



Contract by Authorized Board

Commodity or Service:

Data Warehouse (DW) Solution & Visual Business Intelligence (VBI) Solution

Contract No.:

ETG0004 & ETG0006 – Amendment #6 dated April 12, 2021

Authorized Board: Group Insurance Board (GIB)

Amendment Period: March 1, 2021 through expiration or termination of this amendment or expiration, termination, or cancelation of Contract ETG0004 & ETG0006

1. This Contract Amendment #6 is entered into by the State of Wisconsin Department of Employee Trust Funds (Department or ETF), on behalf of the State of Wisconsin Group Insurance Board (Board) and the Contractor, whose address and principal officer appear below. The Department is the sole point of contact for this Contract.
2. Whereby the Department agrees to direct the purchase and the Contractor agrees to supply the Contract requirements cited in accordance with the State of Wisconsin standard terms and conditions and in accordance with the Contractor's proposal dated September 13, 2016 hereby made a part of this Contract by reference.
3. Contract Amendment #1 dated March 22, 2018 adds new Contract requirements regarding reporting and performance guarantees and replacing Interactive Reporting/management reporting with Dynamic Health Insights which will be accessed via the IBM CXL portal.
4. Contract Amendment #2 dated August 17, 2018
 - (a) Revises Contract Appendix 10C Mandatory Requirements Performance Standards, Section H 1) Customer Service Center to replace the requirement of recording and maintaining 100% of all calls to tracking all customer service calls from the Department.
 - (b) Revises Contract Appendix 10C Mandatory Requirements Performance Standards, Section J, which was added under Amendment 1, which established the operational dates for Phases 2 and 3 as July 31, 2018, and now revises those operation dates for Phases 2 and 3 to August 31, 2018;
 - (c) Adds to Contract Appendix 10C Mandatory Requirements Performance Standards Section K, which requires Contractor to provide notice to the Department before services are performed when services result in additional invoicing outside the scope of RFP ETG0004/0006 or approved Change Request or such services shall be deemed to be included in the scope of the contract, with no additional payment for such service due to the Contractor.
 - (d) Effective August 1, 2018, International Business Machines Corporation (IBM) hereby expressly assumes, confirms, and agrees to perform and observe all the obligations, agreements, terms and conditions, duties, and liabilities under this Contract. IBM will perform such obligations through IBM Watson Health, a division of IBM.
 - (e) Extends the Contract for two (2) years, from January 1, 2019 through December 31, 2020.
5. Contract Amendment #3 dated April 6, 2020
 - (a) Deletes RFP ETG0004/0006 Appendix 10C Mandatory Requirements Performance Standards and adds new RFP ETG0004/0006 Appendix 10C Mandatory Requirements Performance Standards effective starting April 1, 2020.
 - (b) Extends the Contract for two (2) years, from January 1, 2021 through December 31, 2022.
 - (c) Revises RFP ETG0004/0006 Appendix 10A Technical Requirements to allow Contractor to use another file format for data submissions when agreed upon by ETF and Contractor, rather than the format specified in Appendix 10A Mandatory Technical Requirements, 5.4.42 through 5.4.46.
 - (d) Revises RFP ETG0004/0006 Section 1.10 Contract Term to read: The Contract term for providing a DW-VBI solution will commence on the Contract start date and shall extend through December 31, 2018. The Board retains the option, by mutual agreement of the Board and the successful Proposer, to renew the Contract subject to the satisfactory negotiation of terms, including pricing.

6. Contract Amendment #4 dated September 21, 2020

- (a) Deploys all credits currently owed to the Department under Contract Exhibit A, Paragraph 17 (\$23,500) to pay for 385 hours of additional analytic consulting support previously provided.
- (b) Increases the number of hours listed in Contract Exhibit A, Item 30, for the Analytic Consulting Team Expected FTE Dedicated to Annual Project Operations, from approximately 1,400 hours per year to approximately 1,740 hours per year. This increase is a result of the Department's request for, and Contractor's agreement to provide an additional 7.2 hours per week, on average, of on-site Contractor analyst time. The increase in weekly hours will commence the week starting Monday, August 31, 2020, resulting in Contractor providing, at a minimum, 1,513 hours of Analytic Consulting Team support for 2020.
- (c) The above increase in hours will result in monthly operational costs increasing by \$6,500, which will be invoiced to the Department as a separate line-item on each monthly Contractor invoice. This rate takes into account the deployment of the Department's \$250/month credit resulting from Anthem's withdrawal as a Data Submitting Entity (DSE). The distribution of future credits aside from the above (Anthem) shall be mutually agreed upon in writing by the Department and Contractor.

7. Contract Amendment #5 dated March 23, 2021

- (a) Deletes ETG0004/0006 Exhibit A Section 13) THIRD PARTY LICENSOR SOFTWARE and adds new Exhibit A Section 13).
- (b) Increases the number of Department licenses for Advantage Suite to a total of ten (10).
- (c) Department shall not provide Content that is export controlled or requires an export license by Contractor or its Affiliates.

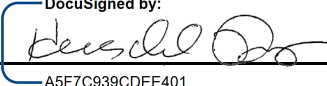
8. Contract Amendment #6 dated April 12, 2021

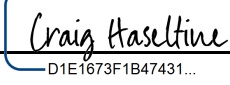
- (a) Adds to the following to the Contract: a subscription to Contractor's Benefits Mentor software and implementation services as described in attached Amendment #6 – Benefits Mentor. This amendment is only applicable to the subscription to Contractor's Benefits Mentor software and implementation services as described in attached Amendment #6 – Benefits Mentor.
- (b) All provisions of Contract ETG0004-0006 apply to services provided under this Amendment, except Appendix 10 – Mandatory Requirements, Tab A (Technical Requirements) Sections 5.1 – 5.4 and 5.8 -5.11 and Tab B (Reporting Requirements) and Tab C (Performance Standards) and as revised in Amendment 3(a).

9. For purposes of administering the Contract, the Order of Precedence is:

- (a) This Contract Amendment #6 dated April 12, 2021;
- (b) The Contract Amendment #5 dated March 23, 2021;
- (c) The Contract Amendment #4 dated September 21, 2020;
- (d) The Contract Amendment #3 dated April 6, 2020;
- (e) The Contract Amendment #2 dated August 17, 2018;
- (f) The Contract Amendment #1 dated March 22, 2018;
- (g) The Contract between the Department and Truven Health Analytics LLC dated March 2, 2017;
- (h) Exhibit A, Changes Agreed to by the Parties during contract negotiations and from the Request for Proposal (RFP) ETG0004 & ETG0006;
- (i) RFP ETG004/ETG006 dated August 5, 2016;
- (j) Contractor's proposal dated September 13, 2016; and;
- (k) Contractor's Best and Final Offer (BAFO), dated November 15, 2016. [This is the revised price proposal based on RFP spreadsheet corrections made by ETF.]

Contract Number & Service: ETG0004 & ETG0006 Data Warehouse & Visual Business Intelligence Solution

| | |
|---|---|
| State of Wisconsin | |
| Department of Employee Trust Funds | |
| By Authorized Board (Name) State of Wisconsin Group Insurance Board | |
| Signature | DocuSigned by:  |
| Name/Title | A5F7C939CDEE401... Herschel Day, Chair State of Wisconsin Group Insurance Board |
| Phone | 608.266.9854 (A. John Voelker, Secretary) |
| Date (MM/DD/CCYY) | 4/15/2021 |

| | |
|---|---|
| Contractor | |
| Legal Company Name International Business Machines Corporation | |
| Trade Name | |
| Taxpayer Identification Number 13-0871985 | |
| Company Address (City, State, Zip) 100 Phoenix Drive Ann Arbor, MI 48108 | |
| By (print Name) Craig Haseltine | |
| Signature | DocuSigned by:  |
| Title | D1E1673F1B47431... Vice President - Global Government Health and Human Services |
| Phone | 1-571-436-5132 Email: haseltin@us.ibm.com |
| Date (MM/DD/CCYY) | 4/15/2021 |

Amendment #6 – Benefits Mentor

1. Scope of Work

Solution Description

IBM Benefits Mentor with Watson

This Solution Description describes the IBM Benefits Mentor with Watson, a Cloud Service, and related professional services (collectively, the “Solution”). Contractor will provide to ETF the Solution. ETF includes Participants authorized to use the Solution.

A. Solution Overview

Benefits Mentor with Watson is a decision support platform which ETF will provide to Participants to educate themselves about the plans they are eligible for and which plan would provide the best balance of cost and coverage, personalized to the claims-observed medical and prescription drug needs of the specific Participant.

The Solution Includes up to 25 plan packages (Plan Package) across medical and dental that can be made available to Participants. “Plan Package” is the combination of attributes (agency, employee status, etc.) that uniquely identify the benefit plan choices available to each employee.

A.1 Core Decision Support

The Solution provides decision support for medical (including prescription drug) and dental plan offerings, and provides the Participant with the most cost-effective plan options through the following channels:

A.1.1 Digital Engagement Solutions

Self-serve toolkit and chat with IBM Watson Health digital engagement solutions (“Digital Engagement Solutions”) that allow Participants to choose the type of experience that provides the level of support they need in their benefit decision.

○ Self-Serve Toolkit

- A self-guided website the Participants can use to answer questions regarding their healthcare needs for the plan year and review details about the plan that is identified to be the most cost effective based on those healthcare needs, as well as the other plans the Participants are eligible for.

○ Chat with Watson

- An IBM Watson-led conversation about the Participant’s healthcare needs that concludes with identification of a plan that is the most cost effective based on those healthcare needs. The Participants can ask questions about the most cost effective and other eligible plans, as well as healthcare and benefits terminology and enrollment topics.

○ Medicare Functionality

- The Contractor and ETF will meet to determine agreed-upon Medicare functionality and corresponding pricing for 2022 and later.

A.2 Claims-based Personalization

The Solution personalizes its plan recommendations based on the healthcare utilization observed in a Participant's medical and drug claims. Those claims can be provided to the Solution via:

A.2.1 Health Insights

Extracts from the data warehouse provided under this Contract (Health Insights) can be used to inform the Solution.

A.3 Single Sign On

The Solution securely hosts ETF's Participant information which can then be accessed through ETF's third-party identity management solution. Participants are authenticated via Single Sign On (SSO). A single SSO link from the source system identified by ETF to the Solution can be enabled. A string of user-specific data would be passed via SSO or entered by the user.

A.4 Year-Round Access

The Digital Engagement Solutions may remain accessible at ETF's request, using the plan designs, solution configurations, and underlying data collected during the implementation until the following year's enrollment period.

B. Optional Features

B.1 Email Summary Statement

Contractor will craft an email to be sent to employees prior to open enrollment. This email will act as a marketing message to direct users to the benefits selection tool.

B.2 Detailed Health Benefits Statement – Mail Delivery

The Detailed Health Benefits Statement is a document that can be delivered as a print media solution mailed to the Participant's home. The Detailed Health Benefits Statement contains a summary of the Participant's historical medical and prescription utilization and the plans the Participant is eligible for, indicating which plan is the most cost effective based on the Participant's observed healthcare needs.

Print fulfillment includes letters, envelopes, address standardization/postal sorting, and letter stuffing.

Postage is estimated using the per mailing rate as of the mailing date, based on anticipated USPS first class, pre-sort rates. Estimated postage fees will be billed prior to mailing and will be adjusted for actual costs once they are known.

B.3 Detailed Health Benefits Statement – Electronic Delivery

The Detailed Health Benefits Statement is a document that can be delivered to Participants online, as a PDF hosted securely by the Solution. The Detailed Health Benefits Statement contains a summary of the Participant's historical medical and prescription utilization and the plans the Participant is eligible for, indicating which plan is the most cost effective based on the Participant's observed healthcare needs.

B.4 Provider Network Status

Enable Participants to confirm whether their medical providers are in-network or out-of-network for the plans they are eligible for within the Digital Engagement Solutions available to them.

If selected, ETF will need to provide provider data to support this functionality. This will be updated with the timelines specified in the Deliverables table (Amendment #6 section 2).

B.5 Log-in Page

Enable Participants to register for a username and password to log in to the Solution when a Single Sign On option is not available to them.

- i. Log-in page that will allow for the users and spouses to authenticate and map them to the proper rates, contributions and plans.
- ii. The users will have to respond to Q/A or dropdowns to map to the proper premium structure

C. Solution Scope

| Data Source (Check One) | Data Source | Notes |
|-------------------------------------|--|--|
| <input type="checkbox"/> | MarketScan Data | |
| <input checked="" type="checkbox"/> | ETF's Data via Health Insights Data | 42,000 employees and retirees (optionally up to 100,000) Online access only |
| <input type="checkbox"/> | ETF's Data via Flexible Analytics Data | |

C.1 Optional Features Selected by ETF

| Optional Features (Check All that Apply) | Optional Features | Notes |
|---|---|------------------------|
| <input type="checkbox"/> | 2.1 Detailed Health Benefits Statement (mail) | |
| <input type="checkbox"/> | 2.2 Detailed Health Benefits Statement (electronic) | |
| <input type="checkbox"/> | 2.3 Provider Network Status | Presented as an option |
| <input checked="" type="checkbox"/> | 2.4 Log-in Page | Presented as an option |

D. Activities

Under this Amendment, Contractor and ETF will undertake the following activities:

Configure the Solution and Provide Access

D.1 Contractor Responsibilities

- a. Contractor will perform the following services for up to 100,000 employees and retirees.
- b. Participants will have access to the Solution via the URL hosted on the WI ETF public website. If the Participant(s) claims/eligibility volume does not meet the Solution threshold to calculate an estimate (less than nine months of eligibility and less than \$1000 in allowed amount), WI ETF can utilize either MarketScan or actual claims for these Participants. Participants who meet the threshold (more than nine months of eligibility and more than \$1000 in allowed amount), the Solution will use the Participants claims. The decision to utilize claims or MarketScan data for Participants who do not meet the threshold would be a decision made during the project.

For New Hires (i.e. those were not part of the dataset used to construct the solution), the Solution will default the Participant to the average annual health care costs for a low-cost person from the Contractor's MarketScan normative data. Participants can then modify their healthcare needs while using the MarketScan normative data. MarketScan is one of the largest proprietary claims databases in the industry including data from hundreds of employer and health plan contributors. Cost estimates are geographically specific (de-identified data with over 14 million covered lives) to estimate the Participant's (individual and family's) healthcare costs for the previous rolling year.

- c. **Project Plan.** Contractor will provide, in writing, a detailed project plan for the production of the Solution (the "Project Plan"). Contractor will work collaboratively with ETF to make sure that all milestones and deliverables are met on a timely basis, in accordance with the mutually agreed upon Project Plan. This Project Plan shall replace any previously submitted drafts. Any material revisions to this Project Plan must be agreed to in writing by ETF and Contractor.
- d. **Status Meetings.** Contractor will coordinate status calls with ETF and review critical paths, timing and deliverables during the project.
- e. **Contractor Responsibilities for Online Solution.** Contractor will provide ETF's Participants with access to the Benefits Mentor with Watson Digital Engagement Solutions. Contractor will release the website into the production environment with a final date to be determined and agreed upon by both Parties. Contractor will provide ETF staff with access to the Solution with generic account information.
- f. **Technical Configuration Support.** Contractor will provide a Single Sign On implementation guide and product documentation and will consult with ETF's IT staff to support the connection of the Solution to ETF's third-party identity management solution if selected as an option.
- g. **Testing of the Solution.** During the implementation of the "Solution", the IBM Watson Health implementation team will conduct testing in the following areas:

- a. **User Interface Configurations:** Reviewing client elected “Solution” configurations to ensure applied entirely and correctly.
- b. **Connectivity:** Establishing “Solution” connectivity between organizations to access the “Solution” prior to user acceptance testing and launch (i.e. Log In Page and Single Sign On, when applicable).
- c. **Data Exchange:** Establishing data exchange connectivity between organization to support supplemental data file(s) exchange, if necessary.
- d. **Data Quality:** Reviewing data quality, sourced from the warehouse and client provided supplemental file(s).
- e. **Solution Launch:** Confirming data and contents successfully transferred to IBM Watson Health PROD environment prior to launch.
- f. **IBM Watson Health Test Cases:**
 - i. Reviewing historical data within the “Solution” to ensure alignment with data originating from the warehouse.
 - ii. **Premiums and Benefits:** Reviewing premium and plan year benefits against test cases to ensure projections are reasonable.

D.2 ETF Responsibilities

- a. **Resource.** ETF will provide an appropriate-level resource to provide Contractor with reasonable access to business and technical contacts, background information, and data sources.
- b. **Project Team.** ETF will provide access to individuals who will work on the implementation and delivery of the Solution who will have sufficient content knowledge and the organizational authority to approve design and specifications.
- c. **Testing.** ETF will provide a pilot group of ETF Staff (up to 10) who consent to participate to test the Solution to ensure accuracy and consistency from a product and user data accuracy perspective. Test data will contain Personal Health Information (“PHI”) and shall therefore be specific to the individual testers only.
- d. **End User Training and Communications.** ETF will be responsible for providing training and training-related communications to Participants regarding the Solution.
- e. **End User Support.** ETF will provide first line support to Participants.
- f. **Signoff.** ETF will be responsible for providing sign-off on a timely basis on all deliverables as defined in the Project Plan.
- g. **User Authentication and Security.** When the SSO option is executed, ETF will provide all necessary end user authentication (and associated end user security management), and secure SSO supporting federated security.

D.3 Joint Responsibilities

System Testing. Contractor and ETF will perform system testing in a joint effort to ensure accuracy and consistency from a product, data, and ETF perspective.

E. Change Request

Any Change Request will be handled in accordance with Appendix B.

F. Additional Terms and Conditions**Cloud Service Terms and Conditions**

ETF shall agree to the Attachment for Cloud Service attached hereto as Appendix A.

G. Data Processing Protection

The parties agree that it is not the intent of the Solution to include data that is subject to i) the European General Data Protection Regulation (EU/2016/679) (GDPR); or ii) other data protection laws identified at <http://ibm.com/dpa/dpl>. Contractor will include a disclaimer on the Solution's web site restricting such usage. If Client has the opinion that IBM is processing such personal data on behalf of the Client, Client shall inform IBM. The parties will then meet and agree upon a course of action which may include entering into a data processing agreement or other amendment, which shall amend this Amendment, as is reasonably required to comply with GDPR and Data Protection Laws, if applicable.

2. Estimated Schedule and Milestones

| Milestones | Estimated Date |
|---|-----------------------|
| 1. Begin Benefits Mentor Implementation | March 1, 2021 |
| 2. All Benefits Mentor services specified in this SOW shall be available for users based on 2021 benefits and premium data. | July 1, 2021 |
| 3. All Benefits Mentor services specified in this SOW shall be available for users based on 2022 benefits and premium data. | September 15, 2021 |
| 4. All Benefits Mentor services specified in this SOW shall be available for users based on the 2023 benefits and premium data. | September 15, 2022 |

3. Renewal and Termination

Either party may terminate the Solution provided under this Amendment in accordance with the Contract terms without affecting other products and services under this Contract.

This Amendment will auto-renew annually for the term of the Contract contingent on a pricing proposal provided by Contractor and approved by ETF.

ETF cancellation: In the event ETF wishes to cancel the Solution, ETF shall provide such notice to Contractor by July 1 prior to the start of the Plan Year. For example, ETF shall notify Contractor by July 1, 2022 for cancellation of the Solution for the 2023 Plan Year (with the Open Enrollment Period commencing in September or October 2022).

Contractor cancellation: In the event Contractor wishes to cancel the Solution, Contractor shall provide such notice to ETF by the first day of the 18th month prior to the start of the Plan Year. For example, Contractor shall notify ETF by July 1, 2021 for cancellation of the Solution for the 2023 Plan Year (with the Open Enrollment Period commencing in September or October 2022).

Pricing Proposals: Contractor shall deliver a pricing proposal for the Solution to ETF by the first day of the 13th month prior to the start of the Plan Year. For example, Contractor will deliver a pricing proposal by December 1, 2022 for the 2024 Plan Year (with the Open Enrollment Period commencing in September or October 2023).

4. Payment Schedule

For the Milestones identified in Section 2 – Estimated Schedule and Milestones above, total costs shall not exceed \$504,150.51 if the employee and retiree count is under 42,000 for 2021 and 2022. If the employee and retiree count is 65,000 for 2021 and 2022, the total costs shall not exceed \$539,361.51. If the employee and retiree count is 100,000 for 2021 and 2022, the total costs shall not exceed \$596,606. The table below shows how the actual cost would be determined based on how the employees and retirees are enrolled into the Solution. The base number of participating employees is 42,000. ETF may optionally increase to either 65,000 or 100,000 employees, by adding UW System employees or Medicare retirees, for any Milestone by notifying the Contractor of such change during the configuration of the Solution for that Milestone. Total costs under this Amendment shall be the sum of the Milestone amount from the table below for the number of employees selected for that Milestone.

For Plan Years starting in 2024 (open-enrollment 2023), Contractor guarantees that the price for the Solution, in the Pricing Proposal, shall not increase by more than 3% or the rate of inflation for the [national consumer price index](#), whichever is lower, unless (a) the third-party costs associated with the Solution increase beyond the same growth factor or (b) the parameters for the Solution change significantly, such as an increase of more than 10,000 in the number of participating employees. In the event of (a), the Contractor will provide ETF with documentation of the increased cost (such as third-party licensing costs) in the Pricing Proposal to justify the increase in price. In the event of (b), the Contractor and ETF shall jointly review the change in the Solution's parameters and negotiate a mutually agreeable price reflective of the updated Solution.

Contractor will invoice ETF for services provided under this Amendment in accordance with the table below.

| Milestone | Charge | | |
|--|---------------------|-----------------------------|------------------------------|
| | 42,000 Employees | 65,000 Employees (Optional) | 100,000 Employees (Optional) |
| After achieving Milestone 2 – July 2021 | \$168,050.17 | \$179,787.17 | \$198,868.67 |
| After achieving Milestone 3 – September 2021 | \$168,050.17 | \$179,787.17 | \$198,868.67 |
| After achieving Milestone 4 – September 2022 | \$168,050.17 | \$179,787.17 | \$198,868.67 |
| Total Services Charge* | \$504,150.51 | \$539,361.51 | \$596,606.00 |

*Department may choose alternative options for each milestone, which would change the Total Services Charge

Contractor will submit invoices to ETF SMBHealthFunding@etf.wi.gov.

Client shall make payments in accordance with Wisconsin Statute 16.528

If IBM incurs additional costs due to delay in performance of ETF responsibilities, this may result in additional charges as agreed to by both parties in a Change Request (Appendix A-1).

5. Performance Guarantees:

For purposes of this Contract Amendment #6 only, Appendix 10 – Mandatory Requirements – Tab C (Performance Standards) as revised in Contract Amendment #3 is hereby replaced in its entirety with the following:

The Contractor must guarantee performance sufficient to fulfill the needs of this Amendment #6. The Contractor must meet all performance standards listed in this Amendment #6. After this Amendment #6 start date, if additional resources are needed, the Contractor will bear all costs necessary to satisfy the requirements of this Amendment #6.

In addition to the liquidated damages detailed in Exhibit 4 - Department Terms and Conditions, ETF may also assess penalties for failure to meet the Performance Standards listed below.

Written notification of each failure to meet a Performance Standard that is measured by ETF will be given to the Contractor prior to assessing penalties. The Contractor will have five (5) Business Days from the date of receipt of ETF's written notification of a failure to perform to provide ETF with specifications to cure the failure. Additional days may be approved by the ETF Program Manager if deemed necessary. If the failure is not resolved within this warning/cure period, penalties may be imposed retroactively to the date of failure to perform. The imposition of penalties is not in lieu of any other remedy available to ETF or in lieu of any other penalties in applicable state or federal law.

If ETF elects to not exercise a penalty clause in a particular instance, this decision shall not be construed as an acceptance of the Contractor's performance. ETF retains the right to pursue future assessment of that performance requirement and associated penalties.

ETF shall be the sole determinant as to whether or not the Contractor meets a performance standard.

The purpose of penalties is to ensure adherence to the performance requirements in this Amendment #6. It is agreed by ETF and the Contractor that, in the event of a failure to meet the performance requirements listed below, damage shall be sustained by ETF. It shall be agreed that the Contractor shall pay or credit ETF for such failures at the sole discretion of ETF, according to the Requirements and penalties below.

ETF and the Contractor shall agree that the Contractor shall not be subject to penalties for failure to meet a performance standard where said failure is not caused by the Contractor. ETF shall have the right to make the final determination in the assessment of all penalties. Finally, while the Performance Standards impose penalties upon the Contractor when the Contractor fails to meet a Performance Standard, it is ETF's expectation that ETF and the Contractor shall enter into a collaborative relationship; and as such, opportunities and methods to improve Contractor performance for said failures shall be pursued by both ETF and the Contractor, in order to meet or exceed the Performance Standards Requirements.

The total penalties assessed for Contractor's failure to meet the performance standards set forth in the following chart shall not exceed twenty-five (25%) percent of the fees paid under this Amendment for any given year except for 2021, where the total shall not exceed 12.5% of the fees paid in 2021. Penalty amounts will be refunded to ETF upon receipt of an invoice for the penalty.

The performance categories and associated penalty are explained in greater detail in the tables that follow:

| Performance Standard | Penalty |
|--|---|
| <p>Milestones: The Contractor will meet the Milestones in Section 2 by the dates included in Section 2.</p> <p>Except in the following instances:</p> <ul style="list-style-type: none"> • ETF non-acceptance of a deliverable • Any delay by ETF or 3rd party driven dependency including but not limited to failure to make resources available • Contractor does not receive usable eligibility data 2 months prior to the delivery dates | <p>\$1,000 for each business day the milestone is not met.</p> |
| <p>System(s) Uptime Availability: Contractor shall ensure the Solution shall be available to Participants twenty-four (24) hours per day/seven days each week 365 days/year.</p> <p>The Solution uptime guarantee is 99%. Contractor provides ETF with the following availability service level agreement (SLA). Starting after initial 'go live' date of 7/1/2021, the availability percentage is calculated as the total number of minutes in a contracted month, minus the total number of minutes of service down in the contracted month, divided by the total number of minutes in the contracted month.</p> <p>Except in the following instances:</p> <ul style="list-style-type: none"> • Problems with ETF or 3rd party equipment, facilities • Outages due to acts or omissions of ETF • Any other outages due to causes beyond the reasonable control of Contractor or which Contractor cannot reasonably foresee • Contractor scheduled down time. | <p>\$2,000 per month where system uptime is below the 99.0% standard.</p> |
| <p>System Downtime Notification: With the exception of unforeseen critical maintenance, Contractor shall notify ETF at least 14 calendar days prior to the scheduled maintenance.</p> | <p>\$500 for each business day the Contractor failed to meet this standard.</p> |
| <p>Privacy and Security: The Contractor shall use or disclose PHI only to perform functions, activities or services specified in this Amendment, for, or on behalf of ETF, provided that such use or disclosure would not violate the HIPAA, ACA, or HITECH regulations.</p> | <p>1) \$10,000 - First violation, plus \$1,000 per record affected by each breach or disclosure; 2) \$15,000 - Second violation, plus \$1,000</p> |

| | |
|--|--|
| | per record affected by each breach or disclosure; 3) \$20,000 - Third and any additional violations, plus \$1,000 per record affected by each breach or disclosure. |
| ETF Timely Notification of Breach: Contractor will provide ETF with timely notification of breach within 24 hours of Contractor confirming any suspected ETF system breach or impermissible use or disclosure of ETF data, regardless of disclosure of PII or PHI. | \$1,000 per hour, for every hour beyond the twenty-four (24) hours that it takes for the Contractor to notify ETF of a breach or impermissible use or disclosure upon discovery by the Contractor. |



Appendix A - Attachment for Cloud Services

The parties agree to this Attachment for Cloud Services which is hereby incorporated into this Amendment #6.

1. Cloud Services

- a. A Cloud Service is a Contractor (hereafter referred to as IBM for this Appendix A) offering provided by IBM and made available via a network. The Cloud Service contemplated in this Amendment and subject to the following terms and conditions is the Benefits Mentor tool. The Benefits Mentor tool ("Solution") is described in this Amendment. ETF will be notified of scheduled maintenance. Technical support and service level commitments, if applicable, are specified in the Amendment.
- b. IBM will provide the facilities, personnel, equipment, software, and other resources necessary to provide the Cloud Service, which is part of the Solution and generally available user guides and documentation to support ETF's use of the Cloud Service, which is part of the Solution. The Cloud Service, which is part of the Solution may require the use of enabling software that ETF downloads to ETF systems to facilitate use of the Solution. ETF may use enabling software only in connection with use of the Solution and according to any licensing terms if specified in the Amendment. Enabling software is provided as-is, without warranties of any kind.
- c. ETF will provide hardware, software and connectivity to access and use the Cloud Service, which is part of the Solution, including any required ETF-specific URL addresses and associated certificates.
- d. ETF may access the Cloud Service, which is part of the Solution only to the extent of authorizations acquired by ETF. ETF is responsible for use of the Solution by any user who accesses the Cloud Service, which is part of the Solution with ETF's account credentials. The Cloud Service, which is part of the Solution may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent Content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating third party rights. In addition, ETF may not use the Solution if failure of the Cloud Service, which is part of the Solution could lead to death, bodily injury, or property or environmental damage. ETF may not: i) reverse engineer any portion of the Cloud Service, which is part of the Solution; ii) assign or resell direct access to the Cloud Service, which is part of the Solution to a third party outside ETF's Enterprise; iii) combine the Cloud Service, which is part of the Solution with ETF's value add to create a commercially available ETF branded solution that ETF markets to its end user customers unless otherwise agreed.

1.2 Changes to Cloud Services

IBM may modify: i) the Cloud Service, which is part of the Solution; and ii) the IBM's Data Security and Privacy Principles for IBM Cloud Services (DSP) from time to time at IBM's sole discretion and such modifications will supersede prior versions. Updates to this Amendment (such as a service description or statement of work) will take effect in accordance with the change request provisions in Appendix B. The intent of any modification will be to: i) improve or clarify existing commitments; ii) maintain alignment to current adopted standards and applicable laws; or iii) provide additional features and functionality. Modifications will not degrade the security or functionality of a Cloud Service.

1.3 Suspension and Termination of Cloud Services

- a. The term of a Cloud Service begins on the date listed in this Amendment.
- b. IBM may suspend, or limit, to the extent necessary, ETF's use of a Cloud Service if IBM determines there is a material breach of ETF's obligations, a security breach, or violation of law, or breach of the terms set forth in section 5 (f). IBM will provide notice of the actions ETF must take to reinstate the Cloud Service. If ETF fails to take such actions within a reasonable time, but no less than 60 days, IBM may terminate the Cloud Service. In the event of such termination, ETF shall pay IBM for the amounts due through the date of termination.
- c. ETF may terminate the Benefits Mentor tool in accordance with the terms and conditions of the underlying contract or according to this Amendment.

2. IBM Content and Data Protection

Nothing in this Section will supersede or relieve IBM from their data protection responsibilities under Section 22.0 or Section 28.0 of the Department Terms and Conditions

- a. "Content" consists of all data, software, and information that ETF or its authorized users provides, authorizes access to, or inputs to IBM Cloud Services. ETF grants the rights and permissions to IBM, its affiliates, and contractors of either, to use, provide, store, and otherwise process Content solely for the purpose of providing the IBM Cloud Services. Use of the IBM Cloud Services will not affect ETF's existing ownership or

license rights in Content. IBM, its affiliates, and contractors of either, will access and use the Content solely for the purpose of providing and managing the IBM Cloud Service. IBM will treat Content as confidential by only disclosing to IBM employees and contractors to the extent necessary to provide the IBM Cloud Services.

- b. ETF is responsible for obtaining all necessary rights and permissions to permit processing of Content in the IBM Cloud Services. ETF will make disclosures and obtain consent required by law before ETF provides, authorizes access, or inputs individuals' information, including personal or other regulated data for processing in the IBM Cloud Services. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for the IBM Cloud Services, ETF will not provide, allow access to, or input the Content for processing in the IBM Cloud Services unless specifically permitted in the terms of the relevant TD or unless IBM has otherwise first agreed in writing to implement additional security and other measures.
- c. IBM Data Security and Privacy Principles (DSP), at <http://www.ibm.com/cloud/data-security>, apply for standard IBM Cloud Services that are generally available. Specific security features and functions of an IBM Cloud Service will be described in the applicable Attachment or TD. Agency is responsible for selecting, ordering, enabling, and using available data protection features appropriate to support Agency's use of the Cloud Services. Agency is responsible for assessing the suitability of the Cloud Services for the Content and Agency's intended use. Agency acknowledges that the Cloud Services used meet Agency's requirements and processing instructions required to comply with applicable laws.
- d. Upon request by either party, IBM, ETF or affiliates of either, will enter into additional agreements as required by law in the prescribed form for the protection of regulated personal data included in Content. The parties agree (and will ensure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.
- e. For IBM Cloud Services with self-managed features, ETF can remove Content at any time. Otherwise, IBM will return or remove Content from IBM computing resources upon the expiration or cancellation of the Cloud Service, or earlier upon Client's request. IBM may charge for certain activities performed at Client's request (such as delivering Content in a specific format). IBM does not archive Content, however some Content may remain in Cloud Service backup files until expiration of such files as governed by IBM's backup retention practices.

3. Warranties and Post Warranty Support

- a. IBM warrants that it provides the Cloud Service, which is part of the Solution using commercially reasonable care and skill. The warranty for the Cloud Service, which is part of the Solution ends when this Amendment ends.
- b. IBM does not warrant uninterrupted or error-free operation of the Cloud Service, which is part of the Solution or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access to the Cloud Service, which is part of the Solution. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, or failure to comply with instructions provided by IBM.

4. Governing Laws and Geographic Scope

IBM will not serve as ETF's exporter or importer for: i) any Content; or ii) use of any portion of the Cloud Service from a country outside ETF's business address.

Appendix B: Project Procedures

B - 1: Project Change Control Procedure

A Project Change Request ("PCR") is used to document a change and the effect the change will have on the services provided under this Amendment. Both parties will review the PCR and agree to implement it, recommend it for further investigation, or reject it. Contractor will specify any charges for such investigation.

B - 2: Deliverable Acceptance Procedure

- a. Within five (5) business days of receipt, ETF's designated Program Manager will either accept a Project Plan deliverable or deliverable in Appendix B, or provide Contractor with a list of requested revisions; otherwise the deliverable will be deemed accepted.
- b. The revisions recommended by ETF and agreed to by Contractor will be made and the deliverable will be resubmitted and deemed accepted.
- c. The revisions recommended by ETF and not agreed to by Contractor will be managed through the Project Change Control Procedure or as described in the Department Terms and Conditions Section 13.0.
- d. While a conflict is being resolved, Contractor will provide services under this Amendment relating to items not in dispute, to the extent practicable pending resolution of the conflict; ETF agrees to pay invoices for services not in dispute per terms of the Contract.

Appendix C: Deliverables

| Item to be delivered | Purpose and Content | Type | Delivery Method | Delivery Date |
|-------------------------------|--|------------------|---------------------------------|--|
| Benefits Mentor Annual Report | Contractor shall email the Benefits Mentor Annual Report to the designated ETF Program Manager. | Project Material | email PDF Soft copy document | within forty-five (45) days after the new enrollment eligibility data is available in Health Insights or to Contractor |
| Train the Trainer Materials | To support ETF's responsibility to train employers and users | Project Material | Email of PowerPoint | No later than 5.31.2021 |
| Project Plan | Project plan with deliverables, milestones and dependencies | Project Material | Email | 30 days after signature of Amendment 5 |
| Usage Report | Contractor provides tool usage statistics for ETF to measure engagement with the digital experiences and impact for open enrollment. | Project Material | Email | Monthly except during open enrollment when it will be weekly |

Appendix D: Sample Project Change Request

| PROJECT CHANGE REQUEST (PCR) | | |
|---|---|--------------------|
| PCR Date: | Requested by: | PCR Number: |
| <p>This PCR must be approved by both parties and signed below on or before the offer expiration date before the PCR can be implemented. This offer will expire on {insert mm/dd/yyyy}, unless extended by IBM in writing. All other terms in the referenced Solution Description not affected by this PCR remain in full force and effect.</p> | | |
| <p>The parties agree that this PCR modifies the existing referenced Solution Description as follows: {insert language regarding the changes to the Solution Description here}</p> | | |
| <p>{insert language regarding the impact of the changes here... sample text is below}</p> <p>If extending the date: The new estimated End Date is {End Date}.</p> <p>If adding hours: The additional estimated services hours for this PCR are {Number of hours}, at \${Hourly rate} per hour, for additional estimated professional services charges of \${Fee total}.</p> <p>If adding Fixed Fee Services: The additional fixed fee for performing the Services defined in this PCR is \${Fee total}.</p> <p>If adding T&L: The additional estimated travel and living expenses (including actual transportation and lodging, and per diem meal expenses) for this PCR are \${Expenses}.</p> | | |
| PCR Approval | | |
| <p>In entering into this PCR, you are not relying upon any representation made by or on behalf of IBM that is not specified in the Agreement or the Solution Description, including, without limitation, the actual or estimated completion date, number of hours to provide any of the Services, charges to be paid, or the results of any of the Services to be provided under the Solution Description. Each of us agrees that the complete agreement between us about these Services consists of 1) this Project Change Request, 2) the referenced Solution Description including any previous mutually-approved PCRs, and 3) the Agreement or any equivalent agreement in effect between us as identified in the Solution Description.</p> | | |
| Agreed to: | Agreed to: | |
| Client Name: | International Business Machines Corporation | |
| By (Authorized Signature): | By (Authorized Signature): | |
| Name (type or print): | Name (type or print): | |
| Date: | Date: | |
| PCR Estimated Start Date (remove if not applicable): | Solution Description Name: | |
| PCR Estimated End Date (remove if not applicable): | Solution Description Number: | |
| | IBM Fax Number: | |
| | IBM Internet ID: | |