



Contract

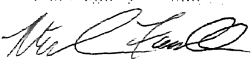
Commodity or Service: Data Warehouse (DW) Solution & Visual Business Intelligence (VBI) Solution
Contract No./Request for Bid/Proposal No: ETG0004 & ETG0006

Authorized Board: Group Insurance Board

Contract Period: March 1, 2017 through December 31, 2018 with the option for renewal of two (2) two (2) year periods

1. This Contract is entered into by the State of Wisconsin, Department of Employee Trust Funds (Department), the State of Wisconsin Group Insurance Board (Board) and between Truven Health Analytics LLC, hereinafter referred to as the "Contractor", whose address and principal officer appears on page 2. The Department is the sole point of contact for this Contract.
2. Whereby the Department of Employee Trust Funds 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. In connection with the performance of work under this Contract, the Contractor agrees not to discriminate against any employees or applicants for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5), Wis. Stats., sexual orientation as defined in s.111.32(13m), Wis. Stats., 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. The Contractor further agrees to take affirmative action to ensure equal employment opportunities. The Contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
4. Contracts estimated to be over fifty thousand dollars (\$50,000) require the submission of a written affirmative action plan. Contractors with an annual work force of less than fifty (50) employees are exempted from this requirement. Within fifteen (15) business days after the award of the Contract, the plan shall be submitted for approval to the Department. Technical assistance regarding this clause is provided by the Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931, 608.261.7952, or via e-mail at ETFPurchase@etf.wi.gov.
5. For purposes of administering this Contract, the Order of Precedence is:
 - A) This Contract with Truven Health Analytics LLC;
 - B) Exhibit A, Changes Agreed to by the Parties during contract negotiations and from the Request for Proposal (RFP) ETG0004 & ETG0006;
 - C) the Request for Proposal (RFP) dated August 5, 2016;
 - D) the Contractor's proposal dated September 13, 2016; and,
 - E) 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 (DW) Solution & Visual Business Intelligence (VBI) Solution

State of Wisconsin	
Department of Employee Trust Funds	
By Authorized Board (Name)	
Group Insurance Board	
By (Name)	
Michael Farrell	
Signature	
Title	
Chair Group Insurance Board	
Phone	608.266.9854 (A. John Voelker, Deputy Secretary)
Date (MM/DD/CCYY)	3/2/2017

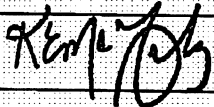
Contractor to Complete	
Legal Company Name	
Truven Health Analytics LLC	
Trade Name	
Taxpayer Identification Number	
06-1467923	
Company Address (City, State, Zip)	
100 Phoenix Drive Ann Arbor, MI 48108	
By (print Name)	
Kevin McFarling	
Signature	
Title	
Senior Vice President and General Manager Truven State & Local Health and Human Services	
Phone	734-913-3000
Date (MM/DD/CCYY)	3-1-17

Exhibit A

Truven Health Analytics, LLC. Contract: Changes agreed to by the parties to the August 5, 2016 Request for Proposals (RFPs) ETG0004 Data Warehouse Solution and ETG0006 Visual Business Intelligence Solution for Services to be provided by Truven Health Analytics, Inc. to the State of Wisconsin Department of Employee Trust Funds for the Health Insurance Programs Offered by the State of Wisconsin Group Insurance Board.

1) Add the following to the RFP, Appendix 9 – Data Submitting Entities (DSE):

GHC - EAU CLAIRE
PO BOX 3217
EAU CLAIRE WI 54702-3217

The above DSE was mistakenly omitted from RFP Appendix 9 but was included in the 22 DSEs discussed throughout the RFP. There is no additional charge to add the above DSE.

2) Delete all the following from the RFP, Appendix 10 – Mandatory Requirements, Tab A. Technical Requirements:

Escrow: 5.11.1 - All software and applications purchased and/or developed for ETF that stand outside of the DW and VBI system tool(s), and include business logic that was developed solely for ETF, are ETF property and must be transferred to ETF upon termination of the Contract.

Escrow: 5.11.2 - ETF shall solely own any custom software, including, but not limited to applications developed to integrate with commercial off-the-shelf (COTS) products, custom source-code, documentation, and configuration files, when furnished by ETF or when developed for ETF under the Contract.

Escrow: 5.11.3 - ETF shall own final deliverables, and any portion thereof, customized and developed exclusively for ETF as part of the Services, exclusive of Contractor's Proprietary Information, based on appropriate ETF and ETF statutes and regulations.

Escrow: 5.11.4 - Contractor licensed and/or Contractor copyrighted materials shall be governed by the terms and conditions identified in the Contract or the license.

Escrow: 5.11.5 - Data, databases and derived data products created, collected, manipulated, or directly purchased to perform the Services shall become the property of ETF. ETF is considered the custodian of the data and shall determine the use, access, distribution of the data, and other conditions of the data based on ETF policies, State statutes, federal regulations, and other applicable rules/regulations. In the case where an industry-specific data model is preferred to be incorporated in Contractor's system, the industry-specific model shall be licensed by ETF, rather than owned by ETF.

Escrow: 5.11.6 - Contractor licensed and/or Contractor copyrighted materials shall be governed by the terms and conditions identified in the Contract or the license.

Escrow: 5.11.7 - All software and applications (source code and all necessary documentation) shall be placed in escrow, and shall include anything necessary to replicate the full database environment (including scripts, stored procedures, ETL, etc.). A quarterly full backup of Contractor's system shall be included, in an escrow account, meeting or exceeding all ETF security standards and/or those included in this RFP.

Escrow: 5.11.8 - Escrow terms and conditions shall survive the termination of the Contract. Application source code and object code and documentation shall be written in English to allow a competent programmer to use and test the source code or object code and documentation. The Contractor shall deposit and store application source code and object codes and documentation with a Third Party Escrow Agent, selected by ETF. ETF shall pay all costs of providing and maintaining the escrow agreement, including the fees of the escrow agent.

Escrow: 5.11.9 - ETF shall be designated as a user in the escrow agreement.

Escrow: 5.11.10 - ETF shall have the right to receive, use and modify the source code and object code and documentation when an escrow Release Event occurs. Contractor grants to ETF the right to access and use the source code or application object code if ETF exercises its escrow rights, or in the event of an escrow Release Event.

Escrow: 5.11.11 - The Contractor hereby grants to ETF a royalty-free, perpetual, irrevocable license permitting disclosure to a third party support contractor of a complete and accurate copy of the then-current source code or object code and documentation for the Application when an escrow Release Event occurs.

Escrow: 5.11.12 - The Contractor shall place and maintain at all times the most current version of the source and object codes and documentation for the Application in escrow with the third party escrow agent selected by ETF. The Contractor shall deposit such current versions into the escrow account within thirty (30) days of any change to the source code and/or object code and documentation for the Application. The Contractor shall warrant to ETF after the initial Acceptance Test has been completed and approved and then on an annual basis that the source code and object code and documentation held by the third party escrow agent is current. ETF shall have the right to test the source code and object code and documentation in escrow at ETF's discretion to verify the current Application containing all updates, upgrades, improvements and enhancements have been added to the escrow. The third party escrow agent fees, if any, for any such test shall be the responsibility of ETF.

Escrow: 5.11.13 - ETF shall have the right to obtain the source code and object code and documentation in accordance with and subject to the terms and conditions of the escrow agreement when all of the following three conditions are met ("Release Event"):

- 1) The Contractor begins winding down its business or liquidating its business under a Chapter 7 Bankruptcy proceeding;
- 2) No entity has succeeded to the Contractor's obligations to provide maintenance and support of the Application while the Contract is in effect; and
- 3) ETF is not in breach of its obligations under this Contract.

Escrow: 5.11.14 - ETF and ETF-authorized users shall have the right to use the source code. ETF and ETF-authorized users are specifically prohibited from using the source code to reverse engineer, develop derivative works or to sublicense the right to use the source code to any other individual or entity for any purpose. ETF and ETF-authorized users shall treat the source code as Confidential Information of the Contractor or successor to the Contractor.

Escrow: 5.11.23 - If the Contract is terminated for any reason, the rights to use the source code shall remain intact even if a Release Event occurs prior to the termination of the Contract.

3) Delete the following from the RFP, Appendix 10 – Mandatory Requirements, Tab A. Technical Requirements:

Escrow: 5.11.25 – Transition assistance shall be provided by Contractor upon termination, cancellation or expiration of this Contract or in the event of a Source Code Release Event.

4) Substitute the following to the RFP, Appendix 10 – Mandatory Requirements, Tab A. Technical Requirements:

Escrow: 5.11.25 – Transition assistance shall be provided by Contractor upon termination, cancellation or expiration of this Contract.

5) Delete the following from the RFP, Exhibit 4 Department Terms and Conditions

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

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

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

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

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

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

6) Substitute the following to the RFP, Exhibit 4 Department Terms and Conditions

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

None of the Services to be provided by the Contractor shall be subcontracted or delegated to any other organization, subdivision, association, individual, corporation, partnership or group of individuals, or other such entity without prior written notification to, and approval of, the Department. Notwithstanding the foregoing, the Department and Contractor agree that Contractor may, upon written notice to the Department, assign or transfer this Contract to IBM in the second quarter of 2018 in connection with the transfer of the business to which this Contract relates, or to an affiliate of IBM. Subject to the foregoing restrictions, this Contract will bind and benefit the parties and their respective successors and assigns.

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

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

The Contractor will be responsible for payment of any losses by subcontractor 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.

7) Delete the following from the RFP, Exhibit 4 Department Terms and Conditions

20.0 ADDITIONAL INSURANCE RESPONSIBILITY: The Contractor shall exercise due diligence in providing Services under this Contract. In order to protect the Board's governing the Department and any Department employee against liability, cost, or expenses (including reasonable attorney fees) which may be incurred or sustained as a result of Contractors errors or other failure to comply with the terms of this Contract, the selected Contractor shall maintain errors and omissions insurance including coverage for network and privacy risks, breach of privacy and wrongful disclosure of information in an amount acceptable to the Department with a minimum of **\$1,000,000** per claim in force during this Contract period and for a period of three (3) years thereafter for Services completed. Contractor shall furnish the Department with a certificate of insurance for such amount. Further, this certificate shall designate the State of Wisconsin Employee Trust Funds and its affiliated boards as additional insured parties. The Department reserves the right to require higher or lower limits where warranted.

8) Substitute the following to the RFP, Exhibit 4 Department Terms and Conditions

20.0 ADDITIONAL INSURANCE RESPONSIBILITY: The Contractor shall exercise due diligence in providing Services under this Contract. In order to protect the Board's governing the Department and any Department employee against liability, cost, or expenses (including reasonable attorney fees) which may be incurred or sustained as a result of Contractor's errors or other failure to comply with the terms of this Contract, the selected Contractor shall maintain errors and omissions insurance including coverage for network and privacy risks, breach of privacy and wrongful disclosure of information in an amount acceptable to the Department with a minimum of **\$1,000,000** per claim in force during this Contract period and for a period of three (3) years thereafter for Services completed. Contractor shall furnish the Department with a certificate of insurance for such amount. Contractor has informed ETF that IBM's Professional Errors and Omissions policy does not allow third parties to be listed as additional insureds. However, Contractor warrants that such errors and omissions insurance coverage shall be applicable to the services provided in this Contract. The Department reserves the right to require higher or lower limits where warranted.

9) Delete the following from the RFP, Exhibit 4 Department Terms and Conditions

21.0 OWNERSHIP OF MATERIALS: Except as otherwise provided in subsection (t) of Section 22, all information, data, reports and other materials as are existing and available from the Department and which the Department determines to be necessary to carry out the scope of Services under this Contract shall be furnished to the Contractor and shall be returned to the Department upon completion of this Contract. The Contractor shall not use it for any purpose other than carrying out the work described in this Contract.

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

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

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

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

10) Substitute the following to the RFP, Exhibit 4 Department Terms and Conditions

21.0 OWNERSHIP OF MATERIALS: All information, data, reports and other materials as are existing and available from the Department and which the Department determines to be necessary to carry out the scope of Services under this Contract shall be furnished to the Contractor. The Contractor shall not use it for any purpose other than carrying out the work described in this Contract.

(a) **CONTRACTOR PROPRIETARY INFORMATION:** The Department acknowledges and agrees that all data, databases, software, reports, analyses, studies, tangible and intangible information, operating systems, application programs and databases systems, together with all related specifications, documentation, designs, processes, procedures, methodologies, applications, techniques, ideas, formulas, and any enhancements, formatting and modifications thereto, used, developed or provided by Contractor under or in connection with this Contract (collectively, "Contractor Proprietary Information") are proprietary to Contractor and title thereto shall remain the sole and exclusive property of Contractor. Contractor shall not be restricted from performing similar

services for other entities or from using, disclosing or otherwise employing in its business any ideas, concepts, know-how, methods, techniques, processes, skills, adaptations and similar knowledge with which Contractor has become acquainted or which it has learned during the normal course of performing the Services, and the Department shall not assert against Contractor any prohibition or restraint from so doing.

[The word “used” above refers to everything before the aforementioned pieces of proprietary information, such as ideas and methodologies, which are brought to or applied to the project by Contractor.]

- (b) **DEPARTMENT DATA:** “Department Data” means any and all claims, eligibility, absenteeism, clinical and other similar healthcare data and information in the original form submitted by or on behalf of the Department to Contractor received from the Department, another contractor of the Department. Department Data includes Confidential Information as defined in Section 22.0 (a). The Department shall own the Department Data and the final deliverables customized and developed for the Department by the Contractor exclusive of the Contractor Proprietary Information.
- (c) **TRANSFORMED DATA:** “Transformed Data” means the data elements created for the DW/VBIS database by Contractor through use of Contractor’s proprietary database construction processes and data transformation or enhancement methodologies. “Transformed Data” does not include:
1. The Contractor’s proprietary data model and proprietary database construction processes and data transformation or enhancement methodologies; nor,
 2. A third party vendor’s proprietary data transformation or enhancement methodology; nor,
 3. Any data element output created by a third party vendor’s proprietary data transformation or enhancement methodology.
- (d) **RETURN, DESTRUCTION, OR TURNOVER OF DATA:** Upon termination of this Contract for any reason, the Department shall provide Contractor with a prior written request that Contractor:
1. Destroy Department Data and certify its destruction to the Department, for which Contractor shall not impose an additional charge to the Department; and/or,
 2. Return Department Data to the Department in the form in which it was provided to Contractor to the extent permissible under applicable laws; and
 3. Turn over Transformed Data to the Department, or to a third-party contractor of the Department after execution of a three-way non-disclosure agreement with the third party contractor. Upon receipt of a written request from the Department for turnover of Transformed Data, Contractor shall provide the Transformed Data in an as-is condition, that is, as it exists in the DW/VBIS database as of the last contractually-required update of the database with encrypted Person IDs, and in an industry-standard electronic format on an encrypted hard drive. Contractor shall not be required to warranty the data, maintain the data, update the data, nor undo the transformation of any element of Department Data. If the Department requires that Contractor decrypt the Person IDs or in any other way change the transformation of any data element, the Department agrees to pay Contractor for the actual and necessary costs of preparing the Transformed Data for turnover, including labor, shipment, and materials.

Contractor shall have the right to retain one (1) archival copy of Department Data to support its rights and obligations under this Contract, subject to the confidentiality obligations and requirements of HIPAA as set forth in Section 22.0.

- (e) **MarketScan®.** Contractor may use the Department Data both during the term of this Contract and thereafter as follows: Department hereby grants to Contractor a perpetual, irrevocable, nonexclusive, royalty-free, nontransferable license to use, disclose, distribute, license, copy, display and demonstrate all Department Data, in a de-identified format, for inclusion in the Truven Health MarketScan databases. For the purpose of the preceding sentence, the term “de-identified” shall mean information that satisfies the requirements set forth in 45 CFR Section 164.514(b), as amended. In connection with use of the Department Data in its MarketScan databases, Contractor

agrees to follow the confidentiality provisions set forth in Section 22.0. Contractor certifies that it is in compliance with applicable laws, with respect to privacy and data security relative to Department Data and that it has implemented and currently maintains an effective information security program to protect Department Data, which program includes administrative, technical, and physical safeguards.

["De-identified" Department Data with regard to MarketScan has the same meaning as is specified in 45 CFR 164.514(b) under HIPAA. Contractor shall de-identify the Department data before it is integrated into the MarketScan database. In addition, Contractor shall ensure that the source of the data cannot be identified as ETF.]

11) Delete the following from the RFP, Exhibit 4 Department Terms and Conditions

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

- (a) **DEFINITIONS:** As used in this Section, unless the context otherwise requires:
- (1) Business Associate. "Business Associate" has the meaning ascribed to it at 45 CFR 160.103 and in this Contract refers to the Contractor (insert name of Contractor).
 - (2) Confidential Information has the meaning ascribed to it in Section 1.5 of the RFP.
 - (3) Covered Entity. "Covered Entity" has the meaning ascribed to it at 45 CFR 160.103 and in this Contract refers to the Department of Employee Trust Funds.
 - (4) HIPAA Rules. "HIPAA Rules" mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
 - (5) Individual Personal Information "Individual Personal Information" has the meaning ascribed to it at Wis. Admin. Code ETF § 10.70 (1).
 - (6) Medical Record. "Medical Record" has the meaning ascribed to it at Wis. Admin. Code ETF 10.01 (3m).
- (b) **PROVISION OF CONFIDENTIAL INFORMATION FOR CONTRACTED SERVICES:** ETF, a different business associate of ETF or a contractor performing Services for ETF may provide Confidential Information to the Contractor under this Contract as the Department determines is necessary for the proper administration of this Contract, as provided by Wis. Stat. § 40.07 (1m) (d) and (3).
- (c) **DUTY TO SAFEGUARD CONFIDENTIAL INFORMATION:** The Contractor shall safeguard Confidential Information supplied to the Contractor or its employees under this Contract. In addition, the Contractor will only share Confidential Information with its employees on a need-to-know basis. Should the Contractor fail to properly protect Confidential Information, any cost the Department pays to mitigate the failure will be subtracted from the Contractor's invoice(s).
- (d) **USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION:** Contractor shall:
- (1) Not use or disclose Confidential Information for any purpose other than as permitted or required by this Contract or as required by law. Contractor shall not use or disclose member names, addresses, or other data for any purpose other than specifically provided for in this Contract;
 - (2) Make uses and disclosures and requests for any Confidential Information following the minimum necessary standard in the HIPAA Rules;
 - (3) Use appropriate safeguards to prevent use or disclosure of Confidential Information other than as provided for by this Contract, and with respect to Protected Health Information, comply with Subpart C of 45 CFR Part 164;
 - (4) Not use or disclose Confidential Information in a manner that would violate Subpart E of 45 CFR Part 164 or Wis. Stat. § 40.07 if done by ETF; and
 - (5) If applicable, be allowed to use or disclose Confidential Information for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor, provided the disclosures are required by law, or Contractor obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Contractor of any instances of which it is aware in which the confidentiality of the information has been or is suspected of being breached.

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

- c. Whether Contractor's Privacy Officer has determined there has been a reportable breach under HIPAA, or an unauthorized acquisition under Wis. Stat. §134.98 and the reasoning for such determination;
 - d. If Contractor determines there has been a breach, impermissible use, or impermissible disclosure, an explanation of the root cause of the breach, impermissible use, or impermissible disclosure;
 - e. A list of the corrective actions taken to mitigate the suspected breach, impermissible use, or impermissible disclosure; and
 - f. A list of the corrective actions taken to prevent a similar future breach, impermissible use, or impermissible disclosure.
- (m) **CLASSIFICATION LABELS:** Contractor shall ensure that all data classification labels contained on or included in any item of Confidential Information shall be reproduced by Contractor on any reproduction, modification, or translation of such Confidential Information. Contractor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of the State, as directed by the Department.
- (n) **SUBCONTRACTORS:** If applicable, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit Confidential Information on behalf of Contractor agree to the same restrictions, conditions, and requirements that apply to Contractor with respect to such information.
- (o) **NOTICE OF LEGAL PROCEEDINGS:** If Contractor or any of its employees, agents, or subcontractors is legally required in any administrative, regulatory or judicial proceeding to disclose any Confidential Information, contractor shall give the Department prompt notice (unless it has a legal obligation to the contrary) so that the Department may seek a protective order or other appropriate remedy. In the event that such protective order is not obtained, Contractor shall furnish only that portion of the information that is legally required and shall disclose the Confidential Information in a manner reasonably designed to preserve its confidential nature.
- (p) **MITIGATION:** The Contractor shall take immediate steps to mitigate any harmful effects of the suspected or actual unauthorized use, disclosure, or loss of any Confidential Information provided to Contractor under this Contract. The Contractor shall reasonably cooperate with the Department's efforts to comply with the breach notification requirements of HIPAA, to seek appropriate injunctive relief or otherwise prevent or curtail such suspected or actual unauthorized use, disclosure or loss, or to recover its Confidential Information, including complying with a reasonable corrective action plan, as directed by the Department.
- (q) **COMPLIANCE REVIEWS:** The Department may conduct a compliance review of the Contractor's security procedures before and during this Contract term to protect Confidential Information.
- (r) **AMENDMENT:** The Parties agree to take such action as is necessary to amend the Contract as necessary for compliance with the HIPAA Rules and other applicable law.
- (s) **SURVIVAL:** The obligations of Contractor under this Section survive the termination of the underlying Contract.
- (t) **RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION:** Upon termination of this Contract for any reason, Contractor, with respect to Confidential Information received from ETF, another contractor of ETF, or created, maintained, or received by Contractor on behalf of ETF, shall:
1. Retain only that Confidential Information which is necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities;
 2. Return to ETF or, if agreed to by ETF, destroy the remaining Confidential Information that Contractor still maintains in any form;
 3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Subsection, for as long as Contractor retains the Protected Health Information;
 4. Not use or disclose the Confidential Information retained by Contractor other than for the purposes for which such Confidential Information was retained and subject to the same conditions set out above under Subsection (d) which applied prior to termination;

5. Return to ETF or, if agreed to by ETF, destroy the Protected Health Information retained by Contractor when it is no longer needed by Contractor for its proper management and administration or to carry out its legal responsibilities; and
6. If required by ETF, transmit the Confidential Information to another contractor of ETF.

12) Substitute the following to the RFP, Exhibit 4 Department Terms and Conditions

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

- (a) **DEFINITIONS:** As used in this Section, unless the context otherwise requires:
 - (1) Business Associate. "Business Associate" has the meaning ascribed to it at 45 CFR 160.103 and in this Contract refers to the Contractor (insert name of Contractor).
 - (2) Confidential Information has the meaning ascribed to it in Section 1.5 of the RFP.
 - (3) Covered Entity. "Covered Entity" has the meaning ascribed to it at 45 CFR 160.103 and in this Contract refers to the Department of Employee Trust Funds.
 - (4) HIPAA Rules. "HIPAA Rules" mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
 - (5) Individual Personal Information "Individual Personal Information" has the meaning ascribed to it at Wis. Admin. Code ETF § 10.70 (1).
 - (6) Medical Record. "Medical Record" has the meaning ascribed to it at Wis. Admin. Code ETF 10.01 (3m).
- (b) **PROVISION OF CONFIDENTIAL INFORMATION FOR CONTRACTED SERVICES:** ETF, a different business associate of ETF or a contractor performing Services for ETF may provide Confidential Information to the Contractor under this Contract as the Department determines is necessary for the proper administration of this Contract, as provided by Wis. Stat. § 40.07 (1m) (d) and (3).
- (c) **DUTY TO SAFEGUARD CONFIDENTIAL INFORMATION:** The Contractor shall safeguard Confidential Information supplied to the Contractor or its employees under this Contract. In addition, the Contractor will only share Confidential Information with its employees on a need-to-know basis. Should the Contractor fail to properly protect Confidential Information, any cost the Department pays to mitigate the failure will be subtracted from the Contractor's invoice(s).
- (d) **USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION:** Contractor shall:
 - (1) Not use or disclose Confidential Information for any purpose other than as permitted or required by this Contract or as required by law. Contractor shall not use or disclose member names, addresses, or other data for any purpose other than specifically provided for in this Contract;
 - (2) Make uses and disclosures and requests for any Confidential Information following the minimum necessary standard in the HIPAA Rules;
 - (3) Use appropriate safeguards to prevent use or disclosure of Confidential Information other than as provided for by this Contract, and with respect to Protected Health Information, comply with Subpart C of 45 CFR Part 164;
 - (4) Not use or disclose Confidential Information in a manner that would violate Subpart E of 45 CFR Part 164 or Wis. Stat. § 40.07 if done by ETF; and
 - (5) If applicable, be allowed to use or disclose Confidential Information for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor, provided the disclosures are required by law, or Contractor obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Contractor of any instances of which it is aware in which the confidentiality of the information has been or is suspected of being breached.
- (e) **COMPLIANCE WITH ELECTRONIC TRANSACTIONS AND CODE SET STANDARDS:** The Contractor shall comply with each applicable requirements of 45 C.F.R. Part 162 if the Contractor conducts standard transactions, as that term is defined in HIPAA, for or on behalf of ETF.

- (f) **MANDATORY REPORTING:** Contractor shall report to ETF in the manner set forth in Subsection (l) any use or disclosure or suspected use or disclosure of Confidential Information not provided for by this Contract, of which it becomes aware, including breaches or suspected breaches of unsecured Protected Health Information as required at 45 CFR 164.410.
- (g) **DESIGNATED RECORD SET:** Contractor shall make available Protected Health Information in a designated record set to the individual as necessary to satisfy ETF's obligations under 45 CFR 164.524.
- (h) **AMENDMENT IN DESIGNATED RECORD SET:** Contractor shall make any amendment to Protected Health Information in a designated record set as directed or agreed to by ETF pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy ETF's obligations under 45 CFR 164.526.
- (i) **ACCOUNTING OF DISCLOSURES:** Contractor shall maintain and make available the information required to provide an accounting of disclosures to the individual as necessary to satisfy ETF's obligations under 45 CFR 164.528.
- (j) **COMPLIANCE WITH SUBPART E OF 45 CFR 164:** To the extent Contractor is to carry out one or more of ETF's obligations under Subpart E of 45 CFR Part 164, Contractor shall comply with the requirements of Subpart E that apply to a covered entity in the performance of such obligation; and
- (k) **INTERNAL PRACTICES:** Contractor shall make its internal practices, books, and records available to the Secretary of the United States Department of Labor for purposes of determining compliance with the HIPAA Rules.
- (l) **CONTRACTOR REPORTING OF BREACH OR SUSPECTED BREACH OR DISCLOSURE TO ETF:**
 - (1) Within twenty-four (24) hours after Contractor becomes aware of a suspected breach, impermissible use, or impermissible disclosure, notify in writing the ETF Program Manager and Privacy Officer. A suspected breach, impermissible use, or impermissible disclosure is considered to be discovered as of the first day on which such occurrence is known to Contractor, or, by exercising reasonable diligence, would have been known to Contractor. The notification must contain details sufficient for the ETF Program Manager and Privacy Officer to determine ETF's agency response. Sufficient details include, without limitation:
 - a. A list of any affected members (if available);
 - b. Information about the information included in the breach, impermissible use, or impermissible disclosure;
 - c. The date or dates of the suspected breach, impermissible use, or impermissible disclosure;
 - d. The date of the discovery by Contractor;
 - e. A list of the pro-active steps taken by Contractor and being taken to correct breach, impermissible use or impermissible disclosure; and
 - f. Contact information at Contractor for affected persons who contact ETF regarding the issue.
 - (2) Not less than one (1) business day before Contractor makes any external communications to the public, media, federal Office for Civil Rights (OCR), other governmental entity, or persons potentially affected by the breach, impermissible use, or impermissible disclosure, provide a copy of the planned communication to the ETF Program Manager and Privacy Officer.
 - (3) Within thirty (30) days after Contractor makes the initial report under this section, Contractor shall research the suspected breach, impermissible use, or impermissible disclosure Confidential Information and provide a report in writing to the ETF Program Manager. The report must contain, at a minimum:
 - a. A complete list of any affected members and contact information;
 - b. Copies of correspondence or notifications provided to the public, media, OCR, other governmental entity, or persons potentially affected;

- c. Whether Contractor's Privacy Officer has determined there has been a reportable breach under HIPAA, or an unauthorized acquisition under Wis. Stat. §134.98 and the reasoning for such determination;
 - d. If Contractor determines there has been a breach, impermissible use, or impermissible disclosure, an explanation of the root cause of the breach, impermissible use, or impermissible disclosure;
 - e. A list of the corrective actions taken to mitigate the suspected breach, impermissible use, or impermissible disclosure; and
 - f. A list of the corrective actions taken to prevent a similar future breach, impermissible use, or impermissible disclosure.
- (m) **CLASSIFICATION LABELS:** Contractor shall ensure that all data classification labels contained on or included in any item of Confidential Information shall be reproduced by Contractor on any reproduction, modification, or translation of such Confidential Information. Contractor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of the State, as directed by the Department.
- (n) **SUBCONTRACTORS:** If applicable, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit Confidential Information on behalf of Contractor agree to the same restrictions, conditions, and requirements that apply to Contractor with respect to such information.
- (o) **NOTICE OF LEGAL PROCEEDINGS:** If Contractor or any of its employees, agents, or subcontractors is legally required in any administrative, regulatory or judicial proceeding to disclose any Confidential Information, contractor shall give the Department prompt notice (unless it has a legal obligation to the contrary) so that the Department may seek a protective order or other appropriate remedy. In the event that such protective order is not obtained, Contractor shall furnish only that portion of the information that is legally required and shall disclose the Confidential Information in a manner reasonably designed to preserve its confidential nature.
- (p) **MITIGATION:** The Contractor shall take immediate steps to mitigate any harmful effects of the suspected or actual unauthorized use, disclosure, or loss of any Confidential Information provided to Contractor under this Contract. The Contractor shall reasonably cooperate with the Department's efforts to comply with the breach notification requirements of HIPAA, to seek appropriate injunctive relief or otherwise prevent or curtail such suspected or actual unauthorized use, disclosure or loss, or to recover its Confidential Information, including complying with a reasonable corrective action plan, as directed by the Department.
- (q) **COMPLIANCE REVIEWS:** The Department may conduct a compliance review of the Contractor's security procedures before and during this Contract term to protect Confidential Information.
- (r) **AMENDMENT:** The Parties agree to take such action as is necessary to amend the Contract as necessary for compliance with the HIPAA Rules and other applicable law.
- (s) **SURVIVAL:** The obligations of Contractor under this Section survive the termination of the underlying Contract.
- (t) **RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION:** Upon termination of this Contract for any reason, Contractor, with respect to Confidential Information received from ETF, another contractor of ETF, or created, maintained, or received by Contractor on behalf of ETF, shall:
1. Retain only that Confidential Information which is necessary for Contractor to continue its proper management and administration or to carry out its legal responsibilities;
 2. Return to ETF or, if agreed to by ETF, destroy the remaining Confidential Information that Contractor still maintains in any form, in accordance with the RETURN, DESTRUCTION, OR TURNOVER OF DATA provisions of Section 21.0 (d);
 3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected

Health Information, other than as provided for in this Subsection, for as long as Contractor retains the Protected Health Information;

4. Not use or disclose the Confidential Information retained by Contractor other than for the purposes for which such Confidential Information was retained and subject to the same conditions set out above under Subsection (d) which applied prior to termination;
5. Return to ETF or, if agreed to by ETF, destroy the Protected Health Information retained by Contractor when it is no longer needed by Contractor for its proper management and administration or to carry out its legal responsibilities, in accordance with the RETURN, DESTRUCTION, OR TURNOVER OF DATA provisions of Section 21.0 (d); and
6. If required by ETF, transmit the Confidential Information to another contractor of ETF.

13) Add the following new contract section

THIRD-PARTY LICENSOR SOFTWARE.

Third party licensor requirements: The Department agrees that the system and other Contractor Proprietary Information may include, other Third Party Licensor products, and that no Third Party Licensor makes any warranty to the Department regarding the system or other Contractor Proprietary Information, assumes any liability to the Department with respect to the Department's use of the Contractor Proprietary Information, or undertakes to furnish support or information relating to the Contractor Proprietary Information. The Department shall comply with and be bound by all provisions and agreements required by other Third Party Licensors as contained herein, and if applicable, attached hereto. The Department's rights to use the Third Party Licensor products terminate if the Department fails to comply with any such obligations. The Third Party Licensors shall be third party beneficiaries of this Agreement to the extent permitted by applicable law for purposes of enforcing their rights and the Department's obligations regarding the Third Party Licensor products. The American Medical Association (a Third Party Licensor) End User terms and conditions are provided below and hereby incorporated into this Contract.

American Medical Association

Pursuant to Contractor's CPT Distribution License Agreement with The American Medical Association ("AMA"), as it may now or hereafter be amended, Contractor is authorized to distribute and sublicense to Customer **Physicians' Current Procedural Terminology, Fourth Edition**, a coding system of nomenclature and codes for reporting of healthcare services (collectively, "CPT"), as part of the system, provided that Customer is bound by certain terms and conditions. Customer's rights to use the CPT terminate if Customer fails to comply with any of the material terms and conditions thereof. The terms and conditions set forth in this Agreement that apply to the system generally also apply to the CPT.

- (a) The following are the additional terms and conditions that apply to the CPT:
 - (1) The provision of an updated version of CPT in the system is dependent upon continuing contractual relations with the AMA.
 - (2) The Agreement is nontransferable, nonexclusive, and for the sole purpose of internal use by Customer, and only within the United States.
 - (3) The CPT license is granted in consideration for a license fee and other consideration.
 - (4) Customer is prohibited from publishing, distributing via the Internet or other public computer-based information system, creating derivative works (including translating), transferring, selling, leasing, licensing or otherwise making available to any unauthorized party, the CPT, or a copy or portion of the CPT.
 - (5) Customer may only make copies of the system for back up or archival purposes.
 - (6) CPT is copyrighted by the AMA and is a registered trademark of the AMA. All notices of proprietary rights, including trademark and copyright notices in CPT must appear on all permitted back-up or archival copies made by the user; any printout or other output from the Electronic Media that contains any portion of CPT (other than that which would constitute fair use, internal reports and claim forms for specific patients and external reports distributed outside of your entity containing less than twenty (20) CPT codes and/or descriptions) will display the following:

CPT only ©2015 American Medical Association. All Rights Reserved.

The year specified in the copyright notices must conform to future CPT updates.
 - (7) Customer shall require that anyone who has authorized access to the system (including consultants and contractors who perform services for Customer) complies with the provisions of this Agreement.
 - (8) Except as otherwise expressly provided in the Agreement, the system is provided "as is" without any warranty from or liability to Contractor or the AMA, including, without limitation, liability for

consequential or special damages or lost profits for sequence, accuracy or completeness of data, or that it will meet Customer's requirements; Contractor's and AMA's sole responsibility is to use reasonable efforts to provide corrections to or a replacement of the system; AMA disclaims any liability for any consequences due to use, misuse or interpretation of information contained or not contained in CPT.

- (9) The CPT license terminates in the event of default by Customer under the Agreement, subject to any applicable cure period.
- (10) In the event that a provision is determined to violate any law or is unenforceable the remainder of the Agreement shall remain in full force and effect.
- (11) This product includes CPT which is commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation, as applicable which were developed exclusively at private expense by the American Medical Association, 515 North State Street, Chicago, Illinois 60654. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015 (b) (2) (November 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (December 2007) and/or subject to the restricted rights provisions of FAR 52.227-14 (December 2007) and FAR 52.227-19 (December 2007), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.

14) Add the following new contract section

CONTRACTOR PROPRIETARY INFORMATION:

- (a) The Department shall keep all Contractor Proprietary Information confidential and shall not reproduce, duplicate, reveal, publish, transfer or disclose any Contractor Proprietary Information to anyone other than its employees with a 'need to know' in the ordinary course and scope of their employment. The Department agrees to take at least the same precautions and measures to safeguard the secrecy and confidentiality of, and proprietary rights to, the Contractor Proprietary Information as it would with its own proprietary information.
- (b) The restrictions set forth in the preceding paragraph respecting confidentiality shall not apply to any Contractor Confidential Information which: (a) is in or becomes part of the public domain without breach of this Contract or violation of any applicable law; or (b) is required to be disclosed pursuant to a valid request under the Wisconsin Public Records law and/or Open Meetings Law; or (c) is required to be disclosed by the Department pursuant to any order or directive of a court or governmental agency of competent jurisdiction; provided, however, that where legally permitted the Department has furnished Contractor notice of such directive or order prior to disclosure. In the event the Department receives a request under the Wisconsin Public Records Law or Open Meetings Law related to this matter, the Department's sole responsibility will be to notify Contractor of the request to allow the Contractor to seek protection from disclosure in a court of competent jurisdiction.

15) Add the following new contract section

NPI AND PROBABILISTIC MATCHING.

Contractor shall not charge ETF for probabilistic matching. Contractor shall provide detailed documentation regarding probabilistic matching upon ETF's request.

16) Add the following new contract section

STANDARD COST STRUCTURE FOR AD HOC AND OTHER WORK.

Contractor shall use the most efficient, lowest cost approach to ad-hoc and non-standard work. ETF and Contractor will follow the normal change-order process for all ad-hoc, out of scope, non-standard work.

For work related to compliance with state laws: Contractor's product team shall stay current with Federal laws. Product releases will generally reflect changes to federal law. If there is a change needed to comply with a State law

that involves customization, Contractor will evaluate the effort and the impact collaboratively with ETF. The cost for such work will be determined on a time and materials basis using Contractor's standard rates included below, unless ETF would prefer the work to be estimated on a fixed-fee basis.

For work related to submission of multiple eligibility records per member per month: Contractor will investigate what distinguishes the various records for a single member, and design an effective, low-cost solution that merges the elements from multiple records into a single record with all needed information. Examples of multiple eligibility records are as follows.

- Records that explain a member's various benefit programs (medical, dental, EGWP, etc.).
- Records that explain a member in transition from active to COBRA.

Programming multiple eligibility records requires a one-time charge of two thousand five hundred (\$2,500) to five thousand (\$5,000) dollars, depending on the degree of difficulty.

For work related to additional custom eligibility or claim fields: Contractor's proposed solution for ETF's project includes up to twenty (20) custom dimension fields (eligibility data) and up to five (5) custom fact fields (claim-based data). For each additional five (5) eligibility fields, Contractor may assess a one-time fee of no more than one thousand (\$1,000) dollars. For each additional claim field, Contractor may assess a one-time fee of one thousand (\$1,000) dollars. Costs may vary depending on the changes (if required) to formats and the data model. Note that this is the approximate cost during the initial implementation. Adding fields after the data model and formats are finalized will incur additional costs that will vary based on complexity.

Other work performed by Contractor at ETF's request, will, in general, be billed using the hourly rate table shown below. For large projects, Contractor will propose a project-based fixed-fee arrangement for ETF's review and approval (e.g., adding multiple new DSEs, adding new tools/products, etc.).

Job Classifications	Hourly Rate
[REDACTED]	

Job Classifications	Hourly Rate

17) Add the following new contract section

CREDITS FOR FEWER DSES AND COST FOR ADDITIONAL DSES.

Contractor's initial set-up charge for adding a new DSE will be between seven thousand five hundred (\$7,500) and twenty five thousand (\$25,000) dollars depending on the type of data and the extent of changes needed to be made by Contractor to the database and data measures. For example, a new drug supplier using the standard data submitting format costs less to add than does adding a workers' comp data supplier, which requires a new data table and measures to be set. If the new DSE replaces an existing DSE, Contractor will charge only additional ongoing fees for any run-out period that overlaps the new DSE.

The ongoing fee for an incremental addition of one DSE is between five hundred (\$500) and seven hundred and fifty (\$750) dollars per update.

Should ETF experience a net reduction of at least one (1) and no more than nine (9) DSEs, Contractor will apply the following credit procedure:

1. **Implementation:** If the net number of DSEs should be reduced during the initial Implementation period from the currently planned number of twenty two (22) DSEs, Contractor will provide ETF with a one-time credit of three thousand five hundred (\$3,500) dollars for each DSE deleted prior to implementation. This credit will apply only if the DSE is deleted before the deadline for DSEs to submit the first round of test data; there will be no credit for a DSE deleted after that deadline.
2. **Ongoing Operations:** For each DSE that ETF deletes after the ongoing operational period has begun, Contractor will provide ETF with a credit of two hundred fifty (\$250) dollars per month for the remainder of the Contract.
3. **Application of the Credits:** All credits realized through DSE deletions as noted in (1) and (2) above will be applied to fund a change request pool that ETF may use to purchase additional analytic consulting services and/or other consulting services from Contractor, using the hourly service rates that are in effect at the time the new service is purchased.

Should ETF experience a net reduction of ten (10) or more DSEs during the term of the Contract, the cost structure of the Contract will be renegotiated.

18) Add the following new contract section

ABILITY TO SHARE METHODOLOGIES.

Upon request by a DSE, Contractor shall provide the methodologies it uses to analyze and transform the data. A signed non-disclosure agreement between Contractor and the DSE shall be a pre-requisite for the DSE to receive Contractor's methodologies.

19) Add the following new contract section

COORDINATION OF BENEFITS.

If a DSE is unable to include the Coordination of Benefits (COB) amount in its claim file but can provide it in a separate file, the cost charged by Contractor to ETF to provide a look-up file shall be no more than a one-time fee of five thousand (\$5,000) dollars. Contractor shall not charge any on-going fees for this work unless the DSE subsequently changes its submission format or content requiring re-programming. In such a case, ETF and Contractor will follow the normal change-order process.

20) Add the following new contract section

REGARDING TRUVEN'S "TWO-CHANCE RULE" DESCRIBED IN ITS PROPOSAL, THE FOLLOWING QUALIFICATION IS ACCEPTED BY BOTH PARTIES:

Contractor's usual and customary fee is one thousand seven hundred fifty (\$1,750) dollars per file submission after two DSE data submission failures. Contractor's typical approach is first to reach out to the struggling DSE, usually by phone, when the difficulty arises, to try to understand the DSE's issue. Contractor will evaluate the circumstances related to the issue, including the complexity of any fixes and whether this the first time the DSE has caused extra work, before actually charging the fee.

Contractor will work with the supplier while keeping ETF informed. If the DSE can get caught up without affecting the implementation schedule (or the monthly update schedule when in the operations phase of the project), no additional cost is required.

Contractor will keep the client apprised of any developing situation with a DSE. If DSEs fail to meet deadlines, Contractor will inform ETF in a timely manner of the options for going forward, which sometimes involve no additional cost such as building the initial database without that DSE's data and adding it later or delaying the database delivery.

Should a DSE's lack of conformance create an out-of-scope condition, Contractor will present documentation to ETF for ETF's consideration of the circumstances of the out-of-scope condition, at which point ETF and Contractor will follow the normal change-order process.

21) Add the following new contract section

DATA QUALITY CHECKS.

Contractor will provide ETF with documentation describing the data quality reviews performed by Contractor at the following key points in the testing process:

- During DSE submittal of test data
- During the SIT cycle
- At the beginning of UAT

Contractor will work with ETF to include the data quality reviews in the implementation plan. ETF staff will timely participate in the data quality reviews on the date and time mutually agreed upon by both parties. ETF and Contractor agree that delays in the data quality reviews or requests for additional information or meetings will delay the project and may result in out-of-scope work for Contractor.

22) Add the following new contract section

DIRECT ACCESS TO THE DATA WAREHOUSE.

Should ETF desire to bypass Advantage Suite, Contractor shall set up an external Cognos connection for a fee of no more than one hundred and fifty thousand (\$150,000) dollars per Contract year in which ETF desires to have direct access to the DW. In the event ETF requires such work, ETF and Contractor will follow the normal change-order process.

23) Add the following new contract section

ETF FEE SCHEDULE INCORPORATION.

Contractor shall, at no charge to ETF, incorporate DSEs' fee schedule files into the DW, including maintenance and updates at no charge, provided the DSEs are able to provide the fee schedules in the following manner:

- A single standard fee schedule layout used by all DSEs.
- A single feed per DSE.

- Comma-separated data format.
- When changes are needed, the DSE supplies a single full replacement fee schedule.

Provided the above conditions are met, Contractor shall incorporate and maintain the DSEs' fee schedules in the Advantage database at no additional cost. If the above conditions are not met and ETF requires that fee schedules be included in the DW, ETF and Contractor will follow the normal change-order process.

24) Add the following new contract section

TABLEAU IMPLEMENTATION.

Contractor's implementation of Tableau within Advantage Suite shall be included in the Implementation Plan with a Quarter four (Q4)-2017 delivery; the full implementation of Phase 1 including Tableau will be mid-December 2017.

25) Add the following new contract section

VBI ALERT/ALARM CAPABILITIES.

Implementation of VBI alert/alarm capabilities within Advantage Suite shall be included in the Implementation Plan with a Quarter four (Q4)-2017 delivery; the full implementation of Phase 1 including VBI alert/alarm capabilities will be mid-December 2017.

26) Add the following new contract section

MOBILE ACCESS.

Implementation of mobile capabilities within Advantage Suite and delivery of reports, data and dashboards through mobile capabilities shall be included in the Implementation Plan with a Quarter four (Q4)-2017 delivery; the full implementation of Phase 1 including mobile capabilities will be mid-December 2017.

27) Add the following new contract section

USER ACCEPTANCE TESTING.

Contractor shall include ETF staff in User Acceptance Testing (UAT). ETF will review reports either by using Advantage Suite to run the reports that Contractor has customized for ETF, or, Contractor will run reports for ETF. ETF's UAT testers must attend an initial training session on Advantage Suite (such meeting date and time to be mutually agreed upon by the parties), then follow test cases (jointly created by Contractor and ETF earlier in the planning process) to create reports and examine the output. Contractor's account team members will be on hand to assist ETF's users with the system. Contractor and ETF shall review the reports in detail to confirm that the data in the database looks to be complete and correct, and that the custom fields, subsets, etc., have been implemented correctly in accordance with the design document and test plan that ETF will have previously approved. Earlier in the implementation process, Contractor shall share with ETF the results of data quality testing and system testing, to ensure that ETF is ready to start UAT.

There is no additional cost to including ETF staff or an ETF designee in UAT, assuming that:

- The ETF designee is fully integrated into the implementation process and Contractor is not required to repeat the deliverable acceptance process at any stage, i.e., Contractor does not have to secure the ETF designee's approval of deliverables and then repeat the approval process with ETF, which would increase scope and risk.
- The ETF designee does not require additional project deliverables beyond those described in Section 39 of Tab 2-2 of Contractor's Proposal.

28) Add the following new contract section

EXTENDING CONTRACT BEYOND 6-YEAR TERM.

The RFP requires the Contractor to include nine (9) years of data in the DW over the course of the initial contract term and the two (2) additional two (2)-year renewal periods (if renewed). Contractor shall upload three (3) years of historical

data from ETF-specified DSEs (as listed in the RFP) in Phase 1 of the project. If the Contract is renewed for two (2) renewal periods, Contractor will upload six (6) years of data during a 6-year contract term for a total of nine (9) years of data. Contractor's price for holding each additional year of data in the DW beyond nine (9) shall be no more than \$15,000 per year per each additional year, for example: \$15,000 more for the year in which the database grows from 9 to 10 years, \$30,000 more for the year in which the database grows from 10 to 11 years (\$15,000 for the 10th year of data + \$15,000 for the 11th year of data), and so on.

If the Contract is renewed beyond the two (2) additional two (2)-year periods, Contractor may increase year seven and year eight Contract pricing (fixed fees and hourly rates) by no more than the Consumer Price Index – All Urban (CPI-U), to be calculated and applied at the beginning of each new Contract year (year seven and eight only). Cost increases for any Contract renewals beyond year eight shall be negotiated in good faith and mutually agreed upon by both parties.

29) Add the following new contract section

DSE FILE SUBMISSION FREQUENCY CHANGE.

Should ETF determine that weekly DSE file submissions are required, Contractor may bill ETF for such weekly updates to the Advantage Suite database a fee of no more than two hundred forty nine thousand eight hundred and forty (\$249,840) dollars per Contract year in addition to the cost quoted in Contractor's Proposal for monthly submissions. Such fee would be applicable only in the Contract years in which ETF requires weekly file submissions, and shall be prorated as appropriate in the event a full year of weekly updates is not required or performed. The fee is an estimate based on the scope of the work should ETF decide to move forward with weekly updates at the start of the Contract. Should ETF move to weekly DSE file submissions after implementation, Contractor will re-evaluate this estimate at that time to account for other scope changes that may have occurred, e.g., a reduction in the number of DSEs.

The fee for weekly updates includes the following services:

Every Monday – Receipt of weekly claim data feeds—facility, professional, and drug—from twenty two (22) DSEs (Contractor would not need weekly eligibility data from ETF).

Every Tuesday – Processing of weekly feeds for data quality.

Every Wednesday-Thursday – Conversion of the claim data, database build, and testing.

Every Friday – Release to production use by ETF and delivery of a fixed number of dashboard reports for which weekly data is suitable.

The weekly update process will refresh the claim tables and will not include the rebuilding of aggregate tables or some field assignments, including the ones noted below, which would remain on a monthly cycle:

- Medical Episodes
- Outpatient Events
- Admissions*
- DxCGs (clinical risk assignments)
- Eligibility fields Final Service Category assignment
- Incurred But Not Reported (IBNR) factors
- Standard Physician assignment
- Standard Facility assignment
- Eligibility-based processes (PCP Imputation, assessing coverage indicators, tagging to claims, etc.)

*The Admissions table combines data from the professional and facility tables into a single admission cost aggregate, which will be updated monthly. The weekly update will still refresh the Facility and Professional claim tables.

Necessary Conditions for Weekly Updates

In order to complete a weekly update, all DSEs must deliver complete and useable data to Contractor by the weekly deadline on Monday. There can be no changes of any kind to the expected data layout. With twenty two (22) DSEs,

there is no time available in a weekly update process to resolve any data quality issue. If a supplier misses the deadline or the data fails the testing process, the DSE's data will be dropped from the build. Once the DSE corrects the data, the Contractor will add it during the next weekly update.

30) Add the following new contract section

Resource Allocation.

Upon the parties' mutual agreement, work requested by ETF that is out of scope with the project described in the RFP will be handled on a time and materials basis, project basis, and/or hourly rate by Contractor.

Replace Contractor's table included with its Proposal in Tab 2-1, Page 22-23, with the following revised table:

PROJECT TEAM DEDICATION TO ETF DW/VBI	EXPECTED FTE DEDICATED TO PROJECT IMPLEMENTATION	EXPECTED FTE DEDICATED TO ANNUAL PROJECT OPERATIONS
Client Services Vice President	Consultative Support	Consultative Support as needed
Key Person: Project Manager Eric Poston	.25 (approximately 315 hours)	.25 (approximately 315 hours)
Project Management, non-key personnel	.50 (approximately 900 hours)	N/A
Analytic Consulting Team, including Key Person: Senior Health Care Data/Policy SME and on-site analyst	.15 to .40 (approximately 525 hours)	.85 (approximately 1400 hours) (changed from .60 FTE and approximately 1000 hours)
Key Person: Senior Systems Analyst	.10 (approximately 140 hours)	.10 (approximately 140 hours)
Data Management Team, including Data Acquisition and Key Person: Senior Architect Adrienne Ray	2.10 (approximately 140 hours)	.70 (approximately 1100 hours)
Technical Support, including Product Support and Security Management	1.2 at start of implementation and .10 for remainder (approximately 350 hours)	.10 (approximately 140 hours)

31) Add the following new contract section

ADDITIONAL WORK.

Contractor will provide an analyst with the expertise described below to assist ETF with a collaborative project underway with the Robert Wood Johnson Foundation and Bailit Health. The project aims to use the "Buying Value Toolkit" to identify a set of performance measures that ETF can use to track and compare vendors. The project is described in additional detail in documents that will be shared with Contractor.

The project is currently underway and scheduled for completion by May 2017.

Contractor's analyst must have Advantage Suite subject matter expertise, and have detailed expertise in the various measures (e.g. population, cost, quality, utilization, etc.) available in Advantage Suite, and a strong background in the methodologies used to create these measures and measure sets (e.g. expertise in NQF, NCQA measures and

methodologies), and implementing performance measurement intervention activities to hold health plans and providers accountable.

Total estimated hours of Contractor's analyst involvement is **twenty five (25) hours**, with effort focused on the following tasks:

- participate in seven (7) - eight (8) one-hour phone contacts between ETF and Bailit, and likely two (2) – three (3) phone contacts with ETF to review and discuss the SOW and expectations for all parties. (*estimated at ten (10) hours total for participation in phone contacts*).
- assist ETF/Bailit in determining whether the performance measures selected in the project effort are available within the Advantage Suite tool, and available and appropriate benchmarks for each performance measure (*estimated at six (6) – eight (8) hours total for measure research and review*).
- provide recommendation options for implementation of measures, likely in a phased approach (*estimated at three (3) – four (4) hours total*).
- assist with the preparation and communication of documentation summarizing findings and results (*estimated at three (3) - four (4) hours total for communications and documentation*).

32) Add the following new contract section

The parties agreed to the following language to add this as 28.0 to the RFP, Exhibit 4 Department Terms and Conditions:

DATA SECURITY AND PRIVACY AGREEMENT

- (a) **PURPOSE AND SCOPE OF APPLICATION:** This Data Security and Privacy Agreement is designed to protect the Department of Employee Trust Fund's (ETF) Confidential Information and ETF Information Resources (defined below). This Data Security and Privacy Agreement supplements the RFP provisions that describe the data security and privacy obligations of the Contractor and its sub-contractors that connect to ETF Information Resources and/or gain access to Confidential Information (as defined in Section 1.5 of the RFP).
- (b) **DEFINED TERMS:**
- (1) **ETF Information Resources** means those devices, networks and related infrastructure that ETF has obtained for use to conduct ETF business. Devices include but are not limited to, ETF-owned or managed storage, processing, communications devices and related infrastructure on which ETF data is accessed, processed, stored, or communicated, and may include personally owned devices. Data includes, but is not limited to, Confidential Information, other ETF created or managed business and research data, metadata, and credentials created by or issued on behalf of ETF.
- (c) **ACCESS TO ETF INFORMATION RESOURCES:** In any circumstance when the Contractor is provided access to ETF Information Resources, it is solely the Contractor's responsibility to ensure that its access does not result in any access by unauthorized individuals to ETF Information Resources. This includes conformance with minimum security standards in effect at the ETF location(s) where access is provided. Any Contractor technology and/or systems that gain access to ETF Information Resources must contain, at a minimum, the security and privacy requirements set forth in the RFP and this Data Security and Privacy Agreement.
- (d) **COMPLIANCE WITH APPLICABLE LAWS:** The Contractor agrees to comply with all applicable state, federal and international laws, as well as industry best practices, governing the collection, access, use, disclosure, safeguarding and destruction of Confidential Information.
- (e) **PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION:** The Contractor agrees to hold ETF's Confidential Information, and any information derived from such information, in strictest confidence. The Contractor will not access, use or disclose Confidential Information other than to carry out the purposes for which ETF disclosed the Confidential Information to the Contractor, except as permitted or required by applicable law, or as otherwise authorized in writing by ETF. For avoidance of doubt, this provision prohibits the Contractor from using for its own benefit Confidential Information or any information derived from such information, except for the use permitted by Section 21.0 referred to as ETF's data contributed to the Contractor's

MarketScan research database. If required by a court of competent jurisdiction or an administrative body to disclose Confidential Information, the Contractor will notify ETF in writing immediately upon receiving notice of such requirement and prior to any such disclosure, to give ETF an opportunity to oppose or otherwise respond to such disclosure (unless prohibited by law from doing so). The Contractor's transmission, transportation or storage of Confidential Information outside the United States, or access of Confidential Information from outside the United States, is prohibited except on prior written authorization by ETF.

(f) **NOTIFICATION OF CORRESPONDENCE CONCERNING CONFIDENTIAL INFORMATION:** The Contractor agrees to notify ETF immediately, both orally and in writing, but in no event more than twenty-four (24) hours after the Contractor receives correspondence or a complaint regarding Confidential Information, including but not limited to, correspondence or a complaint that originates from a regulatory agency or an individual.

(g) **BREACHES OF CONFIDENTIAL INFORMATION:**

COORDINATION OF BREACH RESPONSE ACTIVITIES:

- (1) The Contractor will fully cooperate with ETF's investigation of any breach involving the Contractor, including but not limited to making a point of contact available immediately upon the Contractor's reporting of the breach. The Contractor's full cooperation will include but not be limited to the Contractor:
 - a. Immediately preserving any potential forensic evidence relating to the breach, and remedying the breach as quickly as circumstances permit;
 - b. Making witnesses and documents available as necessary;
 - c. As rapidly as circumstances permit, applying appropriate resources to remedy the breach condition, investigate, document, restore ETF service(s) as directed by ETF, and undertake appropriate response activities;
 - d. Providing status reports to ETF on breach response activities;
 - e. Coordinating all media, law enforcement, or other breach notifications with ETF in advance of such notification(s), unless expressly prohibited by law; and
 - f. Ensuring that knowledgeable Contractor staff is available on short notice, if needed, to participate in ETF-initiated meetings and/or conference calls regarding the breach.

ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS:

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

COMPUTER SYSTEM SECURITY REQUIREMENTS:

- (3) The Contractor will adhere to the applicable provisions of HIPAA. With reasonable notice to the Contractor, ETF may require additional security measures to implement state or federal laws through Contract amendment.