



## Contract

**Commodity or Service:** Third Party Administration of  
Wellness and Disease  
Management Programs

**Contract No./Request for Bid/Proposal No:** ETG0005

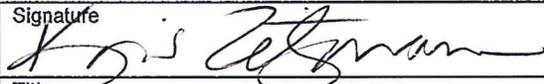
Authorized Board: Group Insurance Board

**Contract Period:** August 16, 2016 through December 31, 2018 with the option for renewal of two (2) two (2) year periods

1. This Contract is entered into by the State of Wisconsin, Department of Employee Trust Funds (Department), the State of Wisconsin Group Insurance Board (Board) and between the The StayWell Company, LLC 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 dated May 27, 2016 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 applicants 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. 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@etf.wi.gov](mailto:ETFProcurement@etf.wi.gov).
5. For purposes of administering this Contract, the Order of Precedence is:
  - A). This Contract with The StayWell Company, LLC;
  - B). Exhibit A, Changes Agreed to by the Parties during contract negotiations and from the Request for Proposal (RFP) ETG0005;
  - C). the Request for Proposal (RFP) dated April 25, 2016; and,
  - D). the Contractor's proposal dated May 27, 2016.

**Contract Number & Service:** ETG0005 Third Party Administration of Wellness and Disease Management Programs

<b>State of Wisconsin</b>	
<b>Department of Employee Trust Funds</b>	
By Authorized Board (Name)	
<b>Group Insurance Board</b>	
By (Name)	
<b>Michael Farrell</b>	
Signature	
	
Title	
<b>Chair Group Insurance Board</b>	
Phone	
608.266.9854 (A. John Voelker, Deputy Secretary)	
Date (MM/DD/CCYY)	
8/16/16	

<b>Contractor to Complete</b>	
Legal Company Name	
The StayWell Company, LLC	
Trade Name	
The StayWell Company, LLC	
Taxpayer Identification Number	
94-3151780	
Company Address (City, State, Zip)	
300 Ames Crossing Road, Suite 100 Saint Paul, MN 55121	
By (print Name)	
Kris Zitzmann	
Signature	
	
Title	
Vice President, National Accounts The StayWell Company, LLC	
Phone	
651.905.6908	
Date (MM/DD/CCYY)	
8/18/16	

# Exhibit A

**The StayWell Company, LLC Contract: Changes Agreed to by the Parties from the Request for Proposal (RFP) ETG0005 For Services to be provided as the Third Party Administration of Wellness and Disease Management Programs to the State of Wisconsin Department of Employee Trust Funds on behalf of the Group Insurance Board dated April 25, 2016.**

**1) Delete the following from the RFP**

## **5.2 ADMINISTRATIVE SERVICES**

D). The Contractor must monitor the development of and provide notification, information and advice in a timely manner to ETF concerning existing or proposed State or federal regulations or legislation that may affect the program. The Contractor must have legal and technical staff available to ETF for advice and consultation as needed for program administration, including during any appeals processes concerning program requirements or eligibility.

**2) Substitute the following to the RFP**

## **5.2 ADMINISTRATIVE SERVICES**

D). Contractor confirms that its recommended wellness and disease management program structure and the StayWell Portal comply with industry best practices as well as applicable federal and state law, including the Affordable Care Act (ACA), Americans with Disabilities Act (ADA), Genetic Information and Nondiscrimination Act (GINA) and Health Insurance Portability and Accountability Act (HIPAA) guidelines. ETF acknowledges and agrees that contractor is not responsible for confirming compliance of other, non-wellness programs that ETF administers with applicable federal and state law. The parties understand and intend that Contractor is not acting as a fiduciary for the Wisconsin Retirement System's retirement plans and other non-wellness benefit plans, that Contractor has no discretion or ability, formal or otherwise, to exercise any authority, direction or influence, whether direct or indirect, with respect to the administration of any aspect of any benefit plans including such plans' documents, or to determine the entitlements of such plan's participants and their beneficiaries to coverage of benefits. The Parties further agree that all authority, discretion and control, formal or informal, direct or indirect, with respect to the adjudication of any claims not related to ETF's wellness program, the disposition, application or investment of assets of any benefit plan and administration of such plans are exclusively vested in entities, other than the contractor, who exercise any such authority or power.

**3) Delete the following from the RFP**

## **EXHIBIT 2, SECTION 24.0**

CANCELLATION: The State of Wisconsin reserves the right to cancel any contract in whole or in part without penalty due to nonappropriation of funds or for failure of the contractor to comply with terms, conditions, and specifications of this contract.

4) **Substitute the following to the RFP**

**EXHIBIT 2, SECTION 24.0**

CANCELLATION: The State of Wisconsin reserves the right to cancel any contract in whole or in part without penalty due to nonappropriation of funds or for failure of the contractor to comply with terms, conditions, and specifications of this contract. Before terminating this Contract, the Department shall give written notice of its intent to terminate to Contractor after a ten (10) Day written notice and cure period.

5) **Delete the following from the RFP**

**EXHIBIT 2, SECTION 27.1 PROPRIETARY INFORMATION:**

Data contained in a bid/proposal, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented. All data, documentation, and innovations become the property of the State of Wisconsin

6) **Delete the following from the RFP**

**EXHIBIT 2, SECTION 34.0**

WORK CENTER PROGRAM: The successful bidder/proposer shall agree to implement processes that allow the State agencies, including the University of Wisconsin System, to satisfy the State's obligation to purchase goods and services produced by work centers certified under the State Use Law, s.16.752, Wis. Stat. This shall result in requiring the successful bidder/proposer to include products provided by work centers in its catalog for State agencies and campuses or to block the sale of comparable items to State agencies and campuses.

7) **Delete the following from the RFP**

**EXHIBIT 3, SECTION 3.2 DISCLOSURE OF INDEPENDENCE AND RELATIONSHIP**

Contractors shall agree as part of the contract for services that during performance of the contract, the contractor will neither provide contractual services nor enter into any agreement to provide services to a person or organization that is regulated or funded by the contracting agency or has interests that are adverse to the contracting agency. The Department of Administration may waive this provision, in writing, if those activities of the contractor will not be adverse to the interests of the state.

8) **Substitute the following to the RFP**

**EXHIBIT 3, SECTION 3.2 DISCLOSURE OF INDEPENDENCE AND RELATIONSHIP**

Contractor agrees that during the performance of this contract, the contractor shall inform the Department that it has entered into a service contract with any entity or subsidiary of that entity that is contracted to perform services for the Department or Group Insurance Board. The Department agrees to provide a list of such entities to the Contractor. The

contractor agrees to safeguard the confidentiality of all confidential information obtained pursuant to this contract from any such entity or subsidiary of that entity.

**9) Delete the following from the RFP**

**EXHIBIT 4, SECTION 16.0**

TERMINATION OF THIS CONTRACT: The Department may terminate this Contract at any time at its sole discretion by delivering one-hundred eighty (180) Calendar Days written notice to the Contractor.

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

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

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

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

**10) Substitute the following to the RFP**

**EXHIBIT 4, SECTION 16.0**

TERMINATION OF THIS CONTRACT: The Department may terminate this Contract at any time at its sole discretion by delivering one-hundred eighty (180) Calendar Days written notice to the Contractor.

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

The transition plan shall be jointly prepared and signed by the Contractor and the Department prior to termination of the contract and shall specify the transition services to be provided, the period of time the services are to be provided, and the responsibilities of the Contractor and the Department. In addition, the transition plan shall include any sections of the contract deemed necessary by the Contractor and the Department for the duration of the transition plan.

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

**11) Delete the following from the RFP**

**EXHIBIT 4, SECTION 18.0**

REMEDIES OF THE STATE: The State of Wisconsin shall be free to invoke any and all remedies permitted under Wisconsin law. In particular, if the Contractor fails to perform as specified in this Contract, the State of Wisconsin may issue a written notice of default providing for at least a seven (7) Business Day period in which the Contractor shall have an opportunity to cure, provided that cure is possible, feasible, and approved in writing by the State of Wisconsin. Time allowed for cure of a default shall not diminish or eliminate the Contractor's liability. If the default remains, after opportunity to cure, then the State of Wisconsin may: (1) exercise any remedy provided in law or in equity or (2) terminate Contractor's Services.

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

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

**12) Substitute the following to the RFP**

**EXHIBIT 4, SECTION 18.0**

REMEDIES OF THE STATE: The State of Wisconsin shall be free to invoke any and all remedies permitted under Wisconsin law. In particular, if the Contractor fails to perform as specified in this Contract, the State of Wisconsin may issue a written notice of default providing for at least a ten (10) Business Day period in which the Contractor shall have an

opportunity to cure, provided that cure is possible, feasible, and approved in writing by the State of Wisconsin. Time allowed for cure of a default shall not diminish or eliminate the Contractor's liability. If the default remains, after opportunity to cure, then the State of Wisconsin may: (1) exercise any remedy provided in law or in equity or (2) terminate Contractor's Services.

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

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

**13) Delete the following from the RFP**

**EXHIBIT 4, SECTION 21.0**

OWNERSHIP OF MATERIALS: Except as otherwise provided in subsection (t) of section 22, 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 Contractor and shall be returned to the Department upon completion of this Contract. The Contractor shall not use it for any purpose other than carrying out the work described in this Contract.

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 Contractor.

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

This Contract shall no way affect or limit the Departments rights to use, disclose or duplicate, for any purpose whatsoever, all information and data pertaining to the Department or Covered Individuals and generated by the claims administration and other Services provided by Contractor under this Contract.

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

determined and certifies to the Department that all personal identifiers have been removed from the retained files.

**14) Substitute the following to the RFP**

**EXHIBIT 4, SECTION 21.0**

**21.0 RIGHTS AND OWNERSHIP**

- a. Any content, applications, tools, graphics, images, or other materials, whether in print, online, or other electronic format (collectively, the "Materials"), provided to Department and its affiliates by Contractor as part of the Services may not be used except as provided for under this Agreement. During the Term of this Agreement, Contractor grants Department and its affiliates a royalty free, nontransferable, nonexclusive license to provide its eligible participants, who are participating in Contractor's programs, with access to Contractor's Materials described in the Statement of Work attached as [EXHIBIT A] or otherwise provided by Contractor as part of the Services. This license does not include the right to use the Materials to furnish a service to others or to copy, distribute, reproduce or alter the Materials, except for use by Departments eligible participants. Materials are provided to the participants solely for their own personal, non-commercial use. All trademarks, ideas, concepts, know-how and techniques used by Contractor, belong to Contractor and Contractor retains all rights and ownership thereto. Department acknowledges and agrees that Contractor owns the Materials and shall retain all right, title, and interest thereto, including without limitation, any and all Intellectual Property Rights contained therein. As used herein, "Intellectual Property Rights" means any copyrights, copyrightable subject matter, trademarks, service marks, know-how, moral rights and other intellectual property rights existing under the laws of any governmental authority, domestic or foreign, including all applications and registrations relating to any of the foregoing. Except as expressly permitted herein, nothing in this Agreement shall be construed to give either party any rights to use any of the other party's trademarks or trade names without such other party's specific, written consent. To the extent that Department or any affiliate of Department provides intellectual property in which Department or such affiliate has Intellectual Property Rights ("Department IP") to Contractor for use as part of the materials, such Department IP shall remain the exclusive property of Department or the relevant affiliate if Department, and Department hereby grants Contractor a limited right and license to use such Department IP solely for the purpose of performing under this Agreement and shall cause the relevant Department affiliate to likewise grant Contractor such a license. Contractor shall not use modified Materials containing or referencing Department IP except for the purpose of fulfilling its obligations under this Agreement. In addition, the parties may agree from time to time that Contractor create new content for Department, that does not incorporate or reference Contractor's Materials (hereinafter, the "New Content"). New Content shall be the exclusive property of Department, and shall be considered Department IP for the purposes of this Agreement.
- b. In the event that a third party brings a claim against Department or any Department affiliate asserting that any component of the Materials used within the scope of the license hereunder constitutes an infringement of such third party's Intellectual

Property Rights, and provided that Contractor is notified promptly in writing by you of any notice of such claim, or should any component of the Materials become, or in Contractor's opinion is likely to become, the subject of any such claim, then Department shall permit Contractor, at Contractor's option, either (a) to procure for Department the right to continue using such Materials, (b) to replace or modify such component of the Materials so that it becomes non-infringing. If neither (a) nor (b) are feasible, Contractor may terminate the license of such component of the Materials and pro-rate the amount of fees payable hereunder during the remaining Term of the Agreement, which pro-ration shall be based on the number of components of the Materials remaining following the termination relative to the total number of components of the Materials licensed hereunder.

- c. Neither party shall acquire a right to use, and may not use without the other party's prior written consent in each instance, the names, characters, artwork, designs, trade names, trademarks or service marks of the other party in any advertising, publicity, public announcement, marketing, press release, promotion and/or client list.

**21.1** All files (paper or electronic) containing any Wisconsin claimant or employee information and all records created and maintained in the course of the work specified by this Contract are the sole and exclusive property of the Department. Contractor may maintain copies of such files during the term of this Contract as may be necessary or appropriate for its performance of this Contract. Moreover, Contractor may maintain copies of such files after the term of this Contract (i) for one hundred twenty (120) days after termination, after which all such files shall be transferred to the Department or destroyed by Contractor, except for any files as to which a claim has been made, (ii) for an unlimited period of time after termination for Contractor's use for statistical purposes, if Contractor first deletes all information in the records from which the identity of a claimant or employee could be determined and certifies to the Department that all personal identifiers have been removed from the retained files, and (iii) for up to ten (10) years on archive and/or backup tapes.

**15) Add the following to the RFP**

**EXHIBIT 4, SECTION 22.0 CONFIDENTIAL INFORMATION AND HIPAA BUSINESS ASSOCIATE AGREEMENT**

**22. u). PRIVACY AND PROTECTION OF PARTICIPANT INFORMATION**

1. Contractor will use and disclose Protected Health Information in accordance with this Section 22.0 and the terms of the Privacy Statement (referenced below) accepted by the participant.
2. The relationship between Contractor and any one of ETF's participants, all communications in connection with that relationship, and all data regarding participants gathered by Contractor, is Confidential Information and will only be used and disclosed to ETF (either in its capacity as an employer or plan sponsor) or ETF's contractors as permitted by the Terms of Use/Privacy Statement ("**Privacy Statement**") accepted by each participant as part of their participation in Contractor's programs.

3. In the event access to Confidential Information relating to a Participant that is gathered by Contractor, including but not limited to Protected Health Information, is required to facilitate the administration of certain aspects of ETF's programs, such as data analysis and the administration of incentives, and such use was not specified in the Privacy Statement, then ETF will provide Contractor with written authorization from the Participants whose Confidential Information is to be disclosed to ETF or to a third party designated by ETF. By requesting that Confidential Information relating to a Participant be provided to ETF, ETF represents that the Confidential Information relating to a Participant will not be used by ETF or its designated third party for individual employment decisions, including but not limited to termination of employment or denial of employee benefits.
- 4). If ETF requests that Contractor transfer any Confidential Information relating to a Participant to a third party, Contractor shall reasonably cooperate with ETF and its designated third party ("Third Party", subject to the terms set forth below. Contractor shall transfer the Confidential Information relating to a Participant to the Third Party upon satisfaction of the following conditions: (i) Contractor receives written instruction from ETF directing Contractor to transfer the Confidential Information relating to a Participant to the Third Party; (ii) Contractor receives written confirmation from ETF that the Third Party has entered into a HIPAA-compliant business associate agreement with ETF, if required, or that a business associate agreement is not required; and (iii) the Privacy Statement allows for the transfer of the Confidential Information relating to a Participant to the Third Party.

**16) Delete the following from the RFP**

**EXHIBIT 4, SECTION 23.5 INDEMNIFICATION:**

CONTRACTOR'S DUTY TO INDEMNIFY: Contractor shall comply with its obligations to indemnify, defend and hold the Indemnified Parties harmless with regard to claims, damages, losses and/or expenses arising from a claim for benefits under the Plan as provided herein. Contractor shall be entitled to control the defense of any such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing; however, Contractor shall consult with Department regarding its defense of any claim and not settle or compromise any claim or action in a manner that imposes restrictions or obligations on Department, requires any financial payment by Department, or grants rights or concessions to a third party without first obtaining Department's prior written consent. Contractor shall have the right to assert any and all defenses on behalf of the Indemnified parties, including sovereign immunity.

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

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

The next section documents the agreements made during contract negotiation with The StayWell Company , LLC on matters of the best and final offer (BAFO) with new performance guarantees and information technology (IT), specifically website support, security, and penetration testing.

- 17) **Delete the following from The StayWell Company, LLC Cost Proposal submitted on May 27, 2016**

**ATTACHMENT C-2, COST PROPOSAL AND COST PROPOSAL NOTES & ASSUMPTIONS**

- 18) **Substitute the following to The StayWell Company, LLC Best and Final Offer and additional performance guarantee dated July 21, 2016**

**ATTACHMENT C-2, COST PROPOSAL AND COST PROPOSAL NOTES & ASSUMPTIONS**

- A). The StayWell Company, LLC Best and Final Offer (BAFO) Letter date July 21, 2016;
- B). BAFO ETF Attachment C-2, Cost Proposal dated July 21, 2016; and,
- C). StayWell Pricing Notes and Assumptions dated July 21, 2016. As part of the parties' discussion of the BAFO, the parties agree to discuss modifications to program fees if program structure significantly changes (e.g., substantial increase in participation or transition to premium-based incentive).

- 19) **Add the following to the The StayWell Company, LLC Best and Final Offer and additional performance guarantee dated July 21, 2016**

**ATTACHMENT C-2, COST PROPOSAL AND COST PROPOSAL NOTES & ASSUMPTIONS**

- A). The StayWell Company, LLC Performance Guarantee Letter dated July 26, 2016.

- 20) **Add the following to the RFP which provides the Information Technology Action Plan**

**SECTION G GENERAL QUESTIONNAIRE, 6.4 DATA SECURITY, 6.4.2 APPLICATION ARCHITECTURE, 6.4.3 USER SECURITY AWARENESS TRAINING, 6.4.4 ACCOUNT/IDENTITY MANAGEMENT, 6.4.5 AUDITING AND LOGGING, 6.4.6 VULNERABILITY MANAGEMENT AND PENETRATION TESTING, AND 6.4.7 HIPAA TESTING**

- A). The StayWell Company, LLC Action Plan on Updating Information Technology to Industry Standards Letter dated July 21, 2016;
- B). Trustwave Executive Summary Scan Results for LV-IPs dated July 21, 2016;
- C). Trustwave Executive Summary Scan Results for Framework & SWP dated July 21, 2016; and,
- D). The StayWell Company, LLC Information Technology Penetration Scan Testing Letter dated July 26, 2016.