**Appendix 12**

**Data Supplier Agreement (sample)**

This Data Supplier Agreement (“DSA”) dated XXXX, 2023, is entered between and among XYZ Company, on behalf of its affiliates and subsidiaries (collectively “Data Supplier”), the Wisconsin Department of Employee Trust Funds (“Department”), and Data Warehouse Company (“Data Warehouse”), collectively the “Parties.” Terms not defined herein may be defined in the applicable agreements between the Parties. If the terms are found to conflict, the terms of this DSA supersede and govern any transfer of Data between the Parties.

**Background & Purpose**

Data Supplier and Department have entered into an Administrative Services Agreement (“Department Agreement”) pursuant to which Data Supplier provides services under the Department-sponsored Well Wisconsin Program to eligible members (“Participants”) in the Department-sponsored group health insurance benefit program (the “Plan”).

Department and Data Warehouse have entered into an agreement (“Data Warehouse Agreement”) pursuant to which Data Warehouse provides certain healthcare decision support systems and services which will be used by the Department and Participants to evaluate, analyze, and manage their healthcare benefits and costs (collectively “Services”). The Department has instructed Data Supplier to make certain specified health screening, assessment, coaching and/or other information available to Data Warehouse to enable Data Warehouse to perform its Services, which member level information will include, without limitation, Department-assigned unique IDs, dates of service, service/program type and personal health information such as screening values and responses to health assessments, (collectively, “Data”). Data Warehouse will share the Data with the Department in accordance with the Health Insurance Portability and Accountability Act (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH), and the Genetic Information Nondiscrimination Act (GINA); and

Data Warehouse recognizes Data Supplier’s legitimate interests in maintaining the confidentiality of the Data, protecting the proprietary nature of its systems and processes, and protecting itself from certain legal liability. Data Supplier is willing to make the Data available to Data Warehouse in accordance with the request of the Department, upon the condition that Data Warehouse provides certain assurances, including assurances of protection against claims or liability arising out of Data Warehouse’s performance of Services or Data Supplier’s release of the Data to Data Warehouse; and

Data Warehouse is willing to make such assurances and in consideration of the foregoing premises and the mutual covenants set forth in this DSA.

The Parties acknowledge and agree as follows:

1. **Data Release**

Data Supplier agrees to release the Data to Data Warehouse as requested by the Department and use all commercially reasonable efforts to protect and securely deliver the Data to Data Warehouse.

**2. Permitted Uses**

Data Warehouse shall not use (deemed to include, but not be limited to, using, exploiting, duplicating, recreating, modifying, decompiling, disassembling, reverse engineering, translating, creating derivative works, adding to an Data Warehouse database, or disclosing Data to another person or permitting any other person to do so) Data except for purposes of providing the Services or to provide the Data to the individual to which the Data relates, provided that such use or disclosure would not violate privacy rules or other laws if performed by Department or the Plan. Notwithstanding the foregoing, the Parties agree and acknowledge that the Data will be used by Data Warehouse, in its commercial databases provided however, that such uses shall be limited in all cases to information that is de-identified in accordance with HIPAA such that no individuals or entities can be identified, either explicitly or implicitly, by users of such databases. In no event will the results of the information included in the databases be used or disclosed in a way that identifies Data Supplier, Department, or any Participants.

**3. Conclusion of Services**

Upon termination of this DSA for any reason or otherwise upon Data Supplier’s (with Department’s written approval) or Department’s prior written request, Data Warehouse will destroy all Data, or at Department’s prior written request, return all Data to the original data source (a servicer, administrator or other entity that is a source of Department Data) in the same format submitted to Data Warehouse; provided however that Data Warehouse shall have the right to retain one archive copy of Department Data to support its rights and obligations under its agreement with the Department, subject to confidentiality obligations contained herein. If a new vendor is identified, Data Warehouse shall transfer all Data, as requested by the Department per the Data Warehouse Agreement, to the new data supplier and upon completion of that transfer, shall fulfill their obligations of deletion or return under this section.

**4. Indemnification**

Data Warehouse agrees to defend Data Supplier by indemnifying and holding Data Supplier harmless against all third party costs and damages (including reasonable attorneys' fees) finally awarded by a court of competent jurisdiction or included in a settlement arising from Data Warehouse’s misuse, unauthorized disclosure, or other misappropriation of the Data while such Data is under Data Warehouse’s control in breach or violation of Data Warehouse’s confidentiality obligations herein, and subject to the cap below; neither Department nor Data Supplier shall be responsible for any of the foregoing costs and damages. Data Supplier will provide Data Warehouse with prompt notice of any claim for which indemnification is sought. Data Warehouse will be allowed to control the defense and settlement of any such claim, and Data Supplier agrees to reasonably cooperate with Data Warehouse in connection with such defense and settlement; provided, however, that Data Warehouse shall not agree to any resolution or settlement that results in an admission of guilt by Data Supplier or a monetary penalty issued against Data Supplier, without Data Supplier’s consent. In no event will Data Warehouse be liable to Data Supplier for incidental, consequential, special, or punitive damages (including loss of profits, data, business, or goodwill, or government fines, penalties, taxes, or filing fees), regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranty, failure of essential purpose or otherwise, and even if advised of the likelihood of such damages. Data Warehouse’s entire liability under this DSA shall not exceed $500,000, regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranty, failure of essential purpose or otherwise, and even if advised of the likelihood of such damages.

**5. Term**

This DSA shall continue in force from year-to-year, but shall terminate automatically upon the earliest of the following:

a. the date agreed to by mutual agreement among the Parties;

b. upon 60 days’ notice to Data Supplier from the Department; or

c. immediately by Data Supplier or the Department, where either has a reasonable belief that Data Warehouse has breached this DSA.

**6. Survival**

The indemnification obligations shall survive any termination, cancellation or expiration of this DSA. The requirement to treat all Data as confidential shall survive the termination of this DSA and shall remain in full force and effect so long as any such information remains commercially valuable, confidential, proprietary and/or trade secret, but in no event less than a period of three (3) years from the date of the Services. With respect to personal health information, for as long as Data Warehouse retains such information.

**7. Assignment**

Neither this DSA nor Data Warehouse’s rights or obligations hereunder may be assigned without Data Supplier’s prior written approval. Such approval shall not be necessary for an assignment by Data Warehouse in conjunction with the sale of the portion of Data Warehouse's business that includes the Services.

**8. Controlling Law**

Any dispute arising out of or in connection with this DSA will be governed by the laws of the State of Wisconsin. Data Warehouse shall follow the notification requirements in Wis. Stat. § 134.98 for personal information. The Department is subject to the provisions of the Wisconsin Public Records Law (Wis. Stat. § 19.31 et seq.).

This DSA, including any applicable supplements, is the complete agreement regarding the transfer of Data, and replaces all prior oral or written communications, representations, warranties, covenants, and agreements between and among Data Supplier, Department and Data Warehouse regarding the transfer of such Data. The alleged invalidity of any term shall not affect the validity of any other terms. The Parties accept the terms of this DSA by signing this DSA by hand or electronically. Once signed, any reproduction of this DSA or a supplement made by reliable means is considered an original.

**Agreed to by: *SAMPLE***

**Data Supplier**

**Data Warehouse Company**

**Department**