

**PROFESSIONAL ADMINISTRATIVE SERVICES ONLY AGREEMENT**

**BETWEEN**

**WISCONSIN PHYSICIANS SERVICE INSURANCE CORPORATION**

**AND**

**STATE OF WISCONSIN GROUP INSURANCE BOARD**

**EFFECTIVE JANUARY 1, 2011**

**ETE0003**

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**PROFESSIONAL ADMINISTRATIVE SERVICES ONLY AGREEMENT  
BETWEEN  
STATE OF WISCONSIN GROUP INSURANCE BOARD  
AND  
WISCONSIN PHYSICIANS SERVICE INSURANCE CORPORATION**

This Professional Administrative Services Only Agreement (“AGREEMENT”) is entered into as of the 1st day of January, 2011 (“Effective Date”), by and between the State of Wisconsin Group Insurance Board (“BOARD”) and Wisconsin Physicians Service Insurance Corporation (“WPS”), which is administered for the BOARD by the State of Wisconsin Department of Employee Trust Funds (“DEPARTMENT”). The BOARD and WPS are referred to herein individually as a “party” and collectively as the “parties”.

**RECITALS**

The State of Wisconsin has by law at Chapter 40, Wis. Stats., established the State of Wisconsin Group Insurance Board Health Plan to provide group health insurance for certain State of Wisconsin employees and their eligible dependents in accordance with Chapter 40, Wis. Stat. (“HEALTH BENEFIT PLAN”); and

The DEPARTMENT, with the approval of the BOARD, issued its Request for Proposals No. ETE0003 issued December 15, 2004 (“RFP”), for a contract to procure certain administrative services for the HEALTH BENEFIT PLAN, published its formal notice of its intent to award the group health insurance administrative services contract to WPS as a result of WPS’ Proposal (“Proposal”) submitted to the DEPARTMENT, and now desires to contract for group health insurance administrative services with WPS and WPS desires to provide such services.

THEREFORE, in consideration of the mutual covenants contained in this AGREEMENT, the parties agree as follows:

**I. DEFINITIONS**

Unless otherwise defined herein, any term needing definition shall have the definition found in the RFP, the PROPOSAL or in applicable Wisconsin law. The following terms, when used and capitalized in this AGREEMENT or any amendments, supplements, endorsements or riders, are defined as follows:

**ADMINISTRATIVE CHARGE** means the fee based on the number of single and FAMILY PARTICIPANTS under STANDARD PLAN, SMP, WISCONSIN PUBLIC EMPLOYERS and MEDICARE Plus \$1,000,000 coverage.

**ADMINISTRATIVE SERVICES ONLY (ASO) AGREEMENT** means an agreement to administer the HEALTH BENEFIT PLAN established, maintained and administered by the BOARD for the benefit of EMPLOYEES of the State of Wisconsin, with claims being paid by an entity other than the EMPLOYER.

**AGREEMENT** means this Professional Administrative Services Only AGREEMENT.

**ANNUITANT** means the following:

- a. any retired EMPLOYEE of the State of Wisconsin who: (1) is receiving an immediate annuity under the Wisconsin Retirement System; or (2) is an EMPLOYEE who retires after 20 years of creditable service; or (3) is receiving a long-term disability benefit under Wis. Adm. Code § 50.40; or (4) is receiving a disability benefit under Wis. Stats. § 40.65;
- b. any retired EMPLOYEE of a participating EMPLOYER who: (1) is receiving an immediate annuity under the Wisconsin Retirement System; or (2) is a person with 20 years of creditable service who is eligible for an immediate annuity but defers application; or (3) is a person receiving an annuity through a program administered by the DEPARTMENT under §. 40.19 (4) (a); or (4) is a

person receiving a benefit under Wis. Stats § 40.65. For those local Employees who are over age 65, SMP does not apply.

**BENEFITS** mean those items and services as listed in the attached Group Master Plan Document for the HEALTH BENEFIT PLAN.

**BOARD** means the State of Wisconsin Group Insurance Board established by Section 15.16 (2), Wisconsin Statutes.

**CALENDAR YEAR** means 12 consecutive calendar months that begins at 12:01 a.m. on January 1 of the first calendar month and ends at 11:59 p.m. on December 31 of the 12<sup>th</sup> calendar month.

**CHARGE** means an amount for a health care service provided by a health care provider that is reasonable, as determined by WPS, when taking into consideration, among other factors determined by WPS, amounts charged by health care providers for similar health care services when provided in the same general area under similar or comparable circumstances and amounts accepted by the health care provider as full payment for similar health care services. The term "area" means a county or other geographical area which WPS determines is appropriate to obtain a representative cross section of such amounts. For example, in some cases the "area" may be an entire state. In some cases the amount WPS determines as reasonable may be less than the amount billed. Charges for HOSPITAL or other institutional CONFINEMENTS are incurred on the date of admission. All others are incurred on the date the PARTICIPANT receives the health care service. CHARGE includes all taxes for which a PARTICIPANT can legally be charged, including but not limited to, sales tax.

**CONFINEMENT** means: (a) the period of time between admission as an inpatient or outpatient to a HOSPITAL, AODA residential center, SKILLED NURSING FACILITY or licensed ambulatory surgical center on the advice of the PARTICIPANT'S PHYSICIAN; and discharge there from, or (b) the time spent receiving emergency care for illness or injury in a HOSPITAL. HOSPITAL swing bed CONFINEMENT is considered the same as CONFINEMENT in a SKILLED NURSING FACILITY. If the PARTICIPANT is transferred to another facility for continued treatment of the same or related condition, it is one CONFINEMENT.

**CONTINUANT** means any SUBSCRIBER enrolled under the federal or state continuation provisions as described in the HEALTH BENEFIT PLAN.

**DAY**, unless used in the term "BUSINESS DAY" means a calendar day. When a deadline or a time period in which an act is to be done is expressed in terms of DAYS, the deadline or expiration of the time period shall be computed by excluding the first DAY and including the last DAY. If the deadline for time period in which an act is to be done falls on Saturday, Sunday or State or WPS holiday, then the deadline or time period is extended until the next BUSINESS DAY. The term "BUSINESS DAY" means Monday, Tuesday, Wednesday, Thursday or Friday, excluding any such DAY which is a State or WPS holiday. When a deadline or time period in which an act is to be done is expressed in "BUSINESS DAYS", the deadline or expiration of the time period shall be computed by excluding the first BUSINESS DAY and including each next following BUSINESS DAY, including the last.

**DEPARTMENT** means the State of Wisconsin Department of Employee Trust Funds.

**DEPENDENT** means the SUBSCRIBER'S:

- a. Spouse;
- b. DOMESTIC PARTNER, if elected;
- c. Child;
- d. Legal ward who becomes a legal ward of the SUBSCRIBER prior to age 19, but not a temporary ward;
- e. Adopted child when placed in the custody of the parent as provided by Wis. Stat. § 632.896;
- f. Stepchild;

- g. Child of the DOMESTIC PARTNER covered under the PLAN;
- h. Grandchild if the parent is a dependent child. The grandchild ceases to be a DEPENDENT at the end of the month in which the dependent child (parent) turns age 18.

A spouse and a stepchild cease to be DEPENDENTS at the end of the calendar month in which a marriage is terminated by divorce or annulment. A DOMESTIC PARTNER and his or her children cease to be DEPENDENTS at the end of the month in which the domestic partnership is no longer in effect.

All other children cease to be DEPENDENTS at the end of the month in which they turn 26 years of age, except that:

- a. An unmarried dependent child who is incapable of self-support because of a physical or mental disability that can be expected to be of long-continued or indefinite duration of at least one year is an eligible DEPENDENT, regardless of age, so long as the child remains so disabled if he or she is dependent on the SUBSCRIBER (or the other parent) for at least 50% of the child's support and maintenance as demonstrated by the support test for federal income tax purposes, whether or not the child is claimed. WPS will monitor mental or physical disability at least annually, terminating coverage prospectively upon determining the DEPENDENT is no longer so disabled, and will assist the DEPARTMENT in making a final determination if the SUBSCRIBER disagrees with WPS' determination.
- b. After attaining age 26, as required by Wis. Stat. § 632.885, a DEPENDENT includes a child that is not married and is not eligible for coverage under a group health insurance plan that is offered by the child's employer and for which the amount of the child's premium contribution is no greater than the premium amount for his or her coverage as a DEPENDENT under the PLAN. The child ceases to be a DEPENDENT at the end of the month in which he or she:
  - (1) turns 27 years of age, or
  - (2) is no longer a full-time student, regardless of age, who was called to federal active duty when the child was under the age of 27 years and while the child was attending, on a full-time basis, an institution of higher education.

A child born outside of marriage becomes a DEPENDENT of the father on the date of the court order declaring paternity or on the date the acknowledgment of paternity is filed with the Department of Children and Families (or equivalent if the birth was outside of Wisconsin) or a birth certificate listing the father's name. The EFFECTIVE DATE of coverage shall be the date of birth if a statement of paternity or a court order is filed within 60 DAYS of the birth.

A child who is considered a DEPENDENT ceases to be a DEPENDENT on the date the child becomes covered under the PLAN as an eligible EMPLOYEE.

Any DEPENDENT eligible for BENEFITS who is not listed on an application for coverage will be provided BENEFITS based on the date of notification with coverage effective the first of the month following receipt of the subsequent application by the DEPARTMENT, except as required under Wis. Stat. § 632.895 (5) and 632.896 and as specified in the Health Benefit Plan's Article II., B. 14.

**DOMESTIC PARTNER** means an individual that certifies in an affidavit along with his/her partner that they are in a domestic partnership as provided under Wis. Stats. § 40.02 (21d), which is a relationship between two individuals that meets all of the following conditions:

- a. Each individual is at least 18 years old and otherwise competent to enter into a contract;
- b. Neither individual is married to, or in a domestic partnership with, another individual;
- c. The two individuals are not related by blood in any way that would prohibit marriage under Wisconsin law;
- d. The two individuals consider themselves to be members of each other's immediate family;

- e. The two individuals agree to be responsible for each other's basic living expenses; and
- f. The two individuals share a common residence. Two individuals may share a common residence even if any of the following applies:
  - (1) Only one of the individuals has legal ownership of the residence;
  - (2) One or both of the individuals have one or more additional residences not shared with the other individual;
  - (3) One of the individuals leaves the common residence with the intent to return.

**EFFECTIVE DATE** means the date, as certified by the DEPARTMENT and shown on the records of the HEALTH BENEFIT PLAN in which the PARTICIPANT becomes enrolled and entitled to the BENEFITS specified in the HEALTH BENEFIT PLAN.

**EMPLOYEE** means an eligible EMPLOYEE of the State of Wisconsin as defined under Wis. Stats. § 40.02(25), or an eligible EMPLOYEE as defined under Wis. Stats. § 40.02 (46) or 40.19 (4) (a), of an EMPLOYER as defined under § 40.02 (28), Wis. Stats., other than the state which has acted under Wis. Stats. § 40.51 (7), to make health care coverage available to its employees.

**EMPLOYER** means the employing State of Wisconsin department, agency or participating local government.

**FAMILY PARTICIPANT** means a PARTICIPANT who is enrolled for family coverage and whose DEPENDENTS are thus eligible for BENEFITS.

**GUIDELINES** mean guidelines for comprehensive major medical plans seeking Group Insurance Board approval to participate under the State of Wisconsin Group Health BENEFIT Program.

**HEALTH BENEFIT PLAN** means the State of Wisconsin Group Insurance Board Health Plan that provides group health coverage for certain State of Wisconsin EMPLOYEES, ANNUITANTS, and their eligible DEPENDENTS in accordance with Chapter 40, Wisconsin Statutes.

**HOSPITAL** means an institution that:

- a. (1) Is licensed and run according to Wisconsin laws or other applicable jurisdictions, that apply to HOSPITALS; (2) maintains at its location all the facilities needed to provide diagnosis of and medical and surgical care for, injury and illness; (3) provides this care for fees; (4) provides such care on an inpatient basis; (5) provides continuous 24-hour nursing services by registered graduate nurses; or
- b. (1) Qualifies as a psychiatric or tuberculosis HOSPITAL; (2) is a Medicare provider; and (3) is accredited as a HOSPITAL by the Joint Commission of Accreditation of Hospitals. The term HOSPITAL does not mean an institution that is chiefly (a) a place for treatment of chemical dependency; (b) a nursing home; or (c) a federal HOSPITAL.

**PARTICIPANT** means the PARTICIPANT or any of the PARTICIPANT'S DEPENDENTS who have been specified by the DEPARTMENT to the HEALTH BENEFIT PLAN for enrollment and who is entitled to BENEFITS.

**PHYSICIAN** means a person who received a degree in medicine from an accredited college or university and is a licensed medical doctor or surgeon licensed by the state in which he/she is located and provides health care services while he/she is acting within the lawful scope of his/her license. A PHYSICIAN is limited to the following:

- a. Doctor of Medicine (M.D.);
- b. Doctor of Osteopathy (O.S.);

- c. Doctor of Dental Surgery (D.D.S.);
- d. Doctor of Dental Medicine (D.D.M.);
- e. Doctor of Surgical Chiropody (D.S.C.);
- f. Doctor of Podiatric Medicine (D.P.M.);
- g. Doctor of Optometry (O.D.);
- h. Doctor of Chiropractic (D. C.).

When required by law to cover the services of any other licensed medical professional under this AGREEMENT, a PHYSICIAN also includes such other licensed medical professional who: (a) is licensed by the state in which he/she is located; (b) is acting within the lawful scope of his/her license; and (c) provides a health care service which WPS determines is a covered expense under this AGREEMENT.

**RFP** means Request for Proposal ETE0003 issued December 15, 2004, by the Wisconsin Department of Employee Trust Funds.

**SPECIALTY HOSPITAL** means a short term SPECIALTY HOSPITAL approved by WPS and the State, licensed and accepted by the appropriate State or regulatory agency to provide diagnostic services and treatment for patients who have a specified medical condition. Such short-term SPECIALTY HOSPITALS shall include, for example, psychiatric, alcoholism, and drug abuse, orthopedic and rehabilitative HOSPITALS.

**SPELL OF ILLNESS:** means the total duration of all successive CONFINEMENTS that are separated from each other by less than 60 days.

**STATE** means the State of Wisconsin, of the United States of America.

**SUBSCRIBER** means an EMPLOYEE, ANNUITANT, or his or her surviving DEPENDENTS, who have been specified by the DEPARTMENT to the HEALTH BENEFIT PLAN for enrollment and who is entitled to BENEFITS, who has made timely application, and who has timely paid the required PREMIUMS that are due and payable for his/her coverage under the HEALTH BENEFIT PLAN.

**WISCONSIN PHYSICIANS SERVICE INSURANCE CORPORATION/WPS:** means the service insurance corporation with its principal office in Monona, Wisconsin, organized and existing under Chapter 613 of the laws of Wisconsin. For the purposes of this AGREEMENT, WPS acts as the health claim administrator under the terms, conditions, and provisions of this AGREEMENT with the State of Wisconsin Group Insurance Board.

## II. FINANCIAL ADMINISTRATION

- A. WPS shall notify the DEPARTMENT every Wednesday of each calendar week during the term of this AGREEMENT and inform the DEPARTMENT in writing by submission of an invoice showing the amount due from the DEPARTMENT to WPS. The amount due every Wednesday shall be the total amount of benefit payments issued by WPS for the claims processed during the immediately prior calendar week (Saturday through Friday).

The DEPARTMENT shall deposit funds into the bank account designated by WPS by the first Monday immediately following the DEPARTMENT'S receipt of the request for payment by WPS.

Direct pay premiums received by WPS shall be credited to the BOARD no later than the second Wednesday of the month following receipt.

- B. WPS shall submit to the DEPARTMENT a written billing statement for the administration charge, other fees and expenses on the 20<sup>th</sup> day of the calendar month (or the first business day following the 20<sup>th</sup> day of the calendar month). That monthly statement shall show the total amount of



administration charge, other fees and expenses due for the immediately following calendar month. The DEPARTMENT shall deposit funds into the bank account designated by WPS on the first business day of the calendar month following the DEPARTMENT'S receipt of the request for payment by WPS.

WPS shall supply an administrative monthly billing which shall be based on PARTICIPANT counts as of first DAY of the month, provided the qualified enrollment meets the requirements laid out in Exhibit 7.0 of the RFP's Business Proposal. WPS shall be paid the following ADMINISTRATIVE CHARGE per month per PARTICIPANT for the AGREEMENT periods stated as follows:

1. Medical Administration Fee:
  - a. \$16.01 per single Medicare and family Medicare contracts (family Medicare means all members have Medicare);
  - b. \$20.98 for all other contracts where at least one member is under age 65.

The medical administration fee stated above includes, but is not limited to, the following:

- a. Annual Administration Fee;
  - b. WPS Medical Management;
  - c. WPS Disease Management;
  - d. HIPAA Certificates of Coverage;
  - e. Booklet Printing;
  - f. Reporting Package;
  - g. Mailing Fees;
  - h. Reserve Calculation;
  - i. Schedule A and/or C of the IRS Form 5500;
  - j. Value Coder Review;
  - k. Fraud & Abuse Review;
  - l. Health Sense Rewards; and
  - m. COBRA Group Billing.
2. Conversion Fee: \$700 per single contract and \$1,400 per family contract to be paid by the covered employee at the time of application for the conversion policy. This fee shall be in addition to any applicable premium due for the conversion policy.

### **III. LIABILITY AND INDEMNITY**

- A. WPS shall use reasonable care and diligence in the performance of its duties under this AGREEMENT, and agrees to indemnify and hold harmless the STATE, the BOARD, the DEPARTMENT, and STATE officers and EMPLOYEES against any and all claims, lawsuits, settlements, judgments, costs, penalties and expenses, including, but not limited to, attorneys' fees, resulting from or arising out of any negligent, dishonest, fraudulent, or criminal act or omission of WPS or any of its directors, officers, or employees, whether acting alone or in collusion with others. WPS' obligations under this provision, including, but not limited to, the

foregoing indemnification, shall survive the termination or nonrenewal of this AGREEMENT for a period of six years, and in case of fraud for a period of six years after discovery of the fraud.

- B.** Nothing in this AGREEMENT shall be construed as a waiver of sovereign immunity by the STATE or its agencies, specifically including, but not limited to, the BOARD and the DEPARTMENT.

Claims for damages or injury may be asserted by WPS against STATE officers, employees or agents only as provided in Wis. Stat. § 893.82.

In the event that employees or agents of the STATE or its agencies, specifically including those of the BOARD and the DEPARTMENT, are found liable to WPS under law, the STATE shall indemnify WPS as provided in Wis. Stat. § 895.46 (1) (a).

- C.** If it is determined that any payment has been made under this AGREEMENT to an ineligible person, or if it is determined that more or less than the correct amount has been paid by WPS, WPS shall make a diligent attempt to recover the payment, or shall adjust the underpayment. WPS shall not be required to initiate court proceedings to obtain any such recovery. If any overpayments made to ineligible persons were the result of fraud or criminal acts or omissions on the part of WPS or any of its directors, officers, and employees, WPS shall reimburse the DEPARTMENT for the amount of such excess payments. Overpayments resulting from negligence of WPS or any of its directors, officers and employees and which are caused by a systemic problem due to WPS' design and/or operation of its claims processing system, including maintenance or pricing arrangements, which are determined by WPS to be uncollectible, despite diligent efforts by WPS to recover the overpayments, shall be recoverable from WPS by the DEPARTMENT provided that the determination of the amount due shall be based on actual verified overpayments.

WPS and the DEPARTMENT shall agree upon reasonable procedures to be used by WPS to recover or collect overpayments and underpayments. WPS shall notify the DEPARTMENT of each uncollectible overpayment of \$50.00 or more within 10 BUSINESS DAYS following WPS' determination that such overpayment is uncollectible after using such recovery and collection procedures.

The BOARD shall hold WPS and its directors, officers, and employees harmless from any liability for any overpayments and/or underpayments made to any ineligible former PARTICIPANT when payments result from a failure of the BOARD, the DEPARTMENT or any other State department or agency to make a timely report to WPS of any PARTICIPANT'S loss of eligibility.

- D.** Notwithstanding any other terms, conditions, and provisions of this AGREEMENT, WPS shall pay CHARGES as determined by WPS. Disputes as to CHARGES will be referred, on a timely basis, to WPS who shall actively attempt to settle the dispute with the provider in a reasonable time frame.

If no settlement is reached after such referral and a lawsuit is brought against a PARTICIPANT, the PARTICIPANT shall contact the DEPARTMENT or WPS within 14 DAYS of the date on which the lawsuit is received by the PARTICIPANT. Within two BUSINESS DAYS of WPS becoming aware of a lawsuit, WPS shall notify the DEPARTMENT about the lawsuit. The DEPARTMENT shall advise WPS to either attempt to resolve the lawsuit or hire an attorney to undertake the defense of such a lawsuit for the PARTICIPANT. WPS shall hire outside legal counsel to represent that PARTICIPANT in any lawsuit involving WPS' determination of the CHARGE for a covered health care service under the HEALTH BENEFIT PLAN and to undertake the defense of such a lawsuit for the PARTICIPANT or take such other measures as WPS deems necessary to resolve the dispute. However, it is understood and agreed that WPS shall not hire outside legal counsel to represent that PARTICIPANT and undertake the defense of any such lawsuit or take any other measures to protect the PARTICIPANT if the PARTICIPANT agrees to accept responsibility for any costs in excess of the CHARGE determined by WPS. WPS' decision to hire outside legal counsel to represent any PARTICIPANT in any CHARGE determination cases is subject to that PARTICIPANT'S advance approval.

The STATE, including the BOARD and DEPARTMENT, shall be solely responsible and liable for paying the attorneys' fees and legal expenses, costs and disbursements charged by the outside

legal counsel representing the PARTICIPANTS in CHARGE determination cases, not WPS. WPS shall not be responsible or liable for paying any such attorneys' fees and legal expenses, costs and disbursements. WPS shall hire outside legal counsel to defend PARTICIPANTS in CHARGE determination cases at the lowest hourly rate that counsel is willing to accept for his/her attorneys' fees for his/her services, with those fees being subject to, and being paid consistent with, the Wisconsin Rules of Professional Conduct for Attorneys.

For the CHARGE determination cases involving the outside legal counsels' representation of PARTICIPANTS, all legal expenses, costs and disbursements, including, but not limited to, attorneys' fees, long distance telephone calls, faxing, copying, court filing fees, discovery expenses, expert witness fees, exhibit preparation fees, and travel costs that are incurred by the outside legal counsel shall be separately charged to, and reimbursed in full by, the STATE, including the BOARD and DEPARTMENT. WPS shall not be paid or receive any portion of the outside legal counsel's attorneys' fees paid based on that hourly rate.

In conjunction with these CHARGE determination cases, WPS shall provide the following administrative services prior to and/or while working with the outside legal counsel hired by WPS to represent PARTICIPANTS.

1. Identify, recommend, and hire appropriate outside legal counsel approved by the PARTICIPANT.
  2. Identify, locate, assemble, and forward copies of relevant HEALTH BENEFIT PLAN records and documents to such outside legal counsel.
  3. Coordinate with such outside legal counsel the acquisition and gathering of relevant HEALTH BENEFIT PLAN records and documents during the litigation discovery process, including, but not limited to, scheduling depositions of WPS' staff and other witnesses.
  4. Review monthly billing statements/invoices provided by such outside legal counsel for its legal expert costs and disbursements and forward those statements/invoices to the DEPARTMENT for its payment.
  5. Provide the DEPARTMENT with monthly reports giving each lawsuit's status in a mutually-agreeable format.
- E. WPS shall defend its CHARGE determinations made under the HEALTH BENEFIT PLAN in administrative cases appealed by PARTICIPANTS (or by any other party having such right of appeal) to the BOARD, with WPS being represented in those appeals either by WPS' corporate legal counsel or by outside legal counsel hired at WPS' own expense. In these appeals such counsel shall not represent the PARTICIPANT, the STATE, the BOARD, or the DEPARTMENT.

#### **IV. EFFECTIVE DATE-AGREEMENT PERIOD**

- A. This AGREEMENT shall become effective as of 12:01 a.m. on January 1, 2007.
- B. Subject to the terms, conditions, and provisions of the HEALTH BENEFIT PLAN, the initial three-year AGREEMENT period shall extend from 12:01 a.m. on January 1, 2006, until 11:59 p.m. on December 31, 2008. Unless either party notifies the other in writing by September 1, 2008, of its intent to allow this AGREEMENT to expire on December 31, 2008, then this AGREEMENT shall be continued and renew automatically once, effective 12:01 a.m. on January 1, 2009, pursuant to 1. or 2. below, as elected by the BOARD.
1. Unless the BOARD notifies WPS in writing by October 1, 2008 that paragraph 2. below will apply, the one-time automatic renewal period is for a period of two years, expiring 11:59 p.m. on December 31, 2010.
  2. If the BOARD so notifies WPS in writing by October 1, 2008, the automatic renewal effective 12:01 a.m. on January 1, 2009, will be for a one-year period. A second,

automatic one-year renewal period will occur effective 12:01 a.m. on January 1, 2010, unless either party notifies the other in writing by September 1, 2009, of its intent to allow this AGREEMENT to expire as of 11:59 p.m. on December 31, 2009.

3. If this AGREEMENT is renewed pursuant to this subsection B., this AGREEMENT shall renew with its then current terms, conditions and provisions unless the parties otherwise agree in writing to amend those terms, conditions, and provisions for the renewal period.

C. Notwithstanding B., above, this contract is extended for the period of January 1, 2011 through December 31, 2011.

## **V. CLERICAL ERRORS**

No clerical error made by the EMPLOYER, the BOARD, the DEPARTMENT or WPS shall invalidate a PARTICIPANT'S BENEFITS to which he/she is otherwise validly entitled, nor continue a PARTICIPANT'S BENEFITS otherwise validly terminated under the HEALTH BENEFIT PLAN, nor create eligibility for any BENEFITS where none otherwise existed under the HEALTH BENEFIT PLAN.

If an eligible EMPLOYEE has made timely written application for BENEFITS as either a single or FAMILY PARTICIPANT and has authorized the premium contributions, the BENEFITS to which he/she is entitled shall not be invalidated solely because of the failure of the DEPARTMENT due to clerical error, to give proper and timely notice to WPS of the EMPLOYEE'S application.

The HEALTH BENEFIT PLAN is responsible for resolving discrepancies in claims payments for all MEDICARE data match inquiries.

## **VI. SUBCONTRACTING**

WPS shall not subcontract any of its responsibilities under this AGREEMENT without the prior written consent of the DEPARTMENT. The DEPARTMENT'S consent shall not be unreasonably denied or delayed.

## **VII. EXAMINATION OF RECORDS**

The DEPARTMENT, or its duly authorized representatives, shall have the right to examine any records of WPS relating to BENEFITS payments and requests for payments of BENEFITS and the issuing of drafts for payment of BENEFITS, except that any examination of a PARTICIPANT'S BENEFITS payment records shall be carried out in a manner agreed to between the DEPARTMENT and WPS subject to the confidentiality of records provisions of § 40.07, Wis. Stats., and any applicable federal or other STATE laws and rules. The information shall be furnished within 14 DAYS of the request. All such information is the sole property of the STATE.

Upon a showing satisfactory to the BOARD that WPS is required by law to maintain a copy of such information, the DEPARTMENT and WPS shall agree to terms, conditions and provisions permitting WPS to maintain information to the minimum extent and for the minimum time required by law. Any such agreement shall require WPS to: (a) keep confidential and properly safeguard each "medical record" and all "personal information", as those terms are respectively defined in Wis. Admin. Code ETF 10.01 (3m) and ETF 10.70 (1), that are included in such information; (b) not make any disclosure of such information without providing advance notice to the DEPARTMENT; and (c) include a liability clause for damages in the event WPS makes any disclosure of personal information or any medical record that would violate Wis. Stat. § 40.07 (1) or (2), respectively, if the disclosure was made by the DEPARTMENT.

## **VIII. AMENDMENTS**

This AGREEMENT may be amended at any time by written agreement of WPS and the BOARD.

## **IX. PARTICIPANT INFORMATION**

WPS agrees that PARTICIPANT information, including, but not limited to, name, group, and PARTICIPANT number in machine readable form and information available by server-based computer developed by WPS while this AGREEMENT is in force is the property of the DEPARTMENT and shall be made available to the DEPARTMENT upon its request, together with appropriate detail as to the format and layout of the data. In accordance with STATE statute, individual documentation used for claim adjudication will be maintained for a minimum of three years.

## **X. FAIR EMPLOYMENT ACT**

WPS declares it is a fair employment employer, and abides by the fair employment provisions of the law and public policy of the STATE with respect to employment of properly qualified persons, including matters pertaining to personnel relationships, regardless of their age, race, religion, color, handicap, physical appearance, disabled or Vietnam era veteran, and arrest or conviction record, or sexual orientation.

## **XI. GRIEVANCE PROCEDURE**

- A.** Any dispute about health insurance BENEFITS or claims arising under the terms, conditions, and provisions of this AGREEMENT shall first be submitted for resolution through WPS' internal claim appeal process and may then, if necessary, be submitted to the DEPARTMENT. The PARTICIPANT may file a complaint with the DEPARTMENT'S Quality Assurance Services Bureau for review. The PARTICIPANT may also request a departmental determination. The determination of the DEPARTMENT is final and not subject to further review unless a timely appeal of the determination by the DEPARTMENT is submitted to the BOARD, as provided by Wis. Stat. § 40.03 (6) (i) and Wis. Admin. Code ETF § 11.01 (3). The decision of the BOARD is reviewable only as provided in Wis. Stat. § 40.08 (12).
- B.** WPS' claim appeal procedure is included as Article XII, C. Claim Determination and Grievance Procedures.
- C.** The PARTICIPANT shall be provided with notice of the right to appeal and a minimum period of 60 DAYS to file a claim appeal after written denial of a BENEFIT or occurrence of the cause of the claim appeal.
- D.** Investigation and resolution of any appeal shall be initiated within five DAYS of the date the appeal is filed by the complainant in an effort to effect early resolution of the problem. Appeals related to an urgent health concern (i.e., life threatening) shall be resolved within four BUSINESS DAYS of WPS' receipt of the appeal.
- E.** In the final decision letter, WPS shall inform the PARTICIPANT of his/her right to request a determination from the DEPARTMENT within 60 DAYS in the event they disagree with the grievance committee's final decision and their right to request a review by an Independent Review Organization in accordance with Wis. Adm. Code § INS 18.11, using the language approved by the DEPARTMENT.

- F. All information and documentation pertinent to any decisions or actions taken regarding any PARTICIPANT complaint or appeal by WPS shall be made available to the DEPARTMENT upon request. If an authorization from the PARTICIPANT is necessary, the HEALTH PLAN shall cooperate in obtaining the authorization and shall accept the DEPARTMENT'S form, when signed by the PARTICIPANT or PARTICIPANT'S representative, to give written authorization for release of information to the DEPARTMENT. Information may include complete copies of appeal files, medical records, consultant reports, customer service contact worksheets or any other documentation the DEPARTMENT deems necessary to review a PARTICIPANT complaint resolving disputes or when formulating determinations. Such information shall be provided at no charge within 15 BUSINESS DAYS, or by an earlier date as requested by the DEPARTMENT and mutually agreed upon by both parties.
- G. If a PARTICIPANT files a lawsuit naming WPS as a defendant, WPS shall notify the DEPARTMENT'S chief legal counsel within ten BUSINESS DAYS of WPS' receipt of notification of the legal action. This requirement does not extend to lawsuits involving subrogation.
- H. If a departmental determination overturns a WPS decision on a PARTICIPANT'S appeal, WPS shall comply with the determination within 90 DAYS of the date of the determination or a \$500 penalty shall be assessed for each DAY in excess of 90 DAYS. As used in this section, "comply" means to take action as directed in the departmental determination or to appeal the determination to the BOARD within 90 DAYS.

## **XII. ADMINISTRATIVE SERVICES TO BE PROVIDED BY WPS**

### **A. General Administration.**

WPS employees shall be available to assist the DEPARTMENT in connection with the general administration of this AGREEMENT, including assistance as to the enrollment of the eligible persons and administration and record keeping systems for the ongoing operation of this AGREEMENT.

### **B. Claims Services.**

WPS shall provide the following administrative services:

1. Inquiry services;
2. Determination of CHARGES;
3. Medical advisor review;
4. Pattern practice review;
5. Coordination of BENEFITS;
6. Appropriate claims edits;
7. BENEFITS determination;
8. Payment of BENEFITS;
9. Preparation and sending Federal Form 1099 to providers (ETF specific are not required);
10. Subrogation services.

**C. Claim Determination and Grievance Procedures.**

**1. Claim Grievance Procedure.**

Any dispute about BENEFITS or claims arising under the terms, conditions, and provisions of this AGREEMENT shall first be submitted for resolution through WPS' internal grievance process and may then, if necessary be submitted to the DEPARTMENT. The PARTICIPANT may file a complaint with the Quality Assurance Services Bureau for review. The PARTICIPANT may also request a departmental determination. The determination of the DEPARTMENT is final and not subject to further review unless a timely appeal of the determination by the DEPARTMENT is submitted to the BOARD, as provided by Wis. Stat. § 40.03 (6) (i.) and Wis. Admin. Code § ETF 11.01 (3). The decision of the BOARD is reviewable only as provided in Wis. Stat. § 40.08 (12).

If any PARTICIPANT has a problem or complaint relating to a determination of BENEFITS, he/she should contact WPS. WPS shall assist the PARTICIPANT in trying to resolve the matter on an informal basis, and may initiate a claim review of the BENEFITS determination. If the PARTICIPANT wishes, he/she may omit this step and immediately file a formal grievance.

Written inquiries received by WPS not related to BENEFITS determinations shall be resolved by WPS within an average of twelve (12) DAYS following WPS' receipt of the inquiry.

**2. Claim Review.**

A claim review may be done only when a PARTICIPANT requests a review of denied BENEFITS. When a claim review has been completed, and the decision is to uphold the denial of BENEFITS, the PARTICIPANT shall receive written notification as to the specific reason(s) for the continued denial of BENEFITS and of his/her right to file a grievance.

A CASE REVIEW OR CLAIM REVIEW MAY NOT BE SUBSTITUTED FOR A GRIEVANCE.

GRIEVANCES REGARDING NONCOVERED SERVICES OR SERVICES EXCLUDED from coverage BY THE HEALTH BENEFIT PLAN SHALL BE HANDLED LIKE ANY OTHER GRIEVANCE.

GRIEVANCES SUBMITTED BY A health care PROVIDER CANNOT BE REFERRED TO THE CLAIM APPEAL UNIT.

**3. Departmental Request for Grievance.**

The DEPARTMENT may require WPS to treat and process a complaint received by the DEPARTMENT as a grievance as appropriate, if the DEPARTMENT forwards the complaint to WPS on behalf of the PARTICIPANT. WPS shall process the complaint as a grievance in compliance with the HEALTH BENEFIT PLAN'S provisions regarding a formal grievance.

**4. Internal Grievance Process.**

**a.** The BOARD directs that the internal grievance process comply with Wis. Stats. § 632.83, except as may otherwise be expressly provided to the contrary in this AGREEMENT. A PARTICIPANT shall have the option of requesting independent review from an independent review organization ("IRO") certified by the Commissioner of Insurance under Wis. Stats. § 632.835 (4) in the same manner and following the same timelines and procedures as provided by Wis. Stats. § 632.835 and Wis. Admin. Code Chapter Ins 18 except as may be otherwise provided or modified by the BOARD in the terms, conditions, and provisions of this AGREEMENT. However, WPS shall not be in breach of this AGREEMENT

solely because the IRO does not comply with the timeframes set forth in the statutes or regulations.

- b. Should a PARTICIPANT request an external review by an IRO, WPS shall make payment for reasonable fees required to be paid to the IRO by the PARTICIPANT. Payment for such review shall be reimbursed to WPS on a cost basis by the DEPARTMENT. Within 14 days of WPS' receipt of the notification of the IRO rendering its determination and its fees, WPS must notify the DEPARTMENT of the outcome and the IRO's fee for the review.

**D. Enrollment Services.**

Although the DEPARTMENT is responsible for eligibility determination and enrollment, WPS shall maintain an enrollment/eligibility system to support the BOARD'S HEALTH BENEFIT PLAN. WPS shall not process any premium transactions related to enrollment, except for those direct pay SUBSCRIBERS from whom WPS will collect premiums and credit same to DEPARTMENT.

Monthly, or upon request by the DEPARTMENT, WPS shall submit a data file (or audit listing, if requested by the DEPARTMENT) to update the DEPARTMENT'S membership files in a file format as identified by the DEPARTMENT after seeking input from WPS. WPS shall submit these files using the SUBSCRIBER identifiers (currently Social Security Number) determined by the DEPARTMENT. WPS shall create separate files for SUBSCRIBERS and DEPENDENTS in a format and timeframe specified by the DEPARTMENT, and submit them to the DEPARTMENT or its designated database administrator. When the DEPARTMENT sends WPS error reports showing SUBSCRIBER and DEPENDENT records failing one or more edits, WPS shall correct and resubmit the failed records with its next update. WPS shall collect from SUBSCRIBERS coordination of benefits information necessary to coordinate BENEFITS under the Wisconsin Administrative Code and report this information to the DEPARTMENT at least annually. WPS must follow the DEPARTMENT'S file transfer protocols (FTP), such as using the DEPARTMENT'S secured FTP site to submit and retrieve files.

**E. Management Reports.**

WPS shall provide DEPARTMENT the following detailed and summary level reports. These reports can change over time with mutual agreement of the parties.

- 1. Reports produced from Data Dashboard;
- 2. Monthly Reports
  - a. claims cycle time;
  - b. claims inventory;
  - c. direct pay enrollment;
  - d. nature of inquiry report;
  - e. subrogation report;
  - f. hospital bill audit;
  - g. claim appeal report.
- 3. Quarterly Reports:
  - a. performance guarantees;
    - (1) financial accuracy
    - (2) payment accuracy



- (3) processing accuracy
  - (4) processing timeliness
  - (5) clean claims
  - (6) all claims
  - (7) call abandonment rate
  - (8) telephone inquiry resolution
  - (9) written inquiry resolution
  - (10) enrollment updates
  - (11) ID card issue
- b. case management reports
  - c. incurred but not reported claims (ibnr)
4. Annual Reports:
- a. aggregate stop-loss;
  - b. claim appeal summary;
  - c. Addendum 1A of the GUIDELINES: Plan Utilization and Rate Review;
  - d. Addendum 1B/Table 8A of the GUIDELINES: Catastrophic Data;
  - e. Table 8B of the GUIDELINES: Catastrophic Case Data;
  - f. Addendum 2 of the GUIDELINES: Provider Listing, Provider Counts;
  - g. Tables 10A, 10B, 10C, 10D of the GUIDELINES: Premium Rate Quotes & Bid Forms;
  - h. Tables 11A, 11B, 11C, 11D of the GUIDELINES: Final Best Bid;
  - i. annual report to be redefined between STATE and WPS.

WPS shall be reimbursed by the DEPARTMENT on the basis of time and materials for the development and furnishing of additional reports beyond this list at the rate of \$100.00 per hour.

On or before January 1, 2006, the DEPARTMENT will furnish a report to WPS showing the SUBSCRIBERS with SINGLE COVERAGE and FAMILY COVERAGE entitled to BENEFITS under the CONTRACT during the first month that it is in effect, and such other reasonable data as may be necessary for WPS administration. On or before the same day of each month thereafter, the DEPARTMENT will furnish like reports for each succeeding month that this CONTRACT is in effect.

**F. Printing and Publication Services.**

WPS shall provide or pay for the listed printing and publication services. These printing and publication services shall include:

- 1. Individual BENEFIT booklets for all PARTICIPANTS with combined DEPARTMENT/WPS input.

2. WPS individual identification cards shall be provided to the PARTICIPANT within 30 DAYS of the EFFECTIVE DATE or the date WPS receives the PARTICIPANT'S eligibility, which ever is later.
3. Posters announcing enrollment procedures, conversion privileges, and other items important to administration of the program for distribution to BOARD agencies and subdivisions (distribution about 500).
4. Necessary claim forms.
5. List of participating SMP PHYSICIANS (there shall be a minimum of three per county);
6. WPS is to develop and furnish to the DEPARTMENT for this informational material at cost on a basis of time and materials.

**G. Personal Computer (P.C.) Services.**

WPS shall provide and maintain a personal computer (PC) or terminal. A WPS employee will be physically located at the DEPARTMENT. This employee shall have access to all STATE and local PARTICIPANT claims and membership data. The cost of servicing and maintaining such PC or remote terminal will be the responsibility of WPS.

**H. Subrogation Procedures.**

Subject to the PROPOSAL, including, but not limited to, Section 5.1.13 thereof, WPS shall have authority to retain any attorneys or law firms regarding such subrogation rights and lawsuits involving such rights to represent the BOARD to pursue the BOARD'S subrogation rights in accordance with this AGREEMENT. Any subrogation settlement agreed to by WPS shall be deemed acceptable by the BOARD. WPS may forego subrogation where, at WPS' discretion, the circumstances in a particular subrogation matter warrant such a decision.

With respect to these subrogation cases, WPS will hire outside legal counsel to provide the BOARD with subrogation litigation services on the BOARD'S behalf at a contingency fee of 25% of net dollars recovered by the outside legal counsel, with those attorneys' fees being subject to, and being paid consistent with, the Wisconsin Rules of Professional Conduct for Attorneys, the code of professional ethics and performance standards established by the Wisconsin Supreme Court for attorneys practicing law in the State of Wisconsin.

For such subrogation matters, the BOARD shall not pay or provide any additional reimbursement for the outside legal counsel's legal fees, expenses, costs and disbursements incurred by outside legal counsel while providing subrogation-related legal services and such legal fees, expenses, costs and disbursements are included in, and will be paid out of, the 25% contingency fee that is paid to the outside legal counsel as set forth in this subsection. WPS will not be paid or receive any portion of the 25% contingency fee that is paid to the outside legal counsel. The BOARD shall be solely responsible and liable for paying the 25% contingency fee to outside legal counsel for its attorneys' fees, legal costs and disbursements incurred by the outside legal counsel representing the BOARD in subrogation cases, not WPS. WPS is not responsible or liable for paying the 25% contingency fee or any such attorneys' fees, legal costs and disbursements.

**I. Premium Rate Determination.**

WPS agrees to provide all necessary technical assistance required by the BOARD for the determination of any change in premium rates needed to finance the BENEFITS.

**J. Additional Services.**

1. WPS shall establish a PARTICIPANT identification system, which identifies DEPENDENTS by age, sex, and DEPENDENT relationship. WPS shall cross-reference this system to each PARTICIPANT'S social security number.

2. WPS shall pay claims of providers according to a time standard mutually established by WPS and the DEPARTMENT. This standard is aimed at providing the BOARD with optimum cash flow BENEFITS.
3. WPS shall operate the Customer Service Department for the STATE PARTICIPANTS between 7:00 a.m. and 7:00 p.m., Monday through Thursday and 7:00 a.m. to 4:30 p.m. on Friday.
4. WPS shall operate an on-line claims processing system for major medical claims. Major medical CHARGES shall be processed concurrently with base CHARGES when submitted by providers.
5. WPS shall, upon DEPARTMENT request, participate in all administrative hearings requested by PARTICIPANTS or WPS, as determined by the DEPARTMENT; said hearings shall be conducted in accordance with guidelines and rules and regulations promulgated by the DEPARTMENT. Costs to the STATE for a PHYSICIAN consultant shall be billed separately at \$250.00 per hour including the travel time to and from the hearing. Fees for the non-medical staff shall be dramatically lower and negotiated upon request of the specific personnel required for the administrative hearing.
6. WPS agrees to assign ID numbers according to the system established by the DEPARTMENT. It is preferable but not mandatory to assign ID numbers that are not correlated to social security numbers. However, upon PARTICIPANT request, such an ID number shall be assigned. Social security numbers shall be incorporated into the PARTICIPANT'S data file and may be used for identification purposes only and not disclosed and used for any other purpose.
7. Upon request of the DEPARTMENT or the PARTICIPANT, the HEALTH BENEFIT PLAN shall provide the total dollar amount of claims paid by the HEALTH BENEFIT PLAN that have been applied toward the PARTICIPANT'S lifetime benefit maximum.
8. WPS shall encourage network hospitals to participate in such quality standards as Leapfrog and other standards as identified by the DEPARTMENT.

### **XIII. PERFORMANCE STANDARDS**

#### **A. Financial Accuracy.**

WPS shall achieve 99% level of financial accuracy. Financial accuracy means the claim dollars paid in the correct amount divided by the total claim dollars paid. Measurement shall be reported on a quarterly basis with an annual settlement.

#### **B. Payment Accuracy.**

WPS shall achieve 97% level of payment accuracy. Payment accuracy is calculated by dividing the number of claims containing no payment error by the total number of claims in a sample. Measurement shall be reported on a quarterly basis with an annual settlement.

#### **C. Processing Accuracy.**

WPS shall achieve 97% level of processing accuracy. Processing accuracy means all claims processed correctly in every respect, financial and technical. Measurement shall be reported on a quarterly basis with an annual settlement.

#### **D. Claim Processing Time.**

WPS shall process within 30 DAYS of receipt 95% of all claims received. Claim processing time includes all claims (both clean and investigated). Measurement shall be reported on a quarterly basis with an annual settlement.

**E. Telephone Inquiries.**

WPS shall respond to all telephone inquiries. Telephone inquiries shall have less than a 3% abandonment rate. Inquiries that can not be fully answered on the initial call will be responded to with a complete answer within five BUSINESS DAYS. Measurement shall be reported on a quarterly basis with an annual settlement.

**F. Written Inquiries.**

WPS shall resolve all written inquiries with an average of 12 BUSINESS DAYS. Measurement shall be reported on a quarterly basis with an annual settlement.

**G. Quarterly Performance Reports.**

Results of the quarterly performance standards shall be reported to the BOARD within 60 DAYS of the end of the reporting period.

**H. Non-Investigated Claims.**

WPS shall process within 14 DAYS of receipt 90% of all claims received that do not require any investigation. Measurement shall be reported on a quarterly basis with an annual settlement.

**I. Enrollment File Updates.**

WPS shall apply accepted daily maintenance files within one BUSINESS DAY of receipt of file. Manual entry of enrollment changes will be processed within two BUSINESS DAYS following the application of the daily maintenance file. Measurement shall be reported on a quarterly basis with an annual settlement.

**J. ID Card Issuance.**

WPS shall issue identification cards within five BUSINESS DAYS from receipt of complete information. Measurement shall be reported on a quarterly basis with an annual settlement.

**K. Penalties.**

During the term of this AGREEMENT, WPS shall meet or exceed the above mentioned performance standards set forth in Sections A. through J. above for each CALENDAR YEAR. For each performance standard not achieved by WPS for an entire CALENDAR YEAR, a penalty of 2% (1% for written inquiries, non-investigated claims, enrollment file updates and ID card issuance) of the total annual administrative fees paid to WPS by the STATE for that CALENDAR YEAR shall be refunded to the STATE (or applied as a future credit) up to a maximum of 10% of the total annual administrative fees paid to WPS for that CALENDAR YEAR for all performance standards not achieved by WPS for that CALENDAR YEAR.

**L. Performance Standards.**

The WPS processing standard for STATE claim appeals is an average of 45 DAYS, excluding extenuating circumstances. Examples of extenuating circumstances are: delays in receiving medical records, and availability of pertinent outside medical consults for reviews. Financial penalties set forth in K. above are not applicable to this performance standard.

At the discretion of the DEPARTMENT, WPS may be required to provide a minimal customer service award determined by the DEPARTMENT in cases of poor customer service. Such awards, at the discretion of the DEPARTMENT, may be deducted from performance penalties due under the contract.

#### **XIV. COST CONTAINMENT**

WPS shall provide the following cost containment program in addition to its routine cost containment efforts.

WPS shall operate a Hospital Bill Audit Program for HOSPITAL and SPECIALTY HOSPITAL claims with CHARGES in excess of \$50,000 per CONFINEMENT. WPS may include claims of less than \$50,000 if WPS determines that the possible recovery of payments justifies the cost of that audit. All amounts recovered under this program shall be paid 45% to WPS and 55% to the BOARD.

#### **XV. ACTUARIAL, AUDIT AND OTHER SERVICES**

The BOARD directs and authorizes WPS to pay at the end of each calendar quarter to the BOARD'S consulting actuary the costs charged for actuarial services provided with regard to this AGREEMENT. Unless otherwise directed by the BOARD, WPS shall allocate 50% of the actuarial service costs to the BOARD EMPLOYEE plans (STANDARD PLAN, SMP AND MEDICARE PLUS \$1,000,000) and the remaining 50% of such costs to the WISCONSIN PUBLIC EMPLOYERS plan. The BOARD shall reimburse WPS for all payments made to the BOARD'S consulting actuary and for any related expenses incurred at least 10 DAYS prior to the end of each calendar quarter.

WPS shall be required to maintain sufficient documentation to provide for the financial/management audit of its performance under this AGREEMENT. These shall include, but are not limited to, program expenditures, claim processing efficiency, and customer service.

At its discretion, the BOARD may require independent or third party audit or review of any function relating to the HEALTH BENEFIT PLAN and may designate a common vendor which shall provide the annual description of BENEFITS and such other information or services it deems appropriate. If so, WPS shall make payment for such audit, review or other services, which shall be reimbursed to WPS on a cost basis.

The BOARD shall make a diligent attempt to select a third party audit firm that is not a competitor of WPS or affiliated with or under the control of a competitor of WPS.

The frequency and extent of such audits shall be determined by the BOARD or DEPARTMENT. Records of paid claims must be maintained in a format and on a media acceptable to the DEPARTMENT.

#### **XVI. HEALTH UNDERWRITING**

Pursuant to Wisconsin Act 113, as amended, WPS shall review medical records and other information to ensure that the persons applying for coverage do not present an adverse risk to the STANDARD PLAN. Applicants shall submit a health questionnaire to WPS along with \$75.00. Upon approval, WPS shall inform the DEPARTMENT who will be responsible for transmitting the application indicating the EFFECTIVE DATE of coverage to the HEALTH BENEFIT PLAN selected by the applicant. The EFFECTIVE DATE of coverage in all cases will be the first DAY of the CALENDAR MONTH following the approval to WPS on a cost basis.

Wisconsin Public Employers ("WPE") of one or more employees requesting participation in the WPE HEALTH BENEFIT PLAN shall be subject to underwriting. Employers with 51 or more EMPLOYEES shall submit claims and enrollment experience including high cost claims data for the most recent available 24 months along with the appropriate fees to the DEPARTMENT. The DEPARTMENT shall forward one check from the employer for the appropriate amount shown below to WPS for their services. Another check for the remainder of the fees shall be payable to the BOARD'S actuarial firm and shall be forwarded to them for their services. Employers with 50 or less EMPLOYEES shall submit small employer information as required by WPS. The fees may be administered per Article XV. Actuarial, Audit & Other Services. WPS shall evaluate risk and submit recommendation back to the DEPARTMENT for final approval by the BOARD'S actuary. The effective date shall be determined by the DEPARTMENT.

Group Size	Cost (With Wage & Tax, Prior Carrier Bill and Teleunderwriting for groups of 50 or less)
1	\$100
2 – 9	\$175
10 to 25	\$275
26 to 35	\$450
36 to 50	\$550
51 and over	\$1,000

## **XVII. GENERAL PROVISIONS**

This AGREEMENT is subject to all other terms, conditions, and provisions in the STATE RFP and in the PROPOSAL. Where applicable, reference to the STATE shall mean the BOARD.

### **A. HEALTH BENEFIT PLAN Determination/Changes.**

The BOARD shall determine all policy for the HEALTH BENEFIT PLAN. In the event that WPS requests, in writing, that the BOARD issue program policy determinations or operating guidelines required for proper performance of the AGREEMENT, the BOARD shall acknowledge receipt of the request in writing and respond to the request within a mutually agreed upon time frame. Likewise, if any changes are required in ASO administrative and/or operative systems, they shall be approved by the BOARD in writing before they are implemented.

### **B. AGREEMENT Administrators.**

WPS shall designate an AGREEMENT administrator who shall have the responsibility for performance of WPS' obligations under this AGREEMENT. WPS shall not change the person designated without the BOARD'S prior written approval. The BOARD'S approval shall not be unreasonably delayed or withheld.

The BOARD shall designate an AGREEMENT administrator who shall have responsibility for performance of the BOARD'S obligations under this AGREEMENT. The BOARD shall not change the person designated without prior written notification to WPS.

### **C. Applicable Laws.**

This AGREEMENT shall be governed under the laws and regulations of the State of Wisconsin, regardless of where any of the HEALTH BENEFIT PLAN services are performed and without regard to its conflict of laws provisions, in the event a choice of law situation arises. WPS and the BOARD shall at all times comply with and observe all federal and STATE laws, local laws, ordinances, and regulations in effect during the period of this AGREEMENT that in any manner affect the work or its contents.

### **D. Assignment.**

No right or duty in whole or in part of WPS under this AGREEMENT may be assigned or delegated without prior written consent of the BOARD, whose consent shall not be unreasonably denied or delayed.

**E. Procurement Documents Made Part of AGREEMENT.**

The RFP and the PROPOSAL are hereby incorporated into this AGREEMENT by reference, excluding those terms, conditions, and provisions thereof that directly or indirectly conflict with, are inconsistent with, or are replaced by, the terms, conditions and provisions that are specifically negotiated by the parties and expressly included in this AGREEMENT by the parties. The BOARD is solely responsible for rendering decisions in matters of interpretation on all terms, conditions, and provisions of HEALTH BENEFIT PLAN. Any ambiguity or inconsistency among documents shall be resolved by applying the following order of precedence:

1. This AGREEMENT with any amendments;
2. GUIDELINES and any applicable federal or STATE statute;
3. Any applicable STATE or administrative rule or regulation;
4. The RFP, with any amendments;
5. WPS' PROPOSAL, with any amendments.'

A higher order document shall supersede a lower order document to the extent necessary to resolve any inconsistencies between them, but silence on any matter in a higher order document shall not negate or modify the provisions of a lower order document as to that matter.

All terms, conditions, and provisions of all five documents shall be interpreted in accordance with the provisions of applicable federal laws and regulations and applicable STATE statutes and rules.

**F. Record Retention.**

WPS agrees that the BOARD, until the expiration of three years after the term of this AGREEMENT, and any extensions, shall have access to and the right to examine any of WPS' pertinent books, financial records, documents, papers, and records and those of any parent, affiliate, or subsidiary organization performing under formal or informal arrangement any service or furnishing any supplies or equipment to WPS involving transactions related to this AGREEMENT.

The period of access and examination described in the paragraph above, for records that relate to: (1) litigation or settlement of claims arising out of the performance of this AGREEMENT; or (2) costs or expenses of this AGREEMENT with which exception is taken by litigation, claims, or exceptions have been disposed.

WPS further agrees that the substance of this clause shall be inserted in any subcontract that WPS enters into with any subcontractor to carry out any of WPS' obligations under this AGREEMENT.

**G. Worker's Compensation Insurance.**

A copy of WPS' Workers' Compensation insurance policy shall be available upon request to the BOARD'S AGREEMENT administrator.

**H. Gifts and/or Kickbacks Prohibited.**

No gifts from WPS or any of WPS' subcontractors, if any to any public employee involved in the performance of the work covered by this AGREEMENT are permissible. Neither WPS nor any of its subcontractors shall demand or receive kickbacks. WPS or any of its subcontractors offering a gift or kickback to a public employee shall be prosecuted to the full extent of the law.

**I. Conflict of Interest.**

During the term of this AGREEMENT, WPS shall have no interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under this AGREEMENT.

Without limiting the generality of the preceding paragraph, WPS agrees that it shall not, during the initial AGREEMENT period and any extension thereof, acquire or hold any business interest that conflicts with WPS' ability relating to its performance of its services under this AGREEMENT.

WPS shall not engage in any conduct which violates, or induces others to violate, the provision of the Wisconsin statutes regarding the conduct of public employees. If a BOARD public official (§ 19.42, Wis. Stat.) or an organization in which a BOARD public official holds at least ten percent interest is a party to this AGREEMENT, then this AGREEMENT is voidable by the STATE unless appropriate disclosure has been made to the State of Wisconsin Ethics Board, 44 East Mifflin St., Suite 601, Madison, WI 53703. Telephone: (608) 266-8123, FAX (608) 264-9309.

**J. Force Majeure.**

Neither party to this AGREEMENT shall be in default by reason of any failure in performance in accordance with its terms if such failure arises out of causes beyond reasonable control and without fault or negligence on their part. Such causes may include, but are not limited to, acts of God or public enemy, acts of the government in either sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the reasonable control and without fault or negligence of the party.

**K. Choice of Law.**

WPS and the BOARD agree to be bound by the laws of the State of Wisconsin and to bring any legal proceedings arising under the AGREEMENT in a court of competent jurisdiction of the State of Wisconsin.

**L. Severability.**

Each term, condition, and provision of this AGREEMENT is severable and if any term, condition, and provision is determined to be invalid, the remaining terms, conditions, and provisions shall nevertheless remain in effect.

**M. WPS' Tax Delinquency.**

If WPS has delinquent Wisconsin tax liability, its compensation due under this AGREEMENT may be offset by ETF upon request of the Department of Revenue in the amount of any such delinquent Wisconsin tax liability, subject to WPS' rights and remedies available under STATE statutes and rules.

**N. Insurance Responsibility.**

WPS while performing its services under this AGREEMENT for the BOARD shall:

1. Maintain Workers' Compensation Insurance, as required by the laws of the State of Wisconsin for all employees engaged in the work.
2. Maintain public liability and property damage insurance against any claims that might occur in carrying out this AGREEMENT: Minimum coverages are \$300,000 single limit liability or \$1,000,000 bodily injury per person and \$300,000 per occurrence and \$1,000,000 property damage.
3. Provide an insurance certificate indicating coverage, signed by an insurer licensed to do business in Wisconsin, covering the term of this AGREEMENT. The insurance certificate is required to be presented before commencement of this AGREEMENT.



**O. Right to Publish.**

Throughout the term of this AGREEMENT, WPS shall secure the BOARD'S written approval prior to the release of any HEALTH BENEFIT PLAN information to third parties, which pertains to work or activities covered by this AGREEMENT.

**P. Confidentiality of HEALTH BENEFIT PLAN Information.**

All information concerning this AGREEMENT and PARTICIPANTS is the sole property of the STATE and it shall remain confidential. It may not be used by WPS nor be transmitted to others for any reason whatsoever except as may be required to administer and implement the program, and then subject to prior DEPARTMENT approval.

The parties acknowledge that during the course of the performance of their obligations under this AGREEMENT, they may come into the possession of personal health care information of PARTICIPANTS ("Individually Identifiable Health Information"). All such Individually Identifiable Health Information shall be treated as confidential information and shall be subject to the provisions of this section. The parties shall also comply with all federal, STATE or other laws, rules, or regulations governing the use and possession of the Individually Identifiable Health Information, including but not limited to the Health Insurance Portability and Accountability Act ("HIPAA"). WPS is a Business Associate under HIPAA. WPS shall comply with the terms, conditions, and provisions of the Business Associate Agreement executed by the parties and that is attached as Attachment 1 to this AGREEMENT. In addition, the provisions of any applicable STATE law which is more restrictive in protecting privacy also applies, specifically including the provisions of § 40.07 (2) Wis. Stat. concerning "medical records" as defined by Wis. Admin. Code ETF § 10.01 (3)m, provided that WPS shall not have a duty to comply with such more restrictive STATE law under Chapter 40, Wis. Stats., Wis. Admin. Code § ETF, or any case law or interpretive decisions construing them, unless and until the DEPARTMENT notifies WPS of the more restrictive STATE law.

Likewise, WPS may only approach BOARD employees and agencies for the purposes specified in this AGREEMENT. Neither WPS nor its employees may approach BOARD employees and agencies for any other purpose without the express written permission from the BOARD.

**Q. Form of Notices.**

Any notice required or permitted to be given to a party to this AGREEMENT shall be in writing, addressed as follows:

To the BOARD:

Arlene Larson, Manager  
Self Insured Health Plans  
Department of Employee Trust Funds  
P.O. Box 7931  
Madison, WI 53707-7931

To WPS:

Sharon Whitwam, Vice President, Member Services  
Wisconsin Physicians Service Insurance Corporation  
1717 West Broadway  
P.O. Box 8190  
Madison, WI 53708-8190

Either party to this AGREEMENT may change its address for receipt of notices by notice given in accordance with this section. Notices delivered by ordinary mail or in hand shall not be sufficient unless acknowledged in writing by the addressee. For notices given by certified mail, return receipt requested shall be sufficient.

**R. Default and Termination.**

**1. Default by WPS.**

Failure of WPS to satisfactorily perform its contractual duties or responsibilities shall constitute default under this AGREEMENT. Without limiting the generality of the foregoing, each of the following events shall constitute a default of WPS, if due to any action or inaction on its part.

Failure of WPS to continue to conduct business in the normal course, or the making of a general assignment of a receiver for all its business or assets, or the filing of a voluntary or involuntary petition of bankruptcy; provided that, in the event of an involuntary petition, WPS shall not have been able to obtain a dismissal of the petition within 30 DAYS after the filing.

Failure to complete to the satisfaction of the BOARD any or all of the milestones contained in the PROPOSAL for the administration of the HEALTH BENEFIT PLAN and its components within the completion times specified in the PROPOSAL.

Failure of WPS to perform any of the covenants or conditions required by this AGREEMENT unless waived by the BOARD.

**2. Recourse upon Default by WPS.**

In the event of default by WPS, the BOARD shall notify WPS of the default condition and may set a date for completion of the task or correction of the condition, and invoke a penalty of \$200.00 for every BUSINESS DAY past the completion or correction date that the condition continues or take any other action under law to obtain performance of the tasks contemplated by this AGREEMENT.

Failure by the BOARD to enforce any AGREEMENT term, condition, or provision after the event of default shall not be deemed a waiver of its rights with regard to the event or any subsequent event. No express waiver of any AGREEMENT event or default shall be deemed as a waiver of the right of the BOARD to enforce each and all of this AGREEMENT terms, condition, or provisions upon further or other default on the part of WPS.

**S. Remedy if BOARD Provides Assistance.**

If, in the reasonable judgment of the BOARD, a default by WPS is not so substantial as to require termination, reasonable efforts to induce WPS to cure the default are unavailing, and the default is capable of being cured by the BOARD or another contractor without undue interference with continued performance by WPS, the BOARD may provide or procure the services reasonably necessary to cure the default, and WPS shall reimburse the BOARD for the actual cost of those services.

**T. Termination for Non-Performance/Non-Payment/Non-Appropriation of Funds/Change in Statute or Collective Bargaining Agreement.**

1. The DEPARTMENT shall work in good faith with WPS to attempt to remedy a failure by WPS to satisfactorily perform its obligations under this AGREEMENT, unless the DEPARTMENT determines that the failure is so egregious as to require immediate referral to the BOARD to consider termination of this AGREEMENT.
2. In considering whether WPS has failed to satisfactorily perform its obligations under this AGREEMENT, the BOARD shall grant WPS the opportunity to be heard either by the BOARD or a subcommittee or agent designated by the BOARD.
3. Where the BOARD determines that WPS has failed to satisfactorily perform its obligations under this AGREEMENT, the BOARD may:

- a. Specify, in writing, the BOARD'S dissatisfaction with WPS' performance and describe what WPS may do to remedy the failure to the satisfaction of the BOARD. The BOARD may impose time limits of 14 BUSINESS DAYS or more within which the remedial action must be completed by WPS.
  - b. Terminate all or part of this AGREEMENT by providing written notice to WPS. Unless the BOARD finds the WPS failure to be egregious, the BOARD will provide at least 30 DAYS advance written notice of the termination. However, the BOARD may terminate this AGREEMENT immediately, without giving any minimum advance written notice when, in the BOARD'S sole determination, the WPS failure is egregious, irremediable, and that the termination of this AGREEMENT is necessary for the fulfillment of the BOARD'S fiduciary duties.
  - c. Combine a written request for specific remedial action by WPS with written notice of this AGREEMENT'S termination if the remedial action is not completed by WPS by the BOARD'S deadline.
4. Upon termination of this AGREEMENT under either paragraph 1., 2. or 3. above, the BOARD may procure services similar to those terminated and WPS must continue performance to the extent not terminated by the BOARD. WPS shall be liable to the BOARD for any actual costs as a result of WPS' default under this paragraph.
  5. Termination for non-performance shall not operate or be construed as a waiver of any right the BOARD might have in the absence of such termination and to recover damages attributable to the default.
  6. In the event the BOARD fails to remit any claims or administrative fee or expense payment to WPS within 30 DAYS after the payment date due, WPS may issue to the BOARD a written notice of WPS' intent to terminate this AGREEMENT. . A copy of such notice shall be sent to the BOARD and shall specify when, no sooner than 30 DAYS thereafter, this AGREEMENT shall terminate. If the BOARD fails to remit the required payment to WPS by the indicated termination date, this AGREEMENT shall terminate accordingly and the BOARD shall continue to owe WPS such payment. Termination for nonpayment shall not operate or be construed as a waiver of any right that WPS might have in the absence of such termination and to recover damages attributable to the nonpayment. Notice in this provision shall not be construed as an admission of the debt by the BOARD or as a waiver of any right, defenses, claims or counterclaims of the BOARD.
  7. This AGREEMENT may be terminated by the BOARD as required by any change in the laws of the State of Wisconsin or collective bargaining agreement at any time during the term of this AGREEMENT by providing written notice thereof to WPS. The BOARD shall provide at least 10 DAYS notice of the termination, unless the law or contract change is effective sooner. Notwithstanding subsection Q. Form of Notice of this AGREEMENT, such notice may be delivered to WPS via a phone call.
  8. The BOARD shall retain the right to terminate this AGREEMENT for non-appropriation of funds by the STATE by providing written notice thereof to WPS. The BOARD shall provide at least 10 DAYS notice of this termination unless the legislative action or inaction causes the funding to expire sooner. Notwithstanding subsection Q., Form of Notice of this AGREEMENT, such notice may be delivered to WPS via a phone call

**U. Rights and Duties Upon Termination.**

**1 Implementation Phase.**

If this AGREEMENT is terminated during the implementation phase, WPS shall complete and deliver to the BOARD, within 30 DAYS after such termination, all deliverables, reports, manuals, documentation, computer source programs, magnetic tapes, data files, program listings, and source documents, including any drafts and revisions, which were

due but not delivered at or prior to termination, and which the BOARD requests in writing to be delivered notwithstanding termination.

**2. Operational Phase.**

The terms, conditions, and provisions of this AGREEMENT relating to turnover plans shall apply.

**3. Effect of Termination or Nonrenewal.**

Termination or nonrenewal of this AGREEMENT shall not terminate or affect the rights, claims, obligations, or liabilities of either party prior to or after the effective date of termination or nonrenewal.

**V. Liquidated Damages.**

In the cases specified below, if WPS is unable to fulfill its obligations under this AGREEMENT, the BOARD shall assess against WPS' administrative fees, the following liquidated damages:

1. For failure to attend, or seek rescheduling at least 2 BUSINESS DAYS in advance, except in emergencies, any of the meetings required in accordance with this AGREEMENT:  
  
\$200 per occurrence.
2. For failure to submit in the contractually agreed upon time frame any reports, tapes, or forms:  
  
\$250 per DAY until delivery
3. For each day after the 30th DAY that WPS' data processing system is not back in operation after a disaster:  
  
\$500 per DAY.
4. For each day after the 60th DAY that WPS' data processing system is not back in operation after a disaster:  
  
\$5,000 per DAY

**W. Equal Opportunity/Affirmative Action Compliance.**

In connection with the performance of work under this AGREEMENT, WPS agrees not to discriminate against any employees or applicant for employment because of age, race, religion, color, handicap marital status, sex, physical condition, developmental disability as defined in Wis. Stat. § 51/01 (5), sexual orientation or national origin, ancestry, arrest record, conviction record, or membership in the national guard, state defense force, or any reserve component of the military forces of the United States or this state. This provision shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, WPS further agrees to take affirmative action to ensure equal employment opportunities. WPS notices to be provided by the contracting officer setting forth provision of the non-discrimination clause. WPS shall file a written Affirmative Action Plan with the BOARD within thirty days of signing the AGREEMENT. Such plan is subject to BOARD approval.