



Contract by Authorized Board

Commodity or Service:

Third Party Administration of Wellness and Disease Management Programs

Contract No./Request for Proposal No:

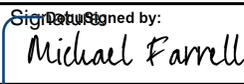
ETG0005 – Amendment #1 dated 02/26/2018

Authorized Board: Group Insurance Board

Contract Period: January 1, 2018 - December 31, 2018 with the option for renewal for an additional four (4) years

1. This Contract Amendment #1 is entered into by the State of Wisconsin Department of Employee Trust Funds (Department or ETF) on behalf of the State of Wisconsin Group Insurance Board (Board), and The StayWell Company, LLC (Contractor), whose address and principal officer appear below. The Department is the sole point of contact for this Contract.
2. Whereby the Department agrees to direct the purchase and Contractor agrees to supply the Contract requirements in accordance with the Department Terms and Conditions, the State of Wisconsin terms and conditions, and the documents specified in the order of precedence below, hereby made a part of the Contract by reference.
3. The Department and Contractor agree to modify the Contract as follows:
 - a. Contractor’s pricing and rules for flu vaccine services are hereby added to the Contract as **Amendment 1A – StayWell Flu Vaccination Pricing and Assumptions.**
 - b. The Department’s Request for Proposal (RFP) ETG0005 Appendix 7 - Performance Standards and Penalties is hereby modified as indicated in the attached **Contract Amendment 1B – Modifications to Appendix 7-Performance Standards and Penalties.**
 - c. Section 28.0 Data Security and Privacy Agreement is hereby added to RFP Exhibit 4 - Department Terms and Conditions. The revised Exhibit 4 is attached as **Contract Amendment 1C – Exhibit 4 Department Terms and Conditions.**
 - d. Sections 5.6L, 5.7Q and 5.12.1F are hereby added to the RFP as indicated in the attached **Contract Amendment 1D – Additions to RFP Sections 5.6, 5.7 and 5.12.**
4. For purposes of administering this Contract, the order of precedence is:
 - (a) This Contract Amendment #1;
 - (b) The Contract between Contractor and the Department signed by the Board on August 16, 2016;
 - (c) Exhibit A, Changes Agreed to by the Parties during contract negotiations and from the Request for Proposal (RFP) ETG0005;
 - (d) Request for Proposal (RFP) ETG0005 dated April 25, 2016; and,
 - (e) Contractor’s proposal dated May 27, 2016.

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

State of Wisconsin Department of Employee Trust Funds
Authorized Board: Group Insurance Board
By (Name): Michael Farrell, Chair, Group Insurance Board
Signature: 
Date of Signature: 3/12/2018
Contact A. John Voelker, ETF Deputy Secretary, if questions arise: (608) 266-9854

Contractor
Legal Company Name: The StayWell Company, LLC
Trade Name: The StayWell Company, LLC
Taxpayer Identification Number: 94-3151780
Contractor Address (Street Address, City, State, Zip): 3000 Ames Crossing Road, Suite 100 Saint Paul, MN 55121
Name & Title (print name and title of person authorized to legally sign for and bind Contractor): Pearce Fleming President, Population Health
Signature: 
Date of Signature: 3/8/2018 3:59 PM EST
Email: PFLEMING@staywell.com Phone: (651) 681-3387

Amendment 1A StayWell Flu Vaccination Pricing and Assumptions

Flu Vaccine Pricing (Valid 9/1/18-12/31/18)	
Service	Unit fee
Quadrivalent Vaccine	\$30/vaccination
Additional fees	See various sections below

Flu Vaccine Assumptions

Flu Vaccination Fee Includes: equipment, supplies and vaccine; consent forms and CDC Vaccination Information Statement; staffing necessary to administer flu vaccine at each event; and nonstandard hours, permit fees, biohazard disposal, shipping, and staff travel expenses.

Minimums:

A minimum of 90% of the amount of the vaccine ordered per event* applies for events with more than 30 vaccines ordered. A 100% minimum applies to events with 20 to 30 vaccines ordered.

ETF will be billed for the actual number of shots administered (less any non-enrolled participants) or minimum number of shots based on the number of flu vaccinations ordered as defined above.

Example:

- 20 ordered, 18 administered, client will be billed for 20
- 40 ordered, minimum of 36 (90%), 32 administered, client will be billed for 36

Non-enrolled participants will not count towards the minimum requirements as StayWell is not billing ETF for non-enrolled participants.

Orders must be placed in increments of 10 vaccinations.

Event size will be based on the request from the individual site coordinators. StayWell will recommend adjustments to the event size based on prior events hosted by StayWell at that location. Sites that cannot base the event size request on a previous year flu shot event (provided by StayWell or another vendor) will start with an event size of 30 and be allowed to increase the event based on actual registration.

*An event is defined as each unique day or consecutive block of time at a given physical address. Events with breaks in the schedule of two (2) hours or greater will be treated as separate events.

Scheduling:

Event hours must be scheduled consecutively and are determined based on the assumption that one nurse can administer 20-25 vaccines in 1 hour. StayWell will schedule StayWell staff time accordingly.

Requests for events on holidays or weekends will not be fulfilled.

Events greater than 4 hours in length require a staff break of 30 minutes.

Flu shot registration:

An online registration tool is provided via a link on the StayWell web-portal for advance registration of flu shots. The online registration tool includes an appointment confirmation and 2 reminder emails (one email sent 4 days prior to the clinic and the other sent 1 day prior to the clinic). Online registration will close 1 day prior to each flu shot event.

StayWell will monitor online flu shot registrations and proactively reach out to site coordinators at events that are almost full or not filling up to make recommendations on increases or decreases to order numbers prior to the 11 Business Day deadline.

Walk Ins:

Walk-ins can be accommodated up to the number of flu shots ordered. Registered participants will be given priority to ensure enough vaccine is available for those that registered in advance. Walk-ins may be asked to return towards the end of the event to ensure those with scheduled appointments receive a shot.

The client will not be billed for participants who are not enrolled in the State of Wisconsin group health insurance program provided the following:

- The flu shot consent form must be updated with language approved by client to ask the question about enrollment in employer benefits. Participants that answer no to this question will not be allowed to participate unless they were registered in advance of the event.
- All participants will be asked to provide their medical ID card. If the participant reports on the flu shot form they are not enrolled in benefits and/or are unable to show an ID, they will be turned away, unless they registered in advance. If a participant checks no, not enrolled in benefits, on the form but shows their ID, the form needs to be updated.
- Non-enrolled participants that receive a flu shot will not be counted toward event minimums. Non-enrolled participants will be subtracted from the actual participation count and a true-up to the minimum will be calculated without inclusion of non-enrolled participants in the actual count.
 - Example: 50 shots ordered, 45 minimum, actual participation 43, 3 non-enrolled. Client is billed for 40 actual plus true-up of 5.
- Non-enrolled participants will not count towards the minimum requirements as StayWell is not billing client for non-enrolled participants.
 - Example 1: 50 shots ordered, 45 minimum, actual participation 50, 2 non-enrolled. Client is billed for 48 actual, no true up applies.
 - Example 2: 20 shots ordered, 20 minimum, actual participation 22, 3 non-enrolled. Client is billed for 19 actual plus true up of 1 participant to get to 20 minimum.

Event changes:

Changes requested 10 Business Days or less prior to the event date (increases or decreases in the number of shots ordered, changes to event times, change in location address within the same metro area) will incur the following fees:

- \$150 for staffing change OR rush supply shipment
- \$250 for staffing change AND rush supply shipment

Reductions in vaccine orders can be requested up to eleven (11) Business Days from the event date. One decrease can be accommodated for each event. If the requested reduction in the number of shots ordered requires a reduction in event hours, registered appointments will be cancelled in order to adjust event hours to the number of hours necessary to accommodate requested shots. Impacted registered participants will be notified by StayWell or StayWell's Subcontractor via email that their appointment is being cancelled due to a change in event hours and will be advised they will need to reschedule.

Increases in vaccine orders can be requested up to eleven (11) Business Days from the event date. The ability to increase flu shot orders is subject to staff and vaccine availability.

Event Cancellation fees (for events cancelled by the Contractor/Contractor's Subcontractor):

Cancellation fees apply as follows:

Cancellation ten (10) Business Days or less prior to the scheduled event date: 50% of estimated fees

Cancellation eleven to fifteen (11-15) Business Days prior to the scheduled event date: 25% of estimated event fees

Cancellation sixteen to twenty (16-20) Business Days prior to the scheduled event date: 15% of estimated event fees

Expectations of Client:

Each flu shot location must have a designated site coordinator to act as the main point of contact for StayWell, reserve the room, promote the event, and greet the staff the day of the event. Event dates, times

and number of vaccines ordered per event must requested sixty (60) days prior to each event. Event confirmation is subject to flu staff availability and vaccine supply.

While flu shot staff can assist with check-in of participants, it is recommended that the client provide registration staff for larger events to assist with verification of eligibility for walk-in participants. Registration staff can be provided by StayWell/StayWell's Subcontractor for a fee of \$125/hr.

Expectations of StayWell flu shot staff:

Staff will bring all materials, supplies, vaccine and equipment with them to the event and will arrive 20-30 minutes prior to the event start time. Flu shot staff will also assist with check-in of participants. If staff is asked to stay 15 minutes or more past the scheduled end time of the event or to arrive more than 30 minutes prior to the start of the event, a fee of \$125/hr/staff applies.

Billing:

Prior to billing the client, StayWell will confirm program eligibility of participants who received the flu shot. Client will be billed the minimum per event as defined in the Minimums section above or for actual flu shots administered to eligible participants if the actual count exceeds the minimum. Non-enrolled participants will not be included in the billing or actual count for meeting the minimum. If a participant is not enrolled at the time of billing but becomes enrolled prior to the end date of the program, the client will be billed for participant if not previously billed.

Reporting:

The weekly report provided will include flu shot event name, number ordered, minimum and number registered. The final report (for each flu season) will include participation and site coordinator satisfaction information. The final report will be delivered to ETF within six (6) weeks after the final event for each flu season. A billing report will be provided monthly to outline 4 subgroups (local employee, local retiree, state employee, and state retiree) and non-enrolled participant count.

Vaccine assumptions:

The 2017-2018 quadrivalent influenza vaccine is made from the following four viruses:

- A/Michigan/45/2015 (H1N1)pdm09-like virus
- A/Hong Kong/4801/2014 (H3N2)-like virus
- B/Brisbane/60/2008-like virus
- B/Phuket/3073/2013-like virus (B/Yamagata)

The vaccine is ordered in multi-dose vials and is not preservative free. Flu shots will not be administered to pregnant or nursing mothers at on-site flu shot events.

Timing	Process for Requesting a Flu Shot Clinic
60 days prior to event	Flu clinic request form due from site coordinators (60 days in advance of clinic date).
Within 1-3 days of request submission	StayWell will send the site coordinator an email confirming the request was received and is being processed, and stating the site coordinator will receive confirmation within 2 weeks.
Within 10 Business Days of request from site coordinator	StayWell will send a confirmation email to the site coordinator for event request.
7 weeks prior to event	StayWell will email the site coordinator a confirmation; the email will include promotional pieces, the confirmed schedule, and directions on how to schedule appointments.
2 weeks prior to event (11 Business Days)	Deadline to increase or decrease number of shots ordered.
4-1 weeks prior to event	Registration email sent; the email will include location details, schedule, current registration estimate, and directions on how to print the roster (email will be sent 4 weeks prior, 3 weeks prior, 2 weeks prior, and 1 week prior to event).
1 day prior to event	Online registration closes; StayWell will email the roster of appointments to the site coordinator at 3 p.m. The site coordinator will need to print the roster and provide it to StayWell flu shot staff.

Ongoing	Provide ongoing support via phone/email as needed. Flu shot report provided weekly. Includes clinic schedule and current registrations. Additional outreach provided based on registrations. Online scheduling tool sends emails to StayWell when events are nearly full. Emails are sent when there are only 4 appointments left and 0 appointments left for a given clinic.
One week after event	Site coordinator receives email from StayWell including link to satisfaction survey.

Amendment 1B

Modifications to Appendix 7 of the RFP (Performance Standards and Penalties)

Effective January 1, 2018	
Performance Standards	Penalties
<p>MODIFY:</p> <p>F. Biometric Screening Events. 2: Length of Screening: Provided that the Contractor has access to the screening site at least ninety (90) minutes prior to the event start time, events shall be fully staffed in order to meet the scheduled start time and end time of the event for pre-scheduled appointments. The Penalty will not apply if the Contractor and event host agree to lengthen the event time to accommodate walk-in appointments.</p> <p>The Performance Guarantee is voided if event end time is delayed due to event host's failure to complete responsibilities and/or additional participants being screened after program end time not due to Contractor issues.</p> <p>Participants with pre-scheduled screening appointments shall complete their screening, including wait time, in a total of thirty (30) minutes or less. Participants that arrive more than five (5) minutes late are excluded from this measure and may be required by the Contractor to be rescheduled if such late arrival will jeopardize timely completion of subsequent screening appointments.</p>	<p>\$500 per thirty (30) minutes of time delayed, per incident</p>
<p>REMOVE:</p> <p>F. Biometric Screening 4. Arrival: The Contractor staff shall be on site and prepared to conduct the initial screening for each screening event at least two (2) hours prior to event start time with all necessary tools and supplies (e.g., XXL BP cuffs, wastebaskets, appointment lists, screening equipment, forms, etc.); provided that Contractor is provided access to such screening site.</p>	<p>\$500 per incident</p>
<p>ADD NEW ITEM F.6:</p> <p>*F. Biometric Screening 6. Prior Notice of Event Cancellation or Event Start/End Time: Contractor will limit cancellation of events adjustments to start/end time for extenuating circumstances and provide ETF/the client with notice a minimum of twenty-one (21) Business Days prior to the event. Contractor cancelled events must be rescheduled for a date during the current incentive year.</p> <p>*Any cancellation by Contractor due to <i>Force Majeure</i> negates this performance standard.</p>	<p>(i) If Contractor cancels a confirmed event ten (10) Business Days or less prior to the scheduled event for reasons not related to Contractor's performance, client will be paid 50% of the estimated event fees.</p> <p>(ii) If Contractor cancels a confirmed event 11-20 Business Days prior to the scheduled date, client will be paid 15% of the estimated event fees.</p> <p>(iii) If Contractor is unable to reschedule a cancelled event (not due to <i>Force Majeure</i>) within the incentive period, Contractor will provide a credit for 100% of the estimated event fees.*</p> <p>*If 50% of the event fees have been awarded as a credit already, Contractor would provide the remaining 50% of event fees to ETF.</p>

<p>MODIFY: H. Customer Service: 1. Telephone Response Time: At least ninety percent (90%) At least eighty-five percent (85%) of all calls to customer service will be answered within thirty (30) seconds; measured by the amount of time between the time a call is received into a customer service queue and the time the phone is answered by a customer service representative.</p>	<p>\$2,500 per quarter for each percentage point below standard (maximum of \$12,500 per quarter).</p>
<p>MODIFY: H. Customer Service: 2. Call Abandonment Rate: Less than two percent (2%) Less than five percent (5%) of calls abandoned, measured by the percentage of calls that are not answered by administrator after thirty (30) seconds (caller hangs up before answer) divided by the number of calls received.</p>	<p>\$2,500 per quarter for each percentage point below standard (maximum of \$12,500 per quarter).</p>
<p>REMOVE: H. Customer Service: 5. Open Call Resolution Turn-Around-Time: Ninety-five percent (95%) of customer service calls that require follow-up or research will be resolved within forty-eight (48) hours. Measured by the percent of open calls resolved in 'X' (the number of Business Days to resolve all calls).</p>	<p>\$2,500 per quarter for each percentage point below standard (maximum of \$12,500 per quarter).</p>
<p>REMOVE: H. Customer Service: 6. Call Resolution Action Plan: Calls not resolved within forty-eight (48) hours will have an action plan for resolution submitted to the ETF Program Manager within five (5) Business Days of the call. The action plan shall include the target date of resolution.</p>	<p>\$2,500 per quarter</p>
<p>MODIFY: *I. Surveys 2. Satisfaction Surveys: The Contractor shall achieve a ninety-five percent (95%) ninety percent (90%) satisfaction or better (defined as "top two-box" satisfaction/approval using an approved standard 5 point survey tool) on all surveys required by the Contract.</p> <p>*Note: Requires a minimum of fifty percent (50%) survey participation (among onsite screening participants) for a given client.</p>	<p>\$2,500 per quarter per survey requirement</p>

Amendment 1C

Exhibit 4 - Department Terms and Conditions

Rev. Date: 04-27-2017

1.0 ENTIRE AGREEMENT: This Contract, its exhibits, subsequent amendments and the documents incorporated by order of precedence contain the entire understanding between the parties on the subject matter hereof, and no representations, inducements, promises, or agreements, oral or otherwise, not embodied herein shall be of any force or effect. This Contract supersedes any other oral or written agreement entered into between the parties on the subject matter hereof.

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

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

In connection with the performance of work under this Contract, the Contractor agrees not to discriminate against employees or applicants for employment because of age, race, religion, creed, color, handicap, physical condition, developmental disability as defined in Wis. Stat. § 51.01 (5); marital status, sex, sexual orientation, national origin, ancestry, arrest record, conviction record; or membership in the national guard, state defense force, or any reserve component of the military forces of the United States or this state.

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

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

Contractor will comply with the provisions of Wis. Stat. § 134.98.

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

In carrying out any provisions of 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 that the Department acts as an agent of the State.

The Contractor accepts full liability and agrees to hold harmless the State, the Department's governing boards, the Department, its employees, agents and contractors for any act or omission of the Contractor, or any of its employees, in connection with this Contract.

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

4.0 CONTRACTOR: The Contractor will be the sole point of contact with regard to contractual matters, including the performance of Services and the payment of any and all charges resulting from contractual obligations.

None of the Services to be provided by the Contractor shall be subcontracted or delegated to any other organization, subdivision, association, individual, corporation, partnership or group of individuals, or other such entity without prior written notification to, and approval of, the Department.

After execution of the Contract, ETF will provide a designated contact person and commit to a timely approval process for notification of a change in subcontractor(s) and/or delegated services.

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

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

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

Any notice required or permitted to be given shall be deemed to have been given on the date of delivery or three (3) Business Days after mailing by the United States Postal Service, certified or registered mail-receipt requested. In the event the Contractor

moves or updates contact information, the Contractor shall inform the Department of such changes in writing within ten (10) Business Days. The Department shall not be held responsible for payments delayed due to the Contractor's failure to provide such notice.

- 5.0 CONTRACTOR PERFORMANCE:** Work under this Contract shall be performed in a timely, professional and diligent matter by qualified and efficient personnel and in conformity with the strictest quality standards mandated or recommended by all generally-recognized organizations establishing quality standards for the work of the type to be performed hereunder. The Contractor shall be solely responsible for controlling the manner and means by which it and its employees or its subcontractors perform the Services, and the Contractor shall observe, abide by, and perform all of its obligations in accordance with all legal and Contract requirements.

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

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

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

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

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

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

Authorized personnel shall have access to interview any Contractor's or subcontractor's employee or authorized agent involved with this Contract in conjunction with any audit, review, or investigation deemed necessary by the State of Wisconsin.

- 7.0 CRIMINAL BACKGROUND VERIFICATION:** The Department follows the provisions in the Wisconsin Human Resources Handbook Chapter 246, Securing Applicant Background Checks (see <http://doa.wi.gov/Documents/DPM/Document%20Library/Chap246VerifyingApplicantInfoSecuringBackgroundChecks.pdf>). The Contractor is expected to perform background checks that, at a minimum, adhere to those standards. This includes the criminal history record from the Wisconsin Department of Justice (DOJ), Wisconsin Circuit Court Automation Programs (CCAP), and other State justice departments for persons who have lived in a state(s) other than Wisconsin. More stringent background checks are permitted. Details regarding the Contractor's background check procedures should be provided to the Department regarding the measures used by the Contractor to protect the security and privacy of program data and participant information. A copy of the result of the criminal background check the Contractor conducted must be made available to the Department upon request. The Department reserves the right to conduct its own criminal background checks on any or all employees or subcontractors of and referred by the Contractor for the delivery or provision of Services.

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

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

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

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

- 10.0 BREACH NOT WAIVER:** A failure to exercise any right, or a delay in exercising any right, power or remedy hereunder on the part of either party shall not operate as a waiver thereof. Any express waiver shall be in writing and shall not affect any event or default other than the event or default specified in such waiver. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The making of any payment to the Contractor under this Contract shall not constitute a waiver of default, evidence of proper Contractor performance, or acceptance of any defective item or Services furnished by the Contractor.
- 11.0 SEVERABILITY:** The provisions of this Contract shall be deemed severable and the unenforceability of any one or more provisions shall not affect the enforceability of any of the other provisions. If any provision of this Contract, for any reason, is declared to be invalid, unenforceable, or illegal, the parties shall substitute an enforceable provision that, to the maximum extent possible in accordance with applicable law, preserves the original intentions and economic positions of the parties.
- 12.0 LIQUIDATED DAMAGES:** The Contractor and Department acknowledge that it can be difficult to ascertain actual damages when a Contractor fails to carry out the responsibilities of this Contract. Because of that, the Contractor and Department will negotiate liquidated damages, as required by the State of Wisconsin, for this Contract. The Contractor agrees that the Department 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) Calendar Days after the Contractor's failure to perform in accordance with the terms and conditions of this Contract.

Notwithstanding the foregoing language, when necessary the Department will identify in the RFP specific financial penalties for failure of the Contractor to meet performance standards and guarantees that may be set forth in the RFP.

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

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

No legal action of any kind, except for the seeking of equitable relief in the case of the public's health, safety or welfare, may begin in regard to the dispute until this dispute resolution procedure has been elevated to the Contractor's highest executive authority and the equivalent executive authority within the Department, and either of the representatives in good faith concludes, after a good faith attempt to resolve the dispute, that amicable resolution through continued negotiation of the matter at issue does not appear likely.

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

Level	Contractor	The Department	Allotted Time
First	Level 1 entity	Deputy Office Director	10 Business Days
Second	Level 2 entity	Office Director	20 Business Days
Third	Level 3 entity	Secretary	30 Business Days

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

- 14.0 CONTROLLING LAW:** All questions as to the execution, validity, interpretation, construction and performance of this Contract shall be construed in accordance with the laws of the State of Wisconsin, without regard to any conflicts of laws or choice of law principles. Any court proceeding arising or related to this Contract or a party's obligations hereunder shall be exclusively brought and exclusively maintained in the State of Wisconsin, Dane County Circuit Court, or in the District Court of the United States

Western District (if jurisdiction is proper in federal court), or upon appeal to the appellate courts of corresponding jurisdiction, and Contractor hereby consents to the exclusive jurisdiction and exclusive venue therein and waives any right to object to such jurisdiction or venue. To the extent that in any jurisdiction Contractor may now or hereafter be entitled to claim for itself or its assets immunity from suit, execution, attachment (before or after judgment) or other legal process, Contractor, to the extent it may effectively do so, irrevocably agrees not to claim, and it hereby waives, the same.

15.0 RIGHT TO SUSPEND OPERATIONS: If, at any time during the period of this Contract, the Department determines that the best interest of the Department or its governing boards would be best served by the Contractor's temporarily holding of all Services, the Department will promptly notify the Contractor. Upon receipt of such notice, the Contractor shall suspend all Services.

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.

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

The State of Wisconsin reserves the right to cancel this Contract in whole or in part without penalty in one (1) or more of the following occurrences:

1. If the Contractor intentionally furnished any statement, representation, warranty, or certification in connection with its Proposal which is materially false, incorrect, or incomplete;
2. If applicable, fails to follow the sales and use tax certification requirements of Wis. Stat. § 77.66;
3. Incurs a delinquent Wisconsin tax liability;
4. Fails to submit a non-discrimination or affirmative action plan per the requirements of Wis. Stat. § 16.765 and Wisconsin's Fair Employment Law, subch. II, Chapter 111 of the Wisconsin Statutes as required herein;
5. Is presently identified on the list of parties excluded from State of Wisconsin procurement and non-procurement Contracts;
6. Becomes a state or federal debarred Contractor, or becomes excluded from state Contracts, or;
7. Fails to maintain and keep in force all required insurance, permits and licenses as required per this Contract;
8. Fails to maintain the confidentiality of the State of Wisconsin's information that is considered to be Confidential Information or Protected Health Information;
9. Files a petition in bankruptcy, become insolvent, or otherwise takes action to dissolve as a legal entity; or,
10. If at any time the Contractor's performance threatens the health or safety of a State of Wisconsin employee, citizen, or customer.
11. Violation of any requirements in Section 22 regarding Confidential Information.

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

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.

- 19.0 TRANSITIONAL SERVICES:** Upon cancellation, termination, or expiration of this Contract for any reason, the Contractor shall provide reasonable cooperation, assistance and Services, and shall assist the State of Wisconsin to facilitate the orderly transition of the work hereunder to the State of Wisconsin and or to an alternative Contractor selected for the transition upon written notice to the Contractor at least thirty (30) business days prior to termination or cancellation, and subject to the terms and conditions set forth herein.
- 20.0 ADDITIONAL INSURANCE RESPONSIBILITY:** The Contractor shall exercise due diligence in providing Services under this Contract. In order to protect the Board's governing the Department and any Department employee against liability, cost, or expenses (including reasonable attorney fees) which may be incurred or sustained as a result of Contractors errors or other failure to comply with the terms of this Contract, the selected Contractor shall maintain errors and omissions insurance including coverage for network and privacy risks, breach of privacy and wrongful disclosure of information in an amount acceptable to the Department with a minimum of **\$1,000,000** per claim and **\$5,000,000** aggregate in force during this Contract period and for a period of three (3) years thereafter for Services completed. Contractor shall furnish the Department with a certificate of insurance for such amount. Further, this certificate shall designate the State of Wisconsin Employee Trust Funds and its affiliated boards as additional insured parties. The Department reserves the right to require higher or lower limits where warranted.
- 21.0 OWNERSHIP OF MATERIALS:** Except as otherwise provided in 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 such software, documents, and materials by the Contractor shall only be with the prior written approval of the Department.

This Contract shall in no way affect or limit the Department's rights to use, disclose or duplicate, for any purpose whatsoever, all information and data pertaining to the Department 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.

- 22.0 CONFIDENTIAL INFORMATION AND HIPAA BUSINESS ASSOCIATE AGREEMENT:** This Section is intended to cover handling of Confidential Information under state and federal law, and specifically to comply with the requirements of HIPAA, HITECH, and the Genetic Information Nondiscrimination Act (GINA) and the federal implementing regulations for those statutes requiring a written agreement with business associates.

(a) DEFINITIONS: As used in this Section, unless the context otherwise requires:

- (1) Business Associate.** "Business Associate" has the meaning ascribed to it at 45 CFR 160.103 and in this Contract refers to the Contractor (insert name of Contractor).
- (2) Confidential Information** has the meaning ascribed to it in Section 1.5 of the RFP.
- (3) Covered Entity.** "Covered Entity" has the meaning ascribed to it at 45 CFR 160.103 and in this Contract refers to the Department of Employee Trust Funds.
- (4) HIPAA Rules.** "HIPAA Rules" mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- (5) Individual Personal Information** "Individual Personal Information" has the meaning ascribed to it at Wis. Admin. Code ETF § 10.70 (1).
- (6) Medical Record.** "Medical Record" has the meaning ascribed to it at Wis. Admin. Code ETF 10.01 (3m).

(b) PROVISION OF CONFIDENTIAL INFORMATION FOR CONTRACTED SERVICES: ETF, a different business associate of ETF or a contractor performing Services for ETF may provide Confidential Information to the Contractor under this Contract as the Department determines is necessary for the proper administration of this Contract, as provided by Wis. Stat. § 40.07 (1m) (d) and (3).

(c) DUTY TO SAFEGUARD CONFIDENTIAL INFORMATION: The Contractor shall safeguard Confidential Information supplied to the Contractor or its employees under this Contract. In addition, the Contractor will only share Confidential Information with its employees on a need-to-know basis. Should the Contractor fail to properly protect Confidential Information, any cost the Department pays to mitigate the failure will be subtracted from the Contractor's invoice(s).

- (d) **USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION:** Contractor shall:
- (1) Not use or disclose Confidential Information for any purpose other than as permitted or required by this Contract or as required by law. Contractor shall not use or disclose member names, addresses, or other data for any purpose other than specifically provided for in this Contract;
 - (2) Make uses and disclosures and requests for any Confidential Information following the minimum necessary standard in the HIPAA Rules;
 - (3) Use appropriate safeguards to prevent use or disclosure of Confidential Information other than as provided for by this Contract, and with respect to Protected Health Information, comply with Subpart C of 45 CFR Part 164;
 - (4) Not use or disclose Confidential Information in a manner that would violate Subpart E of 45 CFR Part 164 or Wis. Stat. § 40.07 if done by ETF; and
 - (5) If applicable, be allowed to use or disclose Confidential Information for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor, provided the disclosures are required by law, or Contractor obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Contractor of any instances of which it is aware in which the confidentiality of the information has been or is suspected of being breached.
- (e) **COMPLIANCE WITH ELECTRONIC TRANSACTIONS AND CODE SET STANDARDS:** The Contractor shall comply with each applicable requirements of 45 C.F.R. Part 162 if the Contractor conducts standard transactions, as that term is defined in HIPAA, for or on behalf of ETF.
- (f) **MANDATORY REPORTING:** Contractor shall report to ETF in the manner set forth in Subsection (l) any use or disclosure or suspected use or disclosure of Confidential Information not provided for by this Contract, of which it becomes aware, including breaches or suspected breaches of unsecured Protected Health Information as required at 45 CFR 164.410.
- (g) **DESIGNATED RECORD SET:** Contractor shall make available Protected Health Information in a designated record set to the individual as necessary to satisfy ETF's obligations under 45 CFR 164.524.
- (h) **AMENDMENT IN DESIGNATED RECORD SET:** Contractor shall make any amendment to Protected Health Information in a designated record set as directed or agreed to by ETF pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy ETF's obligations under 45 CFR 164.526.
- (i) **ACCOUNTING OF DISCLOSURES:** Contractor shall maintain and make available the information required to provide an accounting of disclosures to the individual as necessary to satisfy ETF's obligations under 45 CFR 164.528.
- (j) **COMPLIANCE WITH SUBPART E OF 45 CFR 164:** To the extent Contractor is to carry out one or more of ETF's obligations under Subpart E of 45 CFR Part 164, Contractor shall comply with the requirements of Subpart E that apply to a covered entity in the performance of such obligation; and
- (k) **INTERNAL PRACTICES:** Contractor shall make its internal practices, books, and records available to the Secretary of the United States Department of Labor for purposes of determining compliance with the HIPAA Rules.
- (l) **CONTRACTOR REPORTING OF BREACH OR SUSPECTED BREACH OR DISCLOSURE TO ETF:**
- (1) Within twenty-four (24) hours after Contractor becomes aware of a suspected breach, impermissible use, or impermissible disclosure, notify in writing the ETF Program Manager and Privacy Officer. A suspected breach, impermissible use, or impermissible disclosure is considered to be discovered as of the first day on which such occurrence is known to Contractor, or, by exercising reasonable diligence, would have been known to Contractor. The notification must contain details sufficient for the ETF Program Manager and Privacy Officer to determine ETF's agency response. Sufficient details include, without limitation:
 - a. A list of any affected members (if available);
 - b. Information about the information included in the breach, impermissible use, or impermissible disclosure;
 - c. The date or dates of the suspected breach, impermissible use, or impermissible disclosure;
 - d. The date of the discovery by Contractor;
 - e. A list of the pro-active steps taken by Contractor and being taken to correct breach, impermissible use or impermissible disclosure; and
 - f. Contact information at Contractor for affected persons who contact ETF regarding the issue.
 - (2) Not less than one (1) business day before Contractor makes any external communications to the public, media, federal Office for Civil Rights (OCR), other governmental entity, or persons potentially affected by the breach, impermissible use, or impermissible disclosure, provide a copy of the planned communication to the ETF Program Manager and Privacy Officer.
 - (3) Within thirty (30) days after Contractor makes the initial report under this section, Contractor shall research the suspected breach, impermissible use, or impermissible disclosure Confidential Information and provide a report in writing to the ETF Program Manager. The report must contain, at a minimum:

- a. A complete list of any affected members and contact information;
 - b. Copies of correspondence or notifications provided to the public, media, OCR, other governmental entity, or persons potentially affected;
 - c. Whether Contractor's Privacy Officer has determined there has been a reportable breach under HIPAA, or an unauthorized acquisition under Wis. Stat. §134.98 and the reasoning for such determination;
 - d. If Contractor determines there has been a breach, impermissible use, or impermissible disclosure, an explanation of the root cause of the breach, impermissible use, or impermissible disclosure;
 - e. A list of the corrective actions taken to mitigate the suspected breach, impermissible use, or impermissible disclosure; and
 - f. A list of the corrective actions taken to prevent a similar future breach, impermissible use, or impermissible disclosure.
- (m) **CLASSIFICATION LABELS:** Contractor shall ensure that all data classification labels contained on or included in any item of Confidential Information shall be reproduced by Contractor on any reproduction, modification, or translation of such Confidential Information. Contractor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of the State, as directed by the Department.
- (n) **SUBCONTRACTORS:** If applicable, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit Confidential Information on behalf of Contractor agree to the same restrictions, conditions, and requirements that apply to Contractor with respect to such information.
- (o) **NOTICE OF LEGAL PROCEEDINGS:** If Contractor or any of its employees, agents, or subcontractors is legally required in any administrative, regulatory or judicial proceeding to disclose any Confidential Information, contractor shall give the Department prompt notice (unless it has a legal obligation to the contrary) so that the Department may seek a protective order or other appropriate remedy. In the event that such protective order is not obtained, Contractor shall furnish only that portion of the information that is legally required and shall disclose the Confidential Information in a manner reasonably designed to preserve its confidential nature.
- (p) **MITIGATION:** The Contractor shall take immediate steps to mitigate any harmful effects of the suspected or actual unauthorized use, disclosure, or loss of any Confidential Information provided to Contractor under this Contract. The Contractor shall reasonably cooperate with the Department's efforts to comply with the breach notification requirements of HIPAA, to seek appropriate injunctive relief or otherwise prevent or curtail such suspected or actual unauthorized use, disclosure or loss, or to recover its Confidential Information, including complying with a reasonable corrective action plan, as directed by the Department.
- (q) **COMPLIANCE REVIEWS:** The Department may conduct a compliance review of the Contractor's security procedures before and during this Contract term to protect Confidential Information.
- (r) **AMENDMENT:** The Parties agree to take such action as is necessary to amend the Contract as necessary for compliance with the HIPAA Rules and other applicable law.
- (s) **SURVIVAL:** The obligations of Contractor under this Section survive the termination of the underlying Contract.
- (t) **RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION:** Upon termination of this Contract for any reason, Contractor, with respect to Confidential Information received from ETF, another contractor of ETF, or created, maintained, or received by Contractor on behalf of ETF, shall:
1. Retain only that Confidential Information which is necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities;
 2. Return to ETF or, if agreed to by ETF, destroy the remaining Confidential Information that Contractor still maintains in any form;
 3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Subsection, for as long as Contractor retains the Protected Health Information;
 4. Not use or disclose the Confidential Information retained by Contractor other than for the purposes for which such Confidential Information was retained and subject to the same conditions set out above under Subsection (d) which applied prior to termination;
 5. Return to ETF or, if agreed to by ETF, destroy the Protected Health Information retained by Contractor when it is no longer needed by Contractor for its proper management and administration or to carry out its legal responsibilities; and
 6. If required by ETF, transmit the Confidential Information to another contractor of ETF.

23.0 INDEMNIFICATION:

- 23.1 **SCOPE OF INDEMNIFICATION FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT:** In the event of a claim against the Parties for Intellectual Property Rights Infringement associated with a claim for benefits, Contractor agrees to defend, indemnify and hold harmless Board and Department ("Indemnified Parties") from and against any and all claims, actions, loss, damage, expenses, costs (including reasonable fees for Department's staff attorneys and/or attorneys from the Wisconsin Attorney General's Office) reasonable attorneys' fees otherwise incurred by Board, Department and/or the

Wisconsin Attorney General's Office, court costs, and related reasonable legal expenses whether incurred in defending against such claims or enforcing this Section.

- 23.2 SCOPE OF OTHER INDEMNIFICATION:** In addition to the foregoing Section, Contractor shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, actions, loss, damage, expenses, costs (including reasonable fees for Department's staff attorneys and/or attorneys from the Wisconsin Attorney General's Office) reasonable attorneys' fees otherwise incurred by Department and/or the Wisconsin Attorney General's Office, court costs, and related reasonable legal expenses whether incurred in defending against such claims or enforcing this Section, or liability arising from or in connection with the following: (a) Contractor's performance of or failure to perform any duties or obligations under any agreement between Contractor and any third party; (b) injury to persons (including death or illness) or damage to property caused by the act or omission of Contractor or Contractor Personnel; (c) any claims or losses for Services rendered by any subcontractor, person, or firm performing or supplying Services, materials, or supplies in connection with the Contractor's performance of this Contract; (d) any claims or losses resulting to any person or third party entity injured or damaged by the Contractor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under this Contract in a manner not authorized by this Contract, or by Federal or State statutes or regulations; and (e) any failure of the Contractor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.
- 23.3 INDEMNIFICATION NOTICE:** Department shall give Contractor prompt written notice of such claim, suit, demand, or action (provided that a failure to give such prompt notice will not relieve Contractor of its indemnification obligations hereunder except to the extent Contractor can demonstrate actual, material prejudice to its ability to mount a defense as a result of such failure). Department will cooperate, assist, and consult with Contractor in the defense or investigation of any claim made or suit filed against Department resulting from Contractor's performance under the Contract.
- 23.4 NO INDEMNIFICATION OBLIGATIONS:** Contractor shall as soon as practicable, notify Department of any claim made or suit filed against Contractor resulting from Contractor's obligations under this Contract if such claim may involve the Department. Department has no obligation to provide legal counsel or defense to Contractor if a suit, claim, or action is brought against Contractor or its subcontractors as a result of Contractor's performance of its obligations under this Contract. In addition, Department has no obligation for the payment of any judgments or the settlement of any claims against Contractor arising from or related to this Contract. Department has not waived any right or entitlement to claim sovereign immunity under this Contract.
- 23.5 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.

- 24.0 EQUITABLE RELIEF:** The Contractor acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose information is disclosed and to the State, which injury shall not be compensable by money damages and for which there is not an adequate remedy available at law. Accordingly, the parties specifically agree that the Department, on its own behalf or on behalf of the affected individuals, shall be entitled to obtain injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Contract or under applicable law.
- 25.0 RIGHT TO PUBLISH OR DISCLOSE:** Throughout the term of this Contract, the Contractor must secure the Department's written approval prior to the release of any information which pertains to work or activities covered by this Contract.

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

- 26.0 TIME IS OF THE ESSENCE:** Timely provision of the Services required under this Contract shall be of the essence of the Contract, including the provisions of the Services within the time agreed or on a date specified herein.
- 27.0 IDENTIFICATION OF KEY PERSONNEL AND PERSONNEL CHANGES:** The Department will designate a contract administrator, who shall have oversight for performance of the Department's obligations under this Contract. The Department shall not change the person designated without prior written notification to the Contractor.

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

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

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

The Contractor may not divert key personnel for any period of time except in accordance with the procedure identified in this section. The Contractor shall provide a notice of proposed diversion or replacement to the single person of contact (SPOC) 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 shall notify the SPOC whether the proposed diversion or replacement is approved or rejected, and if rejected shall provide reasons for the rejection. Such approval by the Department shall not be unreasonably withheld or delayed.

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

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

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

An unauthorized change by the Contractor of any Contracted Personnel designed as key personnel will result in the imposition of liquidated damages, as defined in this Contract.

28.0 DATA SECURITY AND PRIVACY AGREEMENT

(a) **PURPOSE AND SCOPE OF APPLICATION:** This Data Security and Privacy Agreement (Agreement) is designed to protect the Department of Employee Trust Fund's (ETF) Confidential Information and ETF Information Resources (defined below). This Agreement describes the data security and privacy obligations of Contractor and its sub-contractors that connect to ETF Information Resources and/or gain access to Confidential Information.

(b) **DEFINED TERMS:**

(1) **Confidential Information** means all tangible and intangible information and materials being disclosed in connection with the Contract, in any form or medium without regard to whether the information is owned by the State of Wisconsin or by a third party, which satisfies at least one of the following criteria: (i) Individual Personal Information; (ii) Protected Health Information under HIPAA, 45 CFR 160.103; (iii) proprietary information; (iv) non-public information related to the State of Wisconsin's employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; (v) information expressly designated as confidential in writing by the State of Wisconsin; (vi) all information that is restricted or prohibited from disclosure by State or federal law, including Individual Personal Information and Medical Records as governed by Wis. Stat. § 40.07, Wis. Admin. Code ETF 10.70(1) and 10.01(3m); or (vii) any material submitted by the Proposer in response to this RFP that the Proposer designates confidential and proprietary information and which qualifies as a trade secret, as provided in Wis. Stat. § 19.36 (5) or material which can be kept confidential under the Wisconsin public records law, and identified by Contractor on FORM D –Designation of Confidential and Proprietary Information (DOA-3027). Pricing information cannot be held confidential.

(2) **ETF Information Resources** means those devices, networks and related infrastructure that ETF has obtained for use to conduct ETF business. Devices include but are not limited to, ETF-owned, managed, used through service agreements storage, processing, communications devices and related infrastructure on which ETF data is accessed, processed, stored, or communicated, and may include personally owned devices. Data includes, but is not limited to, Confidential Information, other ETF created or managed business and research data, metadata, and credentials created by or issued on behalf of ETF.

- (c) **ACCESS TO ETF INFORMATION RESOURCES:** In any circumstance when Contractor is provided access to ETF Information Resources, it is solely Contractor's responsibility to ensure that its access does not result in any access by unauthorized individuals to ETF Information Resources. Contractors who access ETF's systems from any ETF location must at a minimum conform with ETF security standards that are in effect at the ETF location(s) where the access is provided. Any Contractor technology and/or systems that gain access to ETF Information Resources must comply with, at a minimum, the elements in the Computer System Security Requirements set forth in this Agreement.
- (d) **COMPLIANCE WITH APPLICABLE LAWS:** Contractor agrees to comply with all applicable state and federal laws, as well as industry best practices, governing the collection, access, use, disclosure, safeguarding and destruction of Confidential Information.
- (e) **PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION:** Contractor agrees to hold ETF's Confidential Information, and any information derived from such information, in strictest confidence. Contractor will not access, use or disclose Confidential Information other than to carry out the purposes for which ETF disclosed the Confidential Information to Contractor, except as permitted or required by applicable law, or as otherwise authorized in writing by ETF. For avoidance of doubt, this provision prohibits Contractor from using for its own benefit Confidential Information or any information derived from such information. If required by a court of competent jurisdiction or an administrative body to disclose Confidential Information, Contractor will notify ETF in writing immediately upon receiving notice of such requirement and prior to any such disclosure, to give ETF an opportunity to oppose or otherwise respond to such disclosure (unless prohibited by law from doing so).
- (f) **REQUIREMENT TO KEEP CONFIDENTIAL INFORMATION WITHIN THE UNITED STATES:** The Contractor's transmission, transportation or storage of Confidential Information outside the United States, or access of Confidential Information from outside the United States, is prohibited except on prior written authorization by ETF.
- (g) **SAFEGUARD STANDARD:** Contractor agrees to protect the privacy and security of Confidential Information according to all applicable laws and regulations, including HIPAA, by commercially-acceptable frameworks or standards such as the ISO/IEC 27000-series, NIST, 800-53, RFC 2196, IEC 62443, and SANS CIS Top 20. ISO 270001, etc. Security Controls, and no less rigorously than it protects its own confidential information, but in no case less than reasonable care. Contractor will implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of the Confidential Information. All Confidential Information stored on portable devices or media must be encrypted in accordance with the Federal Information Processing Standards (FIPS) Publication 140-2. Contractor will ensure that all security measures are regularly reviewed including ongoing monitoring, an annual penetration and vulnerability test, and an annual security incident response test, and revised, no less than annually, to address evolving threats and vulnerabilities while Contractor has responsibility for the Confidential Information under the terms of this Agreement. Prior to agreeing to the terms of this Agreement, and periodically thereafter (no more frequently than annually) at ETF's request, Contractor will provide assurance, in the form of a third-party audit report or other documentation acceptable to ETF, such as SOC2 Type II, demonstrating that appropriate information security safeguards and controls are in place.
- (h) **INFORMATION SECURITY PLAN:**
- (1) Contractor acknowledges that ETF is required to comply with information security standards for the protection of Confidential Information as required by law, regulation and regulatory guidance, as well as ETF's internal security program for information and systems protection.
 - (2) Contractor will establish, maintain and comply with an information security plan (Information Security Plan), which will contain, at a minimum, such elements as those set forth in this Agreement.
 - (3) Contractor's Information Security Plan will be designed to:
 - a. Ensure the privacy, security, integrity, availability, and confidentiality of Confidential Information;
 - b. Protect against any anticipated threats or hazards to the security or integrity of such information;
 - c. Protect against unauthorized access to or use of such information that could result in harm or inconvenience to the person that is the subject of such information;
 - d. Reduce risks associated with Contractor having access to ETF Information Resources; and
 - e. Comply with all applicable legal and regulatory requirements for data protection.
 - (4) On at least an annual basis, Contractor will review its Information Security Plan, update and revise it as needed, and submit it to ETF upon request. At ETF's request, Contractor will make modifications to its Information Security Plan or to the procedures and practices thereunder to conform to ETF's security requirements as they exist from time to time. If there are any significant modifications to Contractor's Information Security Plan, Contractor will notify ETF within a reasonable period of time, not to exceed two weeks. Any significant modification must include the same or a higher framework or information security standard maturity level than what currently exists in the Plan.
- (i) **RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION:**
- Upon termination of this Contract for any reason, Contractor, with respect to Confidential Information received from ETF, another contractor of ETF, or created, maintained, or received by Contractor on behalf of ETF, shall:

- (1) Retain only that Confidential Information which is necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities;
 - (2) Where feasible, return to ETF, or, if agreed to by ETF, destroy the remaining Confidential Information that Contractor still maintains in any form;
 - (3) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Subsection, for as long as Contractor retains the Protected Health Information;
 - (4) Not use or disclose the Confidential Information retained by Contractor other than for the purposes for which such Confidential Information was retained and subject to the same conditions set out above under Subsection (d) which applied prior to termination;
 - (5) Return to ETF or, if agreed to by ETF, destroy the Protected Health Information retained by Contractor when it is no longer needed by Contractor for its proper management and administration or to carry out its legal responsibilities; and
 - (6) If required by ETF, transmit the Confidential Information to another contractor of ETF.
- (j) **NOTIFICATION OF CORRESPONDENCE CONCERNING CONFIDENTIAL INFORMATION:** Contractor agrees to notify ETF immediately, both orally and in writing, but in no event more than twenty-four (24) hours after Contractor receives correspondence or a complaint regarding Confidential Information, including but not limited to, correspondence or a complaint that originates from a regulatory agency or an individual.
- (k) **BREACHES OF CONFIDENTIAL INFORMATION:**

CONTRACTOR REPORTING OF BREACH OR SUSPECTED BREACH OR DISCLOSURE TO ETF:

- (1) Within twenty-four (24) hours after Contractor becomes aware of a suspected breach, impermissible use, or impermissible disclosure of ETF's Confidential Information, notify in writing the ETF Program Manager and Privacy Officer. A suspected breach, impermissible use, or impermissible disclosure is considered to be discovered as of the first day on which such occurrence is known to Contractor, or, by exercising reasonable diligence, would have been known to Contractor. The notification must contain details sufficient for the ETF Program Manager and Privacy Officer to determine ETF's agency response. Sufficient details include, without limitation:
 - a. The nature of the unauthorized access, use or disclosure;
 - b. A list of any affected members (if available);
 - c. Information about the information included in the breach, impermissible use, or impermissible disclosure;
 - d. The date or dates of the suspected breach, impermissible use, or impermissible disclosure;
 - e. The date of the discovery by Contractor;
 - f. A list of the pro-active steps taken by Contractor and being taken to correct breach, impermissible use or impermissible disclosure; and
 - g. Contact information at Contractor for affected persons who contact ETF regarding the issue.
- (2) Not less than twenty-four (24) hours before Contractor makes any external communications to the public, media, federal Office for Civil Rights (OCR), other governmental entity, or persons potentially affected by the breach, impermissible use, or impermissible disclosure, provide a copy of the planned communication to the ETF Program Manager and Privacy Officer.
- (3) Within thirty (30) days after Contractor makes the initial report under this section, Contractor shall research the suspected breach, impermissible use, or impermissible disclosure Confidential Information and provide a report in writing to the ETF Program Manager. The report must contain, at a minimum:
 - a. A complete list of any affected members and contact information;
 - b. Copies of correspondence or notifications provided to the public, media, OCR, other governmental entity, or persons potentially affected;
 - c. Whether Contractor's Privacy Officer has determined there has been a reportable breach under HIPAA, or an unauthorized acquisition under Wis. Stat. §134.98 and the reasoning for such determination;
 - d. If Contractor determines there has been a breach, impermissible use, or impermissible disclosure, an explanation of the root cause of the breach, impermissible use, or impermissible disclosure;
 - e. A list of the corrective actions taken to mitigate the suspected breach, impermissible use, or impermissible disclosure; and
 - f. A list of the corrective actions taken to prevent a similar future breach, impermissible use, or impermissible disclosure.

COORDINATION OF BREACH RESPONSE ACTIVITIES:

- (4) Contractor will fully cooperate with ETF's investigation of any breach involving Contractor, including but not limited to making witnesses, documents, HIPAA logs, systems logs, video recordings, or other pertinent or useful information available immediately upon Contractor's reporting of the breach and throughout the investigation. Contractor's full cooperation will include but not be limited to Contractor:
 - a. Immediately preserving any potential forensic evidence relating to the breach, and remedying the breach as quickly as circumstances permit
 - b. Within forty-eight (48) hours designating a contact person to whom ETF will direct inquiries, and who will communicate Contractor responses to ETF inquiries; Contractor will designate a Privacy Officer and Security Officer to serve as contacts for ETF.

- c. As rapidly as circumstances permit, applying appropriate resources to remedy the breach condition, investigate, document, restore ETF service(s) as directed by ETF, and undertake appropriate response activities such as working with ETF, its representative, and law enforcement to identify the breach, identify the perpetrator(s), and take appropriate actions to remediate the security vulnerability;
- d. Providing status reports at least every two (2) hours until the root cause of the breach is identified and a plan is devised to fully remediate the breach;
- e. Once the root cause of the breach is identified and a plan is devised to fully remediate the breach, providing status reports daily or at mutually agreed upon timeframes, to ETF on breach response activities, findings, analyses, and conclusions;
- f. Coordinating all media, law enforcement, or other breach notifications with ETF in advance of such notification(s), unless expressly prohibited by law; and
- g. Ensuring that knowledgeable Contractor staff is available on short notice, if needed, to participate in ETF-initiated meetings and/or conference calls regarding the breach.

ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS:

- (5) Contractor will make itself and any employees, subcontractors, or agents assisting Contractor in the performance of its obligations available to ETF at no cost to ETF to testify as witnesses, or otherwise, in the event of a breach or other unauthorized disclosure of Confidential Information caused by Contractor that results in litigation, governmental investigations, or administrative proceedings against ETF, its directors, officers, agents or employees based upon a claimed violation of laws relating to security and privacy or arising out of this Agreement or the Contract.

(l) RETENTION OF LOGS:

- a. HIPAA logs (logs of any systems that have information relating to HIPAA) must be kept for six (6) years.
- b. Firewall logs must be kept for twelve (12) months.

- (m) **ADDITIONAL INSURANCE:** In addition to the insurance required under the Agreement, Contractor at its sole cost and expense will obtain, keep in force, and maintain an insurance policy (or policies) that provides coverage for privacy and data security breaches. This specific type of insurance is typically referred to as Privacy, Technology and Data Security Liability, Cyber Liability, or Technology Professional Liability. In some cases, Professional Liability policies may include some coverage for privacy and/or data breaches. Regardless of the type of policy in place, it needs to include coverage for reasonable costs in investigating and responding to privacy and/or data breaches with the following minimum limits unless ETF specifies otherwise: \$1,000,000 Each Claim and \$5,000,000 Aggregate.

(n) INFORMATION SECURITY PLAN REQUIREMENTS:

- (1) Contractor will develop, implement, and maintain a comprehensive Information Security Plan that is written in one or more readily accessible parts and contains administrative, technical, and physical safeguards. The safeguards contained in such program must be consistent with the safeguards for protection of Confidential Information and information of a similar character set forth in any state or federal regulations by which the person who owns or licenses such information may be regulated.
- (2) Without limiting the generality of the foregoing, every comprehensive Information Security Plan will include, but not be limited to:
 - a. Designating one or more employees to maintain the comprehensive Information Security Plan;
 - b. Identifying and assessing internal and external risks to the security, confidentiality, and/or integrity of any electronic, paper or other records containing Confidential Information and of ETF Information Resources, and evaluating and improving, where necessary, the effectiveness of the current safeguards for limiting such risks, including but not limited to:
 - c. Ongoing employee (including temporary and contract employee) training;
 - d. Employee compliance with policies and procedures; and
 - e. Means, including Contractor staff, processes, and technology, for detecting information system intrusions, data breaches, and anomalous system behavior or activity, and for preventing security breaches, intrusions, or unauthorized access to information systems or networks.
 - f. Developing security policies for employees relating to the storage, access and transportation of records containing Confidential Information outside of business premises.
 - g. Imposing disciplinary measures for violations of the comprehensive Information Security Plan rules.
 - h. Preventing terminated employees from accessing records containing Confidential Information and/or ETF Information Resources.
 - i. Overseeing service providers, by:
 - Taking reasonable steps to select and retain third-party service providers that are capable of maintaining appropriate security measures to protect such Confidential Information and ETF Information Resources consistent with all applicable laws and regulations; and
 - Requiring such third-party service providers by contract to implement and maintain such appropriate security measures for Confidential Information.
 - j. Placing reasonable restrictions upon physical access to records containing Confidential Information and ETF Information Resources and requiring storage of such records and data in locked facilities, storage areas or containers.

- k. Restrict physical access to any network or data centers that may have access to Confidential Information or ETF Information Resources.
 - l. Requiring regular monitoring to ensure that the comprehensive Information Security Plan is operating in a manner reasonably calculated to prevent unauthorized access to or unauthorized use of Confidential Information and ETF Information Resources; and upgrading information safeguards as necessary to limit risks.
 - m. Reviewing the scope of the security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing Confidential Information and of ETF Information Resources.
 - n. Documenting responsive actions taken in connection with any incident involving a breach, and mandating post-incident review of events and actions taken, if any, to make changes in business practices relating to protection of Confidential Information and ETF Information Resources.
- (o) **COMPUTER SYSTEM SECURITY REQUIREMENTS:** To the extent that Contractor electronically stores or transmits Confidential Information or has access to any ETF Information Resources, it will include in its written, comprehensive Information Security Plan the establishment and maintenance of a security system covering its computers, including any wireless system, that, at a minimum, and to the extent technically feasible, will have the following elements:
- (1) Secure user authentication protocols including:
 - a. Control of user IDs and other identifiers;
 - b. A secure method of assigning and selecting passwords, or use of unique identifier technologies, such as biometrics or token devices;
 - c. Multi-Factor Authentication (MFA);
 - c. Control of data security passwords to ensure that such passwords are kept in a location and/or format that does not compromise the security of the data they protect;
 - d. Multi-factor authentication for system administrators and others with 'super-user' access rights;
 - e. Restricting access to active users and active user accounts only;
 - f. Blocking access to user identification after multiple unsuccessful attempts to gain access or the limitation placed on access for the particular system; and
 - g. Periodic review of user access, access rights and audit of user accounts.
 - (2) Secure access control measures that:
 - a. Restrict access to records and files containing Confidential Information and systems that may have access to ETF Information Resources to those who need such information to perform their job duties; and
 - b. Assign unique identifications plus passwords, which are not vendor supplied default passwords, to each person with computer access, which are reasonably designed to maintain the integrity of the security of the access controls.
 - (3) Encryption of all transmitted records and files containing Confidential Information.
 - (4) Adequate security of all networks that connect to ETF Information Resources or access Confidential Information, including wireless networks.
 - (5) Reasonable monitoring of systems, for unauthorized use of or access to Confidential Information and ETF Information Resources.
 - (6) Encryption of all Confidential Information stored on Contractor devices, including laptops or other portable storage devices.
 - (7) For files containing Confidential Information on a system that is connected to the Internet or that may have access to ETF Information Resources, reasonably up-to-date firewall, router and switch protection and operating system security patches, reasonably designed to maintain the integrity of the Confidential Information.
 - (8) Reasonably up-to-date versions of system security agent software, including intrusion detection systems, which must include malware protection and reasonably up-to-date patches and virus definitions, or a version of such software that can still be supported with up-to-date patches and virus definitions, and is set to receive the most current security updates on a regular basis.
 - (9) Education and training of employees on the proper use of the computer security system and the importance of Confidential Information and network security.

With reasonable notice to Contractor, ETF may require additional security measures which may be identified in additional guidance, contracts, communications or requirements.

Amendment 1D

Additions to RFP Sections 5.6 and 5.7 and 5.12

A. The following new section L is hereby added to RFP Section 5.6 – Program Website and Web-Portal:

L. At no additional cost to ETF, the Contractor shall develop, implement, and maintain a wellness portal for up to five thousand (5,000) non-benefits enrolled employees of State employer groups via a unique URL. If the number of non-benefits enrolled employees included on the eligibility file exceeds five thousand (5,000) employees ETF and Contractor will discuss a price for this service.

1. ETF will provide the Contractor with a minimum of a ninety (90) day development period prior to the launch date of the wellness portal for initial State employer groups; such launch date will be mutually agreed upon by ETF and Contractor. Other State employer groups may opt in to use the same wellness portal, using the same URL, at a later date. ETF will provide Contractor with an eligibility file to determine which State employer groups are eligible.

2. The content and functionality of the wellness portal for non-benefits enrolled employees shall match the primary web portal content and functionality with the exception of introductory content and the exclusion of any content/functionality related to fee-based services or incentives.

3. ETF state employer groups will provide a weekly eligibility file of non-benefits enrolled employees to the Contractor using the Contractor's standard file format.

4. Standard reporting will be provided given the group meets the minimum guidelines under HIPAA, separate from what is being provided for the benefits-enrolled population.

B. The following new section Q is hereby added to RFP Section 5.7 – Wellness and Disease Management Programs:

Q. Additional Services

1. The Contractor will provide up to five (5) videos per year from Contractor's video library addressing topics beyond wellness and disease management at no cost for ETF's use in the web-portal and other ETF delivery methods as ETF chooses. Contractor will provide ETF with access to all such Contractor videos so ETF may select which videos it will utilize.

2. Contractor will create up to five (5) custom e-learning modules for ETF annually on wellness, benefits or other topics related to the GHIP/WPE programs for use in the web-portal or other ETF delivery methods. Each custom e-learning module will require ETF to deliver a Statement of Work (SOW) to Contractor prior to development, which will include the content requested, an approval process for final sign-off on the e-learning module, and the desired delivery date. Contractor will provide ETF with an estimate of development hours and a timeline for development. The completed e-learning will be three (3) minutes or less in length, and utilize images, templates and music from the Contractor's resource library. ETF and Contractor assume Contractor development time for such e-learning modules will be no more than thirty (30) hours per module. Development hours that exceed thirty (30) hours must be pre-approved by ETF in writing and, if such approval is given by ETF, will be billed at \$150 per hour. Additional fees may apply if ETF requests to purchase Third Party Content as described below.

3. The custom e-learning modules described above, including any content, graphics, images, or other materials, whether in print, online, or other electronic format, created by Contractor for ETF (collectively, the "Content") will be created as a "work for hire" to be owned by ETF. Contractor will not incorporate any third-party content, such as stock photographs, illustrations, infographics or music ("Third Party Content") in the Content if such items require a fee to be paid by ETF for the use of such Third Party Content, unless ETF has provided Contractor with prior written approval to pay for such Third Party Content. During the term of the Contract, and any relevant SOW, ETF agrees not to distribute for profit any Content without Contractor's written consent.

C. The following new section F is hereby added to RFP Section 5.12.1 – Data Integration and Technical Requirements:

- F. The Contractor shall cooperate with the Department's designated data warehouse vendor by submitting to the data warehouse vendor all of the following data on a schedule to be determined by the Department:
1. Disease management, health risk assessment, biometric screening, and lifestyle management data;
 2. Data regarding recipients of Well Wisconsin health incentives, including denied applicants; and
 3. Other data as specified by the Department.

The Contractor shall comply with the Department's specifications for submission of the required data elements.

To comply with the data submission requirements, the Contractor must follow the specified data file layout and formatting of all data elements within it and the Department's specifications for data filtering and extraction. The Contractor must submit documentation on its data files including a data dictionary. The data files must use the valid values specified in the data dictionary. The Contractor must provide the Department's eight (8)-digit member ID on all files.

The Contractor must designate someone as a data steward who is knowledgeable of its data and the systems that generate it. The data steward shall attend data submission planning meetings scheduled by the Department's data warehouse vendor on the Department's behalf and shall be the key point of contact for the Department's data warehouse vendor on the submission of data and the correction of data errors should they occur.

The Contractor shall follow the data transmission instructions provided by the Department's data warehouse vendor, which shall include industry-standard electronic transmission methods via secure Internet technology.

The quality of Contractor's data submissions will be assessed by the Department's data warehouse vendor for timeliness, validity and completeness. If the Department's data warehouse vendor determines that the data submitted by Contractor fails to meet the Department's data warehouse vendor's thresholds for data quality, the Contractor must cooperate with the Department's data warehouse vendor in submitting corrected data.

The Contractor must submit data and corrected data when necessary by the dates indicated by the Department's data warehouse vendor.

The Contractor agrees to financial penalties for failure to submit data in accordance with this section 5.12.1.F, and which are assessed by the Department's data warehouse vendor on behalf of the Department. Charges or penalties that are the direct result of the Contractor's failure to meet the Department's data submission requirements, timelines or other requirements in this section 5.12.1.F. that impact the Department's data warehouse will be deducted from a future payment(s) owed to the Contractor.

During the initial implementation of the Department's data warehouse, the Contractor will have two chances to submit acceptable data ("two-chance rule"). The Department will charge the Contractor a penalty for each data file submitted after the second submission not accepted by the Department's data warehouse vendor and a penalty for each data file submitted more than one (1) Business Day after the deadline for data file submission.

During the ongoing operation of the Department's data warehouse, the Department will charge the Contractor a penalty for each data file submitted after the first submission not accepted by the Department's data warehouse vendor and a penalty for each data file submitted after the deadline for submission.

During the ongoing operation of the Department's data warehouse, the Department will charge the Contractor a per occurrence penalty for any failure to communicate to the Department's data warehouse vendor a change to the valid values or data fields in the Contractor's next data file submission by ten (10) Business Days before the next data file submission deadline.