizing access in accordance with the terms set forth in this paragraph.

If an audit, litigation, or other action involving the Contractor's records is started before the end of the three (3) year period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the three (3) year period, whichever is later. The Contractor further agrees that this provision shall be inserted in each subcontract.

28. Warranty

The Contractor warrants from the date that any software provided under this Contract is moved into production that said software operates according to and produces the results identified by the specifications approved by the Department. This warranty also covers all delivered programs, documentation, reports, procedures, and other items/services provided under this Contract. Such items will comply with the specifications therefor.

The Contractor's liability with respect to this warranty is limited to the correction of the Wisconsin Kids Information Data System (KIDS) and to the replacement of incorrect or defective documentation, reports, procedures, and other items/services under this Contract. The Contractor agrees that all corrections will be made to the system within sixty (60) days from notification by the Contract Administrator of such deficiencies. Exceptions will be mutually agreed to by the State and Contractor. The Contractor's liability with respect to this warranty is limited to deficiencies identified within one (1) year from the date new software is migrated to the KIDS production environment. Contractor invoices must identify hours expended on warranty work. Warranty work does not relieve the Contractor from scheduled commitments on other deliverables.

If the Contractor fails to repair an identified error or defect within such period, or fails to proceed

with due diligence to effect such repair, the Contract Administrator may, at his/her option, after prior written notice to the Contractor of not less than five (5) business days, act to repair such error or defect. The Contractor will be required to reimburse the Department for all reasonable costs incurred in effecting such repair, except for the cost of those staff authorized under the Skills Transfer Section of this Contract.

All software, documentation, reports, procedures, and other items/services developed under this Contract and transferred to staff funded by the Bureau of Information Technology Services for maintenance shall be removed from this warranty at the time of such transfer.

Software, documentation, reports, procedures, and other items/services which are provided to the Department under contract with a third party vendor are excluded from this warranty.

With respect to any hardware product or any software product that is supplied by a third party manufacturer or software developer, the terms and conditions of the warranty to the Department with respect to such product shall be identical to the terms and conditions of the warranty provided by the manufacturer or software developer of such product and subject to all limitations contained therein. The Department's use of any software product provided by the Contractor hereunder that is supplied by a third party software licensor shall be limited to and subject to the terms and conditions provided by such third party software licensor and, except as provided in the immediately preceding sentence, the terms of this Contract shall not apply to such software product.

Any such condition for which warranty repairs are claimed shall not be attributable to the quality or integrity of data from other automated or manual systems with which the Wisconsin Kids Information Data System (KIDS) interfaces; the Department's misuse or modification of KIDS; the Department's failure to use corrections or enhancements made available by Contractor; the Department's use of KIDS in combination with any product other than those specified by Contractor; hardware, systems software, application software, or telecommunications equipment not a part of KIDS which is inadequate to allow proper operation of KIDS or which is not operating in accordance with the manufacturer's specifications; or operation or utilization of KIDS not in accordance with the operating procedures developed for such system or otherwise in a manner not contemplated by this agreement.

Once IBM transfers code development and maintenance responsibility to the State of Wisconsin or another service provider, IBM's warranty obligation no longer applies.

Y2K Language: Contractor warrants that the software provided by Contractor hereunder is "Year 2000 Ready". "Year 2000 Ready" means that such Contractor owned or developed software, when used in accordance with Contractor associated documentation, is capable of correctly processing, providing and/or receiving date data within and between the twentieth and twenty-first centuries, including leap-year calculations, provided that all products (for example, hardware, software, and firmware) used with such Contractor owned or developed software properly exchange accurate date data with it.

Notwithstanding anything to the contrary herein, it is understood and agreed by Contractor and the Department that Contractor is not providing to the Department hereunder any year 2000 "millennium" software assessment, redevelopment, conversion or testing services or any other Year 2000 services. It is further understood that under this Contract, Contractor agents are not responsible for:

- (a) the Department's products, or

- (b) a third party's products, or
- (c) previously installed or out-of scope Contractor products;

(collectively "Other Products") to correctly process or properly exchange accurate date data.

Contractor shall not be responsible for any failure to perform its obligations under this Contract to the extent such failures are due to the inability of Other Products to correctly process or properly exchange accurate date data alone or in combination with other products.

The Department acknowledges that it is responsible for assessing its current systems and taking appropriate action to migrate to Year 2000 - ready systems. Contractor does not warrant the accuracy of any advice, report data or other product delivered to the Department which produced with or from data and/or software provided by the Department. Such products are provided "AS IS" and Contractor shall not be liable for any inaccuracy thereof. Subject to the obligations of Contractor contained elsewhere in this Contract, Contractor does not assure uninterrupted or error-free operation of the software or services.

CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION OF THE CONTRACT AND SPECIFICALLY EXCLUDES THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

29. Right to Publish

Throughout the term of the Contract, the Contractor shall secure the Department's written approval prior to the public release of any information whatsoever in written or electronic form which pertains to the status of the project covered by this Contract or which identifies KIDS or Wisconsin policies expressly or by implication, such approval not to be unreasonably withheld.

30. Credits and Rights in Data

All documents, reports, and other data prepared for dissemination to persons or entities outside this project during and/or resulting from the performance of services under this Contract shall include the following statement: "The preparation of this (report or document, etc.) was financed under an agreement with the Wisconsin Department of Workforce Development with funds provided in part by the United States Department of Health and Human Services."

The Contractor may not as a result of its work on this project publish or copyright any data without prior approval, unless otherwise stated herein. The Department and the Federal Government shall have the right to publish, duplicate, use and disclose all such data in any manner, and for any purpose whatsoever, and may authorize others to do so.

"Data" shall mean all results, technical information, and materials developed and/or obtained in the performance of the services hereunder including but not limited to, all reports, surveys, plans, charts, recordings (video and/or sound), pictures, drawings, analyses, source and object code, graphic representations, computer programs and printouts, notes and memoranda, and documents whether finished or unfinished, which result from or are prepared in connection with the services performed hereunder. Excepted herefrom is data already published, the public sphere, not developed specifically for this Contract or project or previously used by the Contractor on other projects, or commercially-developed off-the-shelf software products.

Notwithstanding the provisions of 45 CFR, Sub-part F, 95.617, with respect to all products of the services of the Contract, IBM Global Services shall retain one copy of all such products. The

Department grants IBM Global Services 1) an irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, distribute (internally and externally) copies of, and prepare derivative works based on the project and 2) the right to authorize others to do any of the former.

31. Maintenance of Separate Accounting System

The Contractor shall maintain accounting records in a manner which will enable the state or federal government or other staff to audit and examine any books, documents, papers, and records maintained in support of the Contract. All such documents shall be made available to the State at its written request, and shall be identifiable as pertaining to the Contract.

32. Choice of Law

The Contractor agrees to be bound by the laws of the State of Wisconsin. The solicitation and this Contract shall be constructed and interpreted in accordance with Wisconsin law in the event a choice of law situation arises.

33. Force Majeure

The Contractor shall not be liable or accountable for any delay or failure to perform any of its obligations under this Contract to the extent either the Contractor or others working for the Contractor are prevented from doing so by reasons beyond their control, including strikes, acts of God, of governments, of a public enemy, or embargoes, or other reasons commonly considered as causes *force majeure*. In the event of any such delay or failure, the time or times for performance, if any, hereunder shall be extended for a reasonable period, but not less than a period of time commensurate with the delay caused by the *force majeure*. The Department shall make the final decision regarding whether or not the conditions of this section exist.

34. Hiring of Employees

For the duration of this Contract, the Department, without limiting the opportunity of any person to seek and obtain state employment, agrees that it will not assign any person or persons now employed by the Contractor or its subcontractors or agents, to provide services related to this Contract, without the written consent of the Contractor; and the Contractor agrees that it will not engage any person or persons employed by the State on or after the effective date of this Contract, including any department, commission, or board thereof, to provide services related to this Contract, without the written consent of the Department which shall not be reasonably withheld.

35. Notice

Any notice under the Contract which must be given to the Department by the Contractor shall be sufficiently conveyed if mailed, as described in this section, to the Application Development Chief - KIDS, Bureau of Information Technology Services, Department of Workforce Development, 201 East Washington Avenue, P.O. Box 7946, Madison, Wisconsin 53707-7946.

Any notice under the Contract which must be given to the Contractor by the Department shall be sufficiently conveyed if mailed, as described in this section to the Executive Project Manager, IBM Global Services - KIDS Project, 1400 East Washington Avenue, Suite 260, Madison, Wisconsin 53703.

Actual receipt of a notice shall constitute proper delivery of that notice when received.

36. Award of Related

The State may undertake or award supplemental contracts for work related to this Contract or any portion thereof. Related, for purposes of this section, is defined as contracts for procurements related to services for KIDS and issued by the State. The Contractor shall be bound to cooperate fully with such other contractors and the Department in all such cases. All subcontractors will be required to abide by this provision as a condition of the Contract between the subcontractor and the Contractor.

37. Qualification To Do Business

The Contractor is qualified to do business in Wisconsin and is not prohibited by its articles of incorporation, bylaws, or the laws under which it is incorporated from performing the services required under this Contract.

Foreign corporations (corporations other than a Wisconsin corporation) which become a party to any contract which provides services in the State of Wisconsin must possess a certificate of authority from the Wisconsin Secretary of State and must have and continuously maintain a registered resident agent and otherwise conform to all requirements of Chapter 180, Wisconsin Statutes, relating to foreign corporations.

38. Contract Modifications

Any alterations, variations, modifications or waivers of provisions of the Contract shall be valid only when they have been reduced to writing, duly signed and approved. No claims for services furnished by the Contractor not specifically provided in the Contract will be allowed by the Department. Duly signed and approved shall mean when the document is approved, if necessary, by the U.S. Department of Health and Human Services and signed by the duly authorized representatives of the Department and the Contractor.

39. Settlement of Disputes

Any dispute arising under the Contract which is not disposed of by agreement between the Department's named liaison and the Contractor's named liaison shall be resolved by the Department's Contract Administrator and the Contractor's named liaison. If a mutual resolution is not achieved by the Department's Contract Administrator and the Contractor's name liaison, either party may declare an impasse. Within ten (10) business days from the date of the impasse, the Contract Administrator shall issue the decision in writing, setting forth the reasons and facts for the decision as a formal notice pursuant to this Contract. The Contract Administrator's decision may be appealed to the Secretary of the Department whose decision shall be final and conclusive, subject only to whatever legal recourse, if any, the Contractor may have. Pending final resolution of a dispute, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Contract Administrator's direction.

40. Termination

40.1 The Contract shall be subject to termination under any of the following conditions:

I) Mutual Agreement

The contracting parties mutually agree in writing to termination.

II) Default by the Contractor

The Department may, by ninety (90) calendar days prior written notice to the

Contractor signed by the Department's Contract Administrator, terminate the Contractor's right to proceed as to the Contract if the Contractor:

- A) Materially fails to perform the services in accordance with this Contract, or
- B) So fails to make progress as to materially endanger performance of the Contract in accordance with its terms.

Termination at the option of the Department shall be effective ninety (90) calendar days after receipt of such notice, unless the Contractor shall have corrected any alleged failure(s) within thirty (30) calendar days after receipt by the Contractor of such written notice which notice shall specify fully and in detail each material failure to be corrected by the Contractor. The Department shall waive its right to terminate for cause any such failure(s) to perform which, in the exercise of due diligence, cannot be cured in such thirty (30) calendar day period provided that: (a) the Contractor produces a written plan of correction accepted by the Department, in writing, and (b) the Contractor shall within such thirty (30) calendar day period commence and thereafter continue diligently to cure such failure(s) to perform, and (c) no such extension has been granted previously. In the event of such termination, in addition to any other legal rights or remedies the Department may have, the Department may procure or furnish services similar to those so terminated, and the Contractor shall be liable to compensate the Department for any costs up to the amount of the Contract and any federal penalties attributable to the Contractor under this Contract.

III) Financial Instability

The Department may terminate the Contract without paying termination costs if the Contractor files, or has filed against it a petition in bankruptcy or insolvency and that petition is not dismissed within forty-five (45) calendar days.

IV) Termination in the Interest of the State

The Department's Contract Administrator, by ninety (90) calendar days prior written notice, may terminate performance of work under this Contract when it is in the best interest of the State to do so. In the event of such termination, the Contractor will be compensated for all work performed prior to such termination date, including all applicable portions of the holdback, and for all reasonable costs and liabilities to which the Contractor has, out of necessity, obligated itself as a result of this Contract which are applicable to any period after such termination up to the term of the Contract as determined in accordance with the applicable provision of 41 CFR, Sections 1-8. The Contractor shall use its best efforts to minimize the cost to the State.

V) Default by the State

The Contract may be terminated by the Contractor, for cause, upon the failure of the Department to perform any material provision required of it by the Contract, provided the Contractor shall give the Department's Contract Administrator

ninety (90) calendar days prior written notice of the reasons for such termination, including sufficient details to enable the Department to correct these errors and/or omissions. Termination, at the option of the Contractor, shall be effective ninety (90) calendar days after receipt of such notice, unless the Department shall have corrected said failure(s) within thirty (30) calendar days from receipt of the notice. The Department shall not be deemed in default so long as the Department shall within such period commence and thereafter continue diligently to cure such failures and provide relief as necessary to the Contractor through the Change Order and Delay provisions of this Contract. The competency of Department staff shall not be reason for finding the State in default.

The Contractor shall, in the event of a termination, be paid all monies due the Contractor at the effective date of the termination, including all applicable portions of the holdback and payment for completed work for all current deliverables.

VI) Availability of Funds

It is understood and agreed by the parties hereto that all obligations of the Department, including the continuance of payments hereunder, are contingent upon the availability and continued appropriation of State and federal funds, and in no event shall the Department be liable for any payments hereunder in excess of such available appropriated funds. In the event that the amount of any available or appropriated funds provided by the State or federal sources for the purchase of services hereunder shall be reduced, terminated or shall not be continued at an aggregate level sufficient to allow for the purchase of the specified amount of services to be purchased hereunder for any reason whatsoever, the Department shall notify the Contractor of such reduction of funds available and the Department shall be entitled to reduce its commitment hereunder as it deems necessary.

B) Responsibilities Upon Termination

If the Contract is terminated for cause, the party terminating shall be reimbursed by the other party for all reasonable costs and liabilities which are applicable to any period after such termination and for all excess costs which such party reasonable incurs as a direct result of such termination; provided, however, that:

- I) In the event of termination for default by the Department, the Contractor shall not receive reimbursement for any loss of anticipated profits;
- II) In the event of termination for default by the Contractor, the Department shall not receive reimbursement for any loss of increased productivity expected to result from the maintenance or modification of KIDS;
- III) Both parties hereto shall use best efforts to minimize the costs of termination.

40.2 In any event, the period during which such costs shall be computed shall not extend beyond the expiration date of the Contract and such costs shall not duplicate any payments made for completed deliverables, nor exceed the amounts which would otherwise have been due had they been completed.

Upon termination of the Contract by the Department, the Contractor will, if requested by the Department's Contract Administrator at least sixty (60) calendar days prior to such termination, provide reasonable training for the Department's personnel and/or continued performance of the services specified herein for up to six (6) months commencing with the date of termination. For providing such training or continued performance after the term of the Contract, the Department shall pay the Contractor at the change order rate set forth in this Contract, without holdback, for providing such training and/or services.

Upon termination of the Contract for any reason, the Department shall have the right, immediately upon demand, to obtain access to and possession of all its properties held by the Contractor, including, but not limited to, current copies of all deliverables for which the Contractor has received reimbursement.

41. Liquidated Damages

It is agreed by the Department and the Contractor that in the event that the Contractor fails to submit or complete an acceptable deliverable, in accordance with Section 6 of this Contract, damage shall be sustained by the Department and that it is and will be impractical and extremely difficult to determine the actual damage which the Department will sustain in the event of and by reason of such delay.

It is, therefore, agreed that the Contractor may be required to pay, beginning on the first business day following a twenty (20) business day correction period, provided that deliverable has not been submitted or the deficient deliverable has not been corrected within that period, fixed and liquidated damages for each business day of delay of completion of any deliverable in the amount of two thousand dollars (\$2,000) per day for each day of delay after the above mentioned twenty (20) business day correction period. This correction period does not apply in the event that the Contractor fails to correct a deliverable after the completion of two cycles of the review process as defined in Section 6 of this Contract.

Prior to the start of the twenty (20) business day correction period, the Department will notify the Contractor of its intent to impose liquidated damages. Such notice shall include specific reasons which identify why the Department intends to impose damages. This notice requirement does not apply in the event that the Contractor fails to correct a deliverable after completion of two cycles of the review process as defined in Section 6 of this Contract.

The Department shall invoice the Contractor for amounts due as liquidated damages, said invoice to include the dates for which damages are due. In the event of non-payment by the Contractor within thirty (30) days of the date of invoice, amounts due to the Department as liquidated damages may be set-off against any monies due the Contractor and pursuant to the Contract, provided that any appeal to the Contract Administrator or to the Secretary of the Department in accordance with this Contract is not pending. The Department shall notify the Contractor in writing of any claim for liquidated damages pursuant hereto on or before the date the Department deducts such sums from money payable to the Contractor.

The total amount of liquidated damages cannot exceed the price of the unapproved deliverable. Any liquidated damages that are assessed are in lieu of actual damages for the delay of deliverables, but are not in limitation of any rights or remedies of the Department.

The Limitation of Liability Section of this Contract shall not be a bar to the assessment of

damages pursuant to this Section. No damages other than those specifically set forth in this Section are collectable under this Section.

42. Delays

If for any reason, other than *force majeure*, the Contractor is delayed at any time in the progress of the work defined in the Contract by any cause beyond the Contractor's control, then the due date for deliverables affected by the delay shall be extended for such reasonable time as the Department's Contract Administrator may determine.

The Contractor's access to Department personnel will be granted freely. However, the competency of Department staff will not be reason for relieving the Contractor of any responsibility for failing to meet required deadlines or producing non-acceptable deliverables. Any claim for extension of time must be made in writing to the Department's Contract Administrator not more than twenty (20) calendar days after the Contractor reasonably should become aware of the delay; otherwise, it shall be waived.

Nothing contained herein shall limit the Department's obligation to promptly and correctly manage and process Contractor submissions, change order requests, technical materials, reviews and approvals of deliverables, requests for information, and other reasonable requests from the Contractor, its subcontractors or agents.

If the Department and Contractor cannot agree on an extension of time, then the Contractor's remedy shall be pursuant to the settlement of disputes as provided for in the Contract.

43. Audit Liabilities

In addition to and not in any way in limitation of the obligation of the Contractor, it is understood and agreed by the Contractor that the Contractor shall be held liable for any State or federal audit exceptions in which acts or omissions of the Contractor are cited and administratively adjudicated and shall return to the Department all payments made under the Contract to which exception has been taken and proven or which have been disallowed because of such an exception.

Nothing contained herein shall limit the Department's obligation to promptly pursue with the appropriate federal agencies the expeditious clarification, resolution and disposition of federal audit exceptions which the Department and the Contractor agree are erroneous or inappropriate.

44. Indemnity and Insurance

- A) The Contractor agrees to indemnify, defend and hold harmless the State of Wisconsin, its departments, officers, agents and employees, hereinafter referred to as "Indemnified Parties":
 - I) From any and all claims and losses accruing or resulting to any subcontractors, laborers and any other person, firm or corporation furnishing or supplying work, services, materials, or supplies to the Contractor in connection with the performance of this Contract;
 - II) From any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor, its subcontractors, or their employees in the performance of this Contract;
 - III) Against any liability, including costs and expenses for violation of proprietary

rights, copyrights, and rights of privacy attributable to the acts of the Contractor or its subcontractors;

- IV) Against theft, embezzlement or other acts of dishonesty, arising out of its or any subcontractor's unauthorized publication, translation, reproduction, delivery, performance, use or disposition of any software, data, or other confidential information or materials furnished under this Contract or based on any libelous or other unlawful matter placed therein by the Contractor or its subcontractors.
- B) The Contractor agrees to indemnify the Indemnified Parties for:
- I) Any liability or expense due to claims for personal bodily injury or damage to real or tangible personal property arising out of the furnishing, performance, or use of the services to be provided by the Contractor or its subcontractors under this Contract;
 - II) Any claim for payment or compensation, salary or benefits asserted by an employee of the Contractor or its subcontractors; and
 - III) Any claim arising out of the Contractor's or its subcontractor's failure to comply with any applicable law or regulation.
- C) If any claim, action or proceeding is commenced against the State alleging that the personnel provided by the Contractor or any subcontractor or assignee of the Contractor hereunder are employees of the State for any purpose, the Contractor agrees to indemnify and hold the Indemnified Parties harmless from all liabilities, costs and expenses, including, but not limited to, reasonable attorney's fees associated with such claim, action or proceeding. If such claim or employer-employee status be upheld by the court in connection with such a claim, the Contractor liability shall be limited to the damages awarded solely predicated upon a finding by the court as to such status.
- D) If any action, suit or proceeding is brought against the State upon any matter herein indemnified against, the State shall, within fifteen (15) business days, cause notice in writing thereof to be given to IBM Global Services' Contract Administrator.
- E) The Contractor agrees that, in order to protect itself as well as the State, the Contractor shall:
- I) Maintain Workers' Compensation insurance, as required by Wisconsin statute, for all employees engaged in the work. A copy of the Contractor's insurance policy or a certificate of insurance must be filed with the Department's Contract Administrator within thirty (30) days of the signing of this Contract.
 - II) Maintain broad form comprehensive general liability and property damage insurance for all claims that might occur in carrying out the Contract. Minimum coverage shall be \$1,000,000 per occurrence, \$2,000,000 general aggregate, combined single limit for general liability and property damage.
 - III) Provide motor vehicle insurance for all owned, non-owned, and hired vehicles that are used in carrying out the Contract. Minimum coverage shall be \$1,000,000 per occurrence combined single limit for general liability and property damage.

- IV) Provide liability umbrella coverage with a minimum coverage of \$5,000,000 per occurrence and \$10,000,000 aggregate.
- V) Demonstrate that the State is named as an additional insured.
- vi) Have the insurer, which shall be licensed to do business in the State of Wisconsin and rated A minus or better by A. M. Best Co., provide a certificate of insurance indicating coverage is in place. The insurer shall notify the State of cancellation or changes in the coverage. The insurance certificate shall be provided before commencement of the Contract. If the Contractor is self-insured, financial records will need to be provided that clearly demonstrate the financial ability to cover losses up to the limits of insurance required within thirty (30) days of the signing of this Contract.
- vii) In the event of any action, suit, or proceeding against the Contractor upon any matter herein indemnified against, the Contractor shall within five (5) business days, cause notice in writing to be given to the Department as specified in this Contract.

45. Infringement Indemnity

In the event a claim, a cause of action, a proceeding or other legal action should arise in which there are claims that KIDS infringes or violates another's intellectual property rights, the Contractor shall undertake to protect, defend, settle or resolve the proceeding. The Contractor shall protect, defend, indemnify and hold harmless the Department, subject to the Department giving the Contractor prompt written notice of such claim, cause of action or proceeding, and rendering the Contractor all necessary and appropriate assistance in undertaking the defense and/or investigation of that claim, cause of action or proceeding. The Department shall, in this regard, provide to the Contractor all relevant documents and other items which are required in defense of the claim, cause of action or proceeding. The Department shall further render all reasonable cooperation, including making personnel available for interviews and testimony, as needed.

Should KIDS, in the Contractor's opinion, be likely to become the subject of a claim of infringement of another's intellectual property rights, the Contractor may do either of the following: 1) obtain a legal binding right for the Department to use, at no cost to the Department, KIDS; or 2) replace or modify KIDS or portions thereof, so that it is non-infringing, yet still complies with Contract specifications.

If none of the foregoing alternatives are available to the Contractor on terms acceptable to the Contractor, the Contractor shall refund to the State the money paid to the Contractor with respect to KIDS.

46. Limitation of Liability

The Contractor shall not be responsible or liable for any incidental, consequential or special damages occasioned by or as a result of its performance or failure to perform in accordance with this Contract.

47. Severability

If any provision of this Contract is declared or found to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision. Performance under the remaining terms of this Contract shall continue.

48. Consent To Breach Not Waiver

The consent by the Department or the Contractor to any breach of any provision contained in this Contract shall not be deemed to be waiver of such provision on any subsequent breach of the same or any other provision contained in this Contract. Likewise, such a consent shall not establish a course of performance between the parties contradictory to the terms of this Contract.

49. Unlawful Boycott

The Contractor warrants, represents, and agrees that during the time this Contract is in effect, neither it nor any affiliated company will participate in or cooperate with an internal boycott, as defined in 26 USC Section 999 (b) (3) and (4) of the Internal Revenue Code of 1986, as amended.

50. Headings Not Controlling

Section headings under this Contract are for convenience only and shall have no binding force or effect and shall not enter into the interpretation hereof.

51. Conditions of the Parties Obligations

It is understood and agreed that the entire contract between parties is contained herein, except for those matters incorporated herein by reference. This Contract supersedes all oral agreements and negotiations between the parties relating to the subject matter thereof.

This Contract is contingent upon authorization of Wisconsin and the United States law, and any material amendment or repeal of the same affecting relevant funding or authority of the Department shall serve to revise or terminate this Contract, except as further agreed to by the parties hereto.

The Department and Contractor understand and agree that no clause, term or condition of this Contract shall be construed to supersede the lawful powers or duties of either party.

52. Standards of Work

The Department is relying on the Contractor as an expert in providing the goods and services specified. Therefore, the Contractor agrees that the performance of work and services pursuant to this Contract shall conform to the requirements of this Contract and to the high professional standards described by the Contractor in the Proposal.

53. Site Rules and Regulations

The Contractor shall use its best efforts to ensure that its employees and agents, while on State premises or in the presence of state employees, shall comply with the Department's relevant work rules and regulations applicable to the work site. The Department shall provide the Contractor with a written description of the relevant site rules and regulations no later than fifteen (15) calendar days after the effective date of this Contract.

Neither party shall require waivers or releases of any personal rights from the representatives of the other in connection with visits to its premises.

54. Clean Air and Water Acts

The Contractor assures that they will comply with all applicable standards, orders or regulations pursuant to Section 306 of the Clean Air Act as amended (42 USC 1857, h), Section 508 of the Federal Water Pollution Control Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations at 40 CFR Part 15 (reference Appendix G, paragraph 14 i. to 45 CFR Part 74).

55. Energy Act

The Contractor assures that they will comply with all applicable standards and policies relating to energy efficiency which are contained in the State energy conservation plan issues in compliance with the Energy Policy and Conservation Act, Public Law 94-165, (reference Appendix G, paragraph 14 j. to 45 CFR Part 74).

56. Affirmative Action

- 56.1 The Contractor assures that they have submitted an Affirmative Action Plan as required by Wisconsin Administrative Code (Admin. 50.50) to the DES Purchasing Agent.
- 56.2 The Contractor assures that they will comply with the regulations of Title VII of the Civil Rights Act of 1964, Section 503 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Omnibus Budget Reconciliation Act of 1981, and the Non-discrimination on the Basis of Disability in State and Local Government Services; Final Rule 28 CFR Part 35.

57. MBE Stipulation

The State of Wisconsin is committed to the promotion of minority business in the state's purchasing program and a goal of placing five (5) percent of its total purchasing dollars with certified minority businesses. Authority for this program is found in Wisconsin Statutes 15.107(2), 16.75(4), and 16.755 and 560.036(2). The contracting agency is committed to the promotion of minority business in the state's purchasing program.

With this procurement, the successful contractor is encouraged to purchase 5% of services and supplies from minority businesses certified by the Wisconsin Department of Commerce, Bureau of Minority Development. The awarded vendor will submit a **subcontracting plan of action** indicating their utilization of certified minority businesses on this contract. **The Department of Workforce Development will require** from the successful contractor a **quarterly report** of purchases of such supplies and services necessary for the implementation of this contract. A listing of certified minority businesses, as well as the services and commodities they provide, is available from the Department of Administration, Office of Minority Business Programs, (608) 267-7806. The list is published on the Internet at: <http://www.doa.state.wi.us/dsas/mbe.htm>.

58. Non-discrimination

- 58.1 No otherwise qualified person shall be excluded from employment, but denied the benefits of employment or otherwise be subject to discrimination in employment in any manner or term of employment on the basis of age, race, religion, color, sex, national origin, ancestry, disability (as defined in s.51.05 (5), Wis. Stats.), arrest or conviction record (in keeping with s.111.32, Wis. Stats.), sexual orientation, marital status, or military participation. All employees are expected to support goals and activities relating to non-discrimination in employment.

- a) The Contractor shall post the Equal Opportunity Policy, the name of the Equal

Opportunity Coordinator, and the discrimination complaint process in conspicuous places available to applicants for employment and employees. The policy and complaint process will be made available in languages and formats understandable to applicants and employees.

- b) Requirements herein stated apply to any subcontracts. The Contractor has primary responsibility to monitor the equal opportunity compliance of subcontractors.
- c) The Department will monitor the equal opportunity compliance of the Contractor and may review the Contractor's monitoring of its subcontractors. The Contractor agrees to comply with equal opportunity monitoring reviews, including the examination of records and relevant files maintained by the Contractor, as well as interviews with staff, subcontractors and referral agencies. The reviews will be conducted according to Department procedures, through a pre-published monitoring schedule or to address immediate concerns of complainants.

58.2 The Contractor agrees to cooperate with the Department in developing, implementing, and monitoring corrective action plans resulting from complaint investigations or monitoring efforts.

59. Lobbying

In conformance with federal law, the authorized Contractor representative has reviewed, signed and returned to the Department the Certification Regarding Lobbying form.

60. Hardware and Software Ownership

The State and the Contractor acknowledge that the State provided various hardware and software to support the Contractor in the execution of the work authorized by this contract. The State retains ownership and responsibility for this hardware and software, as itemized in the department's asset management system.

IN WITNESS WHEREOF, the Department and IBM Global Services have executed this Contract as of the day and year written below.

Contractor's Authorized Representative
IBM Global Services

Date

Department's Authorized Representative
Charles Pasker, Purchasing Agent
Bureau of Procurement
Wisconsin Department of Workforce Development

Date

Department's Authorized Representative
J. Jean Rogers, Administrator
Division of Economic Support
Wisconsin Department of Workforce Development

Date

Department's Authorized Representative
Maureen Hlavacek, Administrator
Division of Administrative Services
Wisconsin Department of Workforce Development

Date

Department of Workforce Development/IBM Global Services**NON-DISCLOSURE AGREEMENT**

THIS AGREEMENT, made effective this _ day of _____ 1999 between The State of Wisconsin's Department of Workforce Development ("DWD") on behalf of itself and any entity it owns or controls DWD and IBM Global Services ("IBM"), including all subcontractors to assure protection and preservation of the confidential, competitively sensitive, and/or proprietary information belonging to other contractors that are under contract with DWD which these other contractors may disclose to DWD or to which DWD may have access ("**Proprietary Information**").

WHEREAS, the parties desire to utilize the Proprietary Information to enable IBM to provide advice and information to the State of Wisconsin concerning the other contractor's performance of its contract with the State, and

WHEREAS, the parties desire to assure the confidential status of the other contractor Proprietary Information which the other contractor may disclose to DWD.

NOW THEREFORE, in reliance upon and in consideration of the following undertakings, the parties agree as follows:

1. All written and recorded information, data, and materials, including without limitation software and software related materials, that DWD or the other contractor discloses to IBM or that is made available to IBM by virtue of DWD or IBM being on Other contractor premises, which is marked in such a manner so as to give reasonable notice as to its confidential nature shall be deemed to be Proprietary Information. Other contractor information disclosed by other contractor or DWD to IBM orally, which within 30 days is identified in writing to DWD as "Confidential" or the like, shall be deemed to be Proprietary Information. Notwithstanding the foregoing, all information disclosed by Other contractor or otherwise made available to DWD or IBM regardless of form, whether verbally or in writing, that describes or relates to information regarding the specifications, design and procedures concerning the payment processing system named TMS-Image; the specifications, design and procedures concerning the system named ACCoRD; and the specifications, design and procedures concerning the system known as DIRON is deemed Proprietary Information without the necessity of additional or further notice.
2. IBM agrees to use the Proprietary Information received from DWD or Other contractor only for the purpose of this Agreement and will not disclose any Proprietary Information to any person, organization, or entity other than employees of the State of Wisconsin and/or its subcontractors with a need to know such information. No rights, license, trademarks, inventions, copyrights, or patents in any Proprietary Information are implied or granted under this Agreement.
3. Proprietary Information supplied shall not be reproduced in any form except as required to accomplish the intent of the Agreement.
4. IBM shall provide the same care to avoid disclosure or unauthorized use of the Proprietary Information as it provides to protect its own proprietary information. It is agreed that access to all Proprietary Information shall be limited by IBM to only such of its employees or its subcontractors who need to know such information for purposes of this Agreement.

5. All Proprietary Information shall remain the property of other contractor. Such Proprietary Information, including all copies thereof, shall be returned by IBM to Other contractor or DWD, or destroyed after the need for it has expired or upon written request of Other contractor or DWD and, in any event, upon termination of this Agreement.
6. It is understood that the term "Proprietary Information" does not include information which:
 - i) has been or may in the future be in the public domain through no fault of IBM;
 - ii) prior to disclosure hereunder, is in the legitimate possession of IBM;
 - iii) subsequent to disclosure hereunder, is lawfully received from a third party;
 - iv) is independently developed by IBM;
 - v) is disclosed with the written approval of Other contractor or DWD;
 - vi) is obligated to be produced under order of a court of competent jurisdiction or where required by law.
7. Because damages are difficult to ascertain in the event of violation of the Agreement, IBM agrees that, without limiting any other rights and remedies, upon breach hereof, Other contractor or DWD may seek injunctive relief to protect its rights hereunder. IBM agrees to indemnify and hold other contractor and DWD harmless from any and all direct foreseeable loss which may reasonably result from breach of the Agreement, subject to the limitation of liability of the Contract.
8. DWD and other contractor agree and understand that the employees and subcontractors of IBM during the course of performing services for DWD may further develop their general knowledge, skills, and experience as they relate to information technology products and/or services. The subsequent use by such employees and subcontractors of such general knowledge, skills, and experience in the ordinary course of business with IBM or its subsidiaries does not constitute a breach of the Non-Disclosure Agreement or the Contract. Further, DWD and Other contractor recognize that IBM's receipt of Confidential Information shall not create any obligations in any way limiting or restricting the assignment of IBM employees or subcontractors in future engagements.
9. This Agreement shall be governed by the laws of the State of Wisconsin. This Agreement may not be amended except in writing.
10. This Agreement shall continue in full force and effect for a period of three years from date of execution or until the termination of Other contractor's contract with the State of Wisconsin, whichever occurs earlier. The provisions restricting disclosure and use of Proprietary Information shall survive termination of the Agreement.
11. This Agreement is executed in two counterparts.

Department of Workforce Development
 201 East Washington Avenue
 P.O. Box 7935
 Madison, WI 53707-7935

IBM Global Services
 800 North Frederick Avenue
 Gaithersburg, MD 20879

BY: _____

BY: _____

TITLE: CONTRACT ADMINISTRATOR

TITLE: _____

DATE: _____

DATE: _____

STATE OF WISCONSIN
Department of
Workforce Development
Bureau of Procurement
P. O. Box 7518
Madison, WI 53707-7518

CONTRACT: CARES MAINTENANCE (amendment #2)

CONTRACT NUMBER: C-611

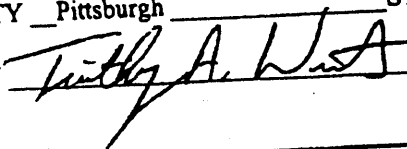
COMMODITY OR SERVICE: CARES MAINTENANCE

CONTRACT PERIOD: Amendment Effective September 1, 1999 through August 31, 2001

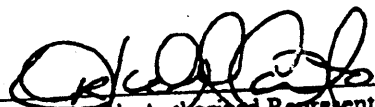
1 This contract amendment with attachment is entered into by and between the State of Wisconsin, Department of Workforce Development (DWD), and the contractor whose name, address and principal officer appears below; Deloitte Consulting Group.

2. Whereby DWD agrees to direct the purchase and the contractor agrees to supply the contract requirements cited above in accordance with the terms and conditions of the contract signed August 26, 1996, and in accordance with the contractor's bid submitted on this RFP with the attached modifications. All other terms and conditions remain the same.

TO BE COMPLETED BY CONTRACTOR

FIRM NAME	Deloitte Consulting		
ADDRESS	1000 One PPG Place		
CITY	Pittsburgh	STATE	PA
ZIP	15222	TELEPHONE NO.	412-402-5000
BY		TITLE	Principal
DATE	8-24-99		

FOR THE DEPARTMENT OF WORKFORCE DEVELOPMENT


Department's Authorized Representative
Orlando Canto, Deputy Secretary
Wisconsin Department of Workforce Development

8/13/99
Date

ATTACHMENT TO AMENDMENT 2 TO CONTRACT C-611

1. Add to the Preamble before 'NOW THEREFORE': WHEREAS, the State extends this contract the first and second one (1) year optional extension periods as defined in the RFP. The extension period is from September 1, 1999 through August 31, 2001.
2. SECTION 2, PAYMENT PROVISIONS.
 - a. 2nd paragraph: Remove and replace the paragraph with 'A set cost of \$41,832 per month will be paid to the Contractor for services as defined in Part III, Section 3.5 of the RFP'.
 - b. 5th paragraph: Remove and replace the paragraph with 'A set cost of \$83.00 per billable hour will be paid to the Contractor for services as defined in Part II, Sections 3.2, 3.3, 3.4, and 3.6 of the RFP. If total hours falls below 13,104 hours per month, the hourly rate shall be \$86.00 per hour. If the total hours falls below 12,191 hours per month, the hourly rate shall be \$89.00 per hour. On a weekly basis, the Contractor shall submit for approval the time sheets for services performed during the month. The Contractor will be notified by the Department within twenty (20) business days after the receipt of the time sheets whether or not the hours are approved. Approval of the Contractor's time sheets shall not be unreasonably withheld. At the end of each month, the Contractor may bill for approved services as follows:'
 - c. 7th paragraph: Delete the entire paragraph.
3. SECTION 3: LIAISON, Remove and replace the paragraph with the following:

3. Contract Administration. The Contractor and the Department agree to have specifically named contract administrators at all times. These representatives of the parties will handle day-to-day delivery of services, will be the first contact regarding any proposals, questions, and change orders, and will ensure that problems and conflicts are resolved fairly and promptly. The Department's contract administrator shall approve payments to the Contractor for billable hours and fixed cost infrastructure/support. The Department's contract administrator will have authority for all contract-related functions except those specifically identified in Section 4. The State's Administrator for this Contract will be the CARES Application Development Chief within the Bureau of Information Technology Services (BITS), Division of Administrative Services. The Department's Contract Administrator will be the Contractor's first contact with the State in all matters stated above. In no instance shall the Contractor refer any matter to any other official outside the State's management structure, unless an initial contact in writing concerning the individual matter has been presented to the Contract Administrator. The Contractor's Contract Administrator for this Contract shall be the Deloitte Consulting Contract Representative.
4. SECTION 4, CONTRACT ADMINISTRATOR, Remove and replace the paragraph with the following:

4. Contract Monitoring. Modifications, extensions, and amendments to the contract will be a shared responsibility between the Division of Administrative Services and the Division of Economic Support. The authority for each division is the Division Administrator or designee. Signatures from both shall be required for any amendments or other modifications to the contract. Any direction in writing pursuant to the Contract that includes both the designated representatives of these Divisions shall be binding on the Contractor and the Department. In those individuals' absences or inability to act, such notice shall be signed by the Administrators of the Divisions, the Secretary or Deputy Secretary of the Department. Deloitte Consulting Contract Administrator for this Contract shall be the Deloitte Consulting Contract Representative.

5. SECTION 14, SUBCONTRACTING, 8th line: change ten (10) days to twenty (20) days.
6. SECTION 20, WARRANTY, add the following paragraph prior to the last paragraph:

The Contractor further warrants that its custom application software (collectively, the "Software") developed by the Contractor and provided to the Department under this Contract, when such Software is used in accordance with its associated documentation, shall be capable of correctly processing, providing and/or receiving date data (i.e., representations for month, day and year) within and between the twentieth and twenty-first centuries, provided that all products (for example, hardware, software and firmware) used with the Software properly exchange date data with it.

7. SECTION 24, CONFIDENTIALITY, add the following paragraph:

The Contractor shall sign and adhere to the attached Non-Disclosure Agreement pertaining to **Proprietary Information** of other DWD Contractors when requested by DWD.

8. SECTION 33, NOTICE, change the Department address to:

Department of Workforce Development
433 W. Washington Ave.,
Madison, WI. 53703
CARES Applications Development Services Section Chief

9. SECTION 55, TURNOVER, remove and replace with the following:

It is the intent of the parties that at the expiration or termination of this agreement, Deloitte Consulting will cooperate with the State of Wisconsin to assist with the orderly transfer of the services provided by Deloitte Consulting hereunder to another services provider or the State of Wisconsin itself. The State of Wisconsin will notify Deloitte Consulting, in writing, of their intent to initiate the turnover period one hundred and twenty (120) days prior to the start of the turnover period. This written notification shall include the start date of Turnover and the requested number of staff by position. The turnover period will be for a minimum of ninety (90) days. Deloitte Consulting will respond to the states written notification 30 days after receipt. The response will include an estimate of time, number of resources, and cost for the services to perform the turnover.

In addition, if the service transfer assistance requires Deloitte Consulting to incur expenses in excess of the expenses that Deloitte Consulting would otherwise incur in the performance of this Agreement then:

- a. Deloitte Consulting shall notify the State of Wisconsin of any additional expenses associated with turnover (e.g. leases, office space, furniture, office equipment, travel and subsistence etc.) ;

The State of Wisconsin shall pay Deloitte Consulting for such additional expenses incurred during turnover on a monthly basis.

It is the understanding of both parties that Deloitte Consulting will be compensated for these services on a time and material basis including those authorized services and expenses which extend beyond the expiration of the contract.

During the turnover period Deloitte Consulting will provide the following types of services, subject to the availability of resources, at the direction of the State of Wisconsin:

- developing an overall transition plan
- freezing of non-critical software changes

notifying all Deloitte Consulting employees and subcontractors of procedures to be followed during the turnover phase
reviewing software libraries with the new service provider or the State of Wisconsin
database administration
software problem analysis
production support
application testing
documentation maintenance
implementation support
technical training
software testing

10. Add SECTION 56, MBE STIPULATION:

The State of Wisconsin is committed to the promotion of minority business in the state's purchasing program and a goal of placing five (5) percent of its total purchasing dollars with certified minority businesses. Authority for this program is found in Wisconsin Statutes 15.107(2), 16.75(4), and 16.755 and 560.036(2). The contracting agency is committed to the promotion of minority business in the state's purchasing program.

With this procurement, the successful contractor is encouraged to purchase 5% of services and supplies from minority businesses certified by the Wisconsin Department of Commerce, Bureau of Minority Development. The awarded vendor will submit a subcontracting plan of action indicating their utilization of certified minority businesses on this contract. The Department of Workforce Development will require from the successful contractor a quarterly report of purchases of such supplies and services necessary for the implementation of this contract. A listing of certified minority businesses, as well as the services and commodities they provide, is available from the Department of Administration, Office of Minority Business Programs, (608) 267-7806. The list is published on the Internet at: <http://www.doa.state.wi.us/dsas/mbe.htm>.

11. Add SECTION 57, HARDWARE AND SOFTWARE OWNERSHIP:

The State and the Contractor acknowledge that the State provided various hardware and software to support the Contractor in the execution of the work authorized by this contract. The State retains ownership and responsibility for this hardware and software, as itemized in the department's asset management system.

12. ENTIRE DOCUMENT: Change Deloitte & Touche to Deloitte Consulting Group.

Department of Workforce Development/Deloitte Consulting Group

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT, made effective this 1st day of September 1999 between The State of Wisconsin's Department of Workforce Development ("DWD") on behalf of itself and any entity it owns or controls DWD and **Deloitte Consulting LLC**, including all subcontractors, to assure protection and preservation of the confidential, competitively sensitive, and/or proprietary information belonging to other contractors that are under contract with DWD which these other contractors may disclose to DWD or to which DWD may have access ("**Proprietary Information**").

WHEREAS, the parties desire to utilize the Proprietary Information to enable DELOITTE CONSULTING to provide advice and information to the State of Wisconsin concerning the other contractor's performance of its contract with the State, and

WHEREAS, the parties desire to assure the confidential status of the other contractor Proprietary Information which the other contractor may disclose to DWD.

NOW THEREFORE, in reliance upon and in consideration of the following undertakings, the parties agree as follows:

1. All written and recorded information, data, and materials, including without limitation software and software related materials, that DWD or the other contractor discloses to DELOITTE CONSULTING or that is made available to DELOITTE CONSULTING by virtue of DWD or DELOITTE CONSULTING being on other contractor premises, which is marked in such a manner so as to give reasonable notice as to its confidential nature shall be deemed to be Proprietary Information. Other contractor information disclosed by another contractor or DWD to DELOITTE CONSULTING orally, which within 30 days is identified in writing to DWD as "Confidential" or the like, shall be deemed to be Proprietary Information. Notwithstanding the foregoing, all information disclosed by other contractor or otherwise made available to DWD or DELOITTE CONSULTING regardless of form, whether verbally or in writing, that describes or relates to information regarding the specifications, design and procedures concerning the payment processing system named TMS-Image; the specifications, design and procedures concerning the system named ACCoRD; and the specifications, design and procedures concerning the system known as DIRON is deemed Proprietary Information without the necessity of additional or further notice.
2. DELOITTE CONSULTING agrees to use the Proprietary Information received from DWD or Other contractor only for the purpose of this Agreement and will not disclose any Proprietary Information to any person, organization, or entity other than employees of the State of Wisconsin and/or its subcontractors with a need to know such information. No rights, license, trademarks, inventions, copyrights, or patents in any Proprietary Information are implied or granted under this Agreement.
3. Proprietary Information supplied shall not be reproduced in any form except as required to accomplish the intent of the Agreement.
4. DELOITTE CONSULTING shall provide the same care to avoid disclosure or unauthorized use of the Proprietary Information as it provides to protect its own proprietary information. It is agreed that access to all Proprietary Information shall be limited by DELOITTE CONSULTING to only such of its employees or its subcontractors who need to know such information for purposes of this Agreement.
5. All Proprietary Information shall remain the property of other contractor. Such Proprietary Information, including all copies thereof, shall be returned by DELOITTE CONSULTING to Other contractor or DWD.

or destroyed after the need for it has expired or upon written request of Other contractor or DWD and, in any event, upon termination of this Agreement.

6. It is understood that the term "Proprietary Information" does not include information which:
 - i) has been or may in the future be available to the public (including, without limitation, any information filed with any governmental agency and available to the public) other than as the result of a disclosure by DELOITTE CONSULTING in breach hereof;
 - ii) prior to disclosure hereunder, is in the legitimate possession of DELOITTE CONSULTING;
 - iii) subsequent to disclosure hereunder, is lawfully received from a third party;
 - iv) is independently developed by DELOITTE CONSULTING;
 - v) is disclosed with the written approval of Other contractor or DWD;
 - vi) is obligated to be produced under order of a court of competent jurisdiction, administrative agency or governmental body, or by any law, rule or regulation, or by subpoena, or any other administrative or legal process;
 - vii) is not designated as "Confidential" in accordance with paragraph 1 of this Agreement
 - viii) is disclosed by the other contractor to a third party without substantially the same restrictions as set forth herein.
7. Because damages are difficult to ascertain in the event of violation of the Agreement, DELOITTE CONSULTING agrees that, without limiting any other rights and remedies, upon breach hereof, Other contractor or DWD may seek injunctive relief to protect its rights hereunder.
8. DWD and Other contractor agree and understand that the employees and subcontractors of DELOITTE CONSULTING during the course of performing services for DWD may further develop their general knowledge, skills, and experience as they relate to information technology products and/or services. The subsequent use by such employees and subcontractors of such general knowledge, skills, and experience in the ordinary course of business with DELOITTE CONSULTING or its subsidiaries does not constitute a breach of the Non-Disclosure Agreement or the Contract. Further, DWD and other contractor recognize that DELOITTE CONSULTING's receipt of Proprietary Information shall not create any obligations in any way limiting or restricting the assignment of DELOITTE CONSULTING employees or subcontractors in future engagements.
9. This Agreement shall be governed by the laws of the State of Wisconsin (without giving effect to its choice of law principles). This Agreement may not be amended except in writing.
10. This Agreement shall continue in full force and effect for a period of three years from date of execution or until the termination of Other contractor's contract with the State of Wisconsin, whichever occurs earlier. The provisions restricting disclosure and use of Proprietary Information shall survive termination of the Agreement.
11. This Agreement is executed in two counterparts.

Department of Workforce Development
201 East Washington Avenue
P.O. Box 7935
Madison, WI 53707-7935

Deloitte Consulting LLC

BY: _____
TITLE: CONTRACT ADMINISTRATOR
DATE: _____

BY: _____
TITLE: _____
DATE: _____

WISCONSIN CARES MAINTENANCE AND MODIFICATION CONTRACT

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Declarations

This Wisconsin CARES Contract, hereinafter referred to as the "Contract," is made by and between the State of Wisconsin, hereinafter referred to as the "State," acting through the Department of Workforce Development, duly authorized, hereinafter referred to as the "Department," located at , 201 East Washington Avenue, P.O. Box 7946, Madison, Wisconsin 53707-7946 and Deloitte & Touche Consulting Group, hereinafter referred to as "Deloitte & Touche," or the "Contractor," located at 2500 One PPG Place, Pittsburgh, Pennsylvania 15222-5401.

Preamble

WHEREAS, the State issued a Request for Proposals with the issue date of October 5, 1995, entitled "Maintenance and Modification of the Client Assistance for Re-employment & Economic Support (CARES) Computer System," hereinafter referred to as the "RFP"; and

WHEREAS, prior to the due date and time stipulated in the RFP, Deloitte & Touche submitted a proposal, entitled "Proposal to Perform Maintenance and Modification of the CARES System," dated November 30, 1995, hereinafter referred to as the "Proposal."

WHEREAS, the State has selected Deloitte & Touche to furnish the services; and

WHEREAS, the State in correspondence dated January 19, 1996, issued by the Department, notified Deloitte & Touche of its intent to award; and

WHEREAS, pursuant to the letter of intent to award, negotiations were conducted between the State and Deloitte & Touche resulting in clarifications to the Deloitte & Touche Proposal at the request of the State which are set forth in this Contract; and

WHEREAS, this Contract negotiated between the State and Deloitte & Touche was submitted to the U.S. Department of Health and Social Services and the U.S. Department of Agriculture prior to the Department signing this Contract.

NOW THEREFORE, Deloitte & Touche agrees to furnish to the State, in accordance with this Contract, the services described in the Department's RFP.

TERMS AND CONDITIONS

1. TERM OF THE CONTRACT

The effective date of this Contract shall be on the day it has been signed by the Contractor and by the duly authorized representatives of the Department of Workforce Development, and has been approved by the U.S. Department of Agriculture and the U.S. Department of Health and Human Services. Notice of said approvals shall be furnished in writing by the Contract Administrator in accordance with this Contract. This Contract shall expire at the completion of the three (3) year maintenance period or at the end of the first or second one (1)-year optional extension period(s) as defined in the RFP. The Department will provide the Contractor with ninety (90) days written notice of extension of this Contract.

The Department and the Contractor agree that the established date of the start of work under this Contract toward the completion of the scope of work defined in Part III of the RFP shall be ten (10) business days after the effective date of this Contract.

2. PAYMENT PROVISIONS

The services and deliverables which are defined in Part III - Statement of Work of the RFP are the basis for payments to the Contractor.

A set cost of \$179,910 per month will be paid to the Contractor for production maintenance services as defined in Part III, Section 3.2, of the RFP. On a weekly basis, the Contractor shall submit for approval the time sheets for production maintenance services. The Contractor will be notified by the Department within twenty (20) business days after the receipt of the time sheets whether or not the services provided were satisfactory. Once all weekly time sheets for a month are approved, the Contractor may invoice for the approved production maintenance services for that month. The Department shall not unreasonably withhold or delay notification of approval of the Contractor's time sheets. Based on the review of the time sheets, if the hours of providing production maintenance services, except for production problem resolution, exceeds or falls below by 15% the FTE allocation for these services in Appendix H of the Contractor's proposal for three consecutive months, the monthly rate will be renegotiated.

Charges for ad hoc reporting, run-time-improvements, and mass changes will be paid for under software changes and enhancements and not as part of the monthly billing charges for production maintenance services. The Department will provide support for production maintenance day shift.

The Department will provide the hardware, software, and related devices listed in

Appendix A which serves as an attachment to this Contract and is included by reference to this Contract.

A set cost of \$64.00 per billable hour will be paid to the Contractor for software changes and enhancements as defined in Part III, Section 3.3, of the RFP. If total billable hours falls below 4100 hours per month for three consecutive months, the hourly rate shall be renegotiated for as long as hours remain below 4100 per month. If the total billable hours exceeds 6400 hours per month for three consecutive months, the hourly rate shall be renegotiated for as long as hours remain above 6400 hours per month. Billable hours are those worked on software changes and enhancements. Track managers shall not bill in excess of 85% of their time to this component. On a weekly basis, the Contractor shall submit for approval the time sheets for software change and enhancement work performed during the month. The Contractor will be notified by the Department within twenty (20) business days after the receipt of the time sheets whether or not the hours are approved. Approval of the Contractor's time sheets shall not be unreasonably withheld. At the end of each month, the Contractor may bill for approved software change and enhancement hours as follows:

For billable hours expended on deliverables associated with software change and enhancement projects, the Contractor may bill at the end of the month during which deliverable approval was given in accordance with Sections 6 and 16 of this Contract. For billable hours expended on software change and enhancement work orders which are not deliverables based, the Contractor may bill at the end of the month during which the hours were expended, subject to approval of time sheets as described in this Section and in accordance with Section 16 of this Contract. Items meeting any of the above criteria as of the end of a month must be combined into one itemized invoice for software changes and enhancements for that month. The Department and the Contractor shall mutually agree to define the process and the criteria for determining which software change/enhancement projects will be deliverables based.

A set cost of \$64.00 per hour will be paid to the Contractor for training services as defined in Part III, Section 3.4 of the RFP. On a weekly basis, the Contractor shall submit for approval the time sheets for training services. The Contractor will be notified by the Department within twenty (20) business days after the receipt of the time sheets whether or not the services provided were satisfactory. Once all weekly time sheets for a month are approved, the Contractor may invoice for the approved training services for that month. The Department shall not unreasonably withhold approval of the Contractor's time sheets.

For all accepted services and deliverables, the Contractor will submit a standard state invoice in triplicate to the Contract Administrator of the Department of Workforce Development. The Department will pay properly submitted Contractor invoices within thirty (30) days of receipt.

3. LIAISON

The Contractor and the Department agree to have specifically named liaisons at all times. These representatives of the parties will be the first contacts regarding any questions, problems, and any other issues which arise during implementation and operation of the Contract. The state's liaison for this Contract will be the CARES Applications Development Services Section Chief who will be the Contractor's first contact with the state in all matters stated above. In no instance shall the Contractor refer any matter to any other official, unless an initial contact in writing concerning the individual matter has been presented to the CARES Applications Development Services Section Chief or, in that person's absence or inability to act, to the Secretary of the Department. The Contractor's liaison for this Contract shall be the Contractor's Project Manager or other designated Contractor representative.

4. CONTRACT ADMINISTRATOR

The Department's Contract Administrator shall be the CARES Applications Development Services Section Chief. The Department's Contract Administrator shall be the single authority to act for the Department under this Contract. Any direction in writing pursuant to the Contract by the Contract Administrator shall be binding on the Contractor and the Department. Whenever the Department is required by the terms of the Contract to provide written notice to the Contractor, such notice must be signed by the Contract Administrator or, in that individual's absence or inability to act, such notice shall be signed by the Secretary of the Department. Any other written direction issued by the Department shall not be binding upon the Contractor or the Department.

5. SYSTEM OWNERSHIP

The U.S. Department of Health and Human Services, the U.S. Department of Agriculture, and the Wisconsin Department of Workforce Development have a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to do so, all application software including, but not limited to, all source and object code, instructions, files and documentation comprising the Wisconsin CARES System. This license shall be maintained regardless of what modifications the Contractor or the Department makes to the system.

The Contractor will convey to the Department, upon request and in a form and format acceptable to the Department in accordance with the Contract, copies of system documentation, operating instructions and procedures, training materials including video presentations and computer-based programs, and all data processing programs, or portions thereof, which are part of the Wisconsin CARES System whether developed by the employees of the Contractor or any subcontractor as part of this Contract.

To the extent that the Contractor utilizes any of its property (including, without

limitation, any software of Contractor or any proprietary or confidential information of Contractor or any trade secrets of Contractor) in performing services hereunder, such property shall remain the property of the Contractor and the Department shall acquire no right or interest in such property.

Nothing in this Contract shall be construed as precluding or limiting in any way the right of the Contractor to provide consulting, auditing or other services of any kind or nature whatsoever to any person or entity as the Contractor in its sole discretion deems appropriate. In furtherance of the foregoing and not in limitation and notwithstanding any contrary provision of this Contract, the parties hereby acknowledge and agree that the Contractor shall have ownership and copyright ownership of, including, without limitation, all rights to use, disclose and otherwise employ its ideas, concepts, know-how, methods, techniques, processes, and skills, and adaptations thereof (including, without limitation, function, system and data models; the generalized features of the structure, sequence and organization of software and the user interfaces and screen designs; general purpose routines, tools and utilities; and procedures, processes, logic coherence and methods of operation of systems) in conducting its business (including, without limitation, providing services or creating programming or materials for other clients), and the Department shall not assert against the Contractor or its personnel any prohibitions or restraint from so doing.

The provisions of this section shall be incorporated in any subcontract which relates to the subject matter of this section.

6. APPROVAL OF DELIVERABLES

The process described in this section will be used for the review and approval of all deliverables under this contract. Each deliverable shall be subject to review by the Department to verify that the deliverable satisfies the acceptance criteria approved by the Department. The Department will provide the Contractor with either a written "Notice of Acceptance" letter for the deliverable or a written "Notice of Rejection" letter citing the specific deliverable requirements that were not met.

- o The review process begins with receipt of the deliverable from the Contractor. The date of receipt is defined as the first working day after the day of delivery to the Department.
- o The Department shall have fifteen (15) working days from the date of receipt of each deliverable to complete its review.
- o The Department shall notify the Contractor in writing within fifteen (15) working days from the date of receipt of each deliverable if the deliverable or any portion thereof is unacceptable. The Department shall set forth the reason(s) for rejection of the deliverable in the written "Notice of Rejection" letter.

- o The Contractor have five (5) working days to clarify with the Department the reason(s) for rejection.
- o The Contractor shall have fifteen (15) working days from the end of the clarification period to correct the deficiency(ies) identified in the "Notice of Rejection" letter and to resubmit the deliverable to the Department.
- o The Department shall thereafter have ten (10) working days to repeat its review process.
- o If the deliverable or any portion thereof is still found unacceptable, the notification, repair, and review process shall be repeated for the deficiencies identified in the original "Notice of Rejection" letter until acceptance by the Department.
- o If due to the size of a deliverable(s) or due to other conflicts or circumstances the Department does not provide the Contractor with a written "Notice of Acceptance" letter or a written "Notice of Rejection" letter within the fifteen (15) day review period, the Contract Administrator and the Contractor shall negotiate a mutually agreeable time frame for the state review to be completed. At the end of that time frame, if the state does not provide a written "Notice of Acceptance" or "Notice of Rejection" letter, the Contractor may invoice for the deliverable for payment without approval.

In the event that the Contractor (a) fails to submit a deliverable by the date indicated in the Contractor's currently approved work plan, or (b) fails to correct a deliverable after the completion of two cycles of the review process as defined above, the Department may impose liquidated damages for each such failure to perform in accordance with the provisions of Section 41 of this Contract.

To the extent that any deliverables are approved by the Department, the Contractor shall be entitled to rely on such approval for purposes of subsequent work except that silence in an approved deliverable with respect to a requirement approved in a prior deliverable cannot be construed to negate or rescind the earlier requirement.

The Contractor is responsible for the preparation of all deliverables pursuant to this Contract. During the development of deliverables the Contractor shall produce sufficient copies to supply one to each state reviewer. After deliverables are approved, the Contractor shall maintain a master copy and provide two (2) copies of all required deliverables in a mutually agreed upon format to the Department.

7. FEDERAL APPROVAL

The Department and State of Wisconsin assume no liability for payment under the terms of this Contract until the Contractor is notified, in writing, that the Contract has been approved by the Wisconsin Department of Administration, the U.S. Department of Health and Human Services, and the U.S. Department of Agriculture.

8. POLICY DETERMINATIONS

The Department shall determine all public assistance policy and operating guidelines for the Wisconsin CARES System. The Contractor shall be entitled to rely upon and act in accordance with such policy determinations and operating guidelines, and shall incur no liability in doing so unless the Contractor acts negligently, maliciously, fraudulently or in bad faith.

9. CONTRACTOR EMPLOYEE SCREENING

Pursuant to Wisconsin State Statutes, Section 111.335, the Contractor is required to screen all Contractor and subcontractor employees for criminal arrest or conviction records.

10. PRIME CONTRACTOR RESPONSIBILITIES

The Contractor will be required to assume responsibility for delivery of all items identified in the RFP which are Contractor deliverables whether or not they are the manufacturer or producer of them. Further, the Department will consider the Contractor to be the sole point of contact with regard to all contractual matters.

11. INDEPENDENT CAPACITY OF CONTRACTOR

The Contractor, its officers, employees, subcontractors, or any other agent of the Contractor in performance of this Contract will act in an independent capacity and not as officers or employees of the State of Wisconsin or the Department.

12. KEY PERSONNEL

The Contractor will assign Key Personnel full-time on the project. The Department agrees that excepted from "full-time" are the following: (i) work on completing existing projects the employee is coming from, not to exceed twenty (20) business days over the term of the Contract; (ii) training; (iii) reasonable vacation; (iv) marketing and administrative meetings; (v) sick leave; and (vi) reasonable personal leave. Combined time for training, marketing and administrative meetings cannot exceed twenty (20) business days in any year without prior approval from the Department's Contract Administrator.

The Key Personnel identified in the Contract in Appendix B are considered to be essential to the work to be performed under the Contract. So long as such persons remain partners, principals, employees or agents of the Contractor and except for illness, death or leave of absence, no diversion by the Contractor, either in full or in part from the project, of Key Personnel will be made except in accordance with the procedures described in this Section.

The Contractor shall submit to the Contract Administrator, at a minimum of sixty (60) days prior to a proposed diversion of Key Personnel, written justification for the proposed diversion. Such justification shall include identification of proposed replacement Key Personnel and shall provide sufficient detail to permit evaluation of the impact of the change on the Contractors responsibilities for the Wisconsin CARES System. At a minimum, thirty (30) days prior to the proposed diversion, the Contract Administrator will notify the Contractor in writing whether the proposed diversion is approved by the Department or rejected, in which case the notification will include the reasons for the rejection. Upon receipt of notice of rejection of a proposed diversion, the Contractor shall have five (5) business days in which to propose, in writing, remedy or remedies to the reasons for rejection. The Department shall respond in writing to the proposed remedies within ten (10) business days. If the remedies are accepted by the Department, the proposed diversion will be approved. Approved replacement Key Personnel must be on-site full time a minimum of two (2) weeks prior to the date of the diversion of Key Personnel. The Department shall retain the right to reasonable access to the Contractors Key Personnel for whom the Department has approved a change in assignment to other than the Project. This obligation will survive the termination of the Contract.

An unauthorized diversion by the Contractor of any Key Personnel prior to the completion of this Contract will result in damage to the Department in amounts that will be impractical and extremely difficult to determine. Therefore, any such unauthorized diversion by the Contractor of any Key Personnel will result in the imposition of liquidated damages, payable by the Contractor immediately upon the receipt of written notice from the Contract Administrator and beginning on the day following receipt of such notice, in the amount of two thousand dollars (\$2,000) per business day for each such offense. Daily liquidated damages shall continue to be assessed until the beginning work date of the Contractors replacement Key Personnel who is accepted by the Department.

The Limitation of Liability Section of this Contract shall not be a bar to the assessment of damages pursuant to this Section. No damages other than those specifically set forth in this Section are collectable under this Section.

Replacement(s) for Key Personnel who have terminated employment as partner, principal, employee or agent of the Contractor shall be subject to the Department's approval.

Any Key Personnel of the Contractor reasonably determined by the Department to be noncooperative, inept, incompetent or otherwise unacceptable shall be removed from working on the Wisconsin CARES System after such problematic behavior has been cited by the Department and the Contractor has been given reasonable time, not less than thirty (30) days, to remedy such problems and has failed to do so. In the event that a Key Personnel of the Contractor is removed from the project pursuant to a request by the Department, the Contractor will have thirty (30) days in which to fill the vacancy with another employee of acceptable experience and skills subject to the prior written approval of the Department. Such approval by the Department will not be unreasonably withheld or delayed. Failure to acceptably replace Key Personnel within thirty (30) days of their removal will result in the imposition of liquidated damages payable by the Contractor

immediately upon receipt of written notice from the Contract Administrator and beginning on the day following receipt of such notice, in the amount of two thousand dollars (\$2,000) per business day for each such offense. Daily liquidated damages shall continue to be assessed until the beginning work date of the Contractor's replacement Key Personnel who is accepted by the Department. The process for removing Key Personnel will occur for only one person at a time.

13. REMOVAL OF NON-KEY PERSONNEL

Any employee or agent, other than Key Personnel, of the Contractor or of any subcontractor reasonably determined by the Department to be noncooperative, inept, incompetent or otherwise unacceptable, shall be removed from the Wisconsin CARES System Project after such problematic behavior has been documented by the Department and the Contractor has been given reasonable time, not less than thirty (30) days, to remedy such problems and has failed to do so.

14. SUBCONTRACTING

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 the prior written consent of the Department. The Department shall respond to the Contractor's proposed use of a subcontractor within ten (10) business days of the receipt of the Contractor's request. Any subcontract must be approved by the Department in writing. The subcontract itself shall be in writing and shall in no way alter the Contract terms and conditions. The Department shall respond to the Contractor regarding approval of any subcontract within ten (10) business days of receipt by the Department of the proposed subcontract. Said subcontract shall contain provisions for state and federal access to the books, documents and records, and inspections of work provided for in this Contract. No subcontract or delegation of work shall relieve or discharge the Contractor from any obligation, provision or liability under this Contract.

15. ASSIGNMENTS

The Contractor shall not assign nor transfer any interest in this Contract without prior written approval of the Contract Administrator. This provision shall not be construed as limiting the Contractor's rights to subcontract some of the services to be performed hereunder in accordance with the provisions of this Contract or to utilize the services of its affiliated corporations to provide some of the services hereunder.

16. AUTHORIZATION OF SOFTWARE CHANGE/ENHANCEMENT WORK

The Department may at any time, with written notice, request the Contractor to make software changes and/or enhancements to the CARES System. As soon as possible after receipt of a written change request, but in no event more than thirty (30) days thereafter, the Contractor shall provide the Department with a written proposal which will include an estimate of the total number of hours required to complete the change. For software changes that are not deliverables based, the Contractor shall provide an hour estimate only.

No changes are to be made until the Department approves the Contractor's written estimate as described in this Section.

The Contractor will monitor the hours expended on each software change/enhancement and provide the Department with a written report of these hours on a monthly basis. For deliverables based projects, the Contractor will inform the Department at the time of each deliverable submission if the projected hours to complete the software change/enhancement project exceed the original estimate. The Contractor may not proceed with the software change/enhancement unless the Department approves the Contractor's re-estimate. For software changes/enhancements which are not deliverables based, the Contractor shall estimate hourly ceilings for changes/enhancements based on their size. In no instance shall the Contractor exceed the total number of estimated hours for any software change/enhancement without prior written approval from the Department.

In the event that the Department elects to cancel a software change/enhancement instead of approving a re-estimate, the Contractor may invoice only for expended hours up to the date of cancellation subject to the applicable reviews and approvals of time sheets under Section 2 of this Contract.

17. INSPECTION OF WORK PERFORMED

The Department's representatives shall, at all reasonable times, have the right to enter into the Contractor's premises where duties under the Contract are being performed, to inspect, monitor, or otherwise evaluate the work being performed. The Contractor and all subcontractors must provide reasonable facilities and assistance for the Department's representatives. Any subcontract permitted by the Department must contain a provision which sets forth the subcontractors agreement with the terms set forth in this paragraph.

18. FEDERAL INSPECTIONS

During the term of the Contract, the U.S. Department of Health and Human Services and the U.S. Department of Agriculture, and their authorized representatives, shall be allowed access into the Contractor's premises where duties under the Contract are being performed to inspect all Contractor materials, documents, work papers, deliverables, or any other such items which pertain to the Wisconsin CARES System. The Contractor

and all subcontractors must provide reasonable facilities and assistance for the federal representatives. Three (3) days in advance of such inspection the Contractor shall be given written notice specifying in appropriate detail the materials required for inspection. The Contractor shall cooperate with any federal reviews and supply a copy of any requested materials. This requirement also applies to any subcontractors who may be engaged in working on the System. Any subcontract permitted by the Department must contain a provision which sets forth the subcontractors agreement with the terms set forth in this paragraph.

19. EXAMINATION OF RECORDS

The Contractor agrees that it shall retain and that the state or the U.S. Department of Health and Human Services, the U.S. Department of Agriculture, and the U.S. Comptroller General, including their duly authorized representatives, until the expiration of three (3) years after the conclusion of this Contract, or any extension, and all pending matters are closed, shall have access to and the right to examine any of the Contractors books, records, including but not limited to financial records, documents and papers, but only those pertinent to the solicitation and performance of this Contract for the purpose of conducting an audit, examination, excerpt and/or transcription of this Contract. This provision also applies to any parent, affiliated or subsidiary organization or any subcontractor approved by the Department pursuant to this Contract, and performing under formal or informal arrangement any service or furnishing any supplies or equipment to the Contractor involving transactions related to this Contract. Any subcontract permitted by the Department must contain a provision specifically authorizing access in accordance with the terms set forth in this paragraph.

If an audit, litigation, or other action involving the Contractor's records is started before the end of the three (3) year period, the records must be retained until all issues arising out of the audit, litigation, or other actions are resolved or until the end of the three (3) year period, whichever is later. The Contractor further agrees that this provision shall be inserted in each subcontract.

20. WARRANTY

The Contractor warrants from the date that any software provided under this Contract is moved into production that said software operates according to and produces the results identified by the specifications approved by the Department. This warranty also covers all delivered programs, documentation, reports, procedures and other items/services provided under this Contract. Such items will comply with the specifications therefor.

The Contractors liability with respect to this warranty is limited to the correction of the Wisconsin CARES System and to the replacement of incorrect or defective documentation within three (3) weeks of formal written notice pursuant to this Contract by the Contract Administrator of such deficiencies; or using all due diligence, such longer

period as may be approved by the Contract Administrator, such approval not to be unreasonably withheld or denied. The Contractor's liability with respect to this warranty is limited to deficiencies identified during the term of this Contract. Such correction of errors and defects shall be made within the scope of the Production Maintenance services described in Part III - Statement of Work of the RFP. No additional costs will be incurred by the Department for the correction of such errors and defects. If the Contractor fails to repair an identified error or defect within such period, or fails to proceed with due diligence to effect such repair, the Contract Administrator may, at his or her option, after prior written notice to the Contractor of not less than five (5) business days, act to repair such error or defect and the Contractor will be required to reimburse the Department for all reasonable costs incurred in effecting such repair.

All software, documentation, reports, procedures and other items/services developed under this Contract and transferred to staff funded by the Bureau of Information Technology Services for maintenance shall be removed from this warranty at the time of such transfer.

Software, documentation, reports, procedures and other items/services which are provided to the Department under contract with a third party vendor are excluded from this warranty.

With respect to any hardware product or any software product that is supplied by a third party manufacturer or software developer, the terms and conditions of the warranty to the Department with respect to such product shall be identical to the terms and conditions of the warranty provided by the manufacturer or software developer of such product and subject to all limitations contained therein. The Department's use of any software product provided by the Contractor hereunder that is supplied by a third party software licensor shall be limited to and subject to the terms and conditions provided by such third party software licensor and, except as provided in the immediately preceding sentence, the terms of this Contract shall not apply to such software product.

Any such condition for which warranty repairs are claimed shall not be attributable to the quality or integrity of data from other automated or manual systems with which the Wisconsin CARES System interfaces; the Department's misuse or modification of the Wisconsin CARES System; the Department's failure to use corrections or enhancements made available by Contractor; the Department's use of the Wisconsin CARES System in combination with any product other than those specified by Contractor; hardware, systems software, application software, or telecommunications equipment not a part of the Wisconsin CARES System which is inadequate to allow proper operation of the Wisconsin CARES System or which is not operating in accordance with the manufacturer's specifications; or operation or utilization of the Wisconsin CARES System not in accordance with the operating procedures developed for such System or otherwise in a manner not contemplated by this Agreement.

CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION OF THE CONTRACT

AND SPECIFICALLY EXCLUDES THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

21. COOPERATION WITH STATE EMPLOYEES

The Contractor shall be bound to cooperate fully with all employees and certified agents of the state in completing the services under this Contract. All subcontractors are required to abide by this provision as a condition of the Contract between the subcontractor and the Contractor.

22. RIGHT TO PUBLISH

Throughout the term of the Contract, the Contractor shall secure the Department's written approval prior to the public release of any information whatsoever in written or electronic form which pertains to the status of the work covered by this Contract or which identifies the Wisconsin CARES System or Wisconsin policies expressly or by implication, such approval not to be unreasonably withheld.

23. CREDITS AND RIGHT IN DATA

All documents, reports, and other data prepared for dissemination to persons or entities outside of the Department during and/or resulting from the performance of services under this Contract shall include the following statement: "The preparation of this (report or document, etc.) was financed under an agreement with the Wisconsin Department of Workforce Development with funds provided in part by the United States Department of Health and Human Services and the United States Department of Agriculture."

The Contractor may not as a result of its work on the Wisconsin CARES System publish or copyright any data without prior written approval, unless otherwise stated herein. The Department and the federal government shall have the right to publish, duplicate, use and disclose all such data in any manner, and for any purpose whatsoever, and may authorize others to do so.

"Data" shall mean all results, technical information and materials developed and/or obtained in the performance of the services hereunder including but not limited to, all reports, surveys, plans, charts, recordings (video and/or sound), pictures, drawings, analyses, source and object code, graphic representations, computer programs and printouts, notes and memoranda, and documents whether finished or unfinished, which result from or are prepared in connection with the services performed hereunder. Excepted here from is data already published, in the public sphere, not developed specifically for this Contract or previously used by the Contractor on other projects.

24. CONFIDENTIALITY

All Department data, whether oral, written, recorded magnetic media, cards or otherwise, which is information about individual citizens, or is internal Department or state information which by its very nature requires it be kept confidential, and is provided to the Contractor by the Department or is acquired by the Contractor in performance of the Contract, shall be regarded as confidential information and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with federal and state statutes and regulations. The Contractor agrees not to release any confidential information provided by the Department or any information generated by the Contractor without the express written consent of the Department's Contract Administrator. This obligation will survive the termination of the Contract.

25. MAINTENANCE OF SEPARATE ACCOUNTING SYSTEM

The Contractor shall maintain accounting records in a manner which will enable the state to audit and examine any books, documents, papers and records maintained in support of the Contract. All such documents shall be made available to the state at its written request, and shall be identifiable as pertaining to the Contract.

26. EMPLOYMENT PRACTICES AND COMPLIANCE WITH FEDERAL ACTS

The Contractor must comply with regulations issued by the Secretary of Labor of the United States in 41 Code of Federal Regulations, Chapter 60, Part 741, pursuant to the provisions of Executive Order 11758 and the Federal Rehabilitation Act of 1973. The Contractor shall likewise be responsible for compliance with the above-mentioned regulations in regard to subcontractors with whom the Contractor enters into a subcontract to whom payments are made in compliance with the Contract. The Contractor and its subcontractors shall comply with the Civil Rights Act of 1964, and any amendments thereto, and the rules and regulations thereunder.

The Contractor certifies that no federal funds will be used to lobby or influence a federal officer or member of Congress, and will file the required federal lobbying forms. The contractor will comply with other federal statutes including the Copeland Anti-Kickback Act, Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, and the Debarment Act.

27. NONDISCRIMINATION AND AFFIRMATIVE ACTION

In connection with the performance of work under this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of age, race, creed, color, handicap, marital status, sex, national origin, ancestry, arrest record, conviction record, membership in the national guard, state defense force or any reserve

component of the military forces of the United States or this state, physical condition, developmental disability as defined in s. 51.01 (5) Wis. Stats., sexual orientation as defined in s. 111.32 (13m) Wis. Stats. 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, Contractor further agrees to take affirmative action to ensure equal employment opportunities. The Contractor agrees to post in a conspicuous place available for employees and applicants for employment, notices to be provided by Department setting forth the provisions of the non-discrimination clause.

For contracts of ten thousand dollars (\$10,000) or more, the Contractor shall submit a written affirmative action plan. Contractors with an annual work force of less than ten employees and contractors which are governmental entities are excluded from this requirement.

"Affirmative Action Plan" is a written document that details an affirmative action program. Key parts of an affirmative action plan are: (1) a policy statement pledging nondiscrimination and affirmative action employment, (2) internal and external dissemination of the policy, (3) assignment of a key employee as the equal opportunity officer, (4) a work force analysis that identifies job classification(s) where representation of women, minorities and/or the disabled is deficient, (5) goals and timetables that are specific and measurable and that are set to correct deficiencies and to reach a balance of work force, (6) revision of all employment practices to ensure that they do not have discriminatory effects, and (7) establishment of internal monitoring and reporting systems to measure progress regularly.

Within fifteen (15) days after the award of the Contract, plans shall be submitted for review and approval to the Affirmative Action Officer, Division of Economic Support, 1 W. Wilson Street, Room 318, P.O. Box 7935, Madison, Wisconsin, 53707-7935. No extensions to this deadline will be granted. Contractors are to contact the State Office of Contract Compliance, Department of Administration, 101 S. Webster Street, 7th Floor, P.O. Box 7867, Madison, Wisconsin 53707-7867, for technical assistance on Equal Opportunity.

28. CHOICE OF LAW

The Contractor agrees to be bound by the laws of the State of Wisconsin. The solicitation and this Contract shall be constructed and interpreted in accordance with Wisconsin law in the event a choice of law situation arises.

29. FORCE MAJEURE

The Contractor shall not be liable or accountable for any delay or failure to perform any

of its obligations under this Contract to the extent either the Contractor or others working for the Contractor are prevented from doing so by reasons beyond their control, including strikes, acts of God, of governments, of a public enemy, or embargoes, or other reasons commonly considered as causes force majeure. In the event of any such delay or failure, the time or times for performance, if any, hereunder shall be extended for a reasonable period, but not less than a period of time commensurate with the delay caused by the force majeure.

30. HIRING OF EMPLOYEES

For the duration of this Contract, the Department, without limiting the opportunity of any person to seek and obtain state employment, agrees that it will not assign any person or persons now employed by the Contractor or its subcontractors or agents, to provide services related to this Contract, without the written consent of the Contractor; and the Contractor agrees that it will not engage any person or persons employed by the state on or after the effective date of this Contract, including any department, commission or board thereof, to provide services related to this Contract, without the written consent of the Department which shall not be unreasonably withheld.

31. PUBLIC OFFICIAL OWNERSHIP

If a state public official (section 19.42, Stats.) or an organization in which a state public official holds at least a 10 percent interest is a party to this Contract, this Contract is voidable by the state unless appropriate disclosure is made to the State of Wisconsin Ethics Board, 125 South Webster, Madison, WI 53703, Telephone (608) 266-8123.

32. ORDER OF PRECEDENCE

The RFP and Contractor's Proposal are incorporated by reference and made a part of this Contract as if set forth verbatim. In the event of any conflict, ambiguity or inconsistency among the provisions of the documents comprising this Contract, the matter shall be resolved by giving precedence in the following order:

- a. The provisions of the Contract Terms and Conditions and Appendices attached herein (as they may be amended).
- b. The provisions of the RFP.
- c. The provisions of the Contractor's Proposal.

A higher order document shall supersede a lower order document to the extent necessary to resolve any inconsistencies between them, but silence on any matter in a higher order document shall not negate or modify the provisions of a lower order document as to the matter.

33. NOTICE

Any notice under the Contract which must be given to the Department by the Contractor shall be sufficiently conveyed if mailed, as described in this section, to:

Department of Workforce Development
1 West Wilson Street,
P.O. Box 7850
Madison, Wisconsin 53707-7850
Attention: Jill Jokela
CARES Applications Development Services Section Chief

Any notice under the Contract which must be given to the Contractor by the Department shall be sufficiently conveyed if mailed, as described in this Section, to:

Deloitte & Touche Consulting Group
2500 One PPG Place
Pittsburgh, PA 15222-5401
Attention: Timothy A. Wiest

Actual receipt of a notice shall constitute proper delivery of that notice when received.

34. AWARD OF RELATED CONTRACTS

The state may undertake or award supplemental Contracts for work related to this Contract or any portion thereof. The Contractor shall be bound to cooperate fully with such other contractors and the Department in all such cases. All subcontractors will be required to abide by this provision as a condition of the Contract between the subcontractor and the Contractor.

35. QUALIFICATION TO DO BUSINESS

The Contractor shall, prior to the execution of the Contract, provide written assurance to the Department that the Contractor is qualified to do business in Wisconsin and is not prohibited by its articles of incorporation, bylaws, or the law under which it is incorporated from performing the services required under this Contract.

Foreign corporations (corporations other than a Wisconsin corporation) which become a party to a contract must possess a certificate of authority from the Wisconsin Secretary of State and must have and continuously maintain a registered resident agent and otherwise conform to all requirements of Chapter 180, Wisconsin Statutes, relating to foreign corporations.

36. **CONTRACT MODIFICATIONS**

Any alterations, variations, modifications or waivers of provisions of the Contract shall be valid only when they have been reduced to writing, duly signed and approved. No claims for services furnished by the Contractor not specifically provided in the Contract will be allowed by the Department. Duly signed and approved shall mean when the document is approved, if necessary, by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture and signed by the duly authorized representatives of the Department and the Contractor.

37. **SETTLEMENT OF DISPUTES**

Any dispute arising under the Contract which is not disposed of by agreement between the Department's named liaison and the Contractor's named liaison shall be resolved by the Department's Contract Administrator and the Contractor's named liaison. If a mutual resolution is not achieved by the Department's Contract Administrator and the Contractor's named liaison, either party may declare an impasse. Within ten (10) business days from the date of the impasse, the Contract Administrator shall issue the decision in writing, setting forth the reasons and facts for the decision as a formal notice pursuant to this Contract. The Contract Administrator's decision may be appealed to the Secretary of the Department whose decision shall be final and conclusive, subject only to whatever legal recourse, if any, the Contractor may have. Pending final resolution of a dispute, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Contract Administrator's direction.

38. **TERMINATION**

The Contract shall be subject to termination under any of the following conditions:

a. Mutual Agreement

The contracting parties mutually agree in writing to termination.

b. Default by the Contractor

The Department may, by ninety (90) days prior written notice to the Contractor signed by the Contract Administrator, terminate the Contractor's right to proceed as to the Contract if the Contractor:

- 1) Materially fails to perform the services described in Part III - Statement of Work of the RFP or materially fails to perform the services within the time

specified or any extension thereof, or

- 2) So fails to make progress as to materially endanger performance of the Contract in accordance with its terms.

Termination at the option of the Department shall be effective ninety (90) days after receipt of such notice, unless the Contractor shall have corrected any alleged failure(s) within thirty (30) days after receipt by the Contractor of such written notice which notice shall specify fully and in detail each material failure to be corrected by the Contractor. The Department may waive its right to terminate for cause any such failure(s) to perform which, in the exercise of due diligence, cannot be cured in such thirty (30) day period provided that: (a) the Contractor produces a written plan of correction accepted by the Department, in writing, and (b) the Contractor shall within such thirty (30) day period commence and thereafter continue diligently to cure such failure(s) to perform, and no such extension has been granted previously. In the event of such termination, the Department may procure or furnish services similar to those so terminated, and the Contractor shall be liable to compensate the Department for any excess costs reasonably incurred by it in obtaining such services. In addition, the Contractor shall reimburse the Department for costs upon termination pursuant to Section 39.

c. Financial Instability

The Department may terminate the Contract without paying termination costs if the Contractor files, or has filed against it a petition in bankruptcy, insolvency, receivership or similar action affecting the financial affairs or stability of the Contractor and that petition is not dismissed within forty-five (45) days. In the event of such termination, and the Contractor is still able to perform, the Contractor will be compensated for all work performed prior to such termination date. In addition, the Contractor shall reimburse the Department for costs upon termination pursuant to Section 39.

d. Termination in the Interest of the State

The Contract Administrator, by ninety (90) days prior written notice, may terminate performance of work under this Contract when it is in the best interest of the state to do so, except that termination required by court order may occur with less than ninety (90) days prior written notice. In the event of such termination, the Contractor will be compensated for all work performed prior to such termination date. In addition, the Department shall reimburse the Contractor for costs upon termination pursuant to Section 39.

e. Default by the State

The Contract may be terminated by the Contractor, for cause, upon the failure of the Department to perform any material provision required of it by the Contract,

provided the Contractor shall give the Contract Administrator ninety (90) days prior written notice of the reasons for such termination, including sufficient details to enable the Department to correct these errors and/or omissions. Termination, at the option of the Contractor, shall be effective ninety (90) days after receipt of such notice, unless the Department shall have corrected said failure(s) within thirty (30) days from receipt of the notice. The Department shall not be deemed in default so long as the Department shall within such period commence and thereafter continue diligently to cure such failures and provide relief as necessary to the Contractor through the Delay provisions of this Contract. The competency of Department staff shall not be reason for finding the state in default.

The Contractor shall, in the event of a termination, be paid all monies due to the Contractor at the effective date of the termination, including all applicable portions of completed work for all current deliverables. In addition, the Department shall reimburse the Contractor for costs upon termination pursuant to Section 39.

f. Availability of Funds

It is understood and agreed by the parties hereto that all obligations of the Department, including the continuance of payments hereunder, are contingent upon the availability and continued appropriation of state and federal funds, and in no event shall the Department be liable for any payments hereunder in excess of such available appropriated funds. In the event that the amount of any available or appropriated funds provided by the state or federal sources for the purchase of services hereunder shall be reduced, terminated or shall not be continued at an aggregate level sufficient to allow for the purchase of the specified amount of services to be purchased hereunder for any reason whatsoever, the Department shall notify the Contractor of such reduction of funds available and the Department shall be entitled to reduce its commitment hereunder as it deems necessary.

No damages can be claimed by the Contractor upon termination of the Contract under any of the conditions included in this Section for unrealized or anticipatory profits.

39. RESPONSIBILITIES UPON TERMINATION

If the Contract is terminated, the parties will be reimbursed as provided under Section 38 for all reasonable costs and liabilities which are applicable to any period after such termination and for all excess costs which are reasonably incurred as a direct result of such termination; provided, however, that:

- a. In the event of termination for default by the Department, the Contractor shall not

receive reimbursement for any loss of anticipated profits;

- b. In the event of termination for default by the Contractor, the Department shall not receive reimbursement for any loss of increased productivity expected to result from the maintenance or modification of the Wisconsin CARES System;
- c. Both parties hereto shall use best efforts to minimize the costs of termination, and
- d. In any event, the period during which such costs shall be computed shall not extend beyond the then current date of expiration of the Contract and such costs shall not duplicate any payments made for completed deliverables, nor exceed the amounts which would otherwise have been due had they been completed.

Upon termination of the Contract by the Department, the Contractor will, if requested by the Contract Administrator at least ninety (90) days prior to such termination, provide reasonable training for the Department's personnel and/or continued performance of the services specified herein for up to six (6) thirty (30) day periods commencing with the date of termination and continuing until given thirty (30) days notice by the Contract Administrator to discontinue such training and/or services. The rate for these services will be determined based on the specific staff and services requested at the time.

Upon termination of the Contract for any reason, the Department shall have the right, immediately upon demand, to obtain access to and possession of all its properties held by the Contractor, including, but not limited to, current copies of all deliverables for which the Contractor has received reimbursement.

40. CAPITAL EQUIPMENT OWNERSHIP

Any piece of capital equipment acquired for this contract shall become the property of the State of Wisconsin at the end of the contract term. Capital equipment is defined as nonexpendable tangible property having a useful life of more than one (1) year and an acquisition cost of one thousand dollars (\$1000) or more. Acquisition cost means net invoice purchase price per unit. This provision does not apply to equipment leased by the Contractor for all or part of the duration of the Contract or to equipment purchased by the Contractor for employee use for purposes in addition to the performance of the Contract.

41. LIQUIDATED DAMAGES

It is agreed by the Department and the Contractor that, in the event that the Contractor fails to submit or complete an acceptable deliverable, in accordance with Section 6 of this Contract, damage shall be sustained by the Department and that it is and will be impractical and extremely difficult to determine the actual damage which the Department will sustain in the event of and by reason of such delay.

It is, therefore, agreed that the Contractor may be required to pay, beginning on the first business day following a twenty (20) business day correction period, provided the deliverable has not been submitted or the deficient deliverable has not been corrected within that period, fixed and liquidated damages for each business day of delay of completion of any deliverable in the amount of two thousand dollars (\$2,000) per day for each day of delay after the above mentioned twenty (20) business day correction period. This correction period does not apply in the event that the Contractor fails to correct a deliverable after the completion of two cycles of the review process as defined in Section 6 of this Contract.

Prior to the start of the twenty (20) business day correction period, the Department will notify the Contractor of its intent to impose liquidated damages. Such notice shall include specific reasons which identify why the Department intends to impose damages. This notice requirement does not apply in the event that the Contractor fails to correct a deliverable after the completion of two cycles of the review process as defined in Section 6 of this Contract.

The Department shall invoice the Contractor for amounts due as liquidated damages, said invoice to include the dates for which damages are due. In the event of nonpayment by the Contractor within thirty (30) days of the date of invoice, amounts due to the Department as liquidated damages may be set-off against any monies due the Contractor and pursuant to the Contract, provided that any appeal to the Contract Administrator or to the Secretary of the Department in accordance with this Contract is not pending. The Department shall notify the Contractor in writing of any claim for liquidated damages pursuant hereto on or before the date the Department deducts such sums from money payable to the Contractor.

The total amount of liquidated damages cannot exceed the price of the unapproved deliverable. Any liquidated damages that are assessed are in lieu of actual damages for the delay of deliverables, but are not in limitation of any other rights or remedies of the Department.

The Limitation of Liability Section of this Contract shall not be a bar to the assessment of damages pursuant to this section. No damages other than those specifically set forth in this Section are collectable under this Section.

42. DELAYS

If for any reason, other than force majeure, the Contractor is delayed at any time in the progress of the work defined in the Contract by any cause beyond the Contractor's control, then the due date for deliverables affected by the delay shall be extended for such reasonable time as the Contract Administrator may determine.

The Contractor's access to Department personnel will be granted freely. However, the

competency of Department staff will not be a reason for relieving the Contractor of any responsibility for failing to meet required deadlines or producing non-acceptable deliverables. Any claim for extension of time must be made in writing to the Contract Administrator not more than twenty (20) days after the Contractor reasonably should have become aware of the delay; otherwise, it shall be waived.

Nothing contained herein shall limit the Department's obligation to promptly and correctly manage and process the Contractor's submissions, technical materials, reviews and approvals of deliverables, requests for information, and other reasonable requests from the Contractor, its subcontractors or agents.

If the Department and the Contractor cannot agree on an extension of time, then the Contractor's remedy shall be pursuant to the settlement of disputes as provided for in the Contract.

43. AUDIT LIABILITIES

In addition to and not in any way in limitation of the obligation of the Contract, it is understood and agreed by the Contractor that the Contractor shall be held liable for any state or federal audit exceptions in which acts or omissions of the Contractor are cited and administratively adjudicated and shall return to the Department all payments made under the Contract to which exception has been taken and proven or which have been disallowed because of such an exception.

Nothing contained herein shall limit the Department's obligation to promptly pursue with the appropriate federal agencies the expeditious clarification, resolution and disposition of federal audit exceptions which the Department and the Contractor agree are erroneous or inappropriate.

44. INDEMNITY AND INSURANCE

The Contractor agrees to indemnify, defend and hold harmless the State of Wisconsin as well as all Departments, officers, agents and employees of the state from all claims, losses or suits involving personal injury or property damage incurred in conjunction with the performance of this Contract. The Contractor agrees that, in order to protect itself as well as the state, the Contractor will at all times during the term of this Contract keep in force a public liability and property damage insurance policy issued by a company authorized to do business in the State of Wisconsin and licensed by the Wisconsin Insurance Department. Minimum coverages are one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations. Within fifteen (15) days of the execution of this Contract, the Contractor shall furnish the Department with written verification of the existence of such insurance.

A copy of the Contractor's worker's compensation insurance policy or a certificate of

insurance for worker's compensation shall be filed with the Contract Administrator within fifteen (15) days following the effective date of the Contract.

In the event of any action, suit, or proceedings against the Contractor upon any matter herein indemnified against, the Contractor shall within five (5) business days, cause notice in writing to be given to the Department as specified in this Contract.

45. INFRINGEMENT INDEMNITY

In the event a claim, a cause of action, a proceeding or other legal action should arise in which there are claims that the Wisconsin CARES System infringes or violates another's intellectual property rights, the Contractor shall undertake to protect, defend, settle or resolve the proceeding. The Contractor shall protect, defend, indemnify and hold harmless the Department, subject to the Department giving the Contractor prompt written notice of such claim, cause of action or proceeding and rendering to the Contractor all necessary and appropriate assistance in undertaking the defense and/or investigation of that claim, cause of action or proceeding. The Department shall, in this regard, provide to the Contractor all relevant documents and other items which are required in defense of the claim, cause of action or proceeding. The Department shall further render all reasonable cooperation, including making personnel available for interviews and testimony, as needed.

Should the Wisconsin CARES System, in the Contractor's opinion, be likely to become the subject of a claim of infringement of another's intellectual property rights, the Contractor may do either of the following: (1) obtain a legal binding right for the Department to use, at no cost to the Department, the Wisconsin CARES System; or (2) replace or modify the Wisconsin CARES System or portions thereof, so that it is non-infringing, yet still complies with the Contract specifications.

The Contractor shall have no other obligations or liabilities to the Department upon complying with the specific provisions of this Section. In addition, the Contractor shall not be liable and shall not be required to protect and indemnify the Department if the infringement of intellectual property rights has resulted from actions performed directly by the Department, its agents or subcontractors on intellectual property provided by the Contractor legally and in good faith, or has resulted from the Department, its agents, or subcontractors combining with the Wisconsin CARES System other software or other intellectual property that was not provided either by the Contractor or with the prior written consent of the Contractor.

46. LIMITATION OF LIABILITY

The Contractor shall not be responsible or liable for any incidental, consequential or special damages occasioned by or as a result of its performance or failure to perform in accordance with this Contract.

47. SEVERABILITY

If any provision of this Contract is declared or found to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision. Performance under the remaining terms of this Contract shall continue.

48. CONSENT TO BREACH NOT WAIVER

The consent by the Department or the Contractor to any breach of any provision contained in this Contract shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision contained in this Contract. Likewise, such consent shall not establish a course of performance between the parties contradictory to the terms of this Contract.

49. UNLAWFUL BOYCOTT

The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company will participate in or cooperate with an international boycott, as defined in 26 USC Section 999 (b) (3) and (4) of the Internal Revenue code of 1986, as amended.

50. HEADINGS NOT CONTROLLING

Section headings under this Contract are for convenience only and shall have no binding force or effect and shall not enter into the interpretation hereof.

51. CONDITIONS OF THE PARTIES OBLIGATIONS

It is understood and agreed that the entire Contract between the parties is contained herein, except for those matters incorporated herein by reference. This Contract supersedes all oral agreements and negotiations between the parties relating to the subject matter thereof.

This Contract is contingent upon authorization of Wisconsin and United States law, and any material amendment or repeal of the same affecting relevant funding or authority of the Department shall serve to revise or terminate this Contract, except as further agreed to by the parties hereto.

The Department and Contractor understand and agree that no clause, term or condition of this Contract shall be construed to supersede the lawful powers or duties of either party.

52. STANDARDS OF WORK

The Department is relying on the Contractor as an expert in providing the goods and services specified. Therefore, the Contractor agrees that the performance of work and

services pursuant to this Contract shall conform to the requirements of this Contract and to the high professional standards described by the Contractor in the Proposal.

53. SITE RULES AND REGULATIONS

The Contractor shall use its best efforts to ensure that its employees and agents, while on state premises or in the presence of state employees, shall comply with the Department's relevant work rules and regulations applicable to the work site. The Department shall provide the Contractor with a written description of the relevant site rules and regulations no later than fifteen (15) days after the effective date of this Contract.

Neither party shall require waivers or releases of any personal rights from the representatives of the other in connection with visits to its premises.

54. RIGHT TO OBTAIN OUTSIDE SERVICES

The Department retains the right to obtain services other than the Contractor's to accomplish changes to the Wisconsin CARES System through whatever means deemed necessary by the Department. Such means may include, but are in no way limited to, competitive procurement for the required services.

55. TURNOVER

The Contractor shall cooperate with a new incoming vendor or with state staff who are responsible for maintaining the System during the turnover period prior to the conclusion of this Contract. The existing Contractor is responsible for working cooperatively with the new incoming vendor and/or with state staff until the expiration date of this Contract in order to ensure that the transition from the old to the new Contractor and/or to state staff does not result in disruption to the System.

IN WITNESS WHEREOF, the Department and the Contractor have executed this Contract as of the day and year written below.

Contractor's Authorized Representative

Date

Department's Authorized Representative

Date