



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

Contract by Authorized Board

Commodity or Service:

Third Party Administration of Wellness and Disease Management Programs

Contract/Request for Proposal/Amendment No.:

ETG0005 – Amendment #4 dated April 21, 2020

Authorized Board: Group Insurance Board

Contract Period: January 1, 2020 - December 31, 2021 with the option for renewal for an additional one (1) year

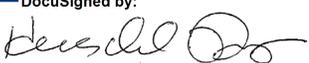
1. This Contract Amendment #4 is entered into by the State of Wisconsin Department of Employee Trust Funds (Department or ETF) on behalf of the Group Insurance Board (Board), and The StayWell Company, LLC (Contractor), whose address and principal officer appear below. The Department is the sole point of contact for this Contract.
2. Whereby in March 2020, MMUSA Acquisition II Corp., a corporate entity that indirectly held all of the membership interests in Contractor, was acquired by WebMD Health Corp., an Internet Brands company. For the time being, Contractor's business name, The StayWell Company, LLC, Taxpayer Identification Number and principal officer will remain as stated on page 3 of this Amendment #4. Contractor will notify the Department as soon as practicable if and when the Contractor's name, Taxpayer Identification Number and principal officer change.
3. Whereby the Department agrees to direct the purchase and Contractor agrees to supply the Contract requirements in accordance with the documents specified in the order of precedence below, which are hereby made a part of the Contract by reference.
4. In **Contract Amendment #1**, the Department and Contractor agreed to modify the Contract as follows:
 - a. Contractor's pricing and rules for flu vaccine services were 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, was modified as indicated in **Contract Amendment 1B – Modifications to Appendix 7-Performance Standards and Penalties**.
 - c. Section 28.0 Data Security and Privacy Agreement was added to RFP Exhibit 4 - Department Terms and Conditions. The revised Exhibit 4 was attached as **Contract Amendment 1C – Exhibit 4 Department Terms and Conditions**.
 - d. Sections 5.6.L, 5.7.Q and 5.12.1.F were added to the RFP as indicated in **Contract Amendment 1D – Additions to RFP Sections 5.6, 5.7 and 5.12**.
5. In **Contract Amendment #2**, the Department and Contractor agreed to modify the Contract as follows:
 - a. Sections 5.3.J, 5.4.D.6, 5.7.R, 5.11.I, and 5.11.J were modified or added to the RFP as indicated in the attached **Contract Amendment 2A – Changes/Additions to RFP Sections 5.3, 5.4, 5.7 and 5.11**.
 - b. The Department's Request for Proposal (RFP) ETG0005 Appendix 7 - Performance Standards and Penalties, was modified as indicated in **Contract Amendment 2B – Modifications to Appendix 7-Performance Standards and Penalties**.
6. In **Contract Amendment #3**, the Department and Contractor agreed to modify the Contract as follows:
 - a. Contract Amendment 1A – StayWell Flu Vaccination Pricing and Assumptions for the period September 1, 2018 through December 31, 2018 was deleted and replaced with **Contract Amendment 3A – StayWell Flu Vaccination Pricing and Assumptions** for the period September 1, 2019 through December 31, 2019.
 - b. The Department's Request for Proposal (RFP) ETG0005 Appendix 6 – Reporting Requirements, was modified as indicated in **Contract Amendment 3B – Modifications to Appendix 6-Reporting Requirements**.
 - c. The Department's Request for Proposal (RFP) ETG0005 Appendix 7 - Performance Standards and Penalties, was modified as indicated in **Contract Amendment 3C – Modifications to Appendix 7-Performance Standards and Penalties**.

- d. New **Appendix 7A – StayWell – Performance Standards and Penalties for Flu Shot Clinics** was added to the Contract.
7. In **Contract Amendment #3**, the Department and Contractor memorialized the activities below, which Contractor completed in 2018 upon the request and direction of the Department. The Department and Contractor agreed:
 - a. Contractor has developed custom data export capabilities to export Well Wisconsin Program data to the Department's Pharmacy Benefit Manager, Navitus, and has exported such data to Navitus, for \$8,000.
 - b. Contractor has created customized Well Wisconsin Program letters for Contractor's Subcontractor Tango to accompany Well Wisconsin Program Participant gift cards, for \$2,500.
8. In **Contract Amendment #3**, the Department and Contractor agreed as follows:
 - a. The pricing indicated in Contractor's BAFO dated July 21, 2016, for 2019 shall be in effect for the Contract period of January 1, 2019 – December 31, 2020.
 - b. Contractor will provide one additional full-time Program Manager, to be located either at the Department's location, or elsewhere in Wisconsin or in a state nearby, as mutually agreed upon by Contractor and the Department. The Program Manager will support the Account Team, coaching requirements, health fair support and employer travel requested by the Department. Additional duties may include: recruiting, training and maintaining wellness champions, creating turn-key programming for wellness champions to implement, working closely with the champions to evaluate, and supporting a culture of health at worksites. Contractor will hire the additional Program Manager specific to the Department's needs, and the Department will be involved in the hiring process. Contractor will perform the initial hire screening and will bring qualified candidates to the Department for the Department's final approval. The cost of this additional full-time Program Manager will be fully borne by Contractor.
9. In this **Contract Amendment #4**, the Department and Contractor agree as follows:
 - a. Contract Amendment 3A – StayWell Flu Vaccination Pricing and Assumptions for the period September 1, 2019 through December 31, 2019 is hereby deleted and replaced with the attached **Contract Amendment 4A – StayWell Flu Vaccination Pricing and Assumptions** for the period September 1, 2020 through December 31, 2020.
 - b. Sections 5.7.S, 5.7.T, 5.11.K and 5.11.L are hereby added to the RFP as indicated in the attached **Contract Amendment 4B – Additions to RFP Sections 5.7 and 5.11**.
 - c. RFP Exhibit 2 – Standard Terms And Conditions (Requests for Bids / Proposals), RFP Exhibit 3 – Supplemental Standard Terms and Conditions for Procurements for Services, RFP Exhibit 4 – Department Terms and Conditions, dated April 22, 2016 and Contract Amendment 1C – Exhibit 4 Department Terms and Conditions, dated April 27, 2017, are hereby deleted and replaced with the attached **Contract Amendment 4C - Exhibit 4 Department Terms and Conditions**, dated April 7, 2020.
 - d. Section F of RFP Section 5.12.1 – Data Integration and Technical Requirements, added per Contract Amendment 1D – Additions to RFP Sections 5.6, 5.7 and 5.12, is deleted and replaced with new RFP Section 5.12.1.I as indicated in the attached **Contract Amendment 4D – Addition to RFP Section 5.12.1 Data Integration and Technical Requirements**.
10. For purposes of administering the Contract, the order of precedence is:
 - (a) This Contract Amendment #4;
 - (b) Contract Amendment #3 signed by the Board on July 26, 2019;
 - (c) Contract Amendment #2 signed by the Board on September 6, 2018;
 - (d) Contract Amendment #1 signed by the Board on March 12, 2018;
 - (e) The Contract between Contractor and the Department signed by the Board on August 16, 2016;
 - (f) Exhibit A, Changes Agreed to by the Parties during contract negotiations and from the Request for Proposal (RFP) ETG0005;
 - (g) Request for Proposal (RFP) ETG0005 dated April 25, 2016; and,
 - (h) Contractor's proposal dated May 27, 2016.

Signatures on next page.

Contract Number & Service: ETG0005 Third Party Administration of Wellness and Disease Management Programs Amendment #4

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

State of Wisconsin Department of Employee Trust Funds
Authorized Board: Group Insurance Board
By (Name): Herschel Day, Chair, Group Insurance Board
Signature: <small>DocuSigned by:</small> 
Date of Signature: <small>5F7C939CDEF401</small> 4/21/2020
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): 1020 Discovery Rd., Suite 100 Saint Paul, MN 55121
Name & Title (print name and title of person authorized to legally sign for and bind Contractor): John Harrison General Manager, WebMD Health Services
Signature: <small>DocuSigned by:</small> 
Date of Signature: <small>785D57975CF69721</small> 4/21/2020
Email: jharrison@webmd.net Phone: (503) 416-2530

Amendment 4A

StayWell Pricing and Assumptions for State of Wisconsin (Valid 9/1/2020-12/31/2020)

Rev. Date 04-07-2020

Flu Vaccine Pricing	
Service	Unit Fee
Flu Vaccination Event Coordination Fee	\$250/flu shot event
Flu Vaccination Fee (Quadrivalent Vaccine Multidose Vial)	\$32/vaccination
Additional Fees	See various sections below

Assumptions
<p>Flu Vaccination Event Coordination Fee includes: set-up of flu program with StayWell's Subcontractor, customization and collection of a flu request form from site coordinators, creation and finalization of a flu shot appointment schedule, monitoring of appointment registration, facilitation of requests for changes to events, coordination of billing to health plans and billing to ETF for participants who cannot be billed through a health plan and for true-ups to the minimum number of vaccines required, and ETF event reporting.</p>
<p>Flu Vaccination Fee includes: equipment, privacy screens (one per nurse per flu shot event), supplies and vaccine; consent forms and CDC Vaccination Information Statement; staffing necessary to administer flu vaccine at each event; nonstandard hours, permit fees, biohazard disposal, shipping; staff travel expenses. The Flu Vaccination Fee will be paid by ETF, a health plan, or StayWell, as noted below.</p>
<p>Contractor/Subcontractor: StayWell has subcontracted Services under the Contract between ETF and StayWell to a Subcontractor that will perform the tasks described herein. Where StayWell is associated with a task referenced herein, StayWell and/or its Subcontractor will complete the task referenced.</p>
<p>Minimums:</p> <ol style="list-style-type: none"> 1. A minimum order quantity of 20 vaccinations applies to all events. All orders for vaccines must be placed in increments of 10 vaccinations. 2. StayWell will not bill ETF for non-enrolled participants that receive a vaccination unless the non-enrolled participant misrepresented their enrollment status on their flu shot consent form by indicating that they were enrolled and supported such misrepresentation by presenting a health plan card that either (a) had no expiration date, or (b) had an expiration date subsequent to the date of the event. 3. For events in which ETF has ordered 20 or 30 vaccinations: If the number of vaccinations actually administered to enrolled participants is less than the total number of vaccinations ordered, StayWell shall bill ETF for the differential in the number of vaccinations actually administered to enrolled participants at the event and the total number of vaccinations ordered. 4. For events in which ETF has ordered 40 or more vaccinations: If the number of vaccinations actually administered to enrolled participants is less than 90% of the total number of vaccinations ordered, StayWell shall bill ETF for the differential in the number of vaccinations actually administered to enrolled participants at the event and 90% of the total number of vaccinations ordered. 5. 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 2 hours or greater will be billed as separate events and the minimum shall apply to each event. 6. Regardless of whether the conditions above are met, ETF will be billed by StayWell for flu vaccinations administered to participants that are enrolled in a health plan but whose flu vaccinations are not reimbursed through such health plan (note that medical plan ID number will be collected on the onsite flu shot consent form for use in billing the health plan; if this number is incorrect or cannot be verified, the health plan may not reimburse the individual claim). <p>EXAMPLES:</p> <p>Example 1: 20 vaccinations ordered, 20 or more vaccinations are actually administered to enrolled participants. Each vaccination recipient was an enrolled participant whose health plan reimbursed StayWell's Subcontractor. StayWell will</p>

not bill ETF for any of the vaccinations.

Example 2: 20 vaccinations ordered, 20 or more vaccinations are actually administered to enrolled participants. 2 of the recipients' claims were not reimbursed by a health plan. StayWell will bill ETF for 2 vaccinations, the number of claims rejected for reimbursement.

Example 3: 20 vaccinations ordered, 18 administered, all of which were administered to enrolled participants whose health plans reimbursed StayWell's Subcontractor for individual vaccination claims. StayWell will bill ETF for 2 vaccinations, the differential between the number of vaccines ordered and the number of vaccines actually administered to enrolled participants.

Example 4: 20 vaccinations ordered, with 18 administered to enrolled participants. 16 of 18 vaccinations were administered to enrolled participants whose health plans reimbursed StayWell's Subcontractor, and the remaining 2 vaccinations are administered to enrolled participants whose health plan did not reimburse StayWell's Subcontractor. StayWell will bill ETF for 4 vaccinations as 20 vaccinations were ordered, only 18 vaccinations were administered and health plans did not reimburse StayWell's Subcontractor for 2 vaccination recipients.

Example 5: 20 vaccinations ordered, 22 vaccinations are actually administered. 4 of the vaccinations are administered to non-enrolled participants. ETF is not billed for the vaccinations administered to the non-enrolled participants (unless the non-enrolled participants misrepresented their enrollment status as described in #2 under Minimums). StayWell will bill ETF for 2 vaccinations, the differential between the number of vaccinations ordered and the number of vaccinations actually administered to enrolled participants.

Example 6: 20 vaccinations ordered, with 21 administered. 19 of 21 vaccinations were administered to enrolled participants whose health plan reimbursed StayWell's Subcontractor. 1 of 21 vaccinations was administered to an enrolled participant whose health plan did not reimburse StayWell's Subcontractor, and 1 of 21 vaccinations was administered to a non-enrolled participant. StayWell will bill ETF for 1 vaccination as 20 vaccinations were ordered, 21 were administered, and 1 vaccination was administered to an enrolled participant whose health plan did not reimburse StayWell's Subcontractor. ETF is not billed for the vaccination administered to the non-enrolled participant (unless the non-enrolled participant misrepresented their enrollment status as described in #2 under Minimums).

Example 7: 40 vaccinations ordered, 32 administered to enrolled participants, all of whose claims were reimbursed by a health plan. StayWell will bill ETF for 4 vaccinations because the number of vaccinations administered to enrolled participants was 4 vaccinations less than 90% of the total number vaccinations ordered or 36 vaccinations (see #4 under Minimums).

Example 8: 40 vaccinations ordered, 36 administered. 34 out of 36 vaccinations were administered to enrolled participants whose health plan reimbursed StayWell's Subcontractor and the remaining 2 vaccinations were administered to enrolled participants whose health plan did not reimburse StayWell's Subcontractor. StayWell will bill ETF for 2 vaccinations. ETF met the 90% minimum (36 vaccinations administered) but must pay for the 2 vaccinations administered to enrolled participants whose health plan did not reimburse StayWell's Subcontractor.

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 or another vendor 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.

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 will be provided via a link on the StayWell portal for advance registration of flu shot recipients. The online registration tool includes appointment confirmation and 2 reminder emails (one email sent 4 Days prior to the flu shot event and the other sent 1 Day prior to the flu shot event). 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 vaccination order numbers prior to the 11-Business Day deadline.

Medical Identification Card:

All participants will be asked to provide a valid medical identification card that demonstrates their enrollment in ETF's group health insurance program ("ID").

If a participant is unable to show an ID, they shall not be permitted to receive a vaccination unless they had registered for the event in advance.

Consent Form:

All participants must complete a flu shot consent form prior to receiving a vaccination.

StayWell shall update the flu shot consent form with language inquiring as to whether the participant is enrolled in ETF's group health insurance program; ETF shall review and approve this language, such approval not to be unreasonably withheld.

StayWell's Subcontractor's staff shall review each participant's form, and if a participant has indicated that they are not enrolled in ETF's group health insurance program on the form, but is able to provide a valid ID on-site, StayWell's Subcontractor's staff shall work with the participant to revise and properly complete the form.

If, after consultation with StayWell's Subcontractor's Staff, the participant still reports on the flu shot consent form that they are not enrolled in ETF's group health insurance program, the participant shall not be permitted to receive a vaccination.

Walk-Ins:

Walk-ins can be accommodated up to the number of vaccinations 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 are able to receive their scheduled vaccination.

ETF will not be billed for participants who receive a vaccination but are not enrolled in the State of Wisconsin group health insurance program unless the non-enrolled participant has misrepresented their enrollment status by indicating that they are, in fact, enrolled on the flu shot consent form.

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 quantity of vaccinations ordered can be requested up to 11 Business Days from the event date. One reduction can be accommodated for each event. If the requested reduction in number of vaccinations 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 revised number of vaccinations ordered. Impacted registered participants will be notified by StayWell 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 quantity of vaccinations ordered can be requested up to 11 Business Days from the event date. However, the ability to increase flu shot orders is subject to staff and vaccine availability.

Event Cancellation fees:

Cancellation fees apply as follows:

- Cancellation 10 Business Days or less prior to the scheduled event date: 25% of estimated fees*
- Cancellation 11-20 Business Days prior to scheduled event date: 15% of estimated fees*

*Estimated fees for the scheduled, but subsequently canceled, event is calculated by multiplying the total number of flu vaccinations ordered by the Flu Vaccination Fee set forth above.

Expectations of ETF and flu shot clinic host/site location:

Each flu shot event location must have a designated site coordinator to act as the main point of contact for StayWell, reserve the event room, promote the event, and greet the StayWell's Subcontractor staff on the day of the event. Event dates and times, and the number of vaccines ordered per event must be requested at least 60 Days prior to each event. Event confirmation is subject to StayWell's Subcontractor's staff availability and vaccine supply.

While flu shot staff can assist with checking in participants, it is recommended that ETF or event site coordinators provide a registration staff person for larger events to assist with verification of eligibility for walk-in participants. A registration staff person can be provided by StayWell's Subcontractor for a fee of \$125/hr.

Expectations of StayWell flu shot staff:

StayWell's Subcontractor's 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. StayWell's Subcontractor's 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:

Flu Vaccination Event Coordination Fee: StayWell will bill ETF monthly for completed flu shot events. StayWell's invoice must indicate the location and date of each event.

Flu Vaccination Fee: StayWell will bill ETF monthly for the flu shots for which ETF is responsible. StayWell's Subcontractor will submit claims to the appropriate health plans for participant flu shots within a maximum of 120 days of the date of service with a deadline of submitting claims by January 15th, immediately following the last flu shot event of the season. Prior to billing ETF or a health plan, StayWell will confirm the program eligibility of each participant who received a flu shot. StayWell will bill ETF for the differentials and the enrolled participants whose health plans did not reimburse StayWell's Subcontractor for individual claims as described in the Minimums section above. 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, ETF will not be billed for the participant if that participant's claim is reimbursed by the health plan.

Timing: StayWell shall bill ETF within 180 days following the date of the last flu shot event.

Reporting:

StayWell will provide ETF with a weekly report that will include the flu shot event name/location, number of vaccinations ordered, minimum vaccinations required and number of participants registered. StayWell will provide a final report that will include participation and site coordinator satisfaction survey results. The report will be delivered within 6 weeks after the final flu shot event. StayWell will provide ETF with a monthly billing report that includes the number of participants for the following subgroups: local employee, local retiree, state employee, state retiree, and participants not enrolled in a health plan. StayWell will provide ETF with a final report outlining the total number of participants billed to the health plans within 6 weeks following the last flu shot event of the season.

StayWell's Subcontractor will report all participant flu shot data to the Wisconsin Immunization Registry (WIR) beginning after StayWell/StayWell's Subcontractor and ETF's contracted health plans agree upon a price and payment method for such reporting. By the end of each February during the term of the Contract, StayWell's Subcontractor will upload or enter participant flu shot data for the prior year, provided the payment arrangement with the health plans is in place for that year.

Vaccine assumptions:

The 2019-2020 quadrivalent influenza vaccine is made from the following four viruses:

- A/Brisbane/02/2018 (H1N1) pdm09-like virus
- A/Kansas/14/2017 (H3N2)-like virus
- B/Colorado/06/2017-like virus (B/Victoria/2/87 lineage)
- B/Phuket/3073/2013-like virus (B/Yamagata/16/88 lineage)

The Contractor shall update ETF should the above vaccine information change after the CDC releases the 2020/2021 vaccine strains.

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

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

<p>Ongoing</p>	<p>StayWell will provide:</p> <ul style="list-style-type: none"> • Ongoing support via phone/email as needed • A flu shot report weekly, including event schedule and current registrations • Additional outreach based on event registrations <p>The online scheduling tool will send emails to StayWell when events are nearly full; emails are sent when there are only 4 appointments left and 0 appointments are left for a given event</p>
<p>One week after event</p>	<p>StayWell will email the site coordinator a link to the event satisfaction survey</p>

Amendment 4B

Additions to RFP Sections 5.7 and 5.11

A. The following new Subsection S is hereby added to RFP Section 5.7 – Wellness and Disease Management Programs:

- S. My StayWell Platform.** The following Services are included with the new My StayWell platform and application at no additional cost to the Department (except where noted below):
- a) **Electronic Health Record (EHR) Integration:** The Department shall have the ability to opt in to allowing Participants to sync EHR data to their My StayWell platform account. Should the Department opt in, Participants will have the option of syncing their EHR data to their My StayWell platform account.
 - b) **Challenges and Activity Tracking:** Participants shall have access to at least fifteen (15) wellness challenges, such as steps, strength training, fruits and vegetables, mindfulness and sleep. The Department shall have the ability to set up custom challenges to engage Participants in select challenges. Leaderboards shall be included for specified competitions and trackers including, but not limited to steps, fruits and vegetables, strength, sleep, hydration and meditation.
 - c) **Digital Learning Sessions:** The My StayWell platform shall include an educational curriculum for Participants, approved by Contractor's medical professionals, organized into twelve (12) interactive sessions on various health and well-being topics. Each session shall include an article, quiz and/or digital game, and goal setting exercise. The Department may choose up to three (3) levels of learning for each session.
 - d) **Coaching:** In addition to telephonic coaching, Participants shall have the opportunity to send an unlimited number of messages to coaching experts within the My StayWell platform, based on coach specialty, and have virtual meetings with a health coach.
 - e) **Doctor Chat:** The Department shall have the ability to opt in to allowing Participants to send questions to a network of over 80,000 U.S. licensed physicians with an average physician experience of 26 years.
 - f) **Interactive Digital Resource Library:** The My StayWell platform shall include an e-learning curriculum for Participants, including, at a minimum, an exercise video series, healthy recipes, digital health games, and e-newsletters on health and wellness topics.
 - g) **Social Feed:** The My StayWell platform shall have social networking functionality configured for each worksite/employer affiliation, and allow Participants to create challenge teams and communities.
 - h) **Champion/Ambassador Network Support:** The My StayWell platform shall allow designated champions to send targeted messaging and event scheduling to Participants.
 - i) **Live Chat Customer Service:** The My StayWell platform shall include online chat support, delivered by Contractor's HelpLine staff. Live Chat shall be available during standard business hours.
 - j) **Digital Coaching:** The My StayWell platform shall include a digital experience with optimized videos, interactive elements, and social engagement related to weight, sleep, and stress with a targeted release date to all Participants of January 1, 2021.
 - k) **Group-based Weight Management Coaching:** The Contractor shall provide Participants with high risk weight access to additional (in addition to what is already provided by the Contractor) group-based coaching resources beginning July 1, 2020. The Department shall pay the Contractor \$575 per Participant (25 seats minimum) for the following additional weight management coaching resources: unlimited access to Contractor coaching professionals, including a registered dietician, a digital scale that connects wirelessly to the Participant's My StayWell platform account using GSM cellular network for transmission (no Wi-Fi or Bluetooth connectivity is required), and a wireless activity tracker that connects to the Participant's My StayWell platform account. In addition, virtual group-based coaching meetings will be held on a weekly basis for Participants. There will also be access to a community page that will mirror the My StayWell Community. On this page, Participants will be able to message their team and their health coach will be able to post messages, education, recipes and other resources to the group.

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

- T. Guided Meditation App Premier Subscription.** The My StayWell platform shall include a stress resilience program. As part of the stress resilience program, the Contractor shall send ETF two hundred and fifty (250) virtual reality (VR) headsets. ETF may purchase additional headsets from the Contractor for fifty-nine dollars (\$59) each. The Contractor will bill ETF for shipping fees for the additional headsets at Contractor's cost.

C. The following new Subsection K is hereby added to RFP Section 5.11 – Marketing and Communication:

K. Marketing Dashboard. The My StayWell platform shall allow the ETF Program Manager to send program-related digital communications to Participants who have accessed the portal.

D. The following new Subsection L is hereby added to RFP Section 5.11 – Marketing and Communication:

L. Champion Connection. Wellness champions will have access to an online resource library that has materials available to help them coordinate and promote Well Wisconsin activities onsite. Examples include but are not limited to: health screening promotional materials, health screening event list, Million Steps Challenge employer toolkit, and health education communications.

Amendment 4C

Department Terms and Conditions

Rev. 04-07-2020

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

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

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

In connection with the performance of work under the Contract, the Contractor agrees not to discriminate against employees or applicants for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Wis. Stat. § 51.01(5); sexual orientation as defined in Wis. Stat. § 111.32(13m), or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Contractor further agrees to take affirmative action to ensure equal employment opportunities. Pursuant to 2019 Wisconsin Executive Order 1, the Contractor agrees it will hire only on the basis of merit and will not discriminate against any persons performing a contract, subcontract or grant because of military or veteran status, gender identity or expression, marital or familial status, genetic information or political affiliation.

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

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

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

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

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

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

The Contractor accepts full liability 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 the Contract.

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

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

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

After execution of the Contract, the Department will provide Contractor with the name of the Department's designated contact person and commit to a timely approval process for Contractor's 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 the Contract. The Contractor will be responsible for Contract performance when subcontractors are used. Subcontractors must abide by all terms and conditions of the Contract.

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

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

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

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

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

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

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

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

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

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

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

6.2 SOC 2/Type 2 Report: If the Department requires Contractor to provide a SOC audit report, Contractor will furnish the Department with a copy of Contractor's annual independent service auditor's report on Contractor's controls relevant to security, availability, processing integrity, confidentiality, and privacy. The SOC audit report must be a type 2 report that includes management's description of Contractor's system and the suitability of the design controls set forth in AICPA Trust Services Criteria Section 100 (2017). This independent audit of the Contractor's controls must be completed in accordance with the AICPA SSAE No. 18 (SOC 2, Type 2). The SSAE 18 (SOC 2, Type 2) annual audit will include all programs under the Contract and will be conducted at the Contractor's expense. If the Contractor's SSAE 18 (SOC 2, Type 2) audit covers less than twelve (12) months of a calendar year, the Contractor will provide a bridge letter to the Department, stating whether processes and controls have changed since the SSAE 18 (SOC 2, Type 2) audit. In addition, the Department requires Contractor to submit a letter of attestation indicating Contractor's receipt of management's assertion of control compliance from Contractor's subcontractors. Provided, however, that if a SOC 2, Type 2 report is unavailable, Contractor may provide an equivalent report and shall have met its obligations under this section.

6.3 Contract Compliance Audit: The parties may agree upon a date and time, or a series of dates and times, for an independent certified public accountant to perform agreed upon procedures or consulting work related to the Contractor's compliance with the Contract. The audit scope will be determined by the Department and may include recordkeeping,

participant account activity, claims processing, administrative performance standards, and any other relevant areas to the programs under the Contract. The timeline of the audit will be mutually agreed upon by the Department and the Contractor. A minimum ten (10) business day notice is required; provided, however, that if the Department requests an on-site visit for such audit, that the Department shall provide Contractor with a minimum of thirty (30) calendar days' advance notice.

6.4 Additional Reporting: Contractor shall provide the Department with a report setting forth information from the Contractor's books, records, ledgers, data, and journals relating to the programs under the Contract, such report, as well as the supporting documents for the report, will be made available for inspection and audit by the Department, its designees, or the State of Wisconsin Legislative Audit Bureau, at any time during normal working hours upon the Department's request; in no event shall the Department be entitled to information regarding or relating to other clients of the Contractor. A minimum ten (10) business day notice will be provided. Records or data requested shall be provided electronically in a format mutually agreed upon by the Department and Contractor. The Department shall have access to interview any employee and authorized agent of the Contractor involved with the Contract in conjunction with any audit, review, or investigation deemed necessary by the Department or the State.

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

7.0 CRIMINAL BACKGROUND VERIFICATION: The Department follows the provisions in the Wisconsin Human Resources Handbook Chapter 246, Securing Applicant Background Checks (see: https://dpm.wi.gov/Hand%20Book%20Chapters/WHRH_Ch_246.pdf). 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 results of the criminal background checks 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 Department agree that their employees, while working at or visiting the premises of the other party, shall comply with all internal rules and regulations of the other party, including security procedures, and all applicable federal, state, and local laws and regulations applicable to the location where said employees are working or visiting.

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

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

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

10.0 BREACH NOT WAIVER: A failure to exercise any right, or a delay in exercising any right, power or remedy hereunder on the part of either party shall not operate as a waiver thereof. Any express waiver shall be in writing and shall not affect any event or default other than the event or default specified in such waiver. A waiver of any covenant, term or condition contained herein or in the Contract shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The making of any payment to the Contractor under the Contract shall not constitute a waiver of default, evidence of proper Contractor performance, or acceptance of any defective item or Services furnished by the Contractor.

11.0 SEVERABILITY: The provisions of the Contract shall be deemed severable and the unenforceability of any one or more provisions shall not affect the enforceability of any of the other provisions. If any provision of the Contract, for any reason, is declared to be invalid, unenforceable, or illegal, the parties shall substitute an enforceable provision that, to the maximum extent possible in accordance with applicable law, preserves the original intentions and economic positions of the parties.

12.0 LIQUIDATED DAMAGES: The Contractor and the Department acknowledge that it can be difficult to ascertain actual damages when a Contractor fails to carry out its responsibilities under the Contract. Because of that, the Contractor and the Department will negotiate liquidated damages, as required by the Department, for the 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 the Contract.

Notwithstanding the foregoing language, when necessary, the Department will identify in the Contract, specific financial penalties for failure of the Contractor to meet performance standards and guarantees. If the Contract was established through a Department solicitation, such performance standards and guarantees may have been set forth in the solicitation.

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

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

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

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

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

The allotted time for the First Level negotiations shall begin on the date the Invoking Party's notice is received by the other party. Subsequent allotted time is the number of days from the date that the Invoking Party's notice was originally received by the other party. If the 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 appropriate Sections herein. The allotted time periods above are in addition to those periods for a party to cure provided elsewhere herein or in the Contract, and do not apply to claims for equitable relief (e.g., injunction to prevent disclosure of Confidential Information). The Department may withhold payments on disputed items pending resolution of the dispute.

- 14.0 CONTROLLING LAW:** All questions as to the execution, validity, interpretation, construction and performance of the Contract shall be construed in accordance with the laws of the State of Wisconsin, without regard to any conflicts of laws or choice of law principles. Any court proceeding arising or related to the Contract or a party's obligations under the Contract shall be exclusively brought and exclusively maintained in the State of Wisconsin, Dane County Circuit Court, or in the District Court of the United States Western District (if jurisdiction is proper in federal court), or upon appeal to the appellate courts of corresponding jurisdiction, and Contractor hereby consents to the exclusive jurisdiction and exclusive venue therein and waives any right to object to such jurisdiction or venue. To the extent that in any jurisdiction Contractor may now or hereafter be entitled to claim for itself or its assets immunity from suit, execution, attachment (before or after judgment) or other legal process, Contractor, to the extent it may effectively do so, irrevocably agrees not to claim, and it hereby waives, the same.
- 15.0 RIGHT TO SUSPEND OPERATIONS:** If, at any time during the period of the Contract, the Department determines that the best interest of the Department or its governing boards would be best served by the Contractor temporarily suspending all Services, the Department will promptly notify the Contractor. Upon receipt of such notice, the Contractor shall suspend all Services.
- 16.0 TERMINATION OF THE CONTRACT:** The Department may terminate the Contract at any time at its sole discretion by delivering one-hundred eighty (180) calendar days written notice to the Contractor.

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

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

Upon any termination of the Contract, the Contractor shall perform the Services specified in a transition plan if so requested by the Department; provided, however, that except as expressly set forth otherwise herein, the Contractor shall not be obligated to

perform such Services unless all amounts due to the Contractor under the Contract, including payment for the transition Services, have been paid. Failure of the Contractor to comply with a transition plan upon the Department's request and upon payment shall constitute a separate breach for which the Contractor shall be liable.

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

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

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

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

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

- 18.0 REMEDIES OF THE DEPARTMENT:** The Department shall be free to invoke any and all remedies permitted under Wisconsin law. In particular, if the Contractor fails to perform as specified in the Contract, the Department may issue a written notice of default providing for at least a 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 Department. Time allowed for cure of a default shall not diminish or eliminate the Contractor's liability. If the default remains, after opportunity to cure, then the Department may: (1) exercise any remedy provided in law or in equity or (2) terminate Contractor's Services.

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

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

- 19.0 TRANSITIONAL SERVICES:** Upon cancellation, termination, or expiration of the Contract for any reason, the Contractor shall provide reasonable cooperation, assistance and Services, and shall assist the Department to facilitate the orderly transition of the work under the Contract to the Department and/or to an alternative contractor selected for the transition upon written notice to the Contractor at least thirty (30) business days prior to termination or cancellation, and subject to the terms and conditions set forth in the Contract.
- 20.0 ADDITIONAL INSURANCE RESPONSIBILITY:** The Contractor shall exercise due diligence in providing the Services under the Contract. In order to protect the Department's governing boards and any Department employee against liability, cost, or expenses (including reasonable attorney fees), which may be incurred or sustained as a result of Contractor's errors or other failure to comply with the terms of the Contract, the Contractor shall maintain errors and omissions insurance including coverage for network and privacy risks, breach of privacy and wrongful disclosure of information in an amount acceptable to the Department with a minimum of **\$1,000,000** per claim and **\$5,000,000** aggregate in force during the Contract period and for a period of three (3) years thereafter for Services completed. Contractor shall furnish the Department with a certificate of insurance for such amount. Further, this certificate shall designate the State of Wisconsin Department of Employee Trust Funds and its affiliated boards as additional insured parties. The Department reserves the right to require higher or lower limits where warranted.
- 21.0 OWNERSHIP OF MATERIALS:** Except as otherwise provided in Section 22, Subsection (v), all information, data, reports and other materials as are existing and available from the Department and which the Department determines to be necessary to carry out the scope of Services under the Contract shall be furnished to the Contractor and shall be returned to the Department upon completion of the Contract. The Contractor shall not use such materials for any purpose other than carrying out the work described in the Contract.

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

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

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

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

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

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

- (1) Business Associate. "Business Associate" has the meaning ascribed to it at 45 CFR 160.103 and refers to the Contractor.
- (2) Confidential Information. "Confidential Information" means all tangible and intangible information and materials being disclosed in connection with the Contract, in any form or medium without regard to whether the information is owned by the State of Wisconsin or by a third party, which satisfies at least one of the following criteria: (i) Individual Personal Information; (ii) Personally Identifiable Information under Wis. Stat. § 19.62(5); (iii) Protected Health Information under HIPAA, 45 CFR 160.103; (iv); proprietary information; (v) non-public information related to the State of Wisconsin's employees, customers, technology (including databases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; (vi) information expressly designated as confidential in writing by the State of Wisconsin; (vii) all information that is restricted or prohibited from disclosure by state or federal law, including Individual Personal Information and Medical Records as governed by Wis. Stat. §§ 40.07, ETF 10.70(1) and ETF 10.01(3m); or (viii) any material submitted by the Contractor in response to a Department solicitation that the Contractor designates confidential and proprietary information and which qualifies as a trade secret, as provided in Wis. Stat. § 19.36(5) or material which can be kept confidential under the Wisconsin public records law.
- (3) Covered Entity. "Covered Entity" has the meaning ascribed to it at 45 CFR 160.103 and refers to the Department of Employee Trust Funds.
- (4) HIPAA Rules. "HIPAA Rules" mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- (5) Individual Personal Information. "Individual Personal Information" has the meaning ascribed to it at Wis. Admin. Code ETF § 10.70 (1).
- (6) Medical Record. "Medical Record" has the meaning ascribed to it at Wis. Admin. Code ETF § 10.01(3m).
- (7) Protected Health Information. "Protected Health Information" has the meaning ascribed to it under 45 CFR 160.103.

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

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

(d) USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION: Contractor shall:

- (1) Not use or disclose Confidential Information for any purpose other than as permitted or required by the Contract or as required by law. Contractor shall not use or disclose member or employee names, addresses, or other information for any purpose other than specifically provided for in the Contract;

- (2) Make uses and disclosures and requests for any Confidential Information following the minimum necessary standard in the HIPAA Rules;
 - (3) Use appropriate safeguards to prevent use or disclosure of Confidential Information other than as provided for by the Contract, and with respect to Protected Health Information, comply with Subpart C of 45 CFR Part 164;
 - (4) Not use or disclose Confidential Information in a manner that would violate Subpart E of 45 CFR Part 164 or Wis. Stat. § 40.07;
 - (5) If applicable, be allowed to use or disclose Confidential Information for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor, provided the disclosures are required by law, or Contractor obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Contractor of any instances of which it is aware the confidentiality of the information has been or is suspected of being breached;
 - (6) Not use for its own benefit Confidential Information or any information derived from such information; and
 - (7) If required by a court of competent jurisdiction or an administrative body to disclose Confidential Information, Contractor will notify the Department in writing immediately upon receiving notice of such requirement and prior to any such disclosure, to give the Department an opportunity to oppose or otherwise respond to such disclosure (unless prohibited by law from doing so).
- (e) **REQUIREMENT TO KEEP CONFIDENTIAL INFORMATION WITHIN THE UNITED STATES:** The Contractor's transmission, transportation or storage of Confidential Information outside the United States, or access of Confidential Information from outside the United States, is prohibited except on prior written authorization by the Department.
- (f) **COMPLIANCE WITH ELECTRONIC TRANSACTIONS AND CODE SET STANDARDS:** The Contractor shall comply with each applicable requirement of 45 C.F.R. Part 162 if the Contractor conducts standard transactions, as that term is defined in HIPAA, for or on behalf of the Department.
- (g) **MANDATORY REPORTING:** Contractor shall report to the Department in the manner set forth in Subsection 22(m) any use or disclosure or suspected use or disclosure of Confidential Information not provided for by the Contract, of which it becomes aware, including breaches or suspected breaches of unsecured Protected Health Information as required at 45 CFR 164.410.
- (h) **DESIGNATED RECORD SET:** Contractor shall make available Protected Health Information in a designated record set to the individual as necessary to satisfy the Department's obligations under 45 CFR 164.524.
- (i) **AMENDMENT IN DESIGNATED RECORD SET:** Contractor shall make any amendment to Protected Health Information in a designated record set as directed or agreed to by the Department pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy the Department's obligations under 45 CFR 164.526.
- (j) **ACCOUNTING OF DISCLOSURES:** Contractor shall maintain and make available the information required to provide an accounting of disclosures to the individual as necessary to satisfy the Department's obligations under 45 CFR 164.528.
- (1) Contractor shall keep all HIPAA logs (logs of any systems that have information relating to HIPAA) for six (6) years.
- (k) **COMPLIANCE WITH SUBPART E OF 45 CFR 164:** To the extent Contractor is to carry out one or more of the Department's obligations under Subpart E of 45 CFR Part 164, Contractor shall comply with the requirements of Subpart E that apply to a covered entity in the performance of such obligation.
- (l) **INTERNAL PRACTICES:** Contractor shall make its internal practices, books, and records available to the Secretary of the United States Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.
- (m) **CONTRACTOR REPORTING OF BREACH OR SUSPECTED BREACH OR DISCLOSURE TO THE DEPARTMENT:**
- (1) Within twenty-four (24) hours after Contractor becomes aware of a suspected breach, impermissible use, or impermissible disclosure, Contractor shall notify in writing the Department 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 Department Program Manager and Privacy Officer to determine the Department's response. Sufficient details include, without limitation:
 - a. The nature of the unauthorized access, use or disclosure;
 - b. A list of any persons affected (if available);
 - c. A description of 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 proactive steps taken by Contractor and being taken to correct the breach, impermissible use or impermissible disclosure; and
 - g. Contact information at Contractor for affected persons who contact the Department regarding the issue.
 - (2) Not less than one (1) business day before Contractor makes any external communications to the public, media, federal Office for Civil Rights (OCR), other governmental entity, or persons potentially affected by the breach, impermissible

use, or impermissible disclosure, provide a copy of the planned communication to the Department Program Manager and Privacy Officer.

- (3) Within thirty (30) business days after Contractor makes the initial report under this Section, Contractor shall research the suspected breach, impermissible use, or impermissible disclosure of Confidential Information and provide a report in writing to the Department Program Manager. The report must contain, at a minimum:
- a. A complete list of any persons affected (whose Confidential Information was supplied to Contractor by the Department) and their 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.

(n) COORDINATION OF BREACH RESPONSE ACTIVITIES:

- (1) Contractor will fully cooperate with the Department's investigation of any breach of Confidential Information involving Contractor, including but not limited to making witnesses, documents, HIPAA logs, systems logs, video recordings, or other pertinent or useful information available immediately upon Contractor's reporting of the breach and throughout the investigation. Contractor's full cooperation will include but not be limited to Contractor:
- a. Immediately preserving any potential forensic evidence relating to the breach, and remedying the breach as quickly as circumstances permit;
 - b. Within forty-eight (48) hours designating a contact person to whom the Department will direct inquiries, and who will communicate Contractor responses to Department inquiries; Contractor will designate a Privacy Officer and Security Officer to serve as contacts for the Department;
 - c. As rapidly as circumstances permit, applying appropriate resources to remedy the breach condition, investigate, document, restore the Department service(s) as directed by the Department, and undertake appropriate response activities such as working with the Department, its representative, and law enforcement to identify the breach, identify the perpetrator(s), and take appropriate actions to remediate the security vulnerability;
 - d. Providing status reports to the Department at least every two (2) hours until the root cause of the breach is identified and a plan is devised to fully remediate the breach;
 - e. Once the root cause of the breach is identified and a plan is devised to fully remediate the breach, providing status reports to the Department daily or at mutually agreed upon timeframes, to the Department on breach response activities, findings, analyses, and conclusions;
 - f. Coordinating all media, law enforcement, or other breach notifications with the Department in advance of such notification(s), unless expressly prohibited by law; and
 - g. Ensuring that knowledgeable Contractor staff is available on short notice, if needed, to participate in Department-initiated meetings and/or conference calls regarding the breach.

(o) CLASSIFICATION LABELS: Contractor shall ensure that all data classification labels contained on or included in any item of Confidential Information shall be reproduced by Contractor on any reproduction, modification, or translation of such Confidential Information. Contractor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of the Department, as directed by the Department.

(p) SUBCONTRACTORS: If applicable, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit Confidential Information on behalf of Contractor agree to the same restrictions, conditions, and requirements that apply to Contractor with respect to such information.

(q) NOTICE OF LEGAL PROCEEDINGS: If Contractor or any of its employees, agents, or subcontractors is legally required in any administrative, regulatory or judicial proceeding to disclose any Confidential Information, Contractor shall give the Department prompt notice (unless it has a legal obligation to the contrary) so that the Department may seek a protective order or other appropriate remedy. In the event that such protective order is not obtained, Contractor shall furnish only that portion of the information that is legally required and shall disclose the Confidential Information in a manner reasonably designed to preserve its confidential nature.

(r) MITIGATION: The Contractor shall take immediate steps to mitigate any harmful effects of the suspected or actual unauthorized use, disclosure, or loss of any Confidential Information provided to Contractor under the Contract. The Contractor shall reasonably cooperate with the Department's efforts to comply with the breach notification requirements of HIPAA, to seek appropriate injunctive relief or otherwise prevent or curtail such suspected or actual unauthorized use, disclosure or loss, or to recover its Confidential Information, including complying with a reasonable corrective action plan, as directed by the Department.

(s) COMPLIANCE REVIEWS: The Department may conduct a compliance review of the Contractor's security procedures before and during the Contract term to protect Confidential Information.

(t) AMENDMENT: The parties agree to take such action as is necessary to amend the Contract as necessary for compliance with the HIPAA Rules and other applicable law.

- (u) **SURVIVAL:** The obligations of Contractor under this Section shall survive the termination of the Contract.
- (v) **RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION:** Upon termination of the Contract for any reason, Contractor, with respect to Confidential Information received from the Department, another contractor of the Department, or created, maintained, or received by Contractor on behalf of the Department, shall:
- (1) Retain only that Confidential Information which is necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities;
 - (2) Return to the Department or, if agreed to by the Department, destroy the remaining Confidential Information that Contractor still maintains in any form;
 - (3) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Subsection, for as long as Contractor retains the Protected Health Information;
 - (4) Not use or disclose the Confidential Information retained by Contractor other than for the purposes for which such Confidential Information was retained and subject to the same conditions set out under Subsection 22(d) which applied prior to termination;
 - (5) Return to the Department or, if agreed to by the Department, destroy the Protected Health Information retained by Contractor when it is no longer needed by Contractor for its proper management and administration or to carry out its legal responsibilities; and
 - (6) If required by the Department, transmit the Confidential Information to another contractor of the Department.
- (w) **ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS:** Contractor will make itself and any employees, subcontractors, or agents assisting Contractor in the performance of its obligations available to the Department at no cost to the Department to testify as witnesses, or otherwise, in the event of a breach or other unauthorized disclosure of Confidential Information caused by Contractor that results in litigation, governmental investigations, or administrative proceedings against the Department, its directors, officers, agents or employees based upon a claimed violation of laws relating to security and privacy or arising out of these Terms and Conditions or the Contract.

23.0 INDEMNIFICATION:

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

obtaining the Department's prior written consent. Contractor shall have the right to assert any and all defenses on behalf of the Indemnified Parties, including sovereign immunity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

An unauthorized change by the Contractor of any contracted personnel designated as key personnel will result in the imposition of liquidated damages, as defined in the Contract.

28.0 INFORMATION SECURITY AGREEMENT

- (a) **PURPOSE AND SCOPE OF APPLICATION:** This Information Security Agreement (“Agreement”) is designed to protect the Department’s Confidential Information (defined above in Section 22.0) and Department Information Resources (defined below). This Agreement describes the information security obligations of Contractor, its employees, contractors and third-party users that connect to Department Information Resources and/or gain access to Confidential Information.
- (b) **DEFINED TERMS:**
- (1) **Department Information Resources:** “Department Information Resources” means those devices, networks and related infrastructure that the Department has obtained for use to conduct Department business. Devices include but are not limited to, Department-owned devices; devices managed or used through service agreements; storage, processing, and communications devices and related infrastructure on which Department data is accessed, processed, stored, or communicated; and may include personally owned devices. Data includes, but is not limited to, Confidential Information, other Department-created or managed business and research data, metadata, and credentials created by or issued on behalf of the Department.
- (c) **ACCESS TO DEPARTMENT INFORMATION RESOURCES:** In any circumstance when Contractor is provided access to Department Information Resources, it is solely Contractor’s responsibility to ensure that its access does not result in any access by unauthorized individuals to Department Information Resources. Contractors who access the Department’s Information Resources from any Department location must at a minimum conform with Department security standards that are in effect at the Department location(s) where the access is provided. Any Contractor technology and/or systems that gain access to Department Information Resources must comply with, at a minimum, the elements in the Information Security Plan Requirements set forth in this Agreement.
- (d) **COMPLIANCE WITH APPLICABLE LAWS:** Contractor agrees to comply with all applicable state and federal laws, as well as industry best practices, governing the collection, access, use, disclosure, safeguarding and destruction of Confidential Information.
- (e) **SAFEGUARD STANDARD:** Contractor agrees to protect the security of Confidential Information according to all applicable laws and regulations by generally accepted information risk management security control frameworks, standards or guidelines such as the ISO/IEC 27000-series, NIST800-53, CIS Critical Security Controls for Effective Cyber Defense or HIPAA Security Rule – 45 CFR Part 160 and Subparts A and C of Part 164 and no less rigorously than it protects its own confidential information, but in no case less than reasonable care. Contractor will implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of the Confidential Information. Contractor will ensure that all security measures are regularly reviewed including ongoing monitoring, monthly vulnerability testing and annual penetration and security incident response tests, revised, no less than annually, to address evolving threats and vulnerabilities while Contractor has responsibility for the Confidential Information under the terms of this Agreement.
- (f) **INFORMATION SECURITY PLAN:**
- (1) Contractor acknowledges that the Department is required to comply with information security standards for the protection of Confidential Information as required by law, regulation and regulatory guidance, as well as the Department’s internal security program for information and systems protection.
- (2) Contractor shall develop, implement, and maintain a comprehensive Information Security Plan that contains administrative, technical, and physical safeguards designed to ensure the privacy, security, integrity, availability, and confidentiality of the Confidential Information. Contractor must provide evidence to the Department of one or more of the following for the plan:
- a. Certification in, or compliance with, generally accepted information risk management security control frameworks, standards or guidelines such as:
 - i. ISO/IEC 27000-series;
 - ii. NIST800-53;
 - iii. CIS Critical Security Controls for Effective Cyber Defense; or
 - iv. HIPAA Security Rule - 45 CFR Part 160 and Subparts A and C of Part 164; and
 - b. Compliance with any state or federal regulations by which the person or entity who owns or licenses such information may be regulated; or
 - c. At a minimum, include the elements listed in the Information Security Plan Requirements set forth below.
- (3) Upon the Department’s request, Contractor shall submit one of the following documents to the Department:
- a. Independent attestation of certification;
 - b. Information Security Plan scope statement;
 - c. Information Security Plan statement of applicability; or
 - d. SOC 2, Type 2 audit and letter of attestation indicating Contractor’s receipt of management’s assertion of control compliance from Contractor’s subcontractors as described in Section 6 Audit Provision.
- The Department reserves the right to require the Contractor to provide more than one of the above documents. If Contractor is unable to produce one of the above documents, Contractor may satisfy the requirement by providing the assurances in Section 28.0(h) below.
- (4) Annually, or upon a significant change in risk posture, Contractor will review its Information Security Plan and update and revise it as needed. If at any time there are any material reductions to Contractor’s Information Security Plan, Contractor will notify the Department within two weeks of the completion of the review and prior to implementation. In such instances, the Department will require an explanation of the reductions. At the Department’s request, Contractor

will make modifications to its Information Security Plan or to the procedures and practices thereunder to conform to the Department's security requirements as defined herein.

- (g) **ADDITIONAL INSURANCE:** In addition to the insurance required under the Contract, Contractor, at its sole cost and expense, will obtain, keep in force, and maintain an insurance policy (or policies) that provides coverage for privacy and data security breaches. This specific type of insurance is typically referred to as Privacy, Technology and Data Security Liability, Cyber Liability, or Technology Professional Liability. In some cases, Professional Liability policies may include some coverage for privacy and/or data breaches. Regardless of the type of policy in place, it needs to include coverage for reasonable costs in investigating and responding to privacy and/or data breaches with the following minimum limits unless the Department specifies otherwise: \$1,000,000 Each Occurrence and \$5,000,000 Aggregate. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the Department requires and is entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Department.

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

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

(1) Security Policies:

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

(2) Security Organization:

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

(3) Asset Management:

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

(4) Human Resources:

- a. Security roles and responsibilities of Contractor's employees, contractors and third-party users have been defined and documented in accordance with Contractor's information security policy;
- b. Contractor performs background verification checks on all candidates for employment, contractors, and third-party users in accordance with relevant laws, regulations and ethics, and proportional to the business requirements, the classification of the information to be accessed, and the perceived risks;
- c. All Contractor's employees and, where relevant, contractors and third-party users, shall receive appropriate security awareness training and regular updates regarding Contractor's security policies and procedures, as relevant for their job function;
- d. Contractor has a formal disciplinary process in place for employees who have committed a security breach;
- e. Contractor's employees' responsibilities for performing employment terminations and changes of employment status are clearly defined and assigned;
- f. All Contractor's employees, contractors and third-party users shall return all Contractor's and the Department's assets in their possession upon termination of their employment, contract or agreement; and
- g. The access rights of all Contractor employees, contractors and third-party users to information and information processing facilities are removed upon termination of their employment, contract or agreement, or adjusted upon a status change.

(5) Physical and Environmental Security:

a. Secure Areas

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

b. Equipment security

- i. Contractor's equipment, and the equipment Contractor may utilize in its operations that is owned by a third party, is maintained to ensure its continued availability and integrity; and
 - ii. Contractor's security measures have been applied to off-site equipment to address the risks of working outside the Contractor's premises.
 - c. Operations management**
 - i. Contractor's operating procedures have been documented, maintained, and made available to all users who require them;
 - ii. Contractor controls changes to information processing facilities and systems; and
 - iii. Contractor has segregated duties and areas of responsibility to reduce opportunities for unauthorized or unintentional modification or misuse of Contractor's assets.
 - d. Third party service delivery management**
 - i. Security controls, service definitions and delivery levels included in Contractor's third-party service delivery agreements are implemented, operated, and maintained by the third party; and
 - ii. The services, reports and records provided by third parties are regularly monitored, reviewed and audited by Contractor.
 - e. Back-up**
 - i. Contractor regularly makes and tests back-up copies of information and software in accordance with Contractor's backup policy.
 - f. Network security management**
 - i. Networks are managed and controlled, either by Contractor or a third party under contract with Contractor; and
 - ii. Security features, service levels, and management requirements of all Contractor's network services have been identified and included in any network services agreement, whether these services are provided in-house by Contractor or outsourced.
 - g. Media handling**
 - i. Contractor has procedures in place to prevent unauthorized disclosure, modification, misuse, removal or destruction of assets, and interruption to business activities; and
 - ii. Contractor has procedures in place for the management of removable media, including the secure and safe disposal of media when no longer required.
 - h. Exchange of information**
 - i. Contractor has established agreements for the secure exchange of information and software between Contractor and appropriate external parties;
 - ii. Contractor shall ensure information involved in electronic messaging is protected;
 - iii. Contractor has developed and implemented policies and procedures to protect the exchange of information; and
 - iv. Contractor shall ensure the integrity of information being made available on a publicly available system is protected to prevent unauthorized modification.
 - i. Monitoring**
 - i. Contractor shall produce and keep a rolling twelve (12) consecutive months of audit logs recording user activities, exceptions, and information security events to assist in future investigations and access control monitoring;
 - ii. Contractor's logging facilities and log information are protected against tampering and unauthorized access; and
 - iii. Contractor's system administrator and system operator activities are logged.
- (6) Access Management:**
 - a. Access control**
 - i. Contractor has an established and documented access control policy that is reviewed regularly based on business and security requirements for access;
 - ii. Contractor has a formal user registration and de-registration procedure in place for granting and revoking access to all information systems and services;
 - iii. Contractor restricts and controls the allocation and use of access privileges;
 - iv. Contractor controls the allocation of passwords through a formal management process; and
 - v. Contractor's management reviews users' access rights at regular intervals using a formal process.
 - b. User responsibilities**
 - i. Users are required to follow good security practices in the selection and use of passwords;
 - ii. Users shall ensure that unattended equipment is protected; and
 - iii. Users shall adopt a clear desk policy for papers and removable storage media and a clear screen policy for information processing facilities.
 - c. Network access control**
 - i. Contractor's users shall only be provided with access to the services that they have been specifically authorized to use;
 - ii. Contractor has implemented appropriate authentication methods to control access by remote users;
 - iii. Contractor has segregated groups of information services, users, and information systems on networks;
 - iv. For shared networks, especially those extending across Contractor's boundaries, Contractor has restricted the capability of users to connect to the network, in line with Contractor's access control policy; and
 - v. Contractor has implemented routing controls for networks to ensure that computer connections and information flows do not breach Contractor's access control policy.
- (7) Security Requirements of Information Systems:**

- a. **Correct processing in applications**
 - i. Contractor shall validate data input to applications to ensure the data is correct and appropriate, and incorporate validation checks to detect any corruption of information through processing errors or deliberate acts;
 - ii. Contractor has identified the requirements for ensuring authenticity and protecting message integrity in applications, and identified and implemented appropriate controls; and
 - iii. Contractor has validated the data output from an application to ensure that the processing of stored information is correct and appropriate to the circumstances.
- b. **Cryptographic controls**
 - i. Contractor has a cryptographic controls policy in place that is documented, has obtained management approval, is reviewed no less frequently than annually and is maintained to ensure its continuing suitability, adequacy and effectiveness.
- c. **Security of system files**
 - i. Contractor has procedures in place to control the installation of software on operational systems;
 - ii. Contractor selects test data carefully, and the test data is protected and controlled; and
 - iii. Contractor restricts access to program source code.
- d. **Security in development and support processes**
 - i. Contractor has implemented procedures to maintain the security of application system software and information;
 - ii. Contractor utilizes formal change control procedures to implement changes; and
 - iii. Contractor supervises and monitors outsourced software development.
- e. **Technical Vulnerability Management**
 - i. Contractor documents the technical vulnerabilities, the exposure evaluated, and the appropriate measures taken to address the associated risk.

(8) Information Security Incident Management:

- a. Contractor communicates information security events and weaknesses associated with information systems in a manner allowing timely corrective action to be taken;
- b. All Contractor's employees, contractors and third-party users of information systems and services are provided awareness training on reporting an observed or suspected incident; and
- c. **Management of information security incidents and improvements**
 - i. The responsibilities and procedures of Contractor's management have been established to ensure timely, effective, and orderly response to information security incidents;
 - ii. Contractor has mechanisms in place to enable the security incidents to be quantified and monitored; and
 - iii. Where a follow-up action against a person or organization after an information security incident involves legal action (either civil or criminal), Contractor shall collect, retain and present evidence in conformance with the rules for evidence established in the relevant jurisdiction(s).

(9) Business Continuity Management:

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

(10) Compliance:

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

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

30.0 DISCLOSURE OF INDEPENDENCE AND RELATIONSHIP:

30.1 Contractor certifies that no relationship exists between Contractor and the Department that interferes with fair competition or is a conflict of interest, and no relationship exists between the Contractor and another person or organization that

constitutes a conflict of interest with respect to a State contract. The Department may waive this provision, in writing, if those activities of the Contractor will not be adverse to the interests of the State.

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

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

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

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

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

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

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

36.0 FOREIGN CORPORATION: If Contractor is a foreign corporation (any corporation other than a Wisconsin corporation), Contractor is required to conform to all the requirements of Chapter 180, Wis. Stats., relating to a foreign corporation and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority. Any foreign corporation which desires to apply for a certificate of authority should contact the Department of Financial Institutions, Division of Corporations, P. O. Box 7846, Madison, WI 53707-7846; telephone (608) 261-7577.

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

The Department shall have the right to audit, review, examine, copy, and transcribe any pertinent records or documents relating to the Contract held by the Contractor.

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

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

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

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

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

42.0 FORCE MAJEURE: Neither the Contractor nor the Department shall be in default by reason of any failure in performance of the Contract in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the non-performing party.

Amendment 4D

New RFP Section 5.12.1.I – Data Integration and Technical Requirements

- I. The Contractor shall cooperate with the Department's designated data warehouse vendor by submitting data on health risk assessments, biometric screenings, and disease and lifestyle management programs, well-being activity and incentive data for Participants under the Contract.

A. Department Data Warehouse – Data Submission Requirements

The Contractor shall comply with the Department's specifications for submission of the required data elements in the formats provided by the Department or provided by the Contractor and approved by the Department, and as updated and approved by the Department. To comply with the data submission requirements, the Contractor shall follow the specified data file layout and formatting of all data elements within the specified data file layout and the Department's specifications for data filtering and extraction. All file formats are subject to change, as determined by the Department, to better serve the needs of the health benefit program.

1. Data submitted to the Department's data warehouse shall include the following:

- a. Data on Participants' health assessment risk scores and responses to all questions asked on the health risk assessment;
- b. Data on Participants' biometric health screening results;
- c. Data on Participants' participation in disease management, including intervention status, number of contacts, and co-morbidities;
- d. Data on Participants' participation in lifestyle management coaching activities, including number of contacts, intervention status, and focus-area(s);
- e. Data on Participants' participation in the various incentive well-being activities and incentive status; and
- f. Other data, as specified by the Department.

2. Data Transmission. All data submitted by Contractor to the Department's data warehouse shall meet the following requirements:

- a. The Contractor shall submit the required data in the most recent file format agreed to by the Contractor and the Department.
- b. The Contractor shall submit the required data on a monthly basis, or other frequency agreed upon by the Contractor and the Department, on a date agreed to by the Contractor and the Department's data warehouse vendor.
- c. A unique person/member identifier is required on all data files and the identifier shall match the person identifier on the Department's eligibility file.
- d. The Contractor shall establish and maintain a secure data transfer with the Department's data warehouse. 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.

3. Submission Timeline. The Contractor shall submit data and corrected data when necessary by the dates indicated by the Department's data warehouse vendor. Specifically:

- a. All data shall be submitted to the Department's data warehouse in the correct file layout on the date approved by the Department of the month following the date of participation.

- b. The Contractor shall communicate any delays in submitting program data to the Department's data warehouse vendor via email to the Department Program Manager or designee and the designated data warehouse vendor as soon as the delay is known, but at least one (1) Day before the scheduled transfer as described above.
- c. Within two (2) Business Days of notification, unless otherwise approved by the Department in writing, the Contractor shall resolve any data errors on the file as identified by the Department's data warehouse vendor or the Department and resubmit the data to the data warehouse.
- d. The Department shall charge a penalty for each data file submitted after the deadlines established above. For files that are delayed by no more than five (5) days AND Contractor provided the Department with notice of delay at least one (1) day prior to scheduled transfer date, penalty shall be waived.

B. Data Dictionary. The Contractor shall submit documentation on its data files including a data dictionary. The data files must use the valid values specified in the data dictionary. During the ongoing operation of the Department's data warehouse, the DEPARTMENT shall charge the Contractor a penalty for any failure to communicate to the Department's data warehouse vendor a change to the valid values or data fields, including new fields, in the Contractor's next data file submission by ten (10) Business Days before the next data file submission deadline.

C. Data Steward. The Contractor shall 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 or status 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.

D. Data Quality. The quality of Contractor's data submissions shall 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 shall cooperate with the Department's data warehouse vendor in submitting corrected data.

The Department, in consultation with its data warehouse vendor and the Contractor, shall develop a data improvement plan which will identify specific areas for the Contractor to improve the quality and completeness of its data submission, along with goals and timelines for improvement.

The Contractor agrees to financial penalties for failure to submit data in accordance with the terms herein, 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 herein that impact the Department's data warehouse vendor will be deducted from a future payment(s) owed the Contractor.

During the initial implementation of the Department's data warehouse, the Contractor will have two (2) chances to submit acceptable data. 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.

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.

E. Performance Standards. The Contractor shall submit data and corrected data when necessary by the dates indicated by the Department's data warehouse vendor on the frequency listed below. The Department will assess the penalties listed below on a quarterly basis.

Data Deliverable/ Requirement	Frequency/ Due Date	Penalties*
a) Health Assessment Data Transfer: The Contractor must submit all Department-specified Participant health assessment data to the Department's data warehouse vendor in the most	Due monthly on the date agreed to by the Contractor and the Department's data warehouse vendor	One thousand (\$1,000) dollars per Business Day for which the standard is not met

Data Deliverable/ Requirement	Frequency/ Due Date	Penalties*
recent file format agreed to by the Contractor and the Department		
b) Biometric Screening Data Transfer: The Contractor must submit all Department-specified Participant biometric screening data to the Department's data warehouse vendor in the most recent file format agreed to by the Contractor and the Department	Due monthly on the date agreed to by the Contractor and the Department's data warehouse vendor	One thousand (\$1,000) dollars per Business Day for which the standard is not met
c) Disease Management Data Transfer: The Contractor must submit all Department-specified Participant disease management data to the Department's data warehouse vendor in the most recent file format agreed to by the Contractor and the Department	Due monthly on the date agreed to by the Contractor and the Department's data warehouse vendor	One thousand (\$1,000) dollars per Business Day for which the standard is not met
d) Lifestyle Management Data Transfer: The Contractor must submit all Department-specified Participant lifestyle management data to the Department's data warehouse vendor in the most recent file format agreed to by the Contractor and the Department	Due monthly on the date agreed to by the Contractor and the Department's data warehouse vendor	One thousand (\$1,000) dollars per Business Day for which the standard is not met
e) Well-being Activity and Incentive Data Transfer: The Contractor must submit all Department-specified Participant well-being activity and incentive data to the Department's data warehouse vendor in the most recent file format agreed to by the Contractor and the Department	Due monthly on the date agreed to by the Contractor and the Department's data warehouse vendor	One thousand (\$1,000) dollars per Business Day for which the standard is not met
f) Data Warehouse Submission Delays: The Contractor must communicate any delays in submitting Department-specified data to the Department's data warehouse vendor via email to the Department Program Manager or designee and the Department's data warehouse vendor	Due as soon as the delay is known, but no later than one (1) Calendar Day before the scheduled transfer date	One thousand (\$1,000) dollars per Business Day for which the standard is not met
g) Data File Corrections: Contractor shall resolve any data errors in the submitted files as identified by the Department's data warehouse vendor or the Department	Due within two (2) Business Days of notification, unless otherwise approved by the Department in writing	One thousand (\$1,000) dollars per Business Day for which the standard is not met
h) Data Dictionary Changes: Contractor must notify the Department's data warehouse vendor of a change to the valid values or data fields in the Contractor's next data file submission	Due at least ten (10) Business Days before the next data file submission deadline	One thousand (\$1,000) dollars per Business Day for which the standard is not met

*The penalties above are not subject to penalty assessment maximums allowed for other performance standards under the Contract.

F. Wisconsin Information Registry. The Contractor, or its Subcontractor, and the Department, shall work with the Department's contracted health plans on a method to reimburse the Contractor's Subcontractor for uploading or entering Participant flu shot vaccination data into the Wisconsin Information Registry (WIR). Upon agreement of the Department's contracted health plans and the Contractor, or the Contractor's Subcontractor, by the end of February, the Contractor's Subcontractor shall submit the prior year's Participant flu shot vaccination data to WIR in a manner compliant with WIR requirements, see: <https://www.dhfswir.org/PR/portalHeader.do;jsessionid=3PvKzdRBZvvcSpjdIhEKmyiTUWZzpdEeWBbTTw3i.master:ir-server>.