**Appendix 13**

**Non-Disclosure Agreement (Data Out) (Sample)**

This Non-Disclosure Agreement (Data Out) (“Agreement”) is entered into by and between XYZ Company (“XYZ”) and ABC Health Plan (“Vendor”), referred to separately herein as a party or jointly herein as the parties. This Agreement will be effective upon the date of last signature below. The parties acknowledge and agree as follows:

1. **Purpose:** The Wisconsin Department of Employee Trust Funds (“Client”) has established the Well Wisconsin Program (“Program”), offering wellness, disease management, mental health, and chronic condition management services (“Services”) under its Group Health Insurance benefit plan (“Plan”). Client has engaged XYZ to provide the Services and Client has entered into an administrative services agreement under which XYZ offers Plan members the Services.
2. **Confidential Information:**
3. Client has requested that XYZ disclose to Vendor certain confidential information as necessary to facilitate the Services, which may contain Protected Health Information as defined under 45 C.F.R. 160.103 (“Confidential Information”). XYZ has agreed to disclose this Confidential Information to Vendor subject to the terms of this Agreement.
4. Confidential Information disclosed by XYZ to Vendor in connection with the Services, shall be used by Vendor only to perform the Services, provided that such use or disclosure would not violate privacy laws if performed by the Client or the Plan. Each party acknowledges and agrees that Client is a Covered Entity under the Health Insurance Portability and Accountability Act of 1996 (and regulations thereunder as amended from time to time) (HIPAA”) and each party has entered into a Business Associate Agreement or certification, as applicable (“Business Associate Agreement”) with Client as required by HIPAA.
5. The parties acknowledge and agree that HIPAA and each party’s Business Associate Agreements with Client govern the use and/or disclosure of Confidential Information that may be obtained or created through the provision of the Services. Each party will only use and disclose Confidential Information for purposes permitted by the Business Associate Agreement governing such Confidential Information or as otherwise required by HIPAA or other applicable law.
6. Each party will use reasonable and appropriate procedures and safeguards to prevent any misuse of Confidential Information. Each party represents and warrants to the other party that Client has granted such party the authority to disclose such Confidential Information and has not imposed any restrictions on such authority that are inconsistent with the terms of this Agreement.
7. Confidential Information shall not include information: (a) generally available to the public prior to or during the time of the Services through authorized disclosure; or (b) obtained from a third party who is under no obligation to XYZ not to disclose such information; or (c) that has already been or is hereafter independently acquired or developed without violation any confidentiality agreement or other similar obligation.
8. **Systems Access:** If XYZ grants Vendor the right to access the XYZ’s online tools allowing for the electronic presentment of certain Confidential Information (“System”) that XYZ makes available to provide up-to-date information on Program participation and related information, the following conditions apply:
9. The System, and any documentation with respect to the System, shall be treated as Confidential Information as defined in this Agreement and subject to the same confidentiality restrictions contained herein. Any content, tools, or other materials appearing on the System are the intellectual property of XYZ and/or its licensors and may not be copied, reproduced, licensed, or sold by Vendor.
10. Further, access to the System shall not be construed as conferring any license of XYZ’s or its licensors intellectual property rights. Vendor agrees not to modify, alter , or deface any trademarks, service marks, or other intellectual property of XYZ made available through the System.
11. Vendor further agrees not to adapt, translate, modify, decompile, disassemble, or reverse engineer the System or any software or programs used in connection with the System.
12. XYZ will assign a User ID and password to each Vendor user (a “User”). Users may not disclose or otherwise make User IDs or passwords available to any third party. If a User ceases to be a User for any reason, including a change in roles within Vendor’s organization or termination of employment, or the User otherwise discloses his or her intent to resign, Vendor shall notify XYZ within two (2) business days so that XYZ can disable the applicable User ID and password.
13. Vendor is responsible for any and all breaches of security relating to the use of a User’s User ID and password until XYZ has disabled that User ID and password.
14. Vendor also agrees to comply with XYZ’s security measures which XYZ will notify Vendor of in writing with respect to Vendor’s access and use of the System. If there is a breach or suspected breach of a User ID or password, Vendor and/or the User must notify XYZ immediately by telephone and promptly follow up with a notice in writing sent via email.
15. Vendor shall maintain reasonable and appropriate security procedures to prevent unauthorized access to Confidential Information in its office(s) or system(s). Further, such procedures shall comply with data security standards that may be imposed by the Privacy and Security Rules of HIPAA, as well as all other applicable laws and regulations.
16. XYZ reservices the right to terminate Vendor’s access at any time to the System. Access to the System will automatically terminate on the date Vendor’s business relationship with Client ends. Upon termination of System access, Vendor will cease all use of the System.
17. **Electronic Transmission:** If Vendor receives the Confidential Information from XYZ via electronic means such as SFTP transmission, Vendor shall use reasonable physical and software-based security measures, commonly used in the electronic data interchange field, to protect Confidential Information received from XYZ. Vendor shall implement and comply with, and shall not attempt to circumvent or bypass, XYZ’s security procedures for the use of the SFTP method of Confidential Information transmission. Vendor shall notify XYZ immediately if Vendor is aware of any breach of the security procedures, such as unauthorized use, or if Vendor suspects such a breach that would result in an unauthorized disclosure of unsecured Confidential Information. XYZ reserves the right to terminate SFTP transmission immediately on the date XYZ reasonably determines that Vendor has breached, or allowed a breach of, this provision. XYZ also reserves the right to change or upgrade its method of Confidential Information transmission with reasonable notice to Vendor.
18. **Permitted Uses:** Vendor:
19. Shall not use (deemed to include, but not be limited to, using, exploiting, duplicating, recreating, modifying, decompiling, disassembling, reverse engineering, translating, creating derivative works, adding to a Vendor database, or disclosing Confidential Information to another person or permitting any other person to do so) Confidential Information except for purposes of providing the Services or to provide the Confidential Information to the individual to which the Confidential Information relates, provided that such use or disclosure would not violate privacy rules or other laws if performed by the Client or the Plan;
20. Shall limit use of Confidential Information only to its authorized employees (deemed to include employees as well as individuals who are agents or independent XYZs of Vendor) who have a need to know for purposes of the Services and who have been advised of the existence and terms of this Agreement and the obligations of confidentiality herein;
21. Shall comply with all applicable laws and regulations governing its use and disclosure of the Confidential Information;
22. Shall use and require its employees to use, at least the same degree of care to protect the Confidential Information as is used with Vendor’s own proprietary and confidential information of a similar nature; and
23. May release Confidential Information in response to a subpoena or other legal process to disclose Confidential Information, after giving XYZ reasonable prior notice of such disclosure (unless such notice is prohibited by law).
24. **Conclusion of Services:** At the conclusion of the Services, Vendor shall either relinquish to XYZ or destroy (with such destruction to be certified to XYZ upon request) all Confidential Information. Notwithstanding the foregoing, and subject to Vendor’s obligations of confidentiality, Vendor may retain one copy of documents containing Confidential Information for archival purposes and to defend its work product.
25. **Breach:** If, during the course of the Services, it is discovered that this Agreement has been breached by Vendor, Vendor shall relinquish all Confidential Information to XYZ upon demand.
26. **Indemnification:** Unauthorized use of Confidential Information by Vendor is a material breach of this Agreement resulting in irreparable harm to XYZ, the Plan, Program participants, and the Client, for which the payment of money damages is inadequate. Vendor agrees to indemnify and hold harmless XYZ with respect to any claims and any damages caused by Vendor’s breach of this Agreement.
27. **Survival:** The requirement to treat all Confidential Information as confidential shall survive the termination of this Agreement and shall remain in full force and effect so long as any such information remains commercially valuable, confidential, proprietary and/or trade secret, but in no event less than a period of three (3) years from the date of the Services. With respect to Protected Health Information, for as long as Vendor retains such information.
28. **Assignment:** Neither this Agreement nor Vendor’s rights or obligations hereunder may be assigned without XYZ’s prior written approval.
29. **General:**
30. This Agreement is the entire understanding between the parties as to the subject matter hereof.
31. This Agreement binds the parties and their respective successors, assigns, agents, employers, subsidiaries, and affiliates.
32. No modification to this Agreement shall be binding upon the parties unless evidenced in writing and signed by the party against whom enforcement is sought.
33. Headings in this Agreement shall not be used to interpret or construe its provisions.
34. The alleged invalidity of any term herein shall not affect the validity of any other terms.

**The parties have caused their authorized representatives to execute this Agreement.**

**Vendor: *SAMPLE***

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**XYZ:**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Acknowledged by Client:** Wisconsin Department of Employee Trust Funds

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_