



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

Commodity or Service:

Insurance Administration System

Contract No./Request for Proposal No:

ETI0050 dated July 30, 2021

Contract Period: Effective Date through December 31, 2031 with the option for renewal for three (3) five (5)-year terms.

1. This Contract is entered into by the State of Wisconsin Department of Employee Trust Funds (Department or ETF or Client) and Benefitfocus.com, Inc. (Contractor). The Department and the Contractor are each individually a "Party" and collectively the "Parties". Contractor's address and principal officer appear below. The Department is the sole point of contact for this Contract.
2. Whereby the Department agrees to direct the purchase and Contractor agrees to supply the Contract requirements in accordance with the documents specified in the order of precedence below, which are hereby made a part of this Contract by reference.
3. The Parties agree to the following:
 - a. All Contractor Services directly provided to ETF, including all interaction with ETF data, will be performed onshore (within the U.S.) as of the Effective Date of this Contract.
 - b. Contractor may utilize offshore resources in a manner that does not conflict with Department Terms and Conditions (DTCs) Section 22.0(e).
 - c. Annually, for the term of the Contract, Contractor will provide ETF, upon request, with the following: i) an attestation regarding ETF data storage, retention, and proof of destruction; ii) a copy of Contractor's Certificate of Insurance; iii) a copy of Contractor's holiday schedule; and iv) attestation of Contractor's HISTRUST certification.
 - d. Appendix 9 Department Terms and Conditions from the RFP ETI0050 is deleted and replaced by Exhibit A: Department Terms and Conditions.
 - e. Pursuant to Section 4.0 of the Department Terms and Conditions (DTCs), ETF hereby provides written approval for Benefitfocus to utilize the following subcontractors: WEX, Inc. for COBRA Administrative Services and Certifi, Inc. for the Direct Billing Services and Benefitplace Billing Services.
4. For purposes of administering this Contract, the order of precedence is:
 - (a) This Contract between the Department and Benefitfocus.com, Inc.;
 - (b) Exhibit A: Department Terms and Conditions;
 - (c) Exhibit B: Implementation Services Order Form;
 - (d) Exhibit C: Implementation Services Order Form Appendix A;
 - (e) Exhibit D: Implementation Services Order Form Appendix B Professional Services Description (Change Control Process);
 - (f) Exhibit E: Ongoing Services Order Form;
 - (g) Exhibit F: Support Service Level Addendum (SSLA) (with Data Quality and Claims Data Docs);
 - (h) Exhibit G Ongoing Services Order Form Appendix A Software Services;
 - (i) Exhibit H: Ongoing Services Order Form Appendix B COBRA;
 - (j) Exhibit I: Ongoing Services Order Form Appendix C Direct Billing;
 - (k) Exhibit J: Ongoing Services Order Form Appendix D MP Billing;
 - (l) Exhibit K: Client Services Addendum;
 - (m) Department's Request for Proposal (RFP) ETI0050 dated March 2, 2020;
 - (n) Contractor's Best and Final Offer dated March 30, 2021; and
 - (o) Contractor's proposal dated May 13, 2020.

Contract Number & Service: ETI0050 Insurance Administration System

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

State of Wisconsin Department of Employee Trust Funds	
By (Name): A. John Voelker	
Title: Secretary, Department of Employee Trust Funds	
Signature: <small>DocuSigned by:</small> <i>John Voelker</i>	
Date of Signature: <small>1EB9C35D52DD31E</small> 7/30/2021	
Phone: 608.266.9854	

Contractor	
Legal Company Name: Benefitfocus.com, Inc.	
Trade Name:	
Taxpayer Identification Number: 57-1099948	
Contractor Address: 100 Benefitfocus Way Charleston, SC 29492	
Name & Title (print name and title of person authorized to legally sign for and bind Contractor): Alpana Wegner, Chief Financial Officer	<small>DocuSigned by:</small>
Signature: <i>Alpana Wegner</i>	
Date of Signature: <small>4FAFF2D81B184E9</small> 7/30/2021	
Email: alpana.wegner@benefitfocus.com Phone: 843.981.8272	

Exhibit A

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Department Terms and Conditions

- 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 customer-facing Services to be provided by the Contractor shall be subcontracted to any other organization, subdivision, association, individual, corporation, partnership or group of individuals, or other such entity without prior

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written notification to, and approval of the Department. Notwithstanding the foregoing and anything to the contrary stated within the Contract, this approval requirement shall not apply to leased employees of Contractor or otherwise utilized by Contractor through a third party staff augmentation agency; and in such event, Contractor shall only be required to provide prompt written notice to the Department for a change in such resources.

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 substantially similar 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 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 commercially 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 an Executive Summary to the Department upon request.

- 6.0 AUDIT PROVISION:** The Contractor is 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. Furthermore, Contractor will provide reasonable assistance required by the Department in connection with any audit or request by any government agency or non-governmental accreditation or certification organization relating to the Department if related to Services. Unless prohibited by Law, the Department will provide reasonable evidence to Contractor to support any request by the Department to Contractor to modify or amend this Agreement, or the Services resulting from such audit or agency request. For the avoidance of doubt, any such audit or request by any government agency or non-government accreditation or certification organization will cover the scope of Contractor and its subcontractors.

- 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)

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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.

- 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, 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.
- 6.3 Contract Compliance Audit:** The Department may schedule and arrange for an independent certified public accountant to perform agreed upon procedures or consulting work related to the Contractor's compliance with the Contract on a periodic basis, as determined by the Department. 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, but should not include those areas already covered by Contractor's SOC report. 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.
- 6.4 Open Access:** All Contractor books, records, ledgers, data, and journals relating to the programs under the Contract will be open for inspection and audit by the Department, its designees, or the State of Wisconsin Legislative Audit Bureau, at any time during normal working hours. 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 provided 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 Department security policies before connection to the Department's local computer network.

- 9.0 SECURITY OF PREMISES, EQUIPMENT, DATA AND PERSONNEL:** During the Term of the Agreement, and at any time within twelve (12) months following its termination during normal business hours, upon reasonable advanced written notice, and not to exceed more than once annually, 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 audit the records of the Contractor and the Contractor's compliance with this Section. The Department shall be solely

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responsible for all costs of the audit, except for any Contractor employee time and office space. 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 DISCOUNT FOR LATE DELIVERY:** The Contractor agrees to accept a discount in the fees due to the Contractor under the Contract in the event any of the Major Deliverables is delivered by Contractor more than twenty-five (25) Business Days after the delivery date set forth in the then-current Project Work Plan. The parties agree that the Contractor shall discount its fees, beginning on the twenty-sixth (26th) Business Day after the delivery date set forth in the then current Project Work Plan, by an amount of one thousand dollars (\$1,000) for each Business Day Contractor fails to deliver any or all Major Deliverables until such Major Deliverable is delivered as mutually agreed, up to a total of one hundred twenty thousand dollars (\$120,000) per Major Deliverable. Any such discount is not a penalty, and shall be in addition to all other legal or equitable remedies that may be available to the Department. Notwithstanding the foregoing: 1) Contractor shall not owe any discount to the extent that any late delivery of a Major Deliverable was the result of a Department-caused delay; 2) In the event that Contractor provides a discount under this Section, then the timeline set forth in the Project Work Plan for each subsequent Major Deliverable shall be extended by the number of days for which the discount was applied; and 3) the total aggregate fees at risk applicable to this Section are up to ten percent (10%) of the total One Time Fees defined in the Implementation Services Order Form.
- 13.0 CONTRACT DISPUTE RESOLUTION:** In the event of a dispute 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 reserve the right to 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, the Department reserves the right to pursue recovery of any and all additional costs incurred by the Department as a result of such failure to proceed. Any costs incurred by the Contractor 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 (Tyler Jenkins, Director)	Level 1 entity (OEI Director)	20 Business Days

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	Public Sector)	Michelle Baxter	
Second	Level 2 entity (Clarke Wallace, VP Customer Success)	Level 2 entity ETF Secretary John Voelker	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 Second 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. The Department acknowledges that such suspension of Services may not negate the Department's obligation to pay for: 1) those Services that have already been provided by Contractor and accepted by the Department pursuant to the milestone payment schedule under the Implementation Order Form; or 2) the recurring fees under the Ongoing Services Order Form.

16.0 TERMINATION OF THE CONTRACT: The Department may terminate the Contract at any time at its sole discretion by delivering three hundred sixty five (365) calendar days written notice to Contractor. The Department may also terminate the Contract at any time at its sole discretion by delivering one hundred and twenty calendar days (120) written notice to Contractor in the event funds are not appropriated for the Services for the next fiscal year or a legislative act otherwise decommissions funds for the Services.

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.

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 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;

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- (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.
- (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.

17.1 Breach by Pattern or Practice: The Department has the right to terminate the Contract and/or pursue all available legal and equitable remedies if the Contractor, by pattern or practice, materially breaches any provision of the Contract. Actions that shall constitute a material breach include, but are not limited to, neglect, failure, or refusal to perform in accordance with any of the terms of this Contract. The Department may provide the Contractor with an opportunity to cure the material breach. Such cure period would be thirty (30) days after written notice, as noted above. If Contractor's efforts to cure are unsuccessful, as determined by the Department's sole, but reasonable, discretion, the Department may terminate the Contract as soon as administratively feasible and/or pursue all available legal and equitable remedies.

17.2 Termination by Contractor: Contractor may terminate the contract in the event the Department fails to discharge any material obligation or remedy any material default under this Contract for a period continuing more than thirty (30) days after the Contractor provides the Department with written notice specifying such default.

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 thirty (30) 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 and/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 **\$5,000,000** per claim and **\$20,000,000** 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 request 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

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associated with and generated under the Contract by the Contractor.

Benefitfocus reserves all rights, title and interest in the Services, including all related intellectual property rights. The Department shall own all customized software, documents, and other materials developed under the Contract, to the extent such ownership is explicitly stated in the applicable Statement of Work or Order Form.

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 deleted 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. Destruction of data takes place at media retirement.

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).

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- (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.

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- (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 forty-eight hours after Contractor becomes aware of an actual or reasonably suspected breach, impermissible use, or impermissible disclosure, Contractor shall notify in writing the Department Program Manager and Privacy Officer. An actual or reasonably 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 actual or reasonably 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 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,

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- 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 substantially similar 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:** Once annually and with reasonable notice, 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 in accordance with Contractor's record retention procedures;
 - (2) Return to the Department or, if agreed to by the Department, delete or 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;

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- (5) Return to the Department or, if agreed to by the Department, delete or 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, except to the extent caused by the Department's acts or omissions under 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

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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.

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 confirmation that such personnel have passed Benefitfocus' 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, or as soon as reasonable practicable provided the circumstances. If the two week requirement cannot be met, Benefitfocus will contact the Department and explain the reasons. 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.

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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.

For any unauthorized change by the Contractor of any contracted personnel designated as key personnel, the Contractor will pay ETF a replacement fee of ten thousand (\$10,000) dollars per occurrence.

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

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- 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. Should Contractor diminish security controls, Contractor will notify the Department. Should the Department determine that the respective control change does not comply with this current agreement, Contractor will, at the Department's request, make modifications to its Information Security Plan or to the procedures and practices which impact the services rendered to the Department

- (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: \$5,000,000 Each Occurrence and \$20,000,000 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,

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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;

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- 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 screen protection requirement 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. Upon award and not later than six months following execution of the Contract, Contractor will create 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.

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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 knowingly 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

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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, and will furnish to Contractor a tax exemption certificate.

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 is not known to 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

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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.

43.0 SURVIVAL: The obligations and terms listed in this Section shall survive termination of the Contract in perpetuity unless otherwise noted. Contractor's duty to cooperate with audits under Section 6.3 and 6.4 shall survive for one year after termination or until the resolution of any contract dispute, whichever is longer. Contractor's duties under Section 28.0 shall survive for as long as the Contractor has access to Department Information Resources and Department data. Payment obligations that accrue prior to the date of termination, Section 1.0, Section 10.0, Section 11.0, Section 13.0, Section 14.0, Section 18.0, Section 21.0, Section 22.0, Section 23.0, Section 25.0, Section 31.0, Section 35.0, Section 37.0, Section 39.0, and this Section 43.0 shall survive termination of the Contract.

Exhibit B Implementation Services Order Form

Pursuant to the terms and conditions set forth in the Contract, the Parties agree that Benefitfocus will provide to State of Wisconsin Department of Employee Trust Funds ("Client" or "ETF") those Software Services identified and marked with an "X" in Section II for the fees indicated. The Professional Services and/or Software functionality (as applicable) are defined in the attached appendices.

I. Client Information <input checked="" type="checkbox"/> New Client <input type="checkbox"/> Existing Client <input type="checkbox"/> System Integrator Implementation <input type="checkbox"/> Reseller	
1. Client Name:	State of Wisconsin Department of Employee Trust Funds
2. Address:	4822 Madison Yards Way, Madison, WI 53705-9100
3. Effective Date:	July 30, 2021
4. Target Go-Live Date:	As defined in Section III.B
5. End of Term:	Upon Benefitfocus' completion of the Services defined in the Attached Appendices A and B.
6. Account Executive:	Rachel Colonna
7. Solutions Engineer:	Joseph Plichta
8. Client Contact (name, phone number and email):	Michelle Baxter, Director of Office of Enterprise Initiatives 608 261-5951 Michelle.Baxter@etf.wi.gov
9. Invoice Contact (name, email, address and county):	ETFSMBAccountsPayable@etf.wi.gov 4822 Madison Yards Way, Madison, WI 53705-9100, Dane County
10. Duplicate Invoice: (Yes/No):	No
11. Duplicate Invoice Contact Information (name, email, address):	N/A
II. Services:	
PROFESSIONAL & SOFTWARE SERVICES	
<input checked="" type="checkbox"/> Benefitplace® <input checked="" type="checkbox"/> Health Insights <input type="checkbox"/> HCM API <input type="checkbox"/> Benefits Service Center <input type="checkbox"/> Benefitplace Health Insights (Stand Alone) <input type="checkbox"/> Additional Insights Data Sources (In Excess of Three) Benefitplace Product Upgrades <input checked="" type="checkbox"/> Single Sign-On (SAML 2.0) <input checked="" type="checkbox"/> API Projects <input checked="" type="checkbox"/> Additional Data Load (Two (2) or More) <input type="checkbox"/> Total Compensation App (Self-Service) <input type="checkbox"/> acaMax Benefitplace Administrative Services <input type="checkbox"/> Verification Services <input type="checkbox"/> One Time Dependent Audit <input type="checkbox"/> Ongoing Verification <input type="checkbox"/> Fulfillment Services <input type="checkbox"/> Open Enrollment Confirmation Statements <input type="checkbox"/> Color <input type="checkbox"/> Black & White <input type="checkbox"/> Post Cards (Color) <input type="checkbox"/> Custom Fulfillment Services <input type="checkbox"/> QMCSO Services <input checked="" type="checkbox"/> COBRA Administration <input type="checkbox"/> Benefitfocus ACA Management & Reporting <input type="checkbox"/> Optional Data Support Services <input type="checkbox"/> ACA Paper Fulfillment Services	<input type="checkbox"/> Benefits Service Center Upgrade Options <input type="checkbox"/> Extended Hours <input type="checkbox"/> Extended Hours (Open Enrollment Only) Benefitplace Professional Services <input type="checkbox"/> Content Management Services: <input type="checkbox"/> One-Time <input type="checkbox"/> Refresh <input type="checkbox"/> Migration <input type="checkbox"/> Additional hours <input type="checkbox"/> Ongoing Subscription <input type="checkbox"/> Custom Report <input checked="" type="checkbox"/> Transmission Project <input type="checkbox"/> Business Restructuring Services <input type="checkbox"/> Annual <input type="checkbox"/> One-Time <input type="checkbox"/> Advanced Reporting Consultation <input type="checkbox"/> Equifax Essentials Solution <input type="checkbox"/> Standard Support <input type="checkbox"/> Premium Support Benefitplace Additional Services: <input type="checkbox"/> One Place Registration Services <input type="checkbox"/> Open Enrollment Reservation Benefitplace Billing Services: <input checked="" type="checkbox"/> Direct Billing <input checked="" type="checkbox"/> Billing & Payment

Exhibit B Implementation Services Order Form

Benefitplace Consumer Directed Healthcare Accounts		
<input type="checkbox"/> FSA <input type="checkbox"/> HRA <input type="checkbox"/> HSA		
III. Professional Services:		
A. Service:	One-Time Fee	
<i>Benefitplace with Health Insights</i> for Enrollment Eligible (Full) Employees	Included	
Single Sign-On (Requires SAML 2.0) defined in Appendices A & B	Included	
Transmission Projects defined in Appendices A & B	Included	
API Projects defined in Appendices A & B	Included	
COBRA Administration	Included	
Billing & Payment	Included	
Direct Billing	included	
TOTAL ONE-TIME FEES		\$2,287,000.00
B. Professional Services Terms and Conditions:		
<p>1. Professional Services shall commence upon the Effective Date, and continue until Acceptance, as defined in Section III.B.2.</p> <p>2. Acceptance procedures are as follows:</p> <ol style="list-style-type: none"> a. Each deliverable identified by Benefitfocus during implementation as Professional Services deliverables will be Accepted upon the earlier of; (i) Client uses the applicable Software Services or deliverable(s) under essentially normal operating conditions, or (ii) Client fails to reject the applicable Software Services within ten (10) business days of Benefitfocus' written notice (with confirmation of receipt by Client) that the applicable Professional Services have been completed. b. Should Client reject a deliverable, such rejection must be accompanied by an explanation of the reasons for the rejection, including specific references to those portions of any relevant schedule, deliverable, acceptance criteria, or product Documentation, which is the basis for the rejection, including identifying those deficiencies that must be corrected in order for the deliverable to be Accepted. Benefitfocus shall not be required to correct, (i) lack of data transmission to any non-integrated carriers; or (ii) any delays caused by Client or Client's carriers or vendors. <p>3. Implementation Services fees shall be invoiced incrementally upon Acceptance by Client of project milestones ("Major Deliverables") as listed in the table below in accordance with the Acceptance procedures outlined in III.B.2.</p> <ol style="list-style-type: none"> a. The Benefitplace Discovery payment milestone includes written validation of business requirements, including but not limited to, Plans/Carriers/Rates, and Change Reason configuration requirements. The milestone will be considered complete upon Client sign-off of the respective Benefitplace discovery documentation. b. The Testing payment milestone is contingent upon satisfactory completion and Client testing and sign-off of Benefitplace system configuration requirements. c. The Benefitplace Production Deployment payment milestone is as defined in Section III.B.7 . d. The Billing Production Deployment payment milestone is as defined in Section III.B.7 The ETF standard Benefitplace design payment milestone includes the foundational discovery with ETF and ETF standard platform set-up that will be deployed to each employing unit, less any employing unit specific requirements. The milestone will be considered complete upon Client sign-off of the respective Benefitplace discovery documentation. The Phase 1, 2, 3, & 4 Benefitplace enablement payment milestones include the data conversion and Benefitplace Base Platform Deployment, as defined in Section III.B.7, for each employing unit within each Phase. The Phases will include one of the following: 1 standalone group with payroll, remaining groups with payroll, groups without payroll, and retirees. Completion of these milestones is contingent upon Client's Acceptance in accordance with Section III.B.2. 		
Major Deliverable	Target Go Live Date	Amount
Upon Client's Execution of the Contract (and thereby this Order Form)	July 30, 2021	\$457,400.00
Deployment of ETF's Marketplace/ Benefitplace.	March 31, 2022	\$228,700.00
Completion of Phase 1 Benefitplace enablement	November 30, 2022	\$457,400.00
Completion of Phase 2 Benefitplace enablement	March 1, 2023	\$381,166.67
Completion of Phase 3 Benefitplace enablement	May 31, 2023	\$381,166.67
Completion of Phase 4 Benefitplace enablement	August 31, 2023	\$381,166.67

Exhibit B

Implementation Services Order Form

Total Implementation Fee:	\$2,287,000
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4. Client agrees that the Base *Benefitplace* Professional Services Fees include data exchange configuration enablement and testing services for the Vendor Data Interfaces listed in Appendix A. An additional one-time fee will apply for any changes or additions to such Vendor Data Interface list as defined hereunder.
5. Support of an HCM Integration Suite solution beyond the scope defined in Appendices A and B, including, without limitation, a change in the described solution or an increase in the number of HCM Integration Suite Data Integration Interfaces to be supported, requires further scoping and fees. Except to the extent the delay is solely caused by Benefitfocus, and unless otherwise agreed upon in writing, there will be no extensions or refunds in the event Client fails to use the HCM Integration Suite Professional Services within twelve (12) months of the Effective Date.
6. Option Data Conversion Services: Upon written request during the the Order Form Term, Client may elect Optional Data Conversion Services defined in Appendix B for a fee of \$200,000, invoiced as incurred.
7. Definitions:
 - a. An “Additional *Benefitplace* Data Source for Initial Load” means that term defined in Appendix A to this Order Form.
 - b. A “Data Capture” means that term defined in Appendix A to this Order Form.
 - c. A “Vendor Data Interface” means that term defined in Appendix A to this Order Form.
 - d. An “Employee” means all current employees of the State of Wisconsin and local employers that are eligible for ETF programs as identified by Wis. Stat. Chapter 40. It also includes those people designated by ETF as inactive or retired members who were previously eligible employees with the State of Wisconsin or a local employer.
 - e. An “Enrollment Eligible Employee (Full)” means an Employee that is eligible for at least one (1) medical, dental, vision, or other IRC Section 125 benefit type within the *Benefitplace*.
 - f. A “HCM Integration Suite Data Integration Interface” means one data transmission link that includes up to one (1) inbound employee demographic file from Client’s HR indicative or payroll system for importing within the *Benefitplace* and one (1) outbound deduction file exported to Client’s HR indicative or payroll system from the *Benefitplace*.
 - g. A “Transmission Vendor Data Interface” means that term defined in Appendix A to this Order Form.
 - h. “*Benefitplace* Production Deployment” is defined as the date that, (a) the Communication Portal available for use by Client under essentially normal operating conditions and has been Accepted by Client for the respective Phase, and (b) all benefits to be managed within the enrollment module are available for use by Client under essentially normal operating conditions and has been Accepted by Client. For each day of delay caused in whole or in part by Benefitfocus, *Benefitplace* Production Deployment shall be delayed by an equal number of days.
 - i. “Billing Production Deployment” is defined as the date when the Direct Billing Service and Benefitplace Billing Services are made available for use to Client under essentially normal operating conditions and have been Accepted by Client.
8. Key Personnel:
 - a. Executive Sponsor: Clarke Wallace, Vice President, Customer Success: Responsible for overall account relationship.
 - b. Project Manager/Delivery Manager: Melanie Dubos, MHR, Project Manager, Professional Services: Accountable for key deliverables within implementation project scope.
 - c. Human Capital Management Solutions Consultant: Jeff Reese
 - d. Solutions Consultant Integrations: Troy Hollingsworth
 - e. Test Manager: Jon-Michael McDowell: Responsible for testing management of the project.
 - f. Program Manager: Meghan Hugus

Exhibit C Implementation Services Order Form - Appendix A

Section I: HCM/API Integration Provider(s):
Total Number of HCM/API Integration Data Interfaces: 11

Vendor System/Version	File Type	Inbound or Outbound Exchange	System Administered by Vendor, Client, or Broker	Standard or Custom
ETF MDM	Employee Demographic File	Inbound	Client	Custom
Oracle Peoplesoft (UW Hospital Clinic)	Employee Demographic File	Inbound	Client	Custom
Oracle Peoplesoft (University Wisconsin)	Employee Demographic File	Inbound	Client	Custom
Oracle Peoplesoft (STAR/DOA)	Employee Demographic File	Inbound	Client	Custom
Oracle Peoplesoft (UW Hospital Clinic)	HCM Deduction File	Outbound	Client	Custom
Oracle Peoplesoft (University Wisconsin)	HCM Deduction File	Outbound	Client	Custom
Oracle Peoplesoft (STAR/DOA)	HCM Deduction File	Outbound	Client	Custom
ETF (Retirees)	HCM Deduction File	Outbound	Client	Custom
ETF Document Management	Document Center API	Outbound	Client	Custom
ETF MDM	Member Demographic Changes	Outbound	Client	Custom
ETF	Member ID API	Inbound	Client	Custom

Section II: Direct Vendor Interfaces (Non-Benefit Catalog)
Total Number of Transmission Projects: 17

Vendor Interface	Benefit Type	Data Capture, Transmission - Inbound Transmission - Outbound, Transmission Project, EOI SSO or API
Dean Health Insurance	Medical	Transmission Project (Outbound)
WEA Trust	Medical	Transmission Project (Outbound)
GHC of Eau Claire	Medical	Transmission Project
GHC of South Central WI	Medical	Transmission Project (Outbound)
HealthPartners	Medical	Transmission - Outbound
Medical Associates Health Plan	Medical	Transmission Project (Outbound)
MercyCare	Medical	Transmission Project (Outbound)
Network Health	Medical	Transmission Project (Outbound)
IBM Watson	Medical	Transmission Project (Outbound)
Quartz	Medical	Transmission Project (Outbound)
United Health Care (UHC)	Medical/Medicare	Transmission - Outbound
Aspirus (new in 2022)	Medical	Transmission Project (Outbound)
Navitus	Commercial Pharmacy	Transmission Project (Outbound)
Navitus	EGWP/Medicare Rx	Transmission Project (Outbound)
Delta Dental	Dental UDB	Transmission - Outbound
Delta Dental	Dental Supplemental	Transmission - Outbound
Delta Vision	Vision	Transmission - Outbound
ConnectYourCare	Pre-Tax: Health FSA	Transmission - Outbound
ConnectYourCare	Pre-Tax: Dependent Care FSA	Transmission - Outbound
ConnectYourCare	Pre-Tax: Limited Purpose FSA	Transmission - Outbound
ConnectYourCare	Pre-Tax: Parking	Transmission - Outbound
ConnectYourCare	Pre-Tax: Transit	Transmission - Outbound
The Hartford	Short Term Disability (ICI)	Transmission Project (Outbound)

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WebMD	Wellness	Transmission Project (Outbound)
Staywell	Wellness inbound	Transmission Project (Inbound & Outbound)
HealthChoice / Mutual of Omaha (pending for 2022)	Long Term Care (LTC)	Transmission Project (Outbound)
ETF*	Multi-Sponsor Medicare Eligibility Data	Transmission Project – Inbound / Outbound
US Bank**	Health Insurance Premium Remittance	TBD

*Benefitfocus agrees to further evaluate a commercially reasonable, data exchange solution with CMS, and to the extent Benefitfocus and CMS agree upon a solution, Benefitfocus will work with Client to amend the Contract accordingly. Depending upon the solution requirements, further scoping and pricing may be required.

**If ETF enhances the Billing solutions to Option 3 that are listed in Appendix C & D, Benefitfocus will bring in this File integration for Billing purposes.

Section III: Benefit Catalog Vendor Interfaces

Benefit Catalog Provider	Benefit Type	Transmission Method	Billing Method
Securian	Life	Transmission	Payroll Deducted
Securian	AD&D	Transmission	Payroll Deducted
Securian	Supplemental Life	Transmission	Payroll Deducted
Securian	Supplemental AD&D	Transmission	Payroll Deducted
Securian	Supplemental Spouse Life	Transmission	Payroll Deducted
Securian	Supplemental Child Life	Transmission	Payroll Deducted
Securian	Accident	Transmission	Payroll Deducted
Securian	EOI	Transmission (outbound EOI)	N/A
Securian	EOI	Transmission (inbound EOI)	N/A
Securian	EOI	Transmission (EOI SSO)	N/A
Carrier Contact Person(s)	Kjirsten Elsner		
Email(s)	Kjirsten.elsner@securian.com		
Phone Number(s)	866-295-8690, ext. 55817		

Benefit Catalog Provider	Benefit Type	Transmission Method	Billing Method
The Hartford	Long Term Disability (ICI)	Transmission	Payroll Deducted
Carrier Contact Person(s)	Jamie Shuford		
Email(s)	Jamie.shuford@thehartford.com		
Phone Number(s)	704-577-7459		

Section IV: Single Sign-On:

Total Number of SSO Link(s): 2

Single Sign-On Vendor	Direction (relative to Benefitfocus) Inbound or Outbound
ETF System	Inbound
ETF System	Inbound

Section V: *Benefitplace* Vendor Data Sources:

Total Number of *Benefitplace* Data Sources for Initial Load in Excess of one (1): 0

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Section VI. Benefitplace Health Insights Data Sources

Benefitplace Health Insights Data Source Support Services			
Ongoing Data File Sources	Historical Data File Sources*	Data File Type	Frequency
WEA Trust Dean Health Insurance GHC of Eau Claire GHC of South Central WI HealthPartners Medical Associates Health Plan MercyCare Network Health Quartz United Healthcare Aspirus	WEA Trust Dean Health Insurance GHC of Eau Claire GHC of South Central WI HealthPartners Medical Associates Health Plan MercyCare Network Health Quartz United Healthcare Aspirus	Medical Claim/Prescription	Historical - one time; Ongoing - monthly
WEA Trust Dean Health Insurance GHC of Eau Claire GHC of South Central WI HealthPartners Medical Associates Health Plan MercyCare Network Health Quartz United Healthcare Aspirus	WEA Trust Dean Health Insurance GHC of Eau Claire GHC of South Central WI HealthPartners Medical Associates Health Plan MercyCare Network Health Quartz United Healthcare Aspirus	Medical Carrier Eligibility	Historical - one time; Ongoing - monthly
Navitus	Navitus	Prescription Claim	Historical - one time; Ongoing - monthly

**Additional data sources can be made available and require further scoping and pricing.*

Exhibit C

Implementation Services Order Form - Appendix A

Section VII. Definitions:

1. “Benefitplace Data Source for Initial Load” means a third-party data source that is used to complete the initial data load of Client’s employee data within *Benefitplace* during the initial *Benefitplace* implementation.
2. “Benefitplace Health Insights Data Source” means a third party or Client-supplied data file source, which may include new, historical or replacement medical claim, prescription claim, eligibility and/or ancillary data file(s).
3. “Data Capture” link means that the applicable benefit type will be enabled and the associated benefit elections will be stored within the Enrollment Portal; provided, however, the transmission of such benefit elections data from Benefitfocus to the applicable carrier or third party provider system is not commercially available or in scope, and shall be the responsibility of Client (or its Authorized User) utilizing Benefitfocus’ standard or ad-hoc reports through self-service.
4. “HCM Integration Data Interface” means one data transmission link that includes up to one (1) inbound employee demographic file from Client’s HRIS system for importing within *Benefitplace* and one (1) outbound HRIS or HCM integration file exported to Client’s HR indicative or payroll system from *Benefitplace*.
5. “SSO Link” means a single sign-on link defined if designated as in scope per the Order Form.
6. “Transmission Vendor Data Interface” means that an interface to transmit the applicable employee benefits data from Benefitfocus to the applicable vendor system is commercially available for enablement within *Benefitplace* and will be enabled, tested, and deployed within Client’s production environment by Benefitfocus. This link also includes an API link made commercially available by Benefitfocus. If any custom requirements specific to “Client” are identified during the implementation of the Transmission Vendor Data Interface, the integration may be reassigned as a Transmission Project and may be subject to additional scoping and pricing.
7. “Transmission Project Vendor Data Interface” means that the applicable vendor benefit type will be enabled as a Data Capture link; provided, however, that Benefitfocus will add such request to its EDI development queue in order to convert to a Transmission Vendor Data Interface.
8. “Vendor Interface” means a file containing Client Data for one or more vendor benefit products or other vendor indicative data that is transmitted from the *Benefitplace* Client’s third-party vendor or received from Client’s third-party vendor for importing within the *Benefitplace*.
9. “Inbound” means files will be transmitted *to* Benefitfocus. “Outbound” means files will be transmitted *from* Benefitfocus.

Exhibit D

Implementation Services Order Form Appendix B Professional Services Description

This Appendix defines a high-level overview of the Professional Services to implement the Software Services specified in the Order Form between State of Wisconsin Department of Employee Trust Funds (“Client” or “ETF”) and Benefitfocus. Detail regarding specific tasks, resources, and deliverables are defined within the project plan created as part of project coordination and discovery. Client and Benefitfocus will identify a mutually agreeable governance framework for this implementation which will be documented and provided by Benefitfocus within 30 business days of contract signature or by a date otherwise agreed upon.

I. **Benefitfocus Professional Services (for all scope in the Order Form):**

A. **Benefitfocus shall:**

1. Conduct pre-implementation coordination and scheduling
2. Hold a discovery kick-off call to initiate implementation project
3. Create, review, and finalize project plan
4. Review and finalize system requirements, design, and configuration documentation
5. Provide access to on-demand online standard training videos, assessments, and product documentation designed to provide users with foundational skills.
6. Provide quarterly content updates to ensure training information is aligned with system functionality.
7. Create, review and finalize a test plan and test scenarios, and conduct internal quality assurance and Client acceptance testing
8. Create, review, finalize and manage a detailed deployment/release management plan
9. Complete Client Acceptance signoff and deploy to a production environment in accordance with Section III.B.2 of the Implementation Services Order Form
10. For this implementation, Benefitfocus will configure one (1) benefit plan year, off-cycle. Should the Client request to change the scope of the implementation (beyond what is identified in Section I.A.11), Benefitfocus reserves the right to reassess the resource allocation strategy and timeline for the project, initiate contracting for a change request order form, and to charge fees for additional effort.
11. Optional Data Conversion Services: Upon Client’s written notice to Benefitfocus anytime prior to the end of the Implementation Order Form Term, Client may upgrade to include the following “Optional Conversion Services” to implement two (2) benefit plan years instead of one (1) benefit plan year for all Enrollment Eligible (Full) Employees for all in scope plans. Assumes no plan difference between the two (2) benefit plan years and includes:
 - a. Discovery
 - b. Configuration of the first participation period
 - c. Copying of the upcoming second participation period configurations
 - d. The effort needed to copy the plan year and post the initial discovery on the second plan year
 - e. Inbound data load of the previous data through the iMax file (note: ETF will need to provide the respective iMax files for each respective participation period)
12. Client shall:
 - a. Provide all plan documentation, rates, employee demographic data, eligibility rules, and any additional information reasonably necessary for the completion of discovery and configuration of the *Benefitplace*. All benefit documentation and benefit and census data must be provided prior to the implementation kickoff date. Delays in providing this information may result in the delay of the Target Go-Live Date.
 - b. Provide resources to attend status meetings, participate in the completion of discovery and the testing of the *Benefitplace*, including, but not limited to Human Resources, payroll and other data subject matter experts, and IT resources.
 - c. Complete online trainings as required by the implementation project plan
 - d. Complete testing and provide signoff at key milestones defined in the implementation project plan
 - e. Complete the testing and validation efforts required by the implementation project by the agreed upon date in the project schedule. This effort includes, but is not limited to, platform testing, payroll and HCM integration testing, and end-to-end process testing. Signoff for these activities must be provided by Client before the Target Go-Live Date.

B. The Professional Services defined under this Appendix are subject to the following implementation conditions:

1. All benefit plans and carriers must be finalized by the Benefitplace discovery end date in the agreed upon project schedule. If this information is delayed, the target go live date will be pushed by an equal number of days, without penalty to Benefitfocus. Benefitfocus must receive current state benefits information and data for census and benefit data by the agreed upon date in the project schedule. Any delay in receiving the initially requested information may delay the Target Go-Live Date.
 - a. Any requested change to requirements after discovery documentation is signed off will be reviewed and assessed via the change control process attached hereto. Benefitfocus will be implementing the active/retiree population benefits administration onto the Benefitplace platform.
 - b. Benefitfocus will not be managing the enrollments or deductions for policies that are individually underwritten. These will be managed outside the system, as the Benefitplace platform requires a group-based and rule-based strategy to premium calculation.
Should it be determined during the implementation that an additional Vendor Data Interface is required, Benefitfocus will work with the Client and the applicable vendor to set up the Vendor Data Interface after a change request Order Form has

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been signed. This change request Order Form will have an implementation timeline independent from the timeline established in this Order Form.

- c. Additional services beyond the scope of this Section may require further scoping and pricing, including, without limitation, implementation of a new Vendor Data Interface, implementation of a new payroll interface, changes to an existing payroll interface, or configuration services associated with a merger, acquisition, divestiture or other business change which requires Benefitplace Restructuring Services

II. **Benefitplace Professional Services (Enrollment Portal):**

A. **Project coordination and discovery:**

1. Hold a discovery kick-off call to initiate the implementation project, including providing Client with templates for gathering benefits, plan, and rule information
2. Review and finalize enrollment configuration documentation, including implementation profile, change reason profile, and client-specific rules
3. Limited to those benefits and benefit providers specified within the Implementation Order Form Benefitfocus shall provide HIPAA 834 and iMax[®] format specifications and participate in discovery calls with Client and Client's benefit provider to plan EDI protocols, including schedules, file naming conventions, transmission details (*e.g.*, URLs for Secure FTP), exception handling procedures, and data maps

B. **Configuration of enrollment application and standard and advanced reporting functionality:**

1. Configure enrollment application with Client's plans, offerings, and designated carrier contract rules
2. Configure open enrollment dates and enablements
3. Enable standard and advanced Benefitplace reporting functionality. Employing Unit Level has access to Standard Reporting, which will be enabled within Benefitfocus Benefitplace for Administrators to generate and view reports of employee benefit-related data.
4. Benefitfocus offers standard reporting options that can be utilized through the self-service tool Benefitplace. Any manipulation or modification of these reports that is requested by Client is the responsibility of the Client, unless the building of custom reporting options has been purchased. Client shall have access to the advanced flex query reporting tool to assist them with reporting needs. In the event additional reporting is needed in the future, Benefitfocus can quote custom reports per the change order process.
5. Each of the items listed above may require that the Client and Benefitfocus agree to certain standard parameters and rules, including, but not limited to, benefit eligibility, deduction calendar setup, qualified life event processing, and other applicable business rules that will be used by the Client. In other cases, the Benefitplace platform may provide alternative parameters and rules that may be used by the Client. However, in all cases, the functionality of the Benefitplace platform will be limited by the parameters, rules, alternatives and options that the Benefitplace platform currently uses and is designed to permit as of a given time to address the issues listed above.

C. **Initial Data Load (Enrollment Portal):**

1. Benefitfocus will be provided with the appropriate data sets from the Client's current system of record, its Employing Units or from its carriers.
2. Once the applicable data files are received from Client and Client's benefit providers (as applicable), Benefitfocus will load current employee dependent information and one (1) plan year of benefit elections data for all benefits defined in Appendix A (excluding beneficiary data) and perform internal quality assurance of loaded data. Benefitfocus will not load Beneficiary data. For the avoidance of doubt, to the extent Client elects the Optional Data Conversion Services in Section I.A.11, Benefitfocus will load two (2) plan years of benefit elections data.
3. Client understands the accuracy and completeness of the data loaded into the *Benefitplace* is directly impacted by the accuracy and completeness of the data provided by or on behalf of the Client.
4. Client will validate all data extracts prior to delivery from Client to Benefitfocus
5. Client will provide data files in the format defined in the *Benefitplace* file specification.
6. Benefitfocus may require that the Client shifts to an active open enrollment strategy where members must actively elect their benefits to retain them for the next plan year if the health of the data is in a poor state.

D. **Conduct Client Acceptance testing:**

1. Provide Client access to test system configured with Client-specific settings
2. Schedule and conduct a walkthrough of enrollment system with Client to review business rules and plan configurations
3. Verify data load, review exceptions with Client, and determine strategy for resolving data exceptions
4. Client will complete testing and validation of the *Benefitplace* platform by the agreed upon go live date in the project schedule.
5. Provide templates for Client signoff on acceptance of employer and rate information

III. **Benefitplace Professional Services (Content Manager):**

A. **Project coordination and discovery:**

1. Provide online user guide
2. Hold a discovery session to review Client corporate style, URL, and content library configuration

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B. Configuration of the Content Manager:

1. Activate the Content Manager with Client-specific URL (20-character limit with no special characters or dashes)
2. Upload Client's logo
3. Provide training to ETF to configure Content Manager navigation, pages, upload content, and audience filtering
4. Display pre-authored *Benefitplace* content per Client's specifications

C. Client shall:

1. Provide Benefitfocus with URL and logo (.png, .gif or .jpg) image
2. Provide all written content
3. Complete configuration of the Content Manager in preparation for use by Client and its Authorized Users

IV. Advanced Branding

- A. Design advanced theme and branding provided by Benefitfocus Design Consultants, based upon branding guide provided by Client for the setup of a branding style tile. No additional branding updates will be made after the implemented deployment, unless assessed with additional charges. Includes:
 1. Private label configuration
 2. Configurable colors, fonts and styles throughout the Member Role™
 3. Configurable design of small and large icons
 4. Configurable colors and fonts of buttons
 5. Configurable tab names, as applicable

V. Platform Usage Stats

- A. Enable Platform Usage Stats monitoring tool used to analyze member engagement and utilization of provided features. This includes the ability for Client Administrators to track member activity in the *Benefitplace*. Platform Usage Stats will be made available to the Client Administrator within the Benefits Administrator role.

VI. Data exchange Professional Services:

- A. Implement and test the facilities for EDI data transmission (Transmission) and Data Capture of benefit elections from *Benefitplace* to Client's benefit providers, who are integrated with Benefitfocus and identified within the Implementation Order Form as "Transmission" or "Data Capture", and utilizing HIPAA 834 or iMax® and benefit provider transmission schedules
- B. If it is determined throughout the implementation that any one of the Client's vendor systems is unable to accept the standard integration established between Benefitfocus and that vendor, or the vendor refuses to integrate with Benefitfocus for the Client, a change request Order Form must be signed. This change request Order Form will have an implementation timeline independent from the timeline established in this Order Form and may be subject to additional fees.
- C. Should it be determined during the implementation that an additional vendor interface is required, Benefitfocus will work with the Client and the applicable vendor to set up an interface after a change request Order Form has been signed. This change request Order Form will have an implementation timeline independent from the timeline established in this Order Form and may be subject to additional fees.

Integration requires the cooperation and consent of the applicable carriers or benefit providers, which may grant or withhold such cooperation and consent in their sole discretion, and which is further subject to the Benefitfocus integration schedule and software release process. Benefitfocus shall utilize commercially reasonable efforts to make such connections available by the Target Go-Live Date, but shall not be liable for any delay or failure by the carrier or benefit provider to grant such connection, and unless specifically stated herein, Benefitfocus does not warrant any date or availability for such connections. Client further acknowledges that additional scoping and pricing may be required to the extent a standard Benefitfocus file format and specifications are not utilized to convert a Data Capture (Transmission Project) into a Transmission eLink. Client shall provide Benefitfocus with the contact information for each carrier, along with authorization to contact each carrier to gather the necessary information to configure, test and deploy these connections.

D. Data exchange configuration and testing services:

1. Configure outbound data extraction files and jobs for each of Client's data transmission links
2. Create at least one (1) test file for each data transmission link and provide to the respective carrier/vendor via the documented transmission method.
3. Client shall require carrier/vendor to validate transmission within two (2) days of receipt.
4. Participate with Client on carrier/vendor testing calls to review and validate file extract
5. Any other transmission of Client's benefit election data shall be the responsibility of Client utilizing Benefitfocus' standard or ad-hoc reports (Client Self Service)

VII. HCM Integration Suite Professional Services:

- A. HCM Integration Suite Professional Services requires technical discovery and configuration

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- B. Inbound and outbound files:** Implement file-based data exchange scope in accordance with the Order Form to and from Client system using a Benefitfocus file format. Benefitfocus will:
1. Hold a discovery call with Client's payroll or HRIS system subject matter expert
 2. Provide Benefitfocus file format specifications and required data elements to Client, vendors and employers as needed
 3. Document schedule and connections specifications for regular inbound and outbound file exchange
 4. Review Benefitfocus job and exception reports and define error resolution procedures
 5. Determine and document a schedule for payroll implementation, testing, and deployment
 6. Conduct payroll integration file or HRIS integration file testing
 7. Conduct up to three (3) successful test cycles in which a test employee demographic file is received from Client and processed into *Benefitplace*
 8. Conduct up to three (3) successful test cycles in which test payroll integration file or HRIS integration file is extracted from *Benefitplace* and imported into the Client system

VIII. API Professional Services:

- A. The API Professional Services include:**
1. Enablement of API-based data exchange interfaces to and from Client's system(s) based on scope listed in the Order Form, using the standard Benefitfocus API formats and specifications.
 2. Benefitfocus will:
 - a. Hold a discovery call with Client's system subject matter expert(s)
 - b. Document schedule and connections specifications for regular data exchange
 - c. Review Benefitfocus job and exception reports and define error resolution procedures
 - d. Determine and document a schedule for implementation, testing, and deployment
 - e. Conduct data processing testing
 - f. Conduct up to three (3) successful test cycles in which test data is received from Client's system(s) and processed into *Benefitplace*
 - g. Conduct up to three (3) successful test cycles in which test data is sent from *Benefitplace* and imported into the Client system(s)

The above API functionality: 1) requires the cooperation and consent of the applicable carriers or benefit providers, which such third party may grant or withhold such cooperation and consent in its sole discretion; and 2) is further subject to the Benefitfocus integration schedule. Benefitfocus shall utilize commercially reasonable efforts to make such connections but shall not be liable for any failure by the above third party to grant such connection, and unless specifically stated herein, Benefitfocus does not warrant any date or availability for such connections. Client further acknowledges that Client may be subject to additional fees from the above third party in connection with Client's use of the API functionality.

IX. Cost Estimator Professional Services:

- A. Project coordination and discovery:**
1. Hold a discovery kick-off call to initiate implementation project, including providing Client with templates for gathering medical plan attribute and rule information
 2. Create, review, and finalize project plan for Client implementation
 3. Review and finalize enrollment configuration documentation, including implementation profile and Client-specific rules
 4. Configuration of Cost Estimator within online enrollment
- B. Carrier enablements:**
1. Plan attributes for the medical plans defined during discovery
 2. Cost estimator
 3. Client plan dependency rules (as applicable)
 4. Healthcare utilization data:
 - a. Generic: Storage and enablement of healthcare utilization data (the "Utilization Data") based upon healthcare cost, utilization, and expected values for a particular age and gender based upon national averages provided by the Medical Expenditure Panel Survey of the US Dept. of Health and Human Services for a consumer selecting private coverage in the United States (the "MEPS national averages")
- C. Conduct Client acceptance testing:**
1. Provide Client access to test system configured with Client-specific settings
 2. Schedule and conduct walkthrough of Cost Estimator with Client to review configurations
 3. Test the facilities for data integration from *Benefitplace* and Client's data warehouse to the Cost Estimator to validate the estimated medical plan costs based upon the configured plan attributes and selected Utilization Data

X. *Benefitplace* Health Insights Professional Services:

- A. Initial Professional Services**

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1. Project coordination and discovery services:

- a. Conduct pre-implementation coordination and scheduling
- b. Hold a discovery kick-off call to initiate implementation project
- c. Create, review, and finalize project plan for implementation
- d. Hold a discovery session
- e. Provide an overview of functionality

B. Data Source Integration Services:

1. Implement and test the facilities for data transmission from Client's data file source(s), as defined herein, and utilizing Benefitfocus standard file formats, data processing logic, and schedules:
 - a. Medical eligibility/claim data transmission - inbound transmission of the medical historical eligibility and claim extract files from Client's applicable data file source(s) defined in the attached Appendix A or as defined in a subsequent Order Form, and implementation of the file layout into the standard Benefitfocus data set and standard data validation and translation process for loading
 - b. Prescription data transmission – inbound transmission of Client's pharmacy data file sources defined in the attached Appendix A or as defined in a subsequent Order Form, as applicable, and implementation of the file layout into the standard Benefitfocus data set and standard data validation and translation process for loading
 - c. Ancillary data transmission – inbound transmission of Client's ancillary data file sources defined in the attached Appendix A or as defined in a subsequent Order Form, as applicable, and implementation of the file layout into the standard Benefitfocus data set and standard data validation and translation process for loading
 - d. Client has been advised and understands that data transmission from unique data file sources requires the cooperation and consent of those data file sources, which those data file sources may grant or withhold in their sole discretion, and which are further subject to the Benefitfocus integration schedule. Data file sources may also charge a fee for providing data extracts. Benefitfocus shall utilize commercially reasonable efforts to make such connections but shall not be liable for any failure by the data file source to grant such connection, and unless specifically stated herein, Benefitfocus does not warrant any date or availability for such connections.
 - e. *Benefitplace* Health Insights integration of new data file source(s) is dependent on the applicable carrier or provider of data file source(s). Implementation of data file source(s) will begin after the second signature of the applicable Order Form and confirmation from the customer that applicable data file source(s) have agreed to release of data. Data files must be received from the applicable carrier or provider of data file source(s) no later than sixty (60) days from the second signature of the applicable Order Form to meet the data source integration target date of approximately one hundred twenty (120) days. In addition, if questions arise about the data and responses are not received from the applicable carrier or provider within five (5) business days, Client will be notified, and the target date may not be attainable. Benefitfocus will work with Client to resolve all issues that arise.

C. *Benefitplace* Health Insights Training Services

1. Benefitfocus will provide the following *Benefitplace* Health Insights overview to Client:
 - a. An overview of *Benefitplace* Health Insights for Administrators, which shall include:
 - i. Review of Cost Estimator with integrated healthcare usage navigation and functionality
 - ii. Navigating to the *Benefitplace* Health Insights dashboard and overview of metrics, interactive click-thru and details
 - iii. Utilizing *Benefitplace* Health Insights dashboard filtering and printing functionality
 - b. Benefitfocus shall provide the following training to Client:
 - i. System operations training:
 - (a) Designed for users who will not only need to operate the basics of the *Benefitplace* Health Insights portal, and may also be called upon to operate the *Benefitplace* Health Insights Software Services functions in the course of business operations
 - (b) This session provides in-depth training and includes problem solving scenarios for attendees
2. System configuration and maintenance training:
 - a. Designed for users tasked with managing the content of the *Benefitplace* Health Insights portal. While training is more technical in nature, attendees should have participated in system operations training to ensure a basic knowledge of system navigation and familiarity with the user audience
 - b. Primary training topics include user management, technical system configuration, and per-group implementation
3. Additional computer-based training sessions or onsite training at the Benefitfocus Charleston office are available at then-current Benefitfocus rates.

XI. Single Sign-On Professional Services:

- A. Single sign-on setup and configuration consists of discovery, user mapping, transport technology, configuration, testing support, operational monitoring, and maintenance and includes:
 1. Setup and configuration of two single sign-on link(s) from Client's identity provider(s) to *Benefitfocus*
- B. Technical discovery to identify technical and functional requirements and limitations

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2. Single sign-on implementation using standard SAML 2.0 technology, or a current mutually agreed upon version thereof
 3. Configuration of links/URLs for single sign-on credential exchange with Client's identity provider(s)
 4. Configuration and support of keep-alive and logout URLs
- C. Client shall be responsible for coordinating with Benefitfocus to create user accounts and update account information to permit the single sign-on to operate as configured and implemented.

XII. Flex Query

- A. Professional Services. Project coordination and discovery services for implementation of Flexible Query Tool:
1. Project services:
 - a. Conduct pre-implementation coordination and scheduling
 - b. Hold a discovery kick-off call to initiate implementation project
 - c. Create, review, and finalize project plan for implementation
 - d. Hold a discovery session
 - e. Provide an overview of functionality
 - B. Training Services. Benefitfocus shall provide the following Flexible Query Tool training to Client:
 1. System operations training –Flexible Query Tool:
 - a. Designed for users who will operate the Benefitfocus portal, and may also be called upon to operate the Benefitfocus Flexible Query Tools functions in the course of business operations
 - b. This session provides in-depth training and includes problem solving scenarios for attendees
 2. System configuration and maintenance training –Flexible Query Tool:
 - a. Designed for users tasked with managing the content of the Benefitfocus portal, Flexible Query Tool. While training is more technical in nature, attendees should have participated in system operations training to ensure a basic knowledge of system navigation and familiarity with the user audience
 - b. Primary training topics include user management, technical system configuration, and per-group implementation, using the Flexible Query Tool.
 - c. Additional computer-based training sessions or onsite training at the Benefitfocus Charleston office are available at then-current Benefitfocus rates.
 - C. Summary of Flexible Query Tool:
 1. Health Insights Flexible Query Tool:
 - a. Integrated data filtering functionality and ad hoc reporting featuring the Flexible Query Tool allows users to perform analysis and reporting on any available data element supplied. The Flexible Query tool can be customized using integrated custom filtering, member population and date-related filtering and can be automated and scheduled. The ad hoc analysis and reporting functions included with the Flexible Query Tool allow users to build custom and specialized reports using an integrated comparison filter tool. Users can create, save and use custom filters for any data elements integrated. In addition, users can build, save and use ad hoc reports that allow deep- dive and drill-down into various data elements. The Flexible Query Tool allows users to create, save and share in- depth analysis and reporting. Functionality includes:
 - i. Design queries using fields from the user's standard file layout to filter for specific data points of interest.
 - ii. Save the user's query for retrieval at a later date.
 - iii. Sort and display column options as determined by the end user.
 - iv. Save, re-use and re-run existing reports from either the user's personal library or from the public library of saved/shared queries.
 - v. Define data groupings to control the display and aggregation of data.
 - vi. Share queries with other users

XIII. COBRA Administrative Professional Services:

- A. Benefitfocus will setup Client in the COBRA Application using the COBRA Program Design Guide developed and mutually agreed upon as part of the design and implementation of the Services.
- B. Benefitfocus will provide standard instructions to Client regarding Client responsibilities. Implementation includes:
 1. Initiation and planning, including sales transition meeting and project kickoff.
 2. Discovery, including completion of the Benefit Design Guide and Client signoff.
 3. COBRA Application configuration of five (5) divisions and enablement of the standard Benefitfocus file-based data transmission from the COBRA Application to Client's applicable carriers. Additional divisions will require further pricing and scoping and an additional writing signed by the parties.
 4. Quality assurance testing and production deployment.
- C. If purchased, notifications will be configured during implementation of COBRA Services, including standardized Benefitfocus branding, and provided in standardized format and language:
 1. Initial Notices ("General Rights Notices" as defined in COBRA) will be sent within the timeframe required by COBRA to newly Covered Employees and spouses informing them of their rights under COBRA.

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2. A COBRA Specific Rights Notice, including instructions for COBRA continuation election, will be sent within the timeframe required by COBRA to all Covered Employees who have a Qualifying Event.
3. The timeliness of sending notifications is contingent on receiving timely, accurate and complete eligibility, qualification and status data per the process and format agreed upon for automated load into the COBRA Application. If complete information is not received timely from Client, Benefitfocus will send the notices described in this Section as soon as administratively practicable after receiving the required information. If information from Client is not complete or is incorrect, such notices may be incomplete or incorrect.
4. If purchased by Client, Initial Notices (General Rights Notices) may be sent to all Covered Employees and spouses at the Target Go Live Date as noted in the Order Form, at the rate identified herein.
5. Notifications within this Section and beyond the scope of this Section require further pricing and scoping and an additional writing signed by the parties.

XIV. Direct Billing Professional Services: Benefitfocus will work with Client to complete the following steps for the implementation of the Direct Billing Services.

A. Direct Billing Professional Services include:

1. Discovery session
2. Requirements Documentation
3. Project management
4. Payment Portal configuration
5. Data transmission and payment process testing
6. Process and operational overview for Administrators
7. Production deployment

B. Benefitfocus obligations:

1. Conduct a discovery session with Client to gather applicable Carrier and business rule information in scope, to include one set of invoicing and payment dates for all carriers
2. Confirm primary contact, authorized users, banking information, and business rules
3. Enable the Payment Portal for Client Authorized Users
 - a. If applicable, contact Client's carrier point(s) of contact to review and coordinate data transmission payment and reporting process
 - b. If applicable, provide each Carrier a HIPAA compliant standard file format
 - c. If applicable, configure payment processing to remit payments directly to approved Carrier accounts from the Client's account via ACH direct deposit
4. Perform initial load of applicable carriers, plans and benefits premium data from Enrollment Platform into Benefitfocus Billing & Payment Portal
5. If applicable, train the Administrator on the process to add banking information into the Payment Portal for ACH/Debit transaction processing
6. Conduct joint testing with Client through a successful 30-day billing cycle to validate invoice accuracy, payment process, payment remittance process and (if applicable) data transmission with Carriers in scope of work
7. Provide applicable training and documentation to Client
8. Deploy Benefitfocus Direct Billing solution into Client's production environment

C. Client obligations:

1. Provide Benefitfocus with the eligibility and business rules for Client's direct billing program
2. Provide Benefitfocus with carriers, plans and carrier contact information to be included in the monthly direct billing administration.
3. If applicable, participate in discovery session with Benefitfocus to review requirements of each carrier, including invoicing and payment rules
4. If a configuration change or discrepancy is identified during the implementation process, it is the responsibility of the Client to work with its Benefitfocus project team to make the appropriate updates.
5. Provide an account owned by Client to which premiums collected will be deposited.
6. Complete and return, with supporting documentation, the forms and/or service agreements for bank and/or merchant services vendors to facilitate electronic payment processing. Client is responsible for banking fees thereunder.
7. Complete joint testing with Benefitfocus and (if applicable) Carrier
8. Sign-off on requirements gathered during discovery

XV. Benefitfocus Benefitplace Billing & Payment Professional Services: Benefitfocus will work with Client to complete the following steps for the implementation of the Benefitfocus Benefitplace Billing & Payment Ongoing Services further described below.

A. The Benefitfocus Benefitplace Billing & Payment Professional Services include:

1. Discovery session
2. Requirements Documentation
3. Project management

Exhibit D

Implementation Services Order Form Appendix B Professional Services Description

4. Payment Portal configuration
 5. Data transmission and payment process testing
 6. Process and operational overview for Administrators
 7. Production deployment
- B. Benefitfocus obligations:
1. Conduct a discovery session with Client to gather applicable Carrier and business rule information in scope, to include one set of invoicing and payment dates for all carriers
 2. Confirm primary contact, authorized users, banking information, and business rules
 3. Enable the Payment Portal for Client Authorized Users
 4. If applicable, contact Client's carrier point(s) of contact to review and coordinate data transmission payment and reporting process
 5. If applicable, provide each Carrier a HIPAA compliant standard file format
 6. If applicable, configure payment processing to remit payments directly to approved Carrier accounts from the Client's account via ACH direct deposit
 7. Perform initial load of applicable carriers, plans and benefits premium data from Enrollment Platform into Benefitfocus Benefitplace Billing & Payment Portal
 8. Train the Administrator on the process to add banking information into the Payment Portal for ACH/Debit transaction processing
 9. Conduct joint testing with Client through a successful 30-day billing cycle to validate invoice accuracy, payment process, payment remittance process and data transmission with Carriers in scope of work
 10. Provide applicable training and documentation to Client
 11. Deploy Benefitfocus Benefitplace Billing & Payment solution into Client's production environment
- C. Client obligations:
1. Provide Benefitfocus with carriers, plans and carrier contact information to be included in the monthly consolidated invoice
 2. Participate in discovery session with Benefitfocus to review requirements of each carrier, including invoicing and payment rules
 3. If a configuration change or discrepancy is identified during the implementation process, it is the responsibility of the Client to work with its Benefitfocus Benefitplace Billing & Payment Customer Success Manager to make the appropriate updates.
 4. Provide an account owned by Client to which premiums collected will be deposited.
 5. Complete and return, with supporting documentation, the forms and/or service agreements for bank and/or merchant services vendors to facilitate electronic payment processing. Client is responsible for banking fees thereunder.
 6. Complete joint testing with Benefitfocus and Carrier
 7. Sign-off on requirements gathered during discovery

Exhibit D

Implementation Services Order Form Appendix B Professional Services Description

Change Control Process

In the event ETF requests a change to the scope of the Project, ETF will deliver such request in writing to Benefitfocus that includes in reasonable detail: (1) a complete description of the problem statement explaining the reason for the change, (2) the business impact if the change is not made, (3) the individual and organization requesting the change, and (4) the requested time frame for implementation of the change in relation to the other tasks set forth in the plan.

Within fifteen (15) Business Days of the receipt of such a request, Benefitfocus shall provide a written change order proposal (a "Change Order Proposal") that shall include: (i) a description of the change and the level of effort involved in implementing the change; (ii) the estimated date by which such change will be completed; (iii) any consequential changes that will need to occur in the Project Work Plan including any project milestones; (iv) the fees and costs for implementing such change; and (v) the latest day by which written approval can be given to Benefitfocus so that Benefitfocus can implement the change in line with Benefitfocus's Change Order Proposal.

If the requested change requires significant research and/or planning and coordination between Benefitfocus and ETF, its Employing Entities and/or its vendors, Benefitfocus will be granted up to thirty (30) Business Days to provide a response with the details listed above. Benefitfocus must provide ETF an explanation in such circumstances for why more than fifteen (15) Business Days are needed and the target response date.

In the event Benefitfocus desires to initiate a change to the scope of the Project, it shall provide to ETF (at no cost to ETF) a Change Order Proposal that meets the foregoing requirements and also clearly explains why the need for a change. ETF shall have no obligation to accept or agree to any Change Order Proposal from Benefitfocus but will work in good faith with Benefitfocus to incorporate changes Benefitfocus proposes.

A Change Order Proposal that is acceptable to ETF and Benefitfocus shall become a Change Order under this Agreement when it is signed by the ETF Secretary (or their designee), the Wisconsin Department of Administration, if required, and the Benefitfocus Senior Vice President (or their designee). The parties shall maintain a change request reporting mechanism and provide a change control plan/methodology for the duration of the Project.

Exhibit E Ongoing Services Order Form

Pursuant to the terms and conditions set forth in the Contract, the Parties agree that Benefitfocus will provide to the State of Wisconsin Department of Employee Trust Funds ("ETF" or "Client") those Software Services identified and marked with an "X" in Section II for the fees indicated. The Professional Services and/or Software functionality (as applicable) are defined in the attached appendices.

I. Client Information		<input checked="" type="checkbox"/> New Client	<input type="checkbox"/> Existing Client	<input type="checkbox"/> System Integrator Implementation	<input type="checkbox"/> Reseller
1. Client Name:	State of Wisconsin Department of Employee Trust Funds				
2. Address:	4822 Madison Yards Way, Madison, WI 53705-9100				
3. Effective Date:	July 30, 2021				
4. Target Go-Live Date:	Target Go Live Dates are defined on a "per Phase" basis as defined in Section III.A				
5. End of Initial Term:	See "Contract Period" on Contract coverage				
6. Account Executive:	Rachel Colonna				
7. Solutions Engineer:	Joseph Plichta				
8. Client Contact (name, phone number and email):	Michelle Baxter Director of Office of Enterprise Initiatives 608 261-5951 Michelle.Baxter@etf.wi.gov				
9. Invoice Contact (name, email, address and county):	ETFSMBAccountsPayable@etf.wi.gov 4822 Madison Yards Way, Madison, WI 53705-9100, Dane County				
10. Duplicate Invoice: (Yes/No):	No				
11. Duplicate Invoice Contact Information (name, email, address):	N/A				
II. Services:					
PROFESSIONAL & SOFTWARE SERVICES					
<input checked="" type="checkbox"/> Benefitplace® <input checked="" type="checkbox"/> Health Insights <input type="checkbox"/> HCM API <input type="checkbox"/> Benefits Service Center <input type="checkbox"/> Benefitplace Health Insights (Stand Alone) <input type="checkbox"/> Additional Insights Data Sources (In Excess of Three) Benefitplace Product Upgrades <input checked="" type="checkbox"/> Single Sign-On (SAML 2.0) Management and Support <input checked="" type="checkbox"/> API Projects Management and Support <input type="checkbox"/> Additional Data Load (Two (2) or More) <input type="checkbox"/> Total Compensation App (Self-Service) <input type="checkbox"/> acaMax Benefitplace Administrative Services <input type="checkbox"/> Verification Services <input type="checkbox"/> One Time Dependent Audit <input type="checkbox"/> Ongoing Verification <input type="checkbox"/> Fulfillment Services <input type="checkbox"/> Open Enrollment Confirmation Statements <input type="checkbox"/> Color <input type="checkbox"/> Black & White <input type="checkbox"/> Post Cards (Color) <input type="checkbox"/> Custom Fulfillment Services <input type="checkbox"/> QMCSO Services <input checked="" type="checkbox"/> COBRA Administration <input type="checkbox"/> Benefitfocus ACA Management & Reporting <input type="checkbox"/> Optional Data Support Services <input type="checkbox"/> ACA Paper Fulfillment Services			<input type="checkbox"/> Benefits Service Center Upgrade Options <input type="checkbox"/> Extended Hours <input type="checkbox"/> Extended Hours (Open Enrollment Only) Benefitplace Professional Services <input type="checkbox"/> Content Management Services: <input type="checkbox"/> One-Time <input type="checkbox"/> Refresh <input type="checkbox"/> Migration <input type="checkbox"/> Additional hours <input type="checkbox"/> Ongoing Subscription <input type="checkbox"/> Custom Report <input type="checkbox"/> Transmission Projects <input type="checkbox"/> Business Restructuring Services <input type="checkbox"/> Annual <input type="checkbox"/> One-Time <input type="checkbox"/> Advanced Reporting Consultation <input type="checkbox"/> Equifax Essentials Solution <input type="checkbox"/> Standard Support <input type="checkbox"/> Premium Support Benefitplace Additional Services: <input type="checkbox"/> One Place Registration Services <input type="checkbox"/> Open Enrollment Reservation Benefitplace Billing Services: <input checked="" type="checkbox"/> Direct Billing <input checked="" type="checkbox"/> Billing Services (Option 1 as defined in the Benefitplace Billing Services Appendix attached hereto)		
Benefitplace Consumer Directed Healthcare Accounts					
<input type="checkbox"/> FSA <input type="checkbox"/> HRA <input type="checkbox"/> HSA					

Exhibit E Ongoing Services Order Form

III. Ongoing Software Services:						
Phase 1: Target Go-Live Date: November 30, 2022						
<i>Services Description</i>	<i>Invoice Frequency</i>	<i>Rate</i>	<i>Employee Type</i>	<i>Minimum Quantity</i>	<i>Minimum Fee</i>	<i>Billing Terms</i>
Benefitplace with Health Insights	Annual	\$10.29	Enrollment Eligible Full	65,500	\$505,496.25	Section III.B.1 Annual Fee pro-rated for Phase 1
Billing Services (Option 1)*	Monthly	\$.63	Enrolled Employees	27,500	\$17,325.00	Section III.B.2
COBRA Administration	Monthly	\$.12	Covered Employees	27,500	\$3,300.00	Section III.B.3
Direct Billing	Monthly	\$3.62	Participants	526	\$1,904.12	Section III.B.4
Phase 2: Target Go-Live Date: March 1, 2023						
<i>Services Description</i>	<i>Invoice Frequency</i>	<i>Rate</i>	<i>Employee Type</i>	<i>Minimum Quantity</i>	<i>Minimum Fee</i>	<i>Billing Terms</i>
Benefitplace with Health Insights	Annual	\$10.29	Enrollment Eligible Full	65,500	\$336,997.50	Section III.B.1 Annual Fee pro-rated for Phase 2
Billing Services (Option 1)*	Monthly	\$.63	Enrolled Employees	55,000	\$34,650.00	Section III.B.2
COBRA Administration	Monthly	\$.12	Covered Employees	55,000	\$6,600.00	Section III.B.3
Direct Billing	Monthly	\$3.62	Participants	1,053	\$3,811.86	Section III.B.4
Phase 3: Target Go-Live Date: May 31, 2023						
<i>Services Description</i>	<i>Invoice Frequency</i>	<i>Rate</i>	<i>Employee Type</i>	<i>Minimum Quantity</i>	<i>Minimum Fee</i>	<i>Billing Terms</i>
Benefitplace with Health Insights	Annual	\$10.29	Enrollment Eligible Full	65,500	\$168,498.75	Section III.B.1 Annual Fee pro-rated for Phase 3
Billing Services (Option 1)*	Monthly	\$.63	Enrolled Employees	82,500	\$51,975.00	Section III.B.2
COBRA Administration	Monthly	\$.12	Covered Employees	82,500	\$9,900.00	Section III.B.3
Direct Billing	Monthly	\$3.62	Participants	1,579	\$5,715.98	Section III.B.4
Phase 4: Target Go-Live Date: August 31, 2023						
<i>Services Description</i>	<i>Invoice Frequency</i>	<i>Rate</i>	<i>Employee Type</i>	<i>Minimum Quantity</i>	<i>Minimum Fee</i>	<i>Billing Terms</i>
Benefitplace with Health Insights	Annual	\$10.29	Enrollment Eligible Full	262,000	\$2,695,980.00	Section III.B.1
Billing Services (Option 1)*	Monthly	\$.63	Enrolled Employees	110,000	\$69,300.00	Section III.B.2
COBRA Administration	Monthly	\$.12	Covered Employees	110,000	\$13,200.00	Section III.B.3
Direct Billing	Monthly	\$3.62	Participants	2,105	\$7,620.10	Section III.B.4

*At contract execution ETF elected Option 1) Base Premium Billing. A description of these options is included in Exhibit J – MP Billing

A. Ongoing Software Services Terms and Conditions

1. Base Benefitplace with Health Insights Software Services:

- a. The Parties agree that the implementation of the Software Services will be completed in phases (each referred to as a “Phase” and collectively as “Phases”). The table above in Section III is based upon an implementation strategy of four (4) Phases where the minimum for each Phase is one-fourth of Client’s total minimum population. Client may elect to change the number of Phases during implementation, subject to a revised, mutually agreed upon project plan. For the avoidance of doubt, in the event the number of Phases is changed, the above Table will be amended to reflect the adjusted minimums and timelines.
- b. Commencement of the *Base Benefitplace with Health Insights* Software Services invoicing for each Phase shall begin upon: (i) the month in which the Software Services achieve *Base Benefitplace* Deployment for the respective Phase. “*Base Benefitplace* Deployment” for each Phase is defined as the date that, (a) the Communication Portal available for use by Client (or any Authorized Users) for the respective Phase, or (b) any benefit to be managed within the enrollment module is available for use by Client (or any Authorized Users) for the respective Phase or, (ii) provided that the delay is not caused solely by Benefitfocus, the Target Go-Live Date for the respective Phase. For each day of delay caused solely by Benefitfocus, Deployment shall be delayed by an equal number of days.
- c. Upon *Base Benefitplace* Deployment for the respective Phase, Benefitfocus will invoice Client based upon the greater of: (i) the minimum number of Enrollment Eligible Employees (Full) multiplied by the respective PEPY rate for the respective Phase; or (ii) the actual number of Enrollment Eligible Employees (Full) Employees loaded within the *Benefitplace* multiplied by the respective PEPY rate for the respective Phase. For the avoidance of doubt, the Minimum Annual Fees for Benefitplace with Health Insights for Phases 1-3 are: 1) pro-rated to cover the period of time from the Target Go Live Date of the respective Phase through August 31, 2023; and 2) only include the population of Enrollment Eligible Full Employees included for the respective Phase. The Minimum Annual Fee for Benefitplace with Health Insights for Phase 4 covers the

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Ongoing Services Order Form

period of from September 1, 2023 through August 31, 2024 and shall apply annually thereafter to Client's full population of Enrollment Eligible Employees for the Order Form Term. For the avoidance of doubt, in the event the timelines are changed as agreed upon in Section III.A.1.a, the invoicing dates in this Section III.A.1.c will also be revised accordingly.

- d. Client agrees that the Base *Benefitplace* Professional Services Fees include data exchange configuration enablement and testing services for the Vendor Data Interfaces defined in Appendix A: Implementation Order Form. For any change or addition to the list defined in that Appendix A, a mutually agreed upon fee per change shall apply for Transmission Data Vendor Interfaces and a mutually agreed upon fee per change for Transmission Project Data Vendor Interfaces and will be invoiced to Client as incurred. For the avoidance of doubt, an addition of a BenefitsPlace Benefit Catalog product or a replacement of a BenefitsPlace Benefit Catalog product with another BenefitsPlace Benefit Catalog product will not incur a fee.

2. **Benefitplace Billing Services:**

- a. Commencement of the *Benefitplace* Billing invoicing for the respective Phase shall begin upon the sooner of (i) that month when the *Benefitplace* Billing Services are Accepted for the respective Phase; (ii) that date when the *Benefitplace* Billing Services are available for Client's use under essentially normal operating conditions for the respective Phase; or (iii) provided that the delay is not caused by the sole fault of Benefitfocus, the Target Go-Live Date for the respective Phase (the "Commencement of the *Benefitplace* Billing Services").
- b. Upon Commencement of the *Benefitplace* Billing Services for Phase 1, and monthly thereafter, Benefitfocus will invoice Client based upon the greater of: (i) the minimum number of Enrolled Employees multiplied by the respective PEPM rate for the then-current Phase; or (ii) the actual number of Enrolled Employee as categorized and loaded within the *Benefitplace* multiplied by the respective PEPM rate for all live Phases.
- c. The Parties agree that the Benefitplace Billing Services Appendix attached hereto contains three solution options: Option 1, Option 2 and Option 3, and, as of the Effective date of this Order Form, Client has selected Option 1. Client may upgrade to Options 2 or 3 by providing written notice to Benefitfocus, subject to agreed upon changes to timelines as applicable.
- d. The Billing Services rate and Minimum Monthly Fees in Section III.A are for Option 1 as defined in Benefitplace Billing Services Appendix. The Billing Services rate for Option 2 is \$.70 per Participant and for Option 3 is \$.76 per Participant. To the extent Client elects Option 2 or Option 3, the respective rate and Minimum Fee will then apply, effective as of the date of the change.

3. **COBRA Administration:**

- a. Commencement of the COBRA Administration invoicing for the respective Phase shall begin upon the sooner of (i) that date when COBRA Administration is made available to use to Client under essentially normal operating conditions for the respective Phase; or (ii) that date upon which the COBRA takeover notice is sent for the respective Phase (the "Commencement of COBRA Administration").
- b. Upon Commencement of COBRA Administration, and monthly thereafter, Benefitfocus will invoice Client based upon the greater of: (i) the respective monthly minimum fees stated above for the then-current Phase; or (ii) for the actual population of Covered Employees, as defined in the Cobra Appendix, loaded within the COBRA Application multiplied by the applicable PCEPM rate for all live Phases. Covered Employees shall be counted as of the last day of the prior month, but for the first month, the count shall be determined by the initial data load.
- c. If in scope, the fees for the Additional Buy-Up Services will be invoiced as incurred.
- d. Additional Pricing Conditions and Assumptions:
 - i. Covered Employees enrolled in more than one COBRA-Eligible Plan are counted only once.
 - ii. Benefitfocus will collect and retain COBRA administrative fees from COBRA Continuants in the amount of two percent (2%) of COBRA premiums or the maximum amount permitted by law, whichever is greater

4. **Direct Billing:**

- a. The PPPM fees stated above are minimum monthly fees for the Direct Billing Services defined herein for each Phase. Benefitfocus shall each month invoice for greater of: (i) the Minimum Monthly Fee for the then-current Phase; or (ii) the actual number of Participants within the *Benefitplace* Software Service multiplied by the respective PPPM rates all live Phases .
- b. Invoicing shall commence upon the sooner of: (i) that date when the Direct Billing Services are made available for use to Client under essentially normal operating conditions for the respective Phase; or (ii) the start date of Client's benefit plan year immediately following execution of the Order Form for the respective Phase.

5. All fees hereunder are due and payable in accordance with the Contract.

6. **Definitions:**

- a. An "Additional *Benefitplace* Data Source for Initial Load" means that term defined in Appendix A to this Order Form.
- b. A "Data Capture" means that term defined in Appendix A: Implementation Order Form.
- c. A "Vendor Data Interface" means that term defined in Appendix A: Implementation Order Form.
- d. An "Employee" means all current employees of the State of Wisconsin and local employers that are eligible for ETF programs as identified by Wis. Stat.Chapter 40. It also includes those people designated by ETF as inactive or retired members who were previously eligible employees with the State of Wisconsin or a local employer.

Exhibit E Ongoing Services Order Form

- e. An "Enrollment Eligible Employee (Full)" means an Employee that is eligible for at least one (1) medical, dental, vision, or other IRC Section 125 benefit type within the Benefitplace.
- f. An "Enrolled Employee" means a Client Employee loaded within the Benefitplace that is enrolled in one more configured benefit plans.
- g. A "HCM Integration Suite Data Integration Interface" means one data transmission link that includes up to one (1) inbound employee demographic file from Client's HR indicative or payroll system for importing within the *Benefitplace* and one (1) outbound deduction file exported to Client's HR indicative or payroll system from the *Benefitplace*.
- h. A "Transmission Vendor Data Interface" means that term defined in Appendix A to this Order Form.
- i. A "Transmission Project Vendor Data Interface" means that term defined in Appendix A to this Order Form.
7. The fees set forth in the Order Form will remain fixed through December 31, 2026. Effective as of January 1, 2027, and annually thereafter, Benefitfocus will increase the Ongoing Software Services fees on an annual basis by the greater of 3% or CPI-U.
8. In the event that Client experiences an increase in its Employee population loaded within the *Benefitplace* by 5% or more, Benefitfocus will invoice Client for such increase in all PEPY fees at the applicable PEPY rate. For the avoidance of doubt, calculation of an increase in Employee population will be pro-rated according to the number of months remaining in the then-current calendar year.
9. Key Personnel for Ongoing Services:
 - a. Executive Sponsor: Clarke Wallace, Vice President, Customer Success: Responsible for overall account relationship.
 - b. Manager, Customer Success Management: Britton Young, Manager, Customer Success Management: Responsible for Contract performance, Contract Deliverables, strategic planning, and custom solutions.

Exhibit F

Support Service Level Addendum (SSLA)

Pursuant to the Contract by and between Benefitfocus.com, Inc., (“Benefitfocus”), and Wisconsin Department of Employee Trust Funds (“Client” or “ETF”), Benefitfocus shall perform Appendix A of the Ongoing Services Order Form (“Order Form”) in compliance with this Support Service Level Addendum (“SSLA”):

1. Definitions

Any term used in this SSLA that is not defined herein shall have the same meaning ascribed to such term in the Contract. The following additional defined terms are used in this SSLA:

“Available Minutes” means the total number of minutes within the applicable month less any time designated by Benefitfocus as Planned Downtime.

“Business Day” is defined as 24-hour period from submission of request, excluding weekends and holidays

“Client Support Hours” shall mean the hours of 8:30 am – 5:00 pm local time at Client’s principal place of business, in the contiguous US (subject to Daylight Savings Time), Monday through Friday, excluding Holidays, and during which Benefitfocus shall make available to Client, live person support provided via telephone, or e-mail.

“Error” means a failure of the Software Services to conform to the specifications set forth in the Documentation which materially impairs Client’s ability to use the Software Services.

“Holidays” mean legal holidays established by federal law (5 U.S.C. 6103) and all official Benefitfocus holidays.

“Server Response Time” is defined as the average server response time from initiation of a web page request to the resulting web page response, measured from the public cloud. excludes benefit section save pages and reports, Client-level bulk searches, web pages that return unbounded lists, require external sources or that return produced or download files (e.g., PDFs), network latency, Internet traffic, end-user computer performance, and other factors outside of Benefitfocus’ control.

“Operations Affected” means a Client Support Issue Request or Error which materially degrades Client’s use of the Software Services or causes serious disruption of Client’s business function supported by the Software Services.

“Planned Downtime” means any period outside of the Primary Services Hours for which Benefitfocus gives notice to Client that the Software Services will be unavailable. Planned Downtime will not count in the calculation of the performance measurements set forth herein.

“Resolution” is defined as the Software Services are returned to an operational status or a workaround is available.

“Resolution Action Plan” is defined as a plan provided by Benefitfocus outlining the proposed steps and timeline to achieve resolution.

“Response Time” means the time elapsed between time of notification to Benefitfocus of a Support Issue Request, and the time Benefitfocus acknowledges receipt of the Support Issue Request.

“Service Level” means an individual metric, which is measured and subject to the terms herein.

“Support Issue Request” means an issue which is reported by clients to Benefitfocus that involves the use of the Software Services. Each Support Issue Request will be identified by Benefitfocus with a unique number. Support Issues are categorized as Urgent, Critical, Major or Minor.

- **“Urgent”** means operations halted and a complete loss of service, or critical functionality is unavailable with no workaround, or data integrity issue is affecting all users. Example: All users cannot log in critical functionality is unavailable (e.g., no one can enroll).

Exhibit F

Support Service Level Addendum (SSLA)

- **“Critical”** means Operations Affected with significant loss in performance or functionality that affects many users and a reasonable workaround is not available. Example: Users are kicked out but can log back in and continue or important functionality is unavailable (e.g., users can't launch VB App).
- **“Major”** means medium business impact with some loss in performance or functionality affecting some but not all users. Example: Acceptable work-around exists minimal performance degradation.
- **“Minor”** means low business impact with minor loss in performance or functionality affecting some but not all users. Example: Cosmetic configuration update (e.g., HR Note word needs to be updated).

2. Client Support

2.1 Client Support. Benefitfocus shall make available to Client, live in person, support provided via telephone, or e-mail during Client Support Hours. Such support shall include assistance with software navigation, Support Issue Requests, issue resolution, but shall specifically exclude any benefit elections or enrollment on behalf of an Authorized User.

2.2 Request Management. Support Issue Requests are routed directly to Benefitfocus, who uses a collection of detailed product, service, and diagnostic information. All calls and support issues are tracked and monitored through OnePlace 365 and reported to Client until resolved.

2.3 Client Support Service Levels – Response Time. Client Management Support Response Time is determined by reviewing the time the Support Issue Requests are logged in OnePlace® 365 by the Client and when it is responded to by Benefitfocus. The following table defines the Client Support Service Levels.

Table 1 – Client Support Services Levels*

Client Case Response Time	100% within 2 Business hours for Urgent including updates every 2 hours until the issue is resolved, or a timeframe is provided for resolution. 98% within 1 business day for critical and 95% within 1 business day for major and minor items.
Client Case Resolution	All cases filed by Client that do not need to go to our Operations or Product Development department will receive: 1) a Resolution within the below timeframe based on issue categorization; or 2) a resolution action plan outlining the proposed steps and timeline to achieve resolution within the below timeframe based on when the case is resolved. Urgent resolved within 1 business day 98% of the time Critical resolved within 2 business days 90% of the time Major/Minor resolved within 15 business days 80% of the time

**This Service Level calculation requires a minimum of ten cases per month. Client is required to file each case in OnePlace 365.*

3. Software Services Availability, Server Response & Data Transmission

3.1 Software Services Availability. The Software Services will be available excluding Planned Downtime or during a Force Majeure event (“Available Minutes”).

Table 2 - Monthly Software Services Availability Service Level

Software Services Availability	99.9% uptime during any calendar month of operation
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Exhibit F

Support Service Level Addendum (SSLA)

Monthly availability shall be expressed as a percentage in which the numerator consists of Available Minutes in the month minus any time that the Software Services is not available for use by Benefitfocus clients and the denominator consists of Available Minutes for such month.

Table 3 – Data Quality

<p>Electronic Data Interchange (EDI) Accuracy Rate</p>	<p>EDI accuracy will be rated for all integration providers and interfaces as identified in Appendix: Implementation Order Form. 99% or greater accuracy per calendar month will be required subject to the following.</p> <ol style="list-style-type: none"> a. ETF or its vendors may report transactions to Benefitfocus sent on the applicable EDI file that they reasonably may determine contain inaccurate data, if determined to be caused by Benefitfocus. b. EDI files will not be logged against the EDI Accuracy Rate if the file can be corrected and resent within the same day. c. The EDI Accuracy Rate shall be calculated as follows: <p style="margin-left: 20px;"><i>100% minus ((the total number of Benefitfocus EDI Transaction Accuracy Issues reported by ETF or its vendors to Benefitfocus within the applicable month/the total number of EDI transactions transmitted by Benefitfocus for such month)*100). If data quality or timeliness issues are reported in 3 consecutive months or for 2 or more months during a 6-month period, ETF and Benefitfocus will agree on a data improvement plan which will result in additional service credits if not met.</i></p>
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Exhibit F

Support Service Level Addendum (SSLA)

Table 4 –Server Response Time Service Level

Server Response Time	Average 2 seconds and not more than 3 seconds 99% of the time*
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**Benefitfocus will monitor the Benefitplace application outside the servers where said application runs and provide the aggregate response time data to Client upon request.*

3.2 Inbound Demographic & Payroll Data. Demographic & payroll data files containing employee adds, terminations, and demographic changes that are sent by Client to Benefitfocus will be processed and applied to the Software Services according to the following service level:

Table 5 – Inbound Demographic & Payroll Data Availability Service Level

Inbound Demographic & Payroll Data Availability	99% by start of 1 st business day following the receipt of the data by Benefitfocus provided that such data is received by 6 pm EST and 99% by start of 2 nd business day following receipt if such data is received after 6 pm EST. The foregoing timelines are subject to the agreed upon file processing schedule and the accuracy of Client Data submitted by Client or its vendors For the avoidance of doubt, the calculation for this Service Level will measure the initial processing of the data only and will not include the time it takes to triage and resolve threshold errors or exceptions. Benefitfocus will use commercially reasonable efforts to resolve threshold errors and exceptions within 8 business hours from the receipt of the data.
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3.3 Outbound Payroll & Deduction Transmission Data. Payroll and deduction data files containing premium information related to employee adds changes, and terminations that is provided to the Client or payroll vendor by Benefitfocus.:

Table 6 – Outbound Payroll & Deduction Transmission Service Level

Outbound Payroll & Deduction Transmission Availability	99% by end of the scheduled business day, subject to the agreed upon file processing schedule and the accuracy of Client Data submitted by Client or its vendors
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3.4 Transmitting Client Data to Carriers and Other Third Parties. Enrollment and benefits data (exclusive of transmitted payroll data) transmitted from Benefitfocus to Carriers and other Third Parties will be delivered according to the following Service Level:

Table 7 – Outbound Carrier Data Transmission Availability Service Level

Outbound Carrier Data Transmission Availability*	99% by end of the scheduled business day subject to the agreed upon file processing schedule and the accuracy of Client Data submitted by Client or its vendors
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**Measures only those outbound data transmissions that are defined as "Transmission" with the applicable Order Form, in the agreed upon requirements, or Contract to Purchase between Benefitfocus and Client.*

3.5 Change Requests – Change Orders and Requested System Modifications. Requests made by Client for changes or modifications to the existing system. Benefitfocus response will include high level hours and cost estimates, and target dates, which will be committed once full discovery is complete. If the request is deemed to be large or complex, the response with estimates and target dates may take up to 30 days to complete. Unless otherwise communicated by Benefitfocus to Client, smaller, less complex requests may take up to 15 days.

Exhibit F

Support Service Level Addendum (SSLA)

Table 8

Change Order Target Go Live Deadlines	Unless otherwise approved by Client's Executive team, all work orders are to be completed by the date agreed upon	See Section 5.4
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4. Disaster Recovery

4.1 Declaration of Disaster Status. Benefitfocus will use its best effort to declare "disaster" status within four (4) hours of its reasonable belief that an event will cause a complete loss of service for twelve (12) hours or more.

4.2 Disaster Operations. Benefitfocus will have all essential services running at an alternate data center within seventy-two (72) hours of declaration of "disaster" status ("RTO"). "Essential" services shall include all external facing web applications. The recovery point objective ("RPO") for restoration of Client Data is four (4) hours.

4.3 Reporting. Benefitfocus will annually produce and provide a Disaster Recovery program summary report. Once annually, upon request, Benefitfocus will also meet with Client to conduct a screen share of Benefitfocus internal summary report.

5. Service Credit*SERVICE LEVEL CREDIT POOL*

Service Level Category	Service Credit for Ongoing Services
Client Case Response Time	10%
Client Case Resolution	10%
Software Services Availability 24/7 excluding scheduled outages	15%
Server Response Time	10%
EDI Accuracy Rate	10%
Inbound Demographic/Payroll Data Availability	15%
Outbound Payroll & Deduction Data Availability	15%
Outbound Carrier Data Transmission Availability	15%
Total	100%

5.1 Service Credit Condition for Ongoing Services. This provision applies to all service levels defined herein except for the Change Order service levels defined in Table 6. Ongoing Services Service Levels are measured on an aggregate basis for a monthly period. In situations where Benefitfocus does not achieve the Service Level for the same metric stated in this SSLA for two (2) consecutive monthly periods, a service credit will apply. Additionally, in the event the same service level metric is missed 6 out of 12 months or 3 out of 6 months on a rolling month basis, a Service Credit will apply. Upon request from Client, Benefitfocus will provide Client a monthly Service Level report for all defined Service Levels. In order for Client to receive a Service Credit, Client must request the applicable Service Credit in writing within thirty (30) days from the date Benefitfocus sends the monthly Service Level report to Client, subject to the conditions set forth in this Section 5. Failure to make such request within 30 days will result in loss of Client's eligibility for the appropriate Service Credit. Service Levels for one-time projects are defined in Table 8.

5.2 Service Levels Effective Date. The Parties agree that there is a ramp up period for support, and therefore, Service Level credits shall not apply until the first full month which is at least 90 days after the Go-Live Date.

5.3 Service Credit Pool for Ongoing Services. For each month the ongoing Service Levels are in effect, a Service Level Credit Pool ("Credit Pool") provides an incentive for Benefitfocus to meet or exceed the Service Levels. The maximum total available Credit Pool is equal to 20% of the annual Fee. As Client fees are invoiced on an annual basis, the fee shall be an amount that is a one-twelfth pro-rata share for the applicable annual fee. The total available Credit Pool is divided into the percentages designated by Client and set forth above as "Service Credit." For Benefitfocus failure to meet any agreed upon Service Level, Client shall be entitled to a credit in the amount of the designated percentage multiplied by the total

Exhibit F

Support Service Level Addendum (SSLA)

available Service Credit Pool If Benefitfocus fails to meet any Service Level, any Service Credit due to Client will be noted on the performance report set forth in paragraph 3.1 above.

5.4 Service Credit Pool for Change Orders.

Benefitfocus agrees to accept a discount in the fees due to Benefitfocus under the Contract in the event any of the Major Deliverables is delivered by Benefitfocus more than twenty-five (25) Business Days after the delivery date set forth in the then-current Change Order. The parties agree that Benefitfocus shall discount its fees, beginning on the twenty-sixth (26th) Business Day after the delivery date set forth in the then current Project Work Plan for the Change Request, by 20% of the applicable one-time fee defined under the Change Order. Any such discount is not a penalty, and shall be in addition to all other legal or equitable remedies that may be available to the Department.

5.5 Service Credit Issuance: Any Service Credit due to Client will be issued by Benefitfocus following the report of failure to meet the applicable Service Level(s). Should a Service Credit be earned in the final month of service provided, Benefitfocus will apply the credit against outstanding amounts due to Benefitfocus under the Contract, and if no amounts are due, Benefitfocus will refund the credit amount to the Client.

5.6 Service Level Measurement. Unless otherwise set forth herein, all Service Levels under this SSLA shall be measured on a monthly basis.

5.7 Service Level Conditions. Benefitfocus' liability for Service Levels or a Service Level Credit are subject to the following conditions:

- A. The Service Level failure is not due to Client failure to perform any of its agreed upon obligations in the manner required by the Contract and the Order Form.
- B. The Service Level failure is not due to Client's system, software or hardware which have not been caused by Benefitfocus or the Software Services, or any Internet service outage (to the extent not caused by Benefitfocus or its own providers).
- C. The Service Level failure is not due to failure of Client or Client's third party service providers, other than Benefitfocus and its subcontractors, to timely perform or provide relevant assistance, data, information or infrastructure required of Client under the Contract.
- D. The Service Level failure is not due to any delays in or unavailability of services provided by third parties unaffiliated with Benefitfocus that impact SLAs, including any downtime while waiting for issue resolution by such third parties.
- E. The Service Level failure is not due to any inaccuracy in data provided by Client to Benefitfocus or data being incorrectly entered by the Client to the extent that Service Levels are impacted as a result of inaccurate data provided by Client.

5.8 Past Due Invoices. Should Client have any invoices over forty five (45) days past due (excluding invoices which are reasonably disputed), Client shall have no claim for any Service Credit during such time as those invoices are past due.

Exhibit G

Ongoing Services Order Form Appendix A Software Services

This Appendix defines a high-level overview of the functionality of the Software Services selected in the Order Form between Client and Benefitfocus and is not meant to be a comprehensive, detailed list of all features and capabilities of the Benefitfocus products. To the extent applicable, detailed functionality for the Software Services, subject to warranty claims, is defined within the current versions of the User Guide, Admin Guide and Report Guide, as provided to Client, and as updated with each new release.

I. Summary of *Benefitplace* Functionality:

A. Content Manager:

1. An online, Client-branded internet portal utilizing a unique URL providing:
 - a. A content management system, including on-line tools for Client management
 - b. Content libraries and tools (including Frequently Asked Questions, RSS feeds, to-do lists, and training libraries)

B. Online Benefit Enrollment:

1. Online enrollment for Client's benefits (listed in in Appendix A Section II to the Implementation Order Form), or as may be amended via the change request process, including but not limited to the following:
 - a. Employee tasks:
 - i. Enter or change personal and demographic information
 - ii. Benefit elections and life event changes
 - iii. Printing of enrollment confirmation
 - b. Administrator tasks (in addition to employee tasks):
 - i. Add/terminate/rehire employees
 - ii. Add, change, or cancel COBRA elections
 - c. Defined contribution functionality:
 - i. Shopping cart feature within the Benefitfocus Employee Role™, including:
 1. Display of applicable defined contribution amounts based upon the configured business rules and benefit enablements
 2. Progressive allocation of the defined contribution amounts based upon the plans selected during the enrollment user workflow
 - d. Cost Estimator to compare plan attributes and out-of-pocket expenses for selected medical plans
2. Enablement and display of third-party service provider products from the Benefitsplace Benefit Catalog to Authorized Users utilizing Benefitfocus standards.

C. Reporting Library:

1. A tool that offers options to generate and view reports by Administrators access to employee benefit-related data. Administrators are able to:
 - a. Apply various filters to capture the critical data points
 - b. Download reports via Excel, CSV, and PDF

D. Event driven notifications:

1. *Benefitplace* provides email and SMS text messaging capabilities through the use of the Benefitfocus event driven messaging framework, which allows Administrators the option to:
 - a. Send scheduled messages, confirmation messages and event-based messages to their Authorized Users
 - b. Create edit and manage message content and details
 - c. Establish event driven rules for when a specific message can be sent (*e.g.*, when an Authorized User reaches a specific age, based on the individual employee's start and end date of enrollment, etc.)
 - d. Select messages to be delivered via email or SMS Text Message

Note: *email messages and SMS text notifications are available to the Client at no additional fee as part of the Benefitplace offering.*

E. Direct Vendor Interfaces:

1. Infrastructure for submission of benefit elections to Client's benefit providers, utilizing HIPAA 834 and iMax® file formats with Benefitfocus integrated vendors (utilizing pre-established integrations between Benefitfocus and vendors) or Client submission of enrollment reports to Client's benefit providers (Data Capture), as applicable

F. HCM Integration Suite Connect:

1. Infrastructure for import and export of data to and from Client's or Employer's payroll system(s) utilizing a file format developed by Benefitfocus
2. Import data into *Benefitplace* containing eligibility updates such as new hires, terminations and category changes
3. Export data to Client's payroll system from *Benefitplace* containing outbound deduction amounts or codes

G. Cost Estimator:

1. An online, interactive decision aid tool made available within *Benefitplace*, which provides the following functionality when launched from the Medical Plan Selection Page of Online Enrollment:
 - a. Comparison of up to four (4) medical plans [up to three (3) side-by-side on screen comparisons] based upon plan attributes configured within *Benefitplace*, by way of example, out-of-pocket maximums, deductibles, co-insurance

Exhibit G

Ongoing Services Order Form Appendix A Software Services

percentages, plan rates (the “Plan Attributes”), and typical healthcare usage (the “Utilization Data”), and cost information

- b. Cost estimator to calculate the estimated cost for each medical plan selected, based upon the selected Plan Attributes and Authorized User’s Utilization Data:
 - i. The Cost Estimator estimates the Authorized User’s costs based upon benchmark healthcare cost and utilization data provided by the Medical Expenditure Panel Survey of the US Dept. of Health and Human Services (the “MEPS national averages”). Authorized Users can apply to their own expected utilization as they compare plans. The default Utilization Data is based upon expected values for a particular age and gender based upon national averages for consumer selecting private coverage in the United States.
 - ii. The Cost Estimator defaults the Authorized User’s Utilization Data based upon healthcare utilization data as available within the *Benefitplace* Health Insights Software Services.
 - iii. Authorized Users may adjust the default Utilization Data within the Cost Estimator to personalize their Utilization Data based upon their expected future healthcare utilization, such as frequency of doctor’s visits or number of prescriptions filled
- c. Display of estimated annual costs based upon the premium value for each medical plan, estimated out-of-pocket costs calculated by the cost estimator, Client contribution, and tax advantage accounts
- d. Printable version of the medical plan comparison performed by the Authorized User to include plan details and out-of-pocket cost estimates for each of medical plans being compared
- e. The Cost Estimator will be made available within *Benefitplace* during Client’s open enrollment and throughout the Client plan year to support new hires and qualified life event transactions
- f. Configuration changes (such as changes in variables) to Client’s plan attribute groups, for Client’s initial and subsequent open enrollment period(s) configured within *Benefitplace* are included at no additional cost for the term of the Order Form. Additional services not included within the scope of this Appendix C are subject to further discovery and scoping and may require additional fees.

H. Summary of *Benefitplace* Health Insights Software Services:

1. A web-based portal, which provides the following *Benefitplace* Health Insights Software Services:
 - a. Data analysis and reporting of health data with the ability to benchmark and organize information on demand while comparing diagnoses, procedure costs and utilization patterns:
 - i. Provide key functionality to analyze historical utilization trends, review claim payment details and compare benchmark data
 - ii. Allow the user to create ad hoc management reporting and customized data exports
 - iii. Allow the user to utilize applications to analyze and report: health plan utilization and cost analysis by provider, procedure or diagnosis, health expenditures for specified time period, by company or department, perform a comparison to benchmark data and report prescription drug utilization
 - iv. Clinical analysis and prediction provided through sublicense the Johns Hopkins ACG[®] System which provides the ability to identify chronic conditions and care compliance within the member population and produce member and population risk scoring and projected costs
 - v. Plan modeling using historical health plan data and multiple plan scenarios to predict the financial impact of plan design changes and develop a comprehensive view of future plan costs. A feature which provides the capability to create multiple “what-if” scenarios to evaluate variations in plan designs and provide ability to evaluate cost shifting alternatives, including co-pay, coinsurance, and out of pocket maximums
 - a. A dashboard within the *Benefitplace* for Employers that provides a set of metrics to measure applicable member health plan cost, enrollment and utilization data and other applicable health data for the most recent twelve-month period.
 - i. The Administrator may view applicable metrics within the dashboard or print applicable report results in PDF format
 - a. Display of medical and prescription claim utilization data within the Cost Estimator application and based upon the utilization received from Client’s applicable data sources defined herein

II. Summary of *Benefitplace* Support Services:

A. *Benefitplace* technical services:

1. Monitoring of technical services, including system connectivity to the Internet, server capacity and configuration, application performance, power, failover, system backups, and disaster recovery systems
2. Administration and maintenance of database configurations, disk space, and required hardware components
3. Staffing for 24/7 response to critical alerts. A “critical alert” is an error or other issue which materially degrades Client’s use of the Software Services or causes serious disruption of Client’s business function supported by the Software Services.
4. Liaison services with Client information technology departments, as required to provide the Software Services

B. Direct Vendor Interfaces and HCM Integration Suite Connect, and software configuration support:

1. Manage and monitor Direct Vendor Interfaces and HCM Integration Suite Connect data transmission, as implemented
2. Research and resolve data conflicts and errors, as applicable
3. Implement updates to Client’s business rules, benefits configurations, and platform configurations related to vendor interfaces implemented within the software upon instruction by Client

Exhibit G

Ongoing Services Order Form Appendix A Software Services

4. Manage and monitor Cost Estimator, as implemented
5. Manage and monitor SSO Links and API(s), as implemented
- C. **Application support:**
 1. Application support shall be provided by a Benefitfocus Account Manager from 8:00 a.m. to 8:00 p.m. EST subject to Daylight Savings Time rules, Monday through Friday (excluding Benefitfocus holidays). Application support includes:
 - a. Navigational application support
 - b. Password reset and access assistance
 - c. Application issue reporting
- D. **Ongoing software maintenance:**
 1. Provide a secure system development lifecycle for the creation of features, enhancements, and other updates for inclusion in software releases and patches in all environments (including Documentation)
 2. Ongoing updates to standard product Documentation, user guides, training materials, and online help
- E. **Benefitplace Health Insights Managed Services:**
 1. Data Source Support:
 - a. Regularly load and verify the applicable data supplied to Benefitfocus from Client's data file source(s) as defined herein
 - b. Provide technical and process support for data loading and management during regular Benefitfocus business hours through email, fax and telephone
 2. Technical support to maintain the technical infrastructure for the Benefitfocus Health Insights Software Service
 - a. Navigational and password reset assistance during regular business hours through email and telephone for the Benefitfocus Health Insights Services

Exhibit H

Ongoing Services Order Form Appendix B. COBRA

This Appendix is subject to all the terms and conditions of the Contract and the applicable order form ("Order Form"), by and between Client and Benefitfocus and provides a description of the services for the ongoing COBRA administration (the "COBRA Administration"). Benefitfocus and Client are each individually a "Party" and collectively the "Parties". Notwithstanding anything to the contrary stated within the Contract, Client may elect to terminate the COBRA Administration services hereunder for convenience by providing written notice to Benefitfocus anytime prior to February 15, 2022. The Parties agree that Client shall be responsible to pay for services rendered through the effective date of termination.

I. Definitions:

- A. Capitalized terms that are not defined in this Appendix shall have the meanings set forth in the Agreement:
1. "Accountable Mail" means mail that provides documented proof that the letter or notice was mailed to the recipient at the recipient's address and meets COBRA regulatory requirements but does not mean that delivery is tracked.
 2. "Bank" means the bank selected from time-to-time to be the depository bank for premium payments.
 3. "Business Days" mean Benefitfocus business days, which exclude weekends and Benefitfocus holidays.
 4. "Carrier" or "Carriers" mean an insurer or health plan or other vendor of Client.
 5. "COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and the related regulation and interpretations by the Department of Labor and the Internal Revenue Service.
 6. "COBRA Application" means a web based application designed to enable the Client or COBRA Continuant to manage and process daily administrative obligations associated with COBRA.
 7. "COBRA Continuants" means qualified beneficiaries electing COBRA continuation coverage.
 8. "COBRA-Eligible Plan" means one or more benefit plans that are subject to COBRA, including, but not limited to, medical, dental, vision, employee assistance plan, health flexible spending arrangement, and/or health reimbursement arrangement benefits a Client has established for its employees.
 9. "Covered Employee" or "Member" means an employee that has enrolled in the employer's COBRA-Eligible Plan(s).
 10. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.
 11. "For the Benefit of" means a bank account that is used for processing premium payments for the benefit of COBRA Continuants or Client at the request of Client.
 12. "Qualifying Event" shall have the meaning given under COBRA.
 13. "Services" shall mean the COBRA Administration provided defined therein.

II. COBRA Administration:

- A. **Benefitfocus Responsibilities for COBRA Administration:** Benefitfocus agrees to provide COBRA Administration described below on behalf of, and at the direction of, Client and its Covered Employees in exchange for the payment set forth herein
- B. **Employee Data Management:**
1. Benefitfocus will complete initial employee set up and ongoing maintenance of all COBRA Continuants and Covered Employees on the COBRA Application.
 2. Benefitfocus responsibilities for administering Covered Employee data management services will be dependent on the receipt of timely and accurate information from Client, including but not limited to plan designs, plan rates, and Qualifying Events.
 3. Benefitfocus will provide Technical Services and Data Quality Support – technical and data maintenance teams, to manage technical aspects of Client's relationship with Benefitfocus.
- C. **COBRA Notifications:** Upon receipt of data from Client which indicates a status change causing a Qualifying Event, or a new hire enrollment into a COBRA eligible plan, Benefitfocus will send via Accountable Mail, within the applicable time frame required by the COBRA provisions of ERISA or upon the effective date of coverage where applicable, the notifications outlined below. Notifications will be configured during implementation of COBRA Services, including standardized Benefitfocus branding, and provided in standardized format and language. Benefitfocus will send the following standard notices, to the extent purchased and implemented under the Implementation Services Order Form or subsequent Order Form:
1. Initial Notices ("General Rights Notices" as defined in COBRA) will be sent within the timeframe required by COBRA to newly Covered Employees and spouses and dependents informing them of their rights under COBRA.
 2. A COBRA Specific Rights Notice, including instructions for COBRA continuation election, will be sent to each Covered Employee, or dependent of a Covered Employee, within 5 Business Days after a qualifying event change that causes loss of eligibility is processed in the Benefitplace enrollment platform.
 3. The timeliness of sending notifications is contingent on receiving timely, accurate and complete eligibility, qualification and status data per the process and format agreed upon for automated load into the COBRA Application. If complete information is not received timely from Client, Benefitfocus will send the notices described in this Section as soon as administratively practicable after receiving the required information. If information from Client is not complete or is incorrect, such notices may be incomplete or incorrect.
 4. If purchased by Client, Initial Notices (General Rights Notices) may be sent to all Covered Employees and spouses at the Target Go Live Date as noted in the Order Form, at the rate identified herein.
 5. Notifications beyond the scope of this Section require further pricing and scoping and an additional writing signed by the parties.

Exhibit H

Ongoing Services Order Form Appendix B. COBRA

D. **COBRA Continuation:**

1. Benefitfocus will mail standard payment coupons to COBRA Continuant after COBRA continuation coverage is elected.
2. Benefitfocus will send standardized forms and letters to communicate with COBRA Continuant concerning premium rate and benefit changes, COBRA continuation coverage eligibility status, Medicare eligibility, advance-termination notice for the individual conversion, and verification of termination of COBRA coverage.
3. Benefitfocus will provide online access to information related to the status of Qualified Beneficiaries and COBRA Continuant.
4. Benefitfocus will notify a COBRA Continuant if COBRA coverage terminates earlier than the end of the maximum period of coverage applicable to the Qualifying Event that entitled the individual to COBRA continuation coverage. The notice will be provided as soon as administratively practicable after Benefitfocus determines that the COBRA continuation coverage will be terminated early.
5. Benefitfocus will extend the maximum COBRA continuation coverage period in cases of disability and second Qualifying Events as allowed under COBRA when notified by COBRA Continuant.
6. Benefitfocus will provide its standard system generated open enrollment/premium rate change letter during open enrollment. Quotes can be provided for custom open enrollment materials, which require further scoping and pricing and an additional writing signed by the parties.

E. **Premium Payment Processing and Services:**

1. Benefitfocus will collect valid and timely premium payments (including any administrative charges and/or convenience fees) from or on behalf of COBRA Continuant, employing postmark date aware, "lock-box" payment processing services for paper payments made by mail, online payment processing made through the COBRA Application by credit/debit card or ACH, and recurring ACH payment initiation and processing.
2. Benefitfocus will, for the purpose of collecting premium payments made by paper documents and sent by mail to the Benefitfocus-assigned post office box (P.O. Box) on all Business Days, receive mail from the post office box, collect paper checks, remittance coupons, correspondence, or other paper documents, and scan or otherwise convert such paper documents into electronic formats for the purpose of tracking and posting payments.
3. Client hereby grants Benefitfocus agency authority to accept, endorse and deposit checks or money orders in Client's name on behalf of Client, and for the purpose of collecting premium payments made through the COBRA Application by credit card or ACH debits of the bank accounts of COBRA Continuant.
4. Benefitfocus will charge an additional online processing fee to credit/debit card payment methods, to the extent permitted by law and the applicable credit card operating rules and regulations. This fee will be payable by COBRA Continuant.
5. Benefitfocus will initiate scheduled monthly ACH transactions for those COBRA Continuant who request automated payment collection through the COBRA Application Member Portal or via form.
6. Benefitfocus will deposit all valid and timely payments received into one (1) designated bank account "For the Benefit of" Client.
7. Benefitfocus will remit to Client or vendors the COBRA premium payments paid by COBRA Continuant, less administrative fees, on a monthly basis via deposit into a single checking account. Additional bank account setup requires further scoping and pricing and an additional writing signed by the parties.
8. Benefitfocus shall consider a payment timely if it is delivered to the designated P.O. Box, postmarked by the U.S. Postal Service, sent by express delivery service (with evidence thereof), or made through the COBRA Application, within timeframes for timely payments defined within the COBRA Application.

F. **Administration in Accordance with Law:**

1. Benefitfocus will administer COBRA services in accordance to applicable laws and regulations.
2. Benefitfocus has no responsibility or duty with respect to any plan that is not indicated by the Client as a COBRA-Eligible Plan. Benefitfocus' responsibilities and duties with respect to COBRA are limited to those expressly provided in this Appendix.

G. **Member Call Center:**

1. Includes support of customer service calls and customer inquiries related to COBRA benefits.
2. Call center hours are 8 a.m. to 8 p.m., Eastern Standard Time Monday through Friday (Business Days only).
3. Call center operations team will be trained to have proper knowledge to be able to answer questions regarding the COBRA Administration.

H. **Responsibilities:**

1. Benefitfocus will support the browsers in accordance with the then-current list located at: www.benefitfocus.com/support/browsers.
2. Client shall provide complete demographic and benefit information to Benefitfocus for Client's current Covered Employees, Qualified Beneficiaries and COBRA Continuant on or by the date agreed upon during the implementation process for the Client.
3. Unless directed otherwise by Benefitfocus, Client will provide notice of a Qualifying Event by providing an electronic file or via direct entry within the *Benefitfocus Benefitplace*. Client is solely responsible for determining whether an employee, spouse or dependent has experienced an initial Qualifying Event under the COBRA-Eligible Plan and the date of the Qualifying Event. Client will notify Benefitfocus of a second Qualifying Event should Client be notified of a second Qualifying Event that occurs with respect to an employee, spouse or dependent within five (5) calendar days.
4. Benefitfocus will hold Client responsible for reviewing COBRA reports made available to client through the COBRA Employer Portal and validate with the Carrier all members are appropriately billed and/or covered. Benefitfocus shall not be liable for

Exhibit H

Ongoing Services Order Form Appendix B. COBRA

paying any loss or damage (including premiums) to Client with respect to any retroactive termination of COBRA coverage, provided that Benefitfocus has performed in accordance with this Appendix.

5. Benefitfocus will hold Client responsible for selecting a determination period and establishing and advising Benefitfocus of the applicable premium rates to be charged for COBRA continuation coverage. In the event any offcycle (not-enrollment related) rate changes are required, client must notify Benefitfocus in writing at least sixty (60) calendar days in advance and at least sixty (60) calendar days in advance of the applicable billing date of any changes in premium rates during an open enrollment period.
 6. In the event that the Client does not provide at least sixty (60) calendar days in advance notification of change in rates, which may result in incorrect payments by COBRA continuants, Benefitfocus will not be held liable for any differences in payments.
 7. Client shall advise Benefitfocus of any changes in the benefits and options provided by the COBRA-Eligible Plan.
 8. Client will be responsible for complying with the Patient Protection and Affordable Care Act ("PPACA") of 2010, including but not limited to any required reporting for COBRA participants, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Internal Revenue Code (the "Code"), and other applicable laws and regulations, other than those specifically governing the COBRA Administration provided by Benefitfocus hereunder.
 9. Client and Benefitfocus will work together to craft an internal compliance procedure. Client will maintain written internal compliance procedures used for notifying Benefitfocus of newly Covered Employees, spouses or dependents, Qualifying Events, premium rate changes, or benefit changes. Such procedures will be provided to Benefitfocus within 5 Business Days upon request.
 10. Client will provide Plan and benefit descriptions (e.g., Summary of Benefits and Coverage, Summary Plan Description and benefit plan booklets, etc.) to qualified beneficiaries during open enrollment.
 11. Client will be solely responsible for maintaining and providing the following information in the event of an IRS or any third party audit: written internal compliance procedures used for notifying Benefitfocus of a newly Covered Employee, spouse or dependent, a Qualifying Event, a report of terminations for each tax year, or when there are rate and benefit changes.
 12. Client will provide the release of any information reasonably necessary for COBRA compliance and administration under this Appendix.
 13. To the extent that the Target Go Live Date noted in the Order Form is the same as the applicable plan year start date, Client will work with previous administrator to manage and administer open enrollment efforts including, the mailing of plan documentation and receipt and record keeping of enrollment changes for the upcoming plan year. If Client expects Benefitfocus to manage and administer such open enrollment efforts, further pricing and scoping via a subsequent contract signed by the parties is required.
- I. **Client acknowledges and agrees that:**
1. Benefitfocus will have no duty with respect to the funding of premiums by Client or COBRA Continuants.
 2. Benefitfocus will not be liable for paying any premiums of a Qualified Beneficiary to Client to the extent that Benefitfocus did not receive the corresponding payment from the Qualified Beneficiary, Client or third party.
 3. Benefitfocus will not be liable for any failure of Client to remit to the Carriers of the plan any funds that Client receives from Benefitfocus.
 4. Benefitfocus will not be liable for any failure of Client to resolve issues with its Carrier billings.
 5. Benefitfocus will not be liable for any retroactive premium rate changes requested by Client.
 6. Benefitfocus will not be responsible for failure of delivery of any notice mailed by Benefitfocus using the Qualified Beneficiary information provided to Benefitfocus by Client. Client is responsible to notify Benefitfocus of any errors or omissions found in reports provided by Benefitfocus within 15 Business Days of the delivery or notification of availability of the report.
 7. Benefitfocus will not be responsible for any loss or damage suffered by any COBRA Continuant, Client or plan, should Benefitfocus fail to give a required notice or a complete notice because Benefitfocus did not receive notice of an event for which a notice was required, Benefitfocus did not receive complete information or Benefitfocus received incorrect information.
- J. **Carrier Notifications:**
1. Benefitfocus' standard practice is to notify the applicable Carrier of a Qualified Beneficiary's enrollment in changes to, or termination from, COBRA coverage ("Carrier Notifications"). If Client instructs Benefitfocus instead to send all such Carrier Notifications to Client or to a third party other than the Carrier, Client (a) shall provide the Carrier such updates in a timely manner; and (b) is liable for any fees associated with providing such Carrier Notifications.

III. Additional Terms and Conditions:

A. For the COBRA Administration:

1. Client is solely responsible for reconciling its Carrier billings to its active COBRA Continuants for periods prior to the Effective Date of this Appendix and to communicate any such changes to the applicable Carriers.
2. Benefitfocus is not responsible for receiving or reviewing claims for benefits under the plan and will not be liable for the payment or funding of any claims for benefits in connection with the plan, including, without limitation, where sought as damages in an action against Client or the plan, or for any activity or occurrences prior to the Effective Date of the Order Form, provided that such failure did not result from the services performed by Benefitfocus in accordance with this Appendix.

Exhibit H

Ongoing Services Order Form Appendix B. COBRA

3. Benefitfocus will not be responsible for any loss or damage suffered by any participant, continuant, the Client or the Client benefit plan, should Benefitfocus fail to give a required notice because Benefitfocus did not receive notice of an event for which a notice was required or the proper address to which the notice was to be sent.
4. Benefitfocus will not have a duty with respect to the funding of premiums by Client or qualified beneficiaries who elect COBRA.
5. Benefitfocus will not be liable for paying any premiums of a qualified beneficiary to any party other than the Client.
6. Benefitfocus will not be liable for any failure of Client to remit to the insurers or third party administrators of the Client, the benefit plan funds that Client receives from Benefitfocus.
7. Benefitfocus will not be liable for any failure of Client to modify its carrier or third party administrator billing and notify insurers of a COBRA Continuant's termination from COBRA coverage when Benefitfocus remits premiums paid by continuants to Client.
8. Benefitfocus will not be responsible for failure of delivery of any notice mailed by Benefitfocus using the qualified beneficiary information provided to Benefitfocus by Client.
9. Benefitfocus will not be responsible for inaccurate notification or premium payment errors, to the extent applicable to the COBRA Administration, except to the extent such inaccurate notification or errors are caused by Benefitfocus.
10. Plans not set up within the *Benefitfocus Benefitplace* in accordance with Benefitfocus requirements will not be included in the COBRA Administration.
11. Client will be solely responsible for complying with the Internal Revenue Code, HIPAA, COBRA and any other applicable federal, state and local laws with respect to the Client Plan.
12. Benefitfocus Custodial Account: ETF may appoint Benefitfocus as custodian for the purposes, and upon the terms and conditions set forth in this Appendix, and will cause Benefitfocus to accept such appointment and agree to act as custodian hereunder and to hold any Client funds received hereunder in accordance with following the terms and conditions set forth in this Appendix. At all times, the assets comprising each of Client's funds in the Custodial Account will be considered a separate sub-account for purposes of this Appendix. Depending upon the context, the term "Custodial Account" will refer to either the separate sub-account for Client or all of the sub-accounts for all employers in the aggregate. Custodial funds provided to Benefitfocus by Client for the payment or funding of any claims for benefits in connection with the Client Plan, including, without limitation, where sought as damages in an action against the Plan ("Client Funds") will be held in a Benefitfocus-owned Custodial Account.
 - a. COBRA Custodial Account: Benefitfocus will open and maintain one or more depository accounts (the "Custodial Account") at Healthcare Bank (the "Bank"). Benefitfocus will deposit in the COBRA Custodial Account all payments received from qualified beneficiaries, less any portion of the payment that constitutes administrative fees payable by the qualified beneficiary. Upon deposit, such payments will become "Client Funds" (minus any applicable fees or other costs as set forth in this Appendix). For administrative convenience and to reduce costs, Benefitfocus will hold Client Funds of the Client together with similar funds from other clients in the Custodial Account (or one or more Custodial Accounts). However, Benefitfocus will maintain records as to the exact amount of funds of each client so that each client has a legal right to the specific amount of funds held in the Custodial Account (minus any applicable fees or other costs as set forth in this Appendix).
 - i. For the COBRA Administration, Benefitfocus will forward COBRA qualified beneficiary health insurance premiums from the Custodial Account to a single bank account opened and maintained by the Client and in accordance with this Appendix and Client's group benefit plan. Benefitfocus will neither have, nor shall be deemed to have, any discretion, control, or authority with respect to the disposition of Client Funds.
13. Benefitfocus and Client intend and agree that Client Funds are, and shall remain, the general assets of Client, are not the general assets of Benefitfocus. Except to the extent that outstanding checks have been written against the account on behalf of Client, and to the extent applicable to the COBRA Administration, Client Funds may be withdrawn by Client at any time (minus any applicable fees or other costs as set forth in this Appendix) and are subject to Client's creditors in the same manner as funds contributed to Client's ordinary checking accounts.
14. Benefitfocus and Client acknowledge and understand that Benefitfocus may receive interest income from time to time on the funds held in the Custodial Account and that any such interest income received by Benefitfocus on Client Funds will be the sole property of Benefitfocus. Client acknowledges and understands that compensation otherwise charged by Benefitfocus for the COBRA Administration under the Appendix would be higher if it did not retain such interest on these funds. The period during which interest income may be earned begins on the dates Client Funds are transferred to the Custodial Account and ends when this Appendix terminates. Funds will be disbursed on a first-in-first-out basis.
15. Fiduciary Status: In addition to the rights and obligation of the Parties, the following provisions will also be incorporated into this Appendix:
 - a. Plan Fiduciary: Benefitfocus and Client agree that Benefitfocus is not the plan administrator, a Named Fiduciary, and is not a plan fiduciary under the Plan(s). Benefitfocus will have no power or authority to waive, alter, breach or modify any terms and conditions of the Plan. Benefitfocus will make payments or distributions from the Custodial Account in accordance with the framework of policies, interpretations, rules, practices and procedures set forth in the Plan, this Appendix and as otherwise agreed upon or directed by Client. Benefitfocus will neither have, nor shall be deemed to, exercise any discretion, control, or authority with respect to the disposition of Client funds. Client agrees that use of or offset of amounts in the Custodial Account to pay for fees or other amounts due to Benefitfocus under this Appendix, or any other

Exhibit H

Ongoing Services Order Form Appendix B. COBRA

agreement between the Parties, will constitute a Client action that is authorized by Client under this Appendix. Client agrees that such actions are not discretionary acts of Benefitfocus and do not create fiduciary status for Benefitfocus. Benefitfocus agrees that it will perform COBRA Administration on the Plan's behalf, as set forth in this Appendix and any attachments or other exhibits. However, Benefitfocus will not undertake any duties or responsibilities, regardless of whether they are set forth in the plan, if such actions are in violation of any applicable laws or regulations.

16. Client Plan Data: Upon termination of this Appendix, Benefitfocus will maintain Client's records in an electronic format as required by law. Following such termination, Benefitfocus will cooperate with Client (or Client's subsequent service provider) to affect an orderly transfer of Client Data covered by the Appendix in a generally commercially available media and format.
17. Notwithstanding anything to the contrary within this Appendix, the Agreement or the applicable Order Form, Client and Benefitfocus will meet and discuss any need to increase fees to Client. Benefitfocus reserves the right to increase fees to Client at any time that are caused by Federal postal rate increases, are due to Federal legislative changes, or are due to the provision of additional services to Client by Benefitfocus that were not included in or contemplated by this Appendix on the Effective Date. Benefitfocus will provide Client with thirty (30) days written notice of fee changes resulting from Federal postal rate increases or Federal legislative changes.
18. Client agrees to assist Benefitfocus as needed with any communication or issue resolution with any required third parties and Authorized Users.
19. Neither Party shall be liable for any delay caused by the other Party, or their respective contractors, agents, employees, or vendors.
20. Benefitfocus shall not make or be liable for any determinations regarding eligibility, and Client shall be responsible for making all determinations regarding Authorized User eligibility for Client's Plan(s).

Exhibit I

Ongoing Services Order Form Appendix C – Direct Billing

This Appendix (the “Appendix”) is subject to all the terms and conditions of the Contract and the applicable order form (“Order Form”), by and between Client and Benefitfocus and provides a description of the services for the direct billing administrative services (“Direct Billing Services”). Benefitfocus and Client are each individually a “Party” and collectively the “Parties.”

- I. Definitions:** For the purposes of the Direct Billing Services the following definitions shall apply:
- A. “Administrator” means Client’s covered employers.
 - B. “Open Enrollment Period” means the period during which a Participant may enroll in or change coverage under a Plan.
 - C. “Participant” means any individual who is subject to a direct billing arrangement and has the direct billing functionality enabled for the applicable Plan(s), as designated by Client.
 - D. “Plan” means any benefit plan established by Client.
 - E. “Premium Invoice” is a PDF image of a bill for premiums payable by a Participant and any of the Participant’s dependents.
- II. Direct Billing Ongoing Services:** Benefitfocus has been engaged by Client to provide certain administration services in connection with Client Plan(s). Accordingly, Client authorizes Benefitfocus to use their respective standard procedures for the provision of the Direct Billing Services. The Direct Billing Services shall be provided in accordance with the framework of policies, interpretations, rules, practices and procedures as set forth in the Plan documents, and as otherwise mutually agreed upon. Additionally, payment processing will be managed in alignment with the service level option Client selects to deploy from the Benefitplace Billing Services options available (Base Direct Billing only, Base Direct Billing plus Payment Tracking, or Base Direct Billing plus Payment Processing).
- A. Benefitfocus Base Direct Billing Services (Option 1: Invoice Generation Only):**
1. Benefitfocus obligations:
 - a) Identify Participants who are eligible for Direct Bill benefits based on criteria as defined during discovery.
 - b) Collect enrollment system data on Participants and dependents, inclusive of names, enrolled plans, coverage dates, monthly premiums, covered dependents, coverage termination dates and other census information to be used in billing.
 - c) Produce individual Participant monthly invoices based on point-in-time data from the enrollment system.
 - d) Provide Participants with 24/7 access (excluding downtime for system maintenance) to the Benefitfocus Benefitplace and the billing portal.
 - e) Mark all Participant monthly invoices as paid in-full after the invoice has been locked.
 - f) Provide the following standard communications to Participants during the Direct Billing period:
 - (1) Monthly Premium Invoice listing all benefits for which the Participant is responsible to make payment. Premium Invoices are posted electronically in each Participant’s billing portal record and can be accessed by the Client or Participant on-demand.
 - (2) When applicable, Premium Invoices will reflect retroactive changes to plans or costs as adjustments.
 - g) Provide the following to Client:
 - (1) Monthly reporting with a breakdown of carriers, plans, and Participant premium is provided to the Client via the billing portal. Additional discovery during implementation may be required.
 - (2) Coordinate with Client on any questions related to the Benefitfocus report detail.
 - h) Provide Participants with telephonic support for inquiries regarding the Direct Billing Premium Invoice during the period of 8:00 a.m. EST to 8:00 p.m. EST, Monday through Friday, excluding holidays and other non-business days.
 - (1) Participant inquiries received by Benefitfocus related to payment status will be redirected to a contact or service center designated by Client.
 2. Client obligations:
 - a) Client is the Plan Administrator and fiduciary as described the Internal Revenue Code and other applicable law. As such, only Client shall have the power to waive, alter, breach or modify any of the terms and conditions of Client Plan(s), and Client exercises all discretion, control or authority with respect to the disposition of the available benefits. As such, Client shall:
 - (1) Determine which benefit plans and individuals are eligible for Direct Billing Services through the Benefitfocus Benefitplace.
 - (2) Communicate eligible benefit plans and category types to Benefitfocus for proper configuration.
 - (3) Provide accurate and timely changes to Participant enrollment and eligibility data, including, but not limited to, information that modifies a Participant’s eligibility, status or election under a Plan.
 - b) Adhere to applicable rules for Benefitfocus Benefitplace Base Premium Billing Services:
 - (1) Client is responsible to process payment of premiums to all Carriers based on the Participant invoice and generated on the Benefitfocus Benefitplace Billing platform. Client is responsible for maintaining compliance with each Carrier’s payment terms.
 - (2) Client or Client’s Carrier is responsible to produce billing for Participants for any Plan(s) not set up within the Enrollment Platform.
 - c) Make changes or adjustments to participant enrollment and eligibility data in the Enrollment Platform, including, but not limited to, information that modifies a participant’s eligibility, status or election under a plan, before the monthly deadline for changes, which will be established during implementation.

Exhibit I

Ongoing Services Order Form Appendix C – Direct Billing

- (1) Benefitfocus will not be responsible for inaccurate Participant invoices which are caused by Client errors. Client will at all times be responsible for the accuracy of information entered or maintained on the Enrollment Platform to ensure accurate data is transmitted to the billing portal.
 - d) Client must be available to discuss discrepancies, answer questions and sign off on carrier updates to clear discrepancies:
 - (1) If a change is required to a Participant's status or category in the Enrollment Platform to fix a discrepancy, a suggested update will be provided and Client is responsible to make the update in the Enrollment Platform.
 - (2) If a file feed is active between the Enrollment Platform and a carrier, updates should be made in the Enrollment Platform to resolve discrepancies relating to this carrier.
 - (3) If a file feed is not active between the Enrollment Platform and a carrier, Client is responsible for researching, fixing and following up on discrepancies relating to this carrier.
 - e) Notify Benefitfocus in writing of any changes in carriers, plan(s) or rates at least sixty (60) days prior to the effective date of the change, or as soon as administratively feasible.
 - f) Work directly with carriers regarding questions related to discrepancies and notify Benefitfocus CSM of any issues.
 - g) Accept responsibility for ensuring the accuracy of the benefit premium and enrollment information within the Enrollment Platform, to the extent that Client is able to do so under the circumstances.
 - h) Manage communications, Client's policies and rules directly with Participants, including but not limited to enforcement of rules for termination of Participant enrollments provided by Client during discovery.
 - i) Comply with all applicable laws (e.g., HIPAA) with respect to Client Plan(s) and make any required filings with the appropriate governmental agencies, including the DOL and the IRS.
 - j) Provide the release of any other information necessary for Benefitfocus to perform the Direct Billing Services provided under this Appendix.
- B. Upgrade Option 2: Base Direct Billing plus Payment Tracking Services.** Additional or changed Benefitfocus and Client obligations are:
1. Benefitfocus obligations:
 - a) Instead of applying automatic full payments based on the amount invoiced, Benefitfocus will accept and process records of payment from Client indicating the amount of payment made by each Participant and processed by Client. Payment records will be applied to the Participant's billing account within the Benefitplace Billing platform.
 - (1) Payment records may be in the form of an automated file feed from Client or Client's bank or merchant processors. Any such feed must be sent in accordance with file specifications to be provided by Benefitfocus.
 - b) Balance Aging Reports become available when Option 2 is selected.
 2. Client obligations:
 - a) Client's obligations
 - (1) Provide Benefitfocus with monthly Participant payment records, including record of reversed payments, such as in the event of insufficient funds activity.
 - (2) Client may choose during discovery to be responsible for notifying Benefitfocus of Participants' terminations due to non-payment based on plan termination rules or may authorize Benefitfocus to automate termination of coverage in the enrollment platform due to non-payment based on delinquency rules defined by Client during discovery.
- C. Upgrade Option 3: Base Direct Billing Plus Payment Processing Services.** Additional or changed Benefitfocus and Client obligations are:
1. Benefitfocus obligations:
 - a) Instead of or in addition to processing payment records from Client, Benefitfocus will enable automated payment processing initiated through the billing portal.
 - (1) All Participant payments are accepted and processed via automated data feeds from lockbox or merchant processors.
 - (2) Participants who do not remit payment in full will have the payment applied so that as much coverage can be maintained as possible. Unallocated balances will be retained and applied to subsequent invoices as appropriate.
 - (3) Application of payments will be at the plan level to pay a plan in full.
 - b) Provide access to on-demand reporting of payment activity.
 - c) Provide optional delinquency notification processing.
 - d) Provide automated termination of coverage in enrollment platform based on delinquency rules defined by Client during discovery.
 - e) Provide optional processing of remittance to Carriers based on Participant payments received. When Option 3 is selected, for the avoidance of doubt, if this optional service in C.1.e is selected during discovery, C.1.e replaces and voids A.2.b.1.
 - f) Work directly with carriers regarding questions related to remittance discrepancies. When Option 3 is selected, for the avoidance of doubt, C.1.f replaces and voids A.2.f.
 - g) Manage Participant telephonic inquiries related to payment processing.
 2. Client obligations:
 - a) Participants payment transactions support by Participants through the Payment Portal.
 - b) Automated payment processing requires connectivity between Benefitfocus' billing platform and Client's bank and/or merchant processor(s). A separate agreement between Client and its bank and Client and a merchant processor will be required.

Exhibit I Ongoing Services Order Form Appendix C – Direct Billing

III. Additional Terms and Conditions:

- A. To the extent purchased by Client, all printing and postage costs for fulfillment services managed by Benefitfocus will be passed through to Client.
- B. Benefitfocus will not be responsible for inaccurate Premium Invoices or payment-related errors except to the extent such errors are caused by Benefitfocus or its subcontractors.
- C. Client will be solely responsible for complying with the Internal Revenue Code, HIPAA, COBRA and any other applicable federal, state and local laws with respect to the Client Plan.
- D. Benefitfocus will not be responsible for receiving or reviewing claims or appeals for benefits or eligibility under the Client benefit plan. Benefitfocus will not be liable for the payment or funding of any claims for benefits in connection with the Client benefit plan, including, without limitation, where sought as damages in an action against the Client or the Client benefit plan.
- E. Client must provide the release of any information necessary for Benefitfocus Direct Billing Services provided under this Appendix.
- F. Fiduciary Status: In addition to the rights and obligation of the Parties, the following provisions will also be incorporated into this Appendix:
 - 1. Claims Payment: To the extent applicable to the Benefitfocus Direct Billing service, Benefitfocus will have no fiduciary duties. All fiduciary duties are the responsibility of Client.
 - 2. Plan Fiduciary: Benefitfocus and Client agree that Benefitfocus is not the plan administrator, the Named Fiduciary and is not a plan fiduciary under the Plan(s), as such terms are described under applicable law. Benefitfocus will have no power or authority to waive, alter, breach or modify any terms and conditions of the Plan. Benefitfocus agrees that it will perform the Direct Billing Services on the Plan's behalf, as set forth in this Appendix and any attachments or other exhibits. However, Benefitfocus will not undertake any duties or responsibilities, regardless of whether they are set forth in the Plan, if such actions are in violation of any applicable laws or regulations or beyond the scope of this Appendix.
- G. Client Plan Data: Upon termination of this Appendix, Benefitfocus will maintain Client's records in an electronic format as required by law and Department Terms and Conditions. Following such termination, Benefitfocus will cooperate with Client (or Client's subsequent service provider) to affect an orderly transfer of Client Data covered by the Appendix in a generally commercially available media and format.
- H. Neither Party will be liable for any delay caused by the other Party, or their respective contractors, agents, employees, or vendors. However, the liability provisions of the Department Terms and Conditions will govern any liability of the parties.
- I. Client agrees to assist Benefitfocus as needed with any communication or issue resolution with any required third parties and Authorized Users.
- J. Benefitfocus will not make, or be liable for, any determinations regarding eligibility, and Client will be responsible for making all determinations regarding Authorized User eligibility for Client's plan(s).
- K. Benefitfocus will support the browsers in accordance with the then-current list located at: www.benefitfocus.com/support/browsers.

Exhibit J

Ongoing Services Order Form Appendix D - MP Billing

This Appendix is subject to all the terms and conditions of the Contract and the applicable order form ("Order Form") by and between Client and Benefitfocus. This appendix provides a description of the "Benefitfocus Benefitplace Billing Services. Benefitfocus and Client are each individually a "Party" and collectively the "Parties".

- I. Definitions:** Capitalized terms that are not defined in this Appendix will have the meanings set forth in the Agreement.
- A. "Business Days" means Benefitfocus business days, which exclude weekends, bank holidays, and Benefitfocus holidays.
 - B. "Carrier" or "Carriers" means an insurer or health plan or other vendor of Client.
 - C. "Enrolled Employee" means an Employee as defined in the Ongoing Services Order Form that is enrolled in one or more benefits in the Enrollment Platform.
 - D. "Enrollment Platform" means the Benefitfocus Benefitplace for Employers.
 - E. "Payment Portal" means Benefitfocus Benefitplace Billing portal.
- II. Benefitfocus Benefitplace Billing Ongoing Services (Base Premium Billing Services: Option 1):**
- A. Benefitfocus obligations:**
1. Collect enrollment system data on Enrolled Employees and dependents, inclusive of names, enrolled plans, coverage dates, monthly premiums, enrolled dependents, coverage termination dates and other census.
 2. Produce electronic monthly consolidated invoices based on point-in-time data from the enrollment system, which includes:
 - a. a summary invoice including carrier, plan, subscriber count, adjustments and total amount due
 - b. a detailed invoice including carrier, plan, due date, subscriber name, ID, coverage level, adjustments
 3. Provide designated Administrators (or Client's covered employers) electronic notifications when invoices generate.
 4. Mark all consolidated invoices as paid after the invoice has been locked.
 5. Coordinate with Client on any questions related to the Benefitfocus invoice and Benefitfocus report detail.
 6. Client must be available to discuss discrepancies, answer questions and sign off on carrier updates to clear discrepancies:
 - a. If a change is required to a member's status or category in the Enrollment Platform to fix a discrepancy, a suggested update will be provided and Client is responsible to make the update in the Enrollment Platform.
 - b. If a file feed is active between the Enrollment Platform and a carrier, updates should be made in the Enrollment Platform to resolve discrepancies relating to this carrier.
 - c. If a file feed is not active between the Enrollment Platform and a carrier, Client is responsible for researching, fixing and following up on discrepancies relating to this carrier.
 7. Benefitfocus will not be responsible for inaccurate consolidated invoices which are caused by Client errors. Client will at all times be responsible for the accuracy of information entered or maintained on the Enrollment Platform to ensure accurate data is transmitted to the Payment Portal.
 8. Carriers and plans not set up within the Enrollment Platform will not be included in Benefitfocus Benefitplace Billing Services.
- B. Client obligations:**
1. Client is responsible to process payment of premiums to all Carriers based on the summary invoice and detail invoice generated on the Benefitfocus Benefitplace Billing platform. Client is responsible for maintaining compliance with each Carrier's payment terms.
 2. Make changes or adjustments to Enrolled Employee enrollment and eligibility data in the Enrollment Platform, including, but not limited to, information that modifies an Enrolled Employee's eligibility, status or election under a plan, before the monthly deadline for changes, which will be established during implementation.
 3. Notify Benefitfocus in writing of any changes in carriers, plan(s) or rates at least sixty (60) days prior to the effective date of the change, or as soon as administratively feasible.
 4. Work directly with carriers regarding questions related to discrepancies.
 5. Accept responsibility for ensuring the accuracy of the benefit premium and enrollment information within the Enrollment Platform, to the extent that Client is able to do so under the circumstances.
- C. Upgrade Option 2: Payment Tracking Services.** Additional or changed Benefitfocus and Client obligations are:
1. Benefitfocus obligations:
 - a. Instead of applying automatic full payments based on the amount invoiced, Benefitfocus will accept and process records from Client indicating the amount of payment made by each Employing Unit and post credit for such payments, which have been processed by Client, into the Employing Unit accounts within the Benefitfocus Benefitplace Billing platform. For avoidance of doubt, when Option 2 is selected, C.1.a. replaces and voids II.A.4.
 - b. Balance Aging Reports become available when Option 2 is selected.
 2. Client obligations:
 - a. Apply status of payments to the invoices made by employing units via an inbound data feed or manual entry of actual amounts paid.
- D. Upgrade Option 3: Payment Processing Services.** Additional or changed Benefitfocus and Client obligations are:
1. Benefitfocus obligations:
 - a. Instead of or in addition to processing payment records from Client, Benefitfocus will enable automated payment processing initiated through the billing portal.

Exhibit J

Ongoing Services Order Form Appendix D - MP Billing

- i. All payments are accepted and processed via automated data feeds from lockbox or merchant processors.
 - ii. Application of payments will be at the plan level to pay a plan in full.
 - b. Provide access to on-demand tracking of payment activity.
 - c. Provide optional delinquency notification processing.
 - d. Provide optional processing of remittance to Carriers. When Option 3 is selected, for the avoidance of doubt, if this optional service in II.D.1.d is selected during discovery, II.D.1.d replaces and voids II.A.4 and II.B.1.
 - e. Work directly with carriers regarding questions related to remittance discrepancies. When Option 3 is selected, for the avoidance of doubt, II.D.1.e replaces and voids II.B.4.
2. Client obligations:
- a. Initiation of electronic payment transactions by the Employing Units to ETF through the Payment Portal.
 - i. Payments must be equal to the full amount due and by the due date reflected on monthly premium invoices.
 - ii. Partial payments are not accepted. Employing Units must pay as invoiced; adjustments will be made as needed in subsequent invoices.
 - iii. In the event that a full payment is not made by the due date, payment will not be remitted to carriers until the following due date.
 - b. Automated payment processing requires connectivity between Benefitfocus' billing platform and Client's bank and/or merchant processor(s). A separate agreement between Client and its bank and Client and a merchant processor will be required.

III. Additional Terms and Conditions:

- A. Benefitfocus will not validate addresses and age data directly with the Carrier(s).
- B. Benefitfocus will not be responsible for inaccurate invoices or reconciliation errors except to the extent such errors are caused by Benefitfocus or its subcontractors.
- C. Client will be solely responsible for complying with the Internal Revenue Code, HIPAA, COBRA and any other applicable federal, state and local laws with respect to the Client Plan.
- D. Benefitfocus will not be responsible for receiving or reviewing claims or appeals for benefits or eligibility under the Client benefit plan. Benefitfocus will not be liable for the payment or funding of any claims for benefits in connection with the Client benefit plan, including, without limitation, where sought as damages in an action against the Client or the Client benefit plan, and any occurrences prior to the Effective Date of the Order Form this to which this Appendix is attached.
- E. Fiduciary Status. In addition to the rights and obligation of the parties, the following provisions will also be incorporated into this Appendix:
 1. Claims Payment. To the extent applicable to the Benefitfocus Benefitplace Billing service, Benefitfocus will have no fiduciary duties. All fiduciary duties are the responsibility of Client.
 2. Plan Fiduciary. Benefitfocus and Client agree that Benefitfocus is not the plan administrator, the Named Fiduciary and is not a plan fiduciary under the Plan(s), as such terms are described under applicable law. Benefitfocus will have no power or authority to waive, alter, breach or modify any terms and conditions of the Plan. Benefitfocus agrees that it will perform Administrative Services on the plan's behalf, as set forth in this Appendix and any attachments or other exhibits. However, Benefitfocus will not undertake any duties or responsibilities, regardless of whether they are set forth in the Plan, if such actions are in violation of any applicable laws or regulations or beyond the scope of this Appendix.
- F. Client must provide the release of any information necessary for Benefitfocus Benefitplace Billing Services provided under this Appendix.
- G. Client Plan Data: Upon termination of this Appendix, Benefitfocus will maintain Client's records in an electronic format as required by law and the Department Terms and Conditions. Following such termination, Benefitfocus shall cooperate with Client (or Client's subsequent service provider) to affect an orderly transfer of Client Data covered by the Appendix in a generally commercially available media and format.
- H. Client agrees to assist Benefitfocus as needed with any communication or issue resolution with any required third parties and Authorized Users.
- I. Benefitfocus will not make, or be liable for, any determinations regarding eligibility, and Client will be responsible for making all determinations regarding Authorized User eligibility for Client's plan(s).
- J. Client agrees that the Administrative Services described herein are conditioned upon the Order Form for Benefitfocus Benefitplace Billing between Benefitfocus and Client being in full force and effect. In the event that such Order Form terminates, this Appendix will also terminate.

EXHIBIT K

Client Services Addendum

I. DEFINITIONS

- A. **Authorized User:** means Client personnel, members of the Client governing boards, participating employers, Client third party administrators, and other third party contractors and agencies providing services to Client.
- B. **Client Data:** means information of Client provided to Benefitfocus or accessed by Benefitfocus under the Contract, including, but not limited to: Personally Identifiable Information PIIP, Protected Health Information (PHI), and information related to Client's operations, such as audit findings, business methodologies, personnel information, technical information, employer information, beneficiary information, survivor information, member information, or any other information deemed by federal or state law, rule or regulation as proprietary or confidential.
- C. **Personally Identifiable Information:** means any information about an individual person that uniquely identifies a person, including but not limited to (a) any information that can be used to distinguish or trace an individual's identity, such as name, address, social security number, telephone number, IP address, financial account number, credit card number, debit card number, driver's license number, date and place of birth, mother's maiden name, or biometric records; and (b) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. Personally Identifiable Information includes, but is not limited to, individual personal information, medical records, Protected Health Information, and electronic protected health information.
- D. **Protected Health Information:** shall have the same meaning as the term "protected health information" at 45 CFR § 160.103.

II. SCOPE OF SERVICES

- A. **Software and Support Services:** "Internal User" means Authorized User who is an employee of Client "End User" means any Authorized User who is not an Internal User. Subject to Client's compliance with the terms and conditions of this Contract, Benefitfocus shall make the services available to Client for use by Authorized Users pursuant to this Contract and the applicable Order Forms during the term of the applicable Order Forms.
- B. **Professional Services:** From time to time, Benefitfocus may make certain Professional Services available to the Client. Professional Services shall be described within the applicable Order Forms.
- C. **Client Responsibilities:** Client shall, (i) be responsible for Internal Users compliance with the Contract, (ii) be responsible for the accuracy, quality and legality of Client Data and of the means by which it acquired Client Data (as Client Data is defined herein), (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Benefitfocus promptly if client becomes aware of any such unauthorized access or use, (iv) use the Services only in accordance with the documentation and applicable laws and government regulations; (v) cooperate with Benefitfocus, as reasonably requested in order for Benefitfocus to provide or Client to receive the Services or in resolving any issues associated with Client's vendors and service providers. Client shall not knowingly, (i) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (ii) use the Services to store or transmit malicious code, (iii) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (iv) attempt to gain unauthorized access to the Services or their related systems or networks. It is the sole responsibility of the Client to maintain all Client benefit plan documents and to exercise all discretionary authority with respect to such Client benefit plans.
- D. **Client Instructions:** Client is responsible for the consequences of any instructions Client may give to Benefitfocus in the course of performing the Services as long as Benefitfocus is acting reasonably and in good faith in regard to such instructions. Benefitfocus shall have the right to rely and act upon such instructions provided by Client to Benefitfocus; provided, however, that the foregoing shall not relieve Benefitfocus from liability for actions that are unreasonable and/or in bad faith.
- E. **Restrictions:** Client shall not, (i) create derivative works based on the Services, (ii) copy, frame or mirror any part or content of the Services, other than copying or framing on Client's own intranets or otherwise for its own internal business purposes, (iii) reverse engineer the Services, (iv) lease, rent, resell, transfer, assign, lend or sublicense, or permit the unauthorized use of the Software Services to any other third party, (v) use the Software Services to provide service bureau, time sharing, rental, application services providing, hosting, or other computer services to unauthorized third parties without Benefitfocus' prior written consent, (vi) access the Services in order to, (i) build a competitive product or service, or (ii) copy any features, functions or graphics of the Services.
- F. **Contractor Responsibilities.** In addition to providing the services described in above referenced Order Forms, Benefitfocus also will comply with the responsibilities specified in sections G and H below.
- G. **Public Records and Open Meetings:** Benefitfocus acknowledges that Client is subject to the provisions of (I) the Wisconsin Public Records Law (Wis. Stat. s. 19.31 et seq.), which provides generally that all records relating to a public agency's business are open to public inspection, disclosure and copying in the manner provided in the Public Records Law, unless specifically exempted under the Public records Law; and (ii) the Open Meetings Law (Wis. Stat. s. 19.81 et seq.), which provides generally for open meetings for public bodies. Accordingly, Client cannot represent or guarantee that any information submitted by Benefitfocus will be confidential. In the event, ETF receives a request under the Public Records Law related to this project, Client's sole responsibility will be to notify Benefitfocus of the request to allow Benefitfocus to seek protection from disclosure in a court of competent jurisdiction. Benefitfocus acknowledges and agrees that (with the exception of Benefitfocus's trade secrets as indicated in an appropriately executed Wisconsin form submitted as part of Benefitfocus's response to the RFP) Client shall be able to comply with such request without any liability under this contract and regardless if such information being requested is considered Benefitfocus's confidential or proprietary information, unless Benefitfocus obtains such judicial protection against such disclosure against the requestor.

EXHIBIT K

Client Services Addendum

- H. **Subpoena:** In the event that a subpoena or other legal process is served upon Benefitfocus for records containing Client's confidential information, Benefitfocus shall promptly notify Client in advance of any disclosure of Client's confidential information and cooperate with Client to object to and/or limit such disclosure provided that Client shall reimburse Benefitfocus for all reasonable out-of-pocket expenses by Benefitfocus under this section.

III. PAYMENT

- A. **Payment:** Client shall pay to Benefitfocus the fees and expenses specified within an applicable Order Form. Except for those fees and expenses that are the subject of a good faith dispute or as otherwise set forth within an applicable Order Form, amounts payable by Client are due "net 30," and are not subject to set-off. Past due amounts shall accrue interest at 1.5% per month, or the maximum rate permitted by law, whichever is lower. Client's or Authorized User's failure to utilize the Services shall in no way relieve the Client of any obligation to pay applicable fees.
- B. **Suspension for Delinquent Account:** Benefitfocus reserves the right to suspend Client's and any Authorized Users' access to and/or use of the Service if any undisputed payment is due but unpaid 60 days past the due date, but only after Benefitfocus has provided Client two (2) notices (with confirmation of receipt by Client), and at least ten (10) days have passed since the receipt by Client of the second notice. Client and Benefitfocus agree that if either party requests using Section 13.0 of the Department Terms and Conditions (Contract Dispute Resolution) prior to any suspension, the other party will agree. Client agrees that Benefitfocus shall not be liable to Client or to any Authorized User or other third party for any suspension of the Service pursuant to this Section.

IV. WARRANTIES & REPRESENTATIONS

- A. **Warranties and Representations of Benefitfocus:** Benefitfocus represents and warrants that (i) it has validly entered into the Contract and has the legal power to do so, (ii) the Software Services shall perform materially in accordance with the product documentation and agreed upon business requirements, (iii) the functionality of the Services will not be materially decreased during the term of the applicable Order Form, (iv) that the Professional Services hereunder shall be performed in a good and workmanlike manner consistent with generally accepted industry standards; (v) Benefitfocus has the required authority and right to provide the Services; (vi) Benefitfocus has not received notice of, and has no reasonable basis to believe that the Services infringe upon any intellectual property rights of any other party; and (vii) upon request from the Client, Benefitfocus will correct any error or omission attributable to Benefitfocus in connection with the Services at no additional charge to Client.
- B. **Representations and Warranties of Client:** Client represents and warrants that (i) it has validly entered into the Contract and has the legal power to do so, (ii) Client will possess all necessary and required authority and permissions to permit Benefitfocus to perform all the obligations under the Contract; (iii) the Services do not include any authority by Benefitfocus to operate the Client benefit plan in any manner that would cause Benefitfocus to be deemed a "fiduciary", trustee, plan administrator or named fiduciary of the Client benefit plan pursuant to any applicable law; and (iv) Client will make all necessary arrangements with its third party vendors to cause such vendors to send and receive Client Data from Benefitfocus as required for Benefitfocus to perform the Services.

V. DISCLAIMERS & LIMITATION OF LIABILITY

- A. **DISCLAIMER OF WARRANTIES: EXCEPT AS SPECIFICALLY REPRESENTED OR WARRANTED WITHIN THE CONTRACT, EACH PARTY SPECIFICALLY DISCLAIMS, WITHOUT LIMITATION, ALL WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THOSE WARRANTIES ARISING FROM A COURSE OF PERFORMANCE, A COURSE OF DEALING OR TRADE USAGE, OR THAT THE SERVICES WILL OPERATE WITHOUT INTERRUPTION. ALL THIRD-PARTY CONTENT AND/OR SERVICES SELECTED BY CLIENT ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY CONTENT OR SERVICES IS STRICTLY BETWEEN CLIENT AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY CONTENT OR THIRD PARTY SERVICE PROVIDER. CLIENT ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES MADE BY BENEFITFOCUS OTHER THAN AS SPECIFICALLY SET FORTH HEREIN.**
- B. **Limitation of Liability:** Except for Claims for indemnification under Section 23.0 of the Department Terms and Conditions, or breach of a Party's obligations under Section 22.0 under the Department Terms and Conditions, or Client's infringement of Benefitfocus intellectual property rights, in no event shall either Party's aggregate liability arising out of or related to the Contract, whether in contract, tort or under any other theory of liability, exceed the amounts actually paid by or due from Client for the services during the term of the applicable Order Form under which the cause of action arose. Except for Claims for indemnification under Section 23.0 of the Department Terms and Conditions, or a breach of a Party's obligations under Section 22.0 of the Department Terms and Conditions, or a Party's negligence or misconduct, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, COVER, OR EXEMPLARY DAMAGES (INCLUDING LOST PROFITS, REVENUES OR OTHER FINANCIAL LOSSES,) ARISING UNDER OR RELATING IN ANY WAY TO THE SERVICES OR THE CONTRACT. The foregoing shall apply regardless of the negligence or other fault of the Party and regardless of whether such liability arises from contract, negligence, tort, strict liability or any other theory of legal liability. THE FOREGOING LIMITATIONS REPRESENT A BARGAINED FOR ALLOCATION OF RISK, WHICH ALLOCATION IS A MATERIAL ELEMENT OF CONTRACT, TO THE MAXIMUM EXTENT POSSIBLE UNDER APPLICABLE LAW.

EXHIBIT K Client Services Addendum

VI. GENERAL PROVISIONS

- A. **Relationship of the Parties:** The relationship between the Parties is that of independent contractors. Nothing contained in the Contract shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever
- B. **Notices:** Any notices required or permitted hereunder shall be in writing and shall be delivered in person, by nationally recognized overnight courier service, by certified U.S. mail, postage prepaid, return receipt requested, or if provided herein or in an Order Form, email, addressed to the Party to be notified and in the case of Benefitfocus, to General Counsel, email Legal1@benefitfocus.com; and in the case of Client, to ETF Secretary at the address for such Party set forth in the Contract or such address as either Party may hereafter specify in accordance herewith.
- C. **No Third Party Beneficiaries:** Nothing herein shall confer, upon any person other than Benefitfocus, Client and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- D. **Survival of Terms:** Notwithstanding the expiration or earlier termination of the Contract for any reason, the provisions of Articles I, II, III, V, & VI of this Client Services Addendum shall remain in full force and effect.