



## Contract

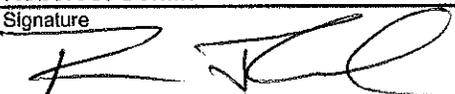
**Commodity or Service:** Health Care Benefits  
Consultant for Wisconsin  
Health Insurance Programs

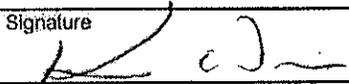
**Contract No./Request for Proposal No:**  
ETE0030/28154-BD

**Contract Period:** November 1, 2014 through October 31, 2016 and renewal options up to three (3) one (1) year periods

1. This contract is entered into by the State of Wisconsin, Department of Employee Trust Funds hereinafter referred to as the "Department", and between The Segal Company (Eastern States), Inc., hereinafter referred to as the "Contractor", whose address and principal officer appears on page 2. The Department is the sole point of contact for this contract.
2. Whereby the Department of Employee Trust Funds agrees to direct the purchase and the Contractor agrees to supply the contract requirements cited in accordance with the State of Wisconsin standard terms and conditions and in accordance with the Contractor's proposal date July 14, 2014 hereby made a part of this contract by reference.
3. In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employees or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5), Wis. Stats., sexual orientation as defined in s.111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Contractor further agrees to take affirmative action to ensure equal employment opportunities. The Contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
4. Contracts estimated to be over fifty thousand dollars (\$50,000) require the submission of a written affirmative action plan. Contractors with an annual work force of less than fifty (50) employees are exempted from this requirement. Within fifteen (15) business days after the award of the contract, the plan shall be submitted for approval to the Department. Technical assistance regarding this clause is provided by the Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931, 608.261.7952, or via e-mail at [ETFProcurement@eff.wi.gov](mailto:ETFProcurement@eff.wi.gov).
5. For purposes of administering this Contract, the Order of Precedence is:
  - A). This Contract with The Segal Company (Eastern States), Inc.;
  - B). Exhibit A, Changes Agreed to by the Parties from the Request for Proposal (RFP) 28154-BD;
  - C). Exhibit B, Business Associate Agreement dated October 29, 2014;
  - D). October 17, 2014 letter from Kenneth Vieira to David Nispel regarding questions for consideration;
  - E). Amendment 2, Questions from vendors and Department of Administration (DOA) Answers dated June 25, 2014;
  - F). Amendment 1, Questions from vendors and DOA Answers dated June 9, 2014;
  - G). The RFP dated May 23, 2014, and;
  - H). Contractor's proposal dated July 14, 2014.

**Contract Number & Service:** ETE0030 - Health Care Benefits Consultant for Wisconsin Health Insurance Programs

<b>State of Wisconsin</b>	
<b>Department of Employee Trust Funds</b>	
By (Name)	
<b>Robert J. Conlin</b>	
Signature	
	
Title	
<b>Secretary</b> Department of Employee Trust Funds	
Phone	
608.266.0301	
Date (MM/DD/CCYY)	
11/10/14	

<b>Contractor to Complete</b>	
Legal Company Name	
The Segal Company (Eastern States), Inc.	
Trade Name	
Segal Consulting	
Taxpayer Identification Number	
13-18354864	
Company Address (City, State, Zip)	
2018 Powers Ferry Road, Suite 850 Atlanta, GA 30339-7200	
By (Name)	
Kenneth C. Vieira, FSA, FCA, MAAA	
Signature	
	
Title	
Senior Vice President	
Phone	
678.306.3154	
Date (MM/DD/CCYY)	
10/29/14	

## Exhibit A

The Segal Company (Eastern States), Inc. Contract: Changes Agreed to by the Parties from the Request for Proposal (RFP) 28154-BD For Services to be provided as the Health Care Benefits Consultant for Wisconsin Health Insurance Programs to the State of Wisconsin Employee Trust Funds Board for the Health Insurance Programs Offered by the State of Wisconsin Group Insurance Board dated May 23, 2014.

1) Delete the following from the RFP

10.3 Liquidated damages

Both parties acknowledge that it can be difficult to ascertain actual damages when a Contractor fails to carry out the responsibilities of the contract. Because of that, the Contractor acknowledges that for the contract resulting from this Proposal, it will negotiate liquidated damages, as required by the State, for the contract. The Contractor agrees that the Agency shall have the right to liquidate such damages, through deduction from the Contractor's invoices, in the amount equal to the damages incurred, or by direct billing to the Contractor.

The Department shall notify the Contractor in writing of any claim for liquidated damages pursuant to this section within thirty (30) days after the Contractor's failure to perform in accordance with the terms and conditions of this agreement.

2). Substitute the following to the RFP

10.3 Liquidated damages.

Both parties acknowledge that it can be difficult to ascertain actual damages when a Contractor fails to carry out the responsibilities of the contract. Because of that, the Contractor acknowledges that for the contract resulting from this Proposal, it will negotiate liquidated damages, as required by the State, for the contract. The Contractor agrees that the Agency shall have the right to liquidate such damages, through deduction from the Contractor's invoices, in the amount equal to the damages incurred, or by direct billing to the Contractor.

The Department shall notify the Contractor in writing of any claim for liquidated damages pursuant to this section within thirty (30) days after the Contractor's failure to perform in accordance with the terms and conditions of this agreement.

In light of the foregoing, it is agreed that Contractor may be required to pay to the Department, for failure to carry out its responsibilities identified in the contract, liquidated damages in an amount that does not exceed the total amount of the contract. Such damages are intended to be a reasonable estimate of the Department's anticipated financial loss and damage and not as a penalty. Furthermore, such damages shall be in addition to, not in lieu of, the rights of the Department to pursue other appropriate remedies. The Contractor and the Department may choose to utilize section 10.4 (contract dispute resolution) of this contract in order to resolve any disagreement over the amount of liquidated damages.

- 3). Delete the following from the RFP

10.4 **Additional Insurance Responsibility**

The Contractor shall exercise due diligence in providing services under any contract awarded. In order to protect the Department's governing boards and any Department employee against liability cost, or expense (including reasonable attorney fees) which may be insured or sustained as a result of vendor errors or other failure to comply with the terms of the awarded contract, the selected vendor shall maintain errors and omissions insurance including coverage for network and privacy risks breach of privacy and wrongful disclosure of information in an amount acceptable to the Department with a minimum of \$1,000,000 per claim in force during the contract period and for a period of 3 years thereafter for services completed. Contractor shall furnish the Department with a certificate of insurance for such amount. Further, this certificate shall designate the State of Wisconsin Employee Trust Funds Board and its affiliated boards as additional insured parties.

- 4). Substitute the following to the RFP

10.4 **Additional Insurance Responsibility**

The Contractor shall exercise due diligence in providing services under any contract awarded. In order to protect the Department's governing boards and any Department employee against liability cost, or expense (including reasonable attorney fees) which may be insured or sustained as a result of vendor errors or other failure to comply with the terms of the awarded contract, the selected vendor shall maintain errors and omissions insurance including coverage for network and privacy risks breach of privacy and wrongful disclosure of information in an amount acceptable to the Department with a minimum of \$1,000,000 per claim in force during the contract period and for a period of 3 years thereafter for services completed. Contractor shall furnish the Department with a certificate of insurance for such amount. Further, this certificate shall designate the State of Wisconsin Employee Trust Funds Board and its affiliated boards as additional insured parties, with the exception of errors and omissions. Contractor has informed the Department that, to the best of its knowledge, a client has never been listed as an additional insured on its errors and omissions policy. However, Contractor warrants that such errors and omissions insurance coverage shall be applicable to the services provided hereunder.

- 5). Delete the following from the RFP

10.6 **Ownership of Materials**

- Except for medical records as defined by Wis. Admin. Code § ETF 10.01 (3m), all information, data, reports and other materials as are existing and available from the Department and which the Department determines to be necessary to carry out the scope of services under this contract shall be furnished to the vendor and shall be returned to the Department upon completion of the contract. The vendor shall not use it for any purpose other than carrying out the work described in the contract. The Department shall not disclose medical records.

- It is agreed that the Department will be furnished without additional charge all data, models, information, reports and other materials associated with and generated under this contract by the vendor.
- The Department shall solely own all customized software, documents, and other materials developed under this RFP. Use of software, documents, and materials by the vendor shall only be with the prior written approval of the Department.
- If used in conjunction with program revenue generating activities with third parties, the Department, vendor, and such third party shall negotiate fee arrangements, which shall include recovery by the Department of development costs associated with the software, documents, or other materials.
- Additional costs to modify software, documents, or other materials developed under this RFP to meet specific requirements of third parties shall be the responsibility of such third parties.

6) Substitute the following to the RFP

10.6 **Ownership of Materials**

- Except to the extent that they incorporate the vendor's proprietary software, tools, know-how, techniques, methodologies and report formats (collectively, the "Vendor's Proprietary Information"), all documents, data, and other tangible materials authored or prepared and delivered by the vendor to the Department under this contract (collectively, the "Deliverables"), are the sole and exclusive property of the Department once paid for by the Department. To the extent Vendor's Proprietary Information is incorporated into such Deliverables, the Department shall have a perpetual, nonexclusive, worldwide, royalty-free license to use, copy, and modify Vendor's Proprietary Information as part of the Deliverables internally and for their intended purpose.

7) Delete the following from the RFP

10.7 **Confidentiality of Information**

- **Disclosures.** The Contractor shall not use Confidential Information ("Confidential Information") for any purpose other than the limited purposes set forth in this Contract, and all related and necessary actions taken in fulfillment of the obligations thereunder. The Contractor shall hold all Confidential Information in confidence, and shall not disclose such Confidential Information to any persons other than those directors, officers, employees, and agents ("Representatives") who have a business-related need to have access to such Confidential Information in furtherance of the limited purposes of this Contract and who have been apprised of, and agree to maintain, the confidential nature of such Confidential Information in accordance with the terms of this Contract. Contractor shall require all such Representatives to read and sign a non-disclosure statement, and shall be responsible for the breach of this Contract by any said Representatives. Contractor shall institute and maintain such security procedures as are commercially reasonable to maintain the confidentiality of the Confidential Information while in its possession or control including transportation, whether physically or electronically. Contractor shall institute and maintain such security procedures as are commercially reasonable to maintain the confidentiality of such Confidential Information

while in its possession or control, including transportation, whether physically or electronically.

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

The Contractor shall maintain all such Confidential Information for a period of three (3) years from the date of termination of the Contract, and shall thereafter return or destroy said Confidential Information as directed by the State.

- **Indemnification.** In the event of a breach by Contractor, Contractor shall indemnify and hold harmless the State of Wisconsin and any of its officers, employees, or agents from any claims arising from the acts or omissions of the Contractor, and its subcontractors, employees and agents, in violation of this Section, including but not limited to costs of monitoring the credit of all persons whose Confidential Information was disclosed, disallowances or penalties from federal oversight agencies, and any court costs, expenses, and reasonable attorney fees, incurred by the State in the enforcement of this Section.
- **Equitable Relief.** The Contractor acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose Confidential Information is disclosed and to the State, which injury will not be compensable by money damages and for which there is not an adequate remedy available at law. Accordingly, the parties specifically agree that the State, on its own behalf or on behalf of the affected individuals, may seek injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Agreement or under applicable law.

8). Substitute the following to the RFP

#### 10.7 **Confidentiality of Information**

- **Disclosures.** The Contractor shall not use Confidential Information ("Confidential Information") for any purpose other than the limited purposes set forth in this Contract, and all related and necessary actions taken in fulfillment of the obligations thereunder. The Contractor shall hold all Confidential Information in confidence, and shall not disclose such Confidential Information to any persons other than those directors, officers, employees, and agents ("Representatives") who have a business-related need to have access to such Confidential Information in furtherance of the limited purposes of this Contract and who have been apprised of, and agree to maintain, the confidential nature of such Confidential Information in accordance with the terms of this Contract. Contractor shall be responsible for the breach of this Contract by any said Representatives. Contractor shall institute and maintain such security procedures as are commercially reasonable to maintain the confidentiality of the Confidential Information while in its possession or control including transportation, whether physically or

electronically. Contractor shall institute and maintain such security procedures as are commercially reasonable to maintain the confidentiality of such Confidential Information while in its possession or control, including transportation, whether physically or electronically.

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

The Contractor shall maintain all such Confidential Information for a period of three (3) years from the date of termination of the Contract, and shall thereafter return or destroy said Confidential Information as directed by the State. Notwithstanding the foregoing, the Contractor may retain an archival copy of the Confidential Information to support its work and in accordance with its disaster recovery and document retention policies, subject to the Contractor's continued compliance with its confidentiality obligations described herein.

- **Indemnification.** In the event of a breach by Contractor, Contractor shall indemnify and hold harmless the State of Wisconsin and any of its officers, employees, or agents from any claims arising from the acts or omissions of the Contractor, and its subcontractors, employees and agents, in violation of this Section, including any court costs, expenses, and reasonable attorney fees, incurred by the State in the enforcement of this Section.
- **Equitable Relief.** The Contractor acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose Confidential Information is disclosed and to the State, which injury will not be compensable by money damages and for which there is not an adequate remedy available at law. Accordingly, the parties specifically agree that the State, on its own behalf or on behalf of the affected individuals, may seek injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Agreement or under applicable law.

9). Delete the following from the RFP

#### 10.11 **Confidentiality of Participant Records**

In addition to the requirements of this section, please refer to the Business Associate Agreement in Appendix B for additional privacy and security requirements.

- As provided by Wis. Stat. § 40.07 and Wis. Admin. Code § 10.70 (1) and by HIPAA, individual personal information in the Department's records (including but not limited to address, social security number, birth date, marital status, earnings, Wisconsin Retirement System (WRS) contributions, WRS interest crediting, beneficiary designations, WRS creditable service and medical information), is not a public record and must be kept confidential. Confidential information may be disclosed to the vendor under this contract as the Department determines is necessary for the proper administration of this contract, as provided by Wis. Stat. § 40.07 (1) (d) and (3).

- The vendor agrees to maintain the strict confidentiality of individual records supplied to the vendor or its employees under this RFP. In addition, the vendor will only share confidential information with its employees and subcontractors on a need to know basis.
- The vendor agrees not to disclose any information furnished to the vendor or its employees, by the Department including any information derived directly or indirectly from information furnished by the Department to any person or entity of any description who is not a party to this RFP without express, written approval of the Secretary of the Department in advance.
- Under no circumstances are participant names, addresses, or other data to be used or made available for any purpose other than specifically provided for in this contract.
- All media in the possession of the vendor including, but not limited to diskettes, CD's, files and written documents containing confidential participant information shall be destroyed or turned over to the Department within 60 calendar days of the completion of this contract. The vendor shall furnish to the Department a written certification that all such media have been destroyed or returned to the Department, unless the Department makes any exceptions to this requirement in writing.

10). Substitute the following to the RFP

**10.11 Confidentiality of Participant Records**

In addition to the requirements of this section, please refer to the Business Associate Agreement in Appendix B for additional privacy and security requirements.

- As provided by Wis. Stat. § 40.07 and Wis. Admin. Code § 10.70 (1) and by HIPAA, individual personal information in the Department's records (including but not limited to address, social security number, birth date, marital status, earnings, Wisconsin Retirement System (WRS) contributions, WRS interest crediting, beneficiary designations, WRS creditable service and medical information), is not a public record and must be kept confidential. Confidential information may be disclosed to the vendor under this contract as the Department determines is necessary for the proper administration of this contract, as provided by Wis. Stat. § 40.07 (1) (d) and (3).
- The vendor agrees to maintain the strict confidentiality of individual records supplied to the vendor or its employees under this RFP. In addition, the vendor will only share confidential information with its employees and subcontractors on a need to know basis.
- The vendor agrees not to disclose any information furnished to the vendor or its employees, by the Department including any information derived directly or indirectly from information furnished by the Department to any person or entity of any description who is not a party to this RFP without express, written approval of the Secretary of the Department in advance.
- Under no circumstances are participant names, addresses, or other data to be used or made available for any purpose other than specifically provided for in this contract.
- All media in the possession of the vendor including, but not limited to diskettes, CD's, files and written documents containing confidential participant information shall be destroyed or turned over to the Department within 60 calendar days of the completion of this contract. The vendor shall furnish to the Department a written certification that all such media have been destroyed or returned to the Department, unless the Department makes any exceptions to this requirement in writing. Notwithstanding the foregoing, the

Department acknowledges and agrees that the Contractor may retain an archival copy of the Department's data and information in accordance with the Contractor's disaster recovery and document retention policies, subject to the Contractor's continued compliance with its confidentiality obligations.

# EXHIBIT B

Dated October 29, 2014

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is by and between The Segal Company (Eastern States), ("Segal"), Inc., and the Wisconsin Department of Employee Trust Funds ("ETF"), and acting on behalf of the State of Wisconsin.

### RECITALS:

**WHEREAS**, ETF and SEGAL ("the Business Associate") have executed a contract, pursuant to which SEGAL provides health care benefit consultant services for the Health Insurance Programs offered by the State of Wisconsin Group Insurance Board ("Underlying Contract"), and in connection with those services ETF discloses or allows the disclosure to SEGAL of certain information that is subject to protection by the Health Insurance Portability and Accountability Act of 1996, ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act of 2009 as passed as part of ARRA ("HITECH") and their implementing regulations, Title 45, Parts 160 through 164 of the Code of Federal Regulations, as well as by laws and administrative rules of the State of Wisconsin; and

**WHEREAS**, with respect to its activities pursuant to the Underlying Contract, SEGAL is ETF's Business Associate as that term is defined by HIPAA; and

**WHEREAS**, It is the intent of this Agreement to comply with state law and with the federal regulations implementing HIPAA and HITECH concerning the privacy, security and transaction standards in 45 C.F.R. Parts 160 to 164, inclusive (collectively, the "HIPAA Rules"),

**WHEREAS**, ETF and SEGAL agree to incorporate the terms of this Agreement into the Underlying Contract and agree to incorporate this Agreement into any associated addenda and contract extensions, in order to comply with HIPAA, HITECH and state law.

**NOW, THEREFORE**, in consideration of these premises and the mutual promises and agreements hereinafter set forth, ETF and SEGAL hereby agree as follows:

### DEFINITIONS:

It is the intent of this Agreement to comply with the federal regulations implementing HIPAA and HITECH concerning the privacy, security and transaction standards, including the definitions in 45 C.F.R. Parts 160 to 164, inclusive, as applicable. This Agreement also addresses compliance with Wisconsin laws on confidentiality of personal information. In particular, the following words and phrases in this Agreement have the meanings set forth below, unless the context clearly requires otherwise:

"ARRA" means the American Recovery and Reinvestment Act of 2009.

"Individual Personal Information" has the meaning set forth in Wis. Admin. Code § ETF 10.70 (1).

"Medical Record" has the meaning set forth in Wis. Admin. Code § ETF 10.01 (3m).

"Personal Information" is information that can be used to identify a person and includes, without limitation, **Individually Identifiable Health Information, Individual Personal Information, Medical Records and Protected Health Information.**

"Third Party" means a party other than a subcontractor or agent that ETF has approved.

## PART I – OBLIGATIONS OF SEGAL

A. **Uses and Disclosures.** SEGAL may use or disclose Personal Information it creates for or receives from ETF or any other Business Associate of ETF for only the following, limited purposes:

1. Permitted Uses and Disclosures of Personal Information. SEGAL is permitted to use and disclose Personal Information:

(a) To provide health care benefit consultant services in accordance with the Underlying Contract.

(b) Subject to the limitations on Uses and Disclosures outlined in this Segal Agreement, specifically including the State Law Restrictions in Part I, Section B, SEGAL is authorized to

(i) use and disclose Personal Information as necessary for SEGAL's proper management and administration and to carry out SEGAL's legal responsibilities, provided that any disclosures under this section are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been violated,

(ii) use and disclose Personal Information as otherwise Required by Law,

(iii) use and disclose PHI for purposes of data aggregation services relating to the health care operations of ETF, and

(iv) de-identify PHI in accordance with the requirements of 45 CFR §164.514(a)-(c), and use or disclose the information that has been de-identified.

2. Prohibition on Unauthorized Use or Disclosure. SEGAL will not use or disclose Personal Information it creates for or receives from ETF or from another Business Associate of ETF, except as authorized or required by this Agreement or as Required by Law or as otherwise authorized in writing by ETF, including, without limitation, marketing and solicitation of business outside the Underlying Contract and disclosure of such information to third-parties.

3. Compliance with Regulations. SEGAL will comply with:

(a) 45 C.F.R. Parts 160 to 164, inclusive, as applicable to a "Segal" of a "Covered Entity" and any other regulations adopted pursuant to HIPAA and HITECH; and

(b) Applicable State Law not preempted by 45 C.F.R §§ 160.201 to 160.203, inclusive, or any other federal law.

4. State Law Restrictions. SEGAL shall comply with Wis. Stat. §§ 40.07 and 134.98 with respect to information SEGAL creates for or receives from ETF or from any other Business Associate of ETF. In particular:

(a) Any Third Party request, including a subpoena, for disclosure of Personal Information, including, without limitation, Medical Records or Individually Identifiable Health Information, shall be referred to ETF in a timely manner; and

(b) SEGAL shall not disclose to any Third Party Individual Personal Information which ETF itself may not disclose pursuant to Wis. Stat. §40.07(1), or of Medical Records that ETF itself may not disclose pursuant to Wis. Stat §40.07(2).

B. **Information Safeguards.** SEGAL will develop, implement, maintain and use reasonable and

appropriate administrative, technical and physical safeguards to preserve the integrity and confidentiality of Personal Information under the control of SEGAL, and to prevent intentional or unintentional non-permitted or violating use or disclosure of Protected Health Information. SEGAL will document and keep these safeguards current and furnish documentation of the safeguards to ETF upon request. These safeguards will comply with HIPAA, HITECH and their implementing regulations.

**C. Reporting of Breach, Improper Use or Disclosure and Security Incidents.**

Reporting of Breach, Improper Use or Disclosure. SEGAL will report to ETF the discovery of any breach, use or disclosure of Personal Information, not allowed by this Agreement or in violation of 45 C.F.R. Part 164 or HITECH. An occurrence of a breach, improper use or disclosure or security incident is considered to be discovered as of the first day on which such occurrence is known to SEGAL, or, by exercising reasonable diligence, would have been known to SEGAL.

1. SEGAL shall provide prompt notice to ETF of the occurrence and shall conduct a Risk Assessment, as required at 45 CFR § 164.402. For purposes of reporting under this Section, the definition of Security Incident shall be limited to the successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
2. As soon as practicable, but not later than 30 days after the discovery, SEGAL shall notify ETF's Privacy Officer of any Breach of Unsecured PHI as required at 45 CFR §164.410. Such notice shall include all information required including the following information:
  - (a) The name and contact information of each individual whose Personal Information has been or is reasonably believed to have been accessed, acquired or disclosed during the Breach.
  - (b) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known.
  - (c) A description of the types of Personal Information that were involved in the Breach (e.g., full name, date of birth, Social Security number, account number).
  - (d) A brief description of what SEGAL is doing to investigate the Breach, to mitigate losses and to protect against further Breaches.
  - (e) The actions SEGAL has undertaken or will undertake to mitigate any harmful effect of the Breach.
  - (f) A corrective action plan that includes the steps SEGAL has taken or will take to prevent similar Breaches.
3. SEGAL will be responsible for notifying individuals of the occurrence when ETF and SEGAL agree that notification is necessary and to pay the reasonable cost of such notifications, as well as any costs associated with the breach, improper use or disclosure, including, without limitation, credit monitoring services. SEGAL must obtain ETF's approval of the time, manner and content of any such notifications, provide ETF with copies of the notifications, and provide the notifications within sixty (60) days after discovery of the breach, improper use or disclosure. SEGAL shall have the burden of demonstrating to ETF that all notifications were made as required, including any evidence demonstrating the necessity of any delay beyond the 60 day calendar notification to affected individuals after the discovery of the breach by ETF or SEGAL.

**D. Duty to Mitigate Effect of Misuse or Unauthorized Disclosure and Notify Members of Unauthorized Acquisition:**

1. SEGAL will mitigate, as required by HIPAA, HITECH, state law and this agreement, to the extent practicable, any harmful effect that is known to SEGAL of a breach, improper use or unauthorized disclosure reported pursuant to subsection D of this section, including the reimbursement of any civil fines or penalties imposed as a result of such breach, improper use or unauthorized disclosure.
  2. To the extent not preempted by HIPAA, SEGAL will comply with the provisions of Wis. Stat. §134.98 and any subsequently adopted state law regarding mitigation of privacy breaches, and shall ensure by written contract that any subcontractor or agent with whom it contracts to carry out the provisions of the Underlying Contract also complies with the provisions of Wis. Stat. §134.98 and any subsequently adopted law regarding mitigation of privacy breaches.
- E. **Minimum Necessary.** SEGAL will make reasonable efforts to use, disclose, or request only the minimum amount of Personal Information necessary to accomplish the intended purpose and shall comply with regulations issued pursuant to HIPAA and HITECH.
- F. **Disclosure to SEGAL's Subcontractors and Agents.** SEGAL shall require any of its agents or subcontractors to provide reasonable assurance, evidenced by written contract, that the agent or subcontractor will comply with the same privacy and security obligations as SEGAL with respect to such Personal Information. Before entering into such a contract with an agent or subcontractor, SEGAL shall provide ETF with a copy of the contract and discuss with ETF any concerns that may be raised about the contract.
- G. **Access, Amendment and Disclosure Accounting.**
1. **Access.** At the direction of ETF, SEGAL agrees to provide access to any Protected Health Information held by SEGAL which ETF has determined to be part of ETF's Designated Record Set, in the time and manner designated by ETF, so that ETF may meet its access obligations under HIPAA and HITECH. All fees related to this access, as determined by SEGAL, are the responsibility of the individual requesting the access.
  2. **Amendment.** At the direction of ETF, SEGAL agrees to amend or correct Protected Health Information held by SEGAL and which ETF has determined to be part of ETF's Designated Record Set, in the time and manner designated by ETF, so that ETF may meet its amendment obligations pursuant to HIPAA and HITECH. All fees related to this amendment, as determined by SEGAL, are the responsibility of the individual requesting the access.
  3. **Documentation of Disclosures.** SEGAL agrees to document such disclosures of Protected Health Information and information related to such disclosures so that ETF may meet its obligations under HIPAA and HITECH.
  4. **Accounting of Disclosures.**
    - (a) In accordance with 45 CFR § 164.528, SEGAL shall maintain a process to provide ETF an accounting of disclosures of Protected Health Information for as long as SEGAL maintains Protected Health Information received from or on behalf of ETF. SEGAL agrees to provide to ETF or to an individual, in a time and manner designated by ETF, information collected in accordance with Subsection 3 above, to permit ETF to properly respond to a request by an individual for an accounting of disclosures pursuant to HIPAA and HITECH.
    - (b) Each accounting will provide:
      - (i) The date of each disclosure;
      - (ii) The name and address of the organization or person who received the Protected Health Information;
      - (iii) A brief description of the Protected Health Information disclosed; and

- (iv) For disclosures other than those made at the request of the subject, the purpose for which the Protected Health Information was disclosed and a copy of the request or authorization for disclosure.
- (c) For repetitive disclosures which SEGAL makes to the same person or entity, including ETF, for a single purpose, SEGAL may provide:
- (i) The disclosure information for the first of these repetitive disclosures;
  - (ii) The frequency or number of these repetitive disclosures; and
  - (iii) The date of the last of these repetitive disclosures,
  - (iv) SEGAL will make a log of this disclosure information available to ETF within five (5) business days of ETF's request.
- (d) SEGAL need not record disclosure information or otherwise account for disclosures of Protected Health Information if:
- (i) The disclosures are allowed under this Agreement or are expressly authorized by ETF in another written document; and
  - (ii) The disclosures are for one of the following purposes:
    - i. Treatment, Payment or Health Care Operations that are not made through an Electronic Health Record;
    - ii. In response to a request from the Individual who is the subject of the disclosed Protected Health Information, or to that Individual's Personal Representative;
    - iii. Made to persons involved in the health care or payment for the health care of the Individual who is the subject of the disclosed Protected Health Information;
    - iv. For notification for disaster relief purposes;
    - v. For national security or intelligence purposes;
    - vi. As part of a Limited Data Set; or
    - vii. To law enforcement officials or correctional institutions regarding inmates.
- (e) In the event the Implementation Specifications found at 45 CFR 164.528(b) are modified, it shall not be considered a violation of this Agreement for SEGAL to comply with such modified provisions regardless of whether or not this Section G(c) is amended.
5. Disclosure Tracking Time Periods. Except as otherwise provided in this paragraph, SEGAL must have available to ETF the disclosure information required by this section, but in no case will SEGAL be required to have available information from:
- (a) More than six (6) years before ETF's request for the disclosure information; or
  - (b) Any period during which SEGAL did not provide services to ETF.
6. Disclosure Tracking for Disclosures made through Electronic Health Records: SEGAL only needs to provide disclosures for Treatment, Payment or Health Care Operations made through an Electronic Health Record for three years prior to the date on which the accounting is requested. SEGAL shall provide all information necessary for ETF to provide an accounting that includes all information required by regulations issued pursuant to HIPAA and HITECH.
7. Effective Date: The effective date for accounting required under subsection 6 depends on the date ETF acquires an Electronic Health Record. If ETF had an electronic Health Record as of January 1, 2009, subsection 6 will apply to Protected Health Information disclosures made by ETF on or after January 1, 2014. If ETF does not have an Electronic Health Record as of

January 1, 2009, subsection 6 will apply to Protected Health Information disclosures made by ETF after the later of January 1, 2011 or the date ETF acquires an Electronic Health Record.

- H. **Accounting to ETF and Government Agencies.** SEGAL will make its internal practices, books, and records relating to its use and disclosure of Protected Health Information available to ETF to provide to the U.S. Department of Health and Human Services (HHS) in a time and manner designated by HHS for the purpose of determining ETF's compliance with HIPAA and HITECH. SEGAL shall promptly notify ETF of any inquiries made to it by HHS concerning ETF's compliance with HIPAA.
- I. **Red Flag Rules.** If applicable to SEGAL, SEGAL shall be responsible for implementation of an Identity Theft Monitoring Policy and procedure to protect Personal Information under the Federal Trade Commission regulations known as the "Red Flag Rules."

## **PART II –ETF OBLIGATIONS**

- A. **Changes in Permissions to Use and Disclose Protected Health Information.** ETF shall promptly notify SEGAL of any change in, or revocation of, permission by an individual to use or disclose Protected Health Information, to the extent that such change may affect SEGAL's use or disclosure of such Protected Health Information.
- B. **Changes in ETF's Notice of Privacy Practices.** ETF shall provide SEGAL with a copy of ETF's Notice of Privacy Practices and shall notify SEGAL of any change made to the Notice of Privacy Practices, to the extent that such change may affect SEGAL's efforts to comply with this Agreement.
- C. **Changes in State Law.** ETF shall notify SEGAL of any relevant change in Wisconsin law, to the extent that such change may affect SEGAL's efforts to comply with this Agreement.
- D. ETF shall notify CONSULTANT of any restriction on the use or disclosure of PHI that it has agreed to or is required to abide by under 45 CFR §164.522, to the extent that such restriction may affect CONSULTANT's use or disclosure of PHI.
- E. ETF shall not request CONSULTANT to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by ETF, except to the extent that such use or disclosure is for the purposes set forth above in Section A(1)(b)(i) and (ii).

## **PART III - TERM, TERMINATION AND AMENDMENT**

- A. **Term.** This Agreement becomes effective on the effective date of the Underlying Contract. The Agreement is co-extensive with the term of the Underlying Contract, including any extensions made to the original Underlying Contract.
- B. **Termination for Breach.** Either party may terminate this Agreement if the other violates a material term of the Agreement, provided that the non-breaching party provides the breaching party with no less than 30 days in which to cure such violation prior to termination becoming effective. However, if the non-breaching party reasonably and in good faith determines that the violation is not curable, it may terminate this Agreement immediately upon written notice to the breaching party. Upon termination of this Agreement, the Underlying Contract also shall terminate to the extent that it requires SEGAL to access, use, disclose and/or maintain PHI in order to provide the Services.
- C. **Effect of Termination: Return or Destruction of Protected Health Information.**

Upon termination, cancellation, expiration, or other conclusion of the Agreement, SEGAL shall:

1. Return to ETF or, if return is not feasible, destroy all Personal Information in whatever form or medium that SEGAL received from or created on behalf of ETF. This provision shall also apply to all Personal Information that is in the possession of subcontractors or agents of SEGAL. In such case, SEGAL shall retain no copies of such information, including any compilations derived from and allowing identification of Personal Information. SEGAL shall complete such return or destruction as promptly as possible, but not more than thirty (30) days after the effective date of the conclusion of this Agreement. Within such thirty (30) day period, SEGAL shall certify on oath in writing to ETF that such return or destruction has been completed.
  2. If SEGAL destroys Personal Information, it shall be done with the use of technology or methodology that renders the Personal Information unusable, unreadable, or undecipherable to unauthorized individuals as specified by HHS in HHS guidance for the destruction of Protected Health Information. Acceptable methods for destroying Personal Information include: (i) paper, film, or other hard copy media shredded or destroyed in order that Personal Information cannot be read or reconstructed; and (ii) electronic media cleared, purged or destroyed consistent with the standards of the National Institute of Standards and Technology (NIST). HHS specifically excluded redaction as a method of destruction of Protected Health Information, unless the information is properly redacted so as to be fully identified.
  3. If SEGAL believes that the return or destruction of Personal Information is not feasible, SEGAL shall provide written notification of the conditions that make return or destruction infeasible and shall extend the protections of this Agreement to Personal Information received from or created on behalf of ETF, and limit further uses and disclosures of such Personal Information, for so long as SEGAL maintains the Personal Information. ETF understands that CONSULTANT's need to maintain portions of the PHI in records of health care benefit consultant determinations and for other archival purposes related to memorializing advice provided will render return or destruction infeasible.
- D. **Agreement to Amend Agreement.** The parties to this contract acknowledge that federal laws relating to transactions, security and privacy are rapidly evolving and that amendment to this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, HITECH and their implementing regulations. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, HITECH and applicable federal regulations. If this Agreement is not amended by the effective date of any final regulation or amendment to final regulations with respect to HIPAA and HITECH, this Agreement will automatically be amended on such effective date such that the obligations they impose on the parties remain in compliance with the regulations then in effect.

#### **PART IV – GENERAL PROVISIONS**

- A. **Conflict.** The provisions of this Agreement override and control any conflicting provision of the Underlying Contract. All non-conflicting provisions of the Underlying Contract remain in full force and effect.
- B. **Election to Not Treat As Representative.** Nothing in this Agreement shall be construed to limit the discretion of ETF, under 45 C.F.R. § 164.502 (g) (5), to elect not to treat a person as the representative of an individual.
- C. **No Third Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any entity other than ETF and SEGAL, any rights, remedies, obligations or liabilities whatsoever.

- D. **Documentation.** All documentation that is required by this Agreement or by 45 C.F.R. Part 164 will be retained by SEGAL for six (6) years from the date of creation or when it was last in effect, whichever is longer.
- E. **Survival.** The parties' obligations and rights, with respect to SEGAL's engagement to provide services, will be unaffected by the termination of the Underlying Contract and this Agreement. In particular, the provisions of Part III, Sections D and E, and this section, shall survive termination of the Underlying Contract and this Agreement.
- F. **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- G. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules
- H. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile or Portable Document Format (PDF) copies thereof shall be deemed to be originals.
- I. **Informal Resolution.** If any controversy, dispute, or claim arises between the parties with respect to this Agreement, the parties shall make good faith efforts to resolve such matters informally.
- J. **Notices.** All notices to be given pursuant to the terms of this Agreement shall be in writing and shall be sent certified mail, return receipt requested, postage prepaid or by courier service. If to Covered Entity, the notice shall be sent to such address as ETF notifies CONSULTANT of in writing. If to CONSULTANT, the notice shall be sent to the Privacy Official, c/o General Counsel, The Segal Group, 333 West 34th Street, New York, New York 10001.

Company Name: The Segal Company (Eastern Sloths), INC. Date: 10/27/14

Authorized Person: Kenneth C. VIGORA Phone: 678-306-3154  
 (Print or type)

  
 (Signature of authorized person)



2018 Powers Ferry Road SE Suite 850 Atlanta, GA 30339-7200  
T 678.306.3100 [www.segalco.com](http://www.segalco.com)

October 17, 2014

Mr. David H. Nispel  
General Counsel  
Wisconsin Department of Employee Trust Funds  
801 W Badger Road  
Madison WI 53707-7931

**RE: Questions for Consideration**

Dear Mr. Nispel:

It was good talking with you on Wednesday and discussing the concerns raised by the Department of Administration and documented in your letter of October 10<sup>th</sup>. We are prepared to discuss in more detail on our negotiation calls next week, as requested in your letter, but wanted to give you some feedback and thoughts prior to that meeting. Below are your three questions and our responses.

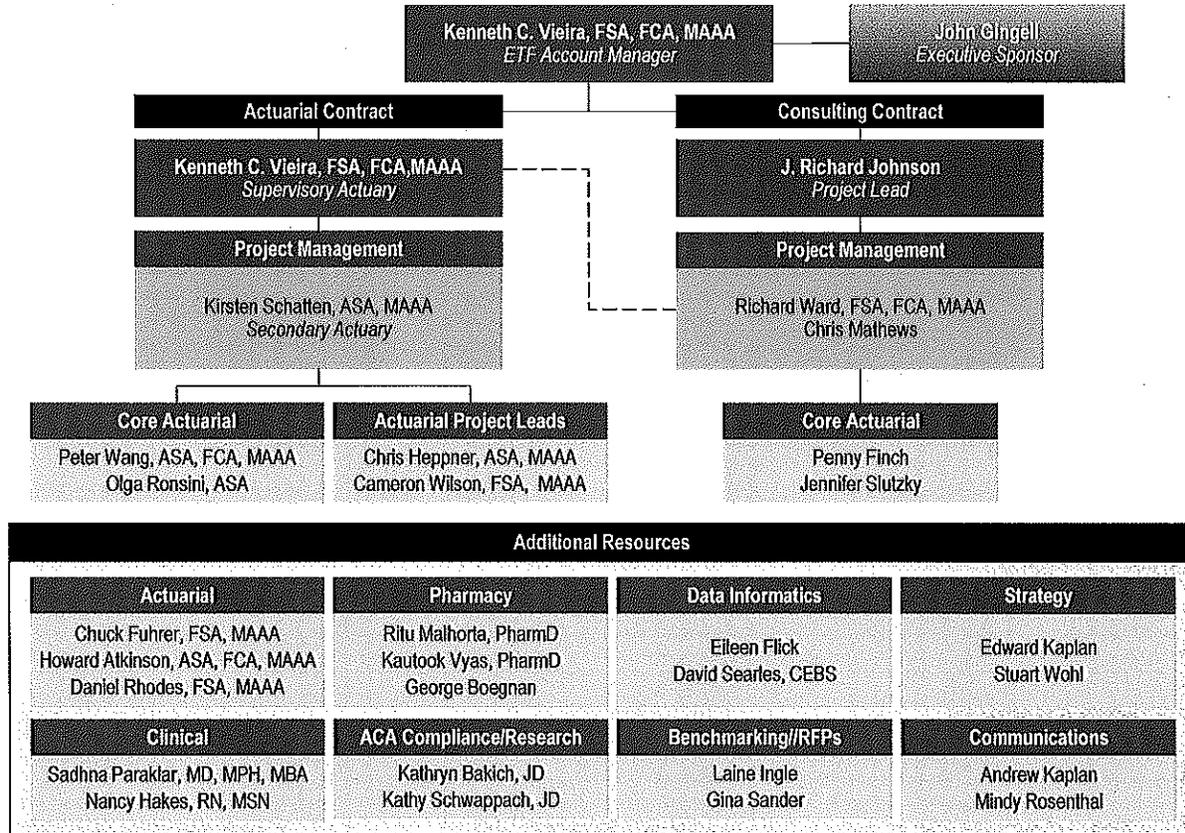
1. Staff Structure: The Department of Administration advised ETF to negotiate a staff structure that supports the necessary independence of the benefit consultants from the work of the actuaries that also are under contract with the State of Wisconsin. ETF would appreciate hearing your thoughts about how the Segal actuary team and the Segal benefits consulting team will operate to address this question. Since Segal has served as both the actuary and benefits consultant for other government retirement systems, ETF would like to hear about your experiences with those systems.

It is very common for State level systems to procure one contract that combines both the actuarial and consulting work. This is currently the case for a number of states we work with, including but not limited to Illinois, North Carolina, Alabama, Pennsylvania, Delaware, Maryland, New Hampshire, Alaska, Hawaii and Colorado. We sometimes see a contract that splits the services when there is a competent local actuarial firm that does not do consulting, but this is not the norm.

Our team is highly proficient on working a variety of engagements, whether actuarial or consulting in nature. Our Segal Actuaries are seasoned consultants and for some clients, manage engagements that are consulting in nature, with little or no actuarial component. That being said, we understand that ETF bid the contract separately and does have some concerns on how the actuarial and consulting contracts will work together.

In the actuarial contract we included a number of consultants, and in the consulting contract we included a number of actuaries. We believe that both types of skillsets are required in each of the contracts. There is

a definitive overlap that exists between these contracts in the need for calculations and coordination to the current structure as new options are being considered. Our proposal assumed there would be efficiencies gained by utilizing some of the same staff between the contracts, to avoid having to gather data or build analytical models twice, not to mention duplication of intellectual capital. We believe this coordination is important as we involve our subject matter experts on a number of the consulting contract major topics. Below we have presented a combined organizational chart for both contracts that shows the separation between the lead teams for the actuarial contract and the consulting contract:



I will be responsible for the entire account and also for the supervisory actuarial role on the actuarial contract. This is a common account structure where Segal has multiple contracts with a state government, to help assure that all of the engagements are moving ahead smoothly and coordinating as needed with their complementary engagements. On the consulting contract, Rick Johnson will lead that project. It is highly likely that each of us would be presenting separately at a board meeting related to each of the contracts we are leading. Although the individuals under each contract above will provide the majority of the work on the project, there will necessarily be some overlap to support each contract's needs. Note that our Chicago Office, where Penny Finch is located, will provide more support on the Consulting Contract. Our additional resources were in both proposals and will be utilized as necessary during the engagement. For example, the consulting project assumes a considerable amount of time for both the data informatics and clinical teams.

Our chart above is not materially different from what we originally proposed and includes the same individuals. The only change is that Richard Ward will concentrate more on the consulting project to

support the varied needs of that assignment. Richard will work closely with Chris Mathews to manage elements of the project. With that in mind we have moved Kirsten Schatten into the Secondary Actuary role for the duration of the actuarial contract. Richard is still available if needed but we believe Ken and Kirsten, as well as the rest of the actuarial team, can meet that contract's need with the level of experience required.

Further details of our team members' experience can be found in our original proposals for each contract.

2. Double billing: ETF would appreciate hearing what mechanisms Segal uses to prevent double billing to the retirement system when Segal holds both the actuary and benefits consultant contracts

ETF should be assured that you will not be double billed for any component of the engagement. The projects are unique, possessing different billing codes in our time entry system. When a consultant works on the account, he or she will put their billable time under the appropriate engagement. The account manager reviews all time detail entered for each month as part of the regular billing cycle. Where time appears in both matters for the same day, additional discussions are initiated with the staff member to understand why time was charged in the manner it was. Adjustments can then be made to make sure the time entry appears in the correct matter number. Also, the account manager is experienced in managing project work and looks closely at the amounts of time being entered compared to the proposed and budgeted hours and staff members. Staff member time is reviewed closely by each person's manager and tracked back to the amounts actually billed in the client matters. Double billing and/or deliberately coding incorrect time in our system could result in the staff member's termination of employment from Segal.

There are some tasks that we assumed would be included under the actuarial contract, even though the output is needed for the consulting project as well. We believe having Segal work on both contracts can result in some savings. Our proposed estimated consulting fees would have been much higher had we not been able to leverage the work and knowledge acquired under the actuarial contract.

3. Timing of Reports: ETF would like to hear Segal's thoughts about what it believes can reasonably be evaluated and delivered by the February 2015 Group Insurance Board meeting. We are now looking at a four-month time frame.

We noted originally in our response that the 6-month timing for Report 1 was really much shorter, due to the timing for contract initiation, seasonal holidays and the need to provide preparatory material to board members in advance of the actual board meeting. With the delay in awarding the contract, that has now been reduced to effectively less than 3 business months. It is our understanding that for a board meeting in February, you will likely need all our materials by the end of January. With a likely start date in early November, that leaves only three calendar months, including the holidays. We believe it would be beneficial to ETF to move the date back to March for the presentation of Report 1, giving us additional time to prepare a more comprehensive review.

Assuming the extra month, that leaves our team about four calendar months to complete our assessment. Since Report 1 is focused on the 2016 plan year, we have prioritized the projects that we believe could have impact on that year, along with a few of the projects that will help position the more major program structure and delivery issues for ongoing board consideration. We delayed the reporting and recommendations on other assignments that could not practically be implemented for 2016. Our more comprehensive Report 2 would include those components as well as further details on some of the other components.

Mr. David H. Nispel  
October 17, 2014  
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We can commit to providing a high-level review of the following components for Report 1 (March 2015):

- Prevention/Wellness
- Disease Management/Chronic Care
- Pharmacy and Specialty Pharmacy
- Consumer Driven Health Care Design
- Comprehensive Plan Benchmarking – plan costs, designs, access
- Plan Design Review
- ACA Review – excise tax, compliance
- Private and Public Exchanges

We will begin working on all of the projects at the outset of the contract and may have other components available by that March meeting date, but we believe the areas presented above are a reasonable expectation. Our second report will include more detailed analysis and support for longer term initiatives.

-----  
We look forward to the opportunity to continue our work with the State of Wisconsin. Hopefully this gives us some context for our discussion next week. Please contact me at 678-306-3154 if you need any additional information.

Sincerely,



Kenneth C. Vieira, FSA, FCA, MAAA  
Senior Vice President  
East Region Public Sector Market Leader