

REQUEST FOR PROPOSALS FOR

**Direct Contract Medicare Employer Group Waiver
Prescription Drug Plan
and Pharmacy Benefit Management Services
Effective January 1, 2018**

ISSUING OFFICE

**Commonwealth of Pennsylvania
Public School Employees' Retirement System (PSERS)**

RFP NUMBER

PSERS RFP 2016-3

DATE OF ISSUANCE

December 9, 2016

REQUEST FOR PROPOSALS FOR
Medicare Employer Direct Contract Group
Prescription Drug Plan
And Pharmacy Benefit Management Services

PSERS RFP 2016-3

TABLE OF CONTENTS

CALENDAR OF EVENTS		iv
Part I	GENERAL INFORMATION	1
Part II	CRITERIA FOR SELECTION	11
Part III	TECHNICAL SUBMITTAL	16
Part IV	COST SUBMITTAL	41
Part V	SMALL DIVERSE BUSINESS AND SMALL BUSINESS PARTICIPATION SUBMITTAL	42
Part VI	CONTRACT TERMS AND CONDITIONS	47

APPENDICES

APPENDIX A	PROPOSAL COVER SHEET	79
APPENDIX B	DOMESTIC WORKFORCE UTILIZATION CERTIFICATION	80
APPENDIX C	TRADE SECRET CONFIDENTIAL PROPRIETARY INFORMATION NOTICE FORM	81
APPENDIX D	COST SUBMITTAL WORKSHEET	82
APPENDIX E	SMALL DIVERSE BUSINESS AND SMALL BUSINESS PARTICIPATION SUBMITTAL FORM	93
APPENDIX F	SMALL DIVERSE AND SMALL BUSINESS LETTER OF INTENT	94
APPENDIX G	MODEL FORM OF SMALL DIVERSE BUSINESS AND SMALL BUSINESS SUBCONTRACT AGREEMENT	96

EXHIBITS

EXHIBIT 1	PRE-65 PLAN PHARMACY PROGRAM SPECIFICATIONS	105
EXHIBIT 2	HOP MEDICARE PART D PLAN PHARMACY PROGRAM SPECIFICATIONS	106
EXHIBIT 3	HOP MEDICARE PART D PLAN BENEFIT SUMMARY	107
EXHIBIT 4	CLAIMS DATA	108
EXHIBIT 4A	LIMITED DATA USER AGREEMENT	109

CALENDAR OF EVENTS

The Commonwealth will make every effort to adhere to the following schedule:

Activity	Responsibility	Date
Deadline to submit Questions via email to Fdagostino@pa.gov	Potential Offerors	12/14/2016
Pre-proposal Conference Call - Dial-in Information: 1-888-330-1716 Code: 5532694 at 1:00 pm EST.	Issuing Office/Potential Offerors	12/15/2016
Answers to Potential Offeror questions posted to the DGS website at http://www.emarketplace.state.pa.us/Search.aspx no later than this date.	Issuing Office	12/23/2016
Please monitor website for all communications regarding the RFP.	Potential Offerors	
Sealed proposal must be received by the Issuing Office at Public School Employees' Retirement System ATTN: Cathy Gusler 5 North 5 th Street Harrisburg, PA 17101	Offerors	1/20/2017

PART I

GENERAL INFORMATION

- I-1. Purpose.** This request for proposals (RFP) provides to those interested in submitting proposals for the subject procurement (“Offerors”) sufficient information to enable them to prepare and submit proposals for the Public School Employees’ Retirement System’s (PSERS) consideration on behalf of the Commonwealth of Pennsylvania (“Commonwealth”) to satisfy a need for a **Direct Contract Medicare Employer Group Waiver Prescription Drug Plan and Pharmacy Benefit Management Services** (“Project”). This RFP contains instructions governing the requested proposals, including the requirements for the information and material to be included; a description of the service to be provided; requirements which Offerors must meet to be eligible for consideration; general evaluation criteria; and other requirements specific to this RFP.
- I-2. Issuing Office.** The PSERS (“Issuing Office”) has issued this RFP on behalf of the Commonwealth. The sole point of contact in the Commonwealth for this RFP shall be Franca Maria D’Agostino, Director, Health Insurance Office, Public School Employees’ Retirement System, 5 N. 5th Street, Harrisburg, PA 17101 (Email: Fdagostino@pa.gov) the Issuing Officer for this RFP. Please refer all inquiries to the Issuing Officer.
- I-3. Overview of Project.** PSERS seeks to obtain Pharmacy Benefit Management (PBM) services for a direct-contract, self-funded prescription drug program of the Health Options Program (HOP). HOP is a voluntary group health benefits program available to PSERS’ retirees, their spouse and dependents. The prescription drug programs relevant to this RFP cover approximately 79,000 individuals in an employer direct Medicare PDP and less than 200 individuals in an under-65 program. PSERS is responsible for the enrollment and eligibility of its program members and delegates enrollment and eligibility administration and maintenance to a third party, which will interact in this capacity with the PBM. Most participants reside in Pennsylvania. Approximately 10% of participants reside outside the Commonwealth. Additional detail is provided in **Part III** of this RFP.
- I-4. Objectives.**
- A. General.** This Request For Proposal (RFP) provides interested contractors with sufficient information to enable them to prepare and submit proposals for consideration by the Commonwealth of Pennsylvania to satisfy a need for Medicare Prescription Drug Program Support Services And Pharmacy Benefit Management Services.
- B. Specific.** PSERS seeks to provide a high quality, cost effective prescription drug plan to its members and to develop partnerships with quality-oriented vendors who can administer the current plan designs and utilize education and information strategies to enhance members’ satisfaction with the program.

- I-5. Type of Contract.** It is proposed that if the Issuing Office enters into a contract as a result of this RFP, it will be a **Unit Price Contract** as shown in **Part VI**. The Proposed Agreement for Prescription Drug Benefits Administration Services also contains the Business Associates Addendum and the Standard Contract Terms and Conditions (available at www.dgs.state.pa.us/dgs/lib/dgs/forms/comod/procurementforms/gspur12a.doc). The Issuing Office, in its sole discretion, may undertake negotiations with Offerors whose proposals, in the judgment of the Issuing Office, show them to be qualified, responsible and capable of performing the Project. The contracting vendor will be required to agree to contract language mandated by the Commonwealth of Pennsylvania and the Centers for Medicare and Medicaid Services (CMS).
- I-6. Rejection of Proposals.** The Issuing Office reserves the right, in its sole and complete discretion, to reject any proposal received as a result of this RFP.
- I-7. Incurring Costs.** The Issuing Office is not liable for any costs the Offeror incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.
- I-8. Pre-proposal Conference Call.** The Issuing Office will hold a Pre-proposal conference call as specified in the Calendar of Events. The purpose of this conference call is to provide opportunity for clarification of the RFP. Offerors should forward all questions to the Issuing Office in accordance with **Part I, Section I-9** to ensure adequate time for analysis before the Issuing Office provides an answer. Offerors may also ask questions during the conference call. The Pre-proposal conference call is for information only. Any answers furnished during the conference call will not be official until they have been verified, in writing, by the Issuing Office. All questions and written answers will be posted on the Department of General Services' (DGS) website as an addendum to, and shall become part of, this RFP. Participation in the Pre-proposal conference call is optional. PSERS asks that all Offerors intending to participate in the Pre-proposal conference call register in advance by sending an email to the Issuing Officer (see **Part I, Section I-2**) with your company name and the names of the individuals you plan to have on the call. This will help the Issuing Office provide adequate facility for the call.
- I-9. Questions & Answers.** If an Offeror has any questions regarding this RFP, the Offeror must submit the questions by email (**with the subject line "RFP PSERS 2016-3 Question"**) to the Issuing Officer named in **Part I, Section I-2** of the RFP. If the Offeror has questions, they must be submitted via email **no later than** the date indicated on the Calendar of Events. The Offeror shall not attempt to contact the Issuing Officer by any other means. The Issuing Officer shall post the answers to the questions on the DGS website by the date stated on the Calendar of Events. An Offeror who submits a question *after* the deadline date for receipt of questions indicated on the Calendar of Events assumes the risk that its proposal will not be responsive or competitive because the Commonwealth is not able to respond before the proposal receipt date or in sufficient time for the Offeror to prepare a responsive or competitive proposal. When submitted after the deadline date for receipt of questions indicated on the Calendar of Events, the

Issuing Officer *may* respond to questions of an administrative nature by directing the questioning Offeror to specific provisions in the RFP. To the extent that the Issuing Office decides to respond to a non-administrative question *after* the deadline date for receipt of questions indicated on the Calendar of Events, the answer must be provided to all Offerors through an addendum.

All questions and responses as posted on the DGS website are considered as an addendum to, and part of, this RFP in accordance with RFP **Part I, Section I-10**. Each Offeror shall be responsible to monitor the DGS website for new or revised RFP information. The Issuing Office shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the RFP or formally issued as an addendum by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or of the solicitation. The required protest process for Commonwealth procurements is described on the DGS website.

I-10. Addenda to the RFP. If the Issuing Office deems it necessary to revise any part of this RFP before the proposal response date, the Issuing Office will post an addendum to the DGS website at <http://www.emarketplace.state.pa.us/Search.aspx>. It is the Offeror's responsibility to periodically check the website for any new information or addenda to the RFP. Answers to the questions asked during the Questions & Answers period also will be posted to the website as an addendum to the RFP.

I-11. Response Date. To be considered for selection, hard copies of proposals must arrive at the Issuing Office on or before the time and date specified in the RFP Calendar of Events. The Issuing Office will **not** accept proposals via email or facsimile transmission. Offerors who send proposals by mail or other delivery service should allow sufficient delivery time to ensure timely receipt of their proposals. If, due to inclement weather, natural disaster, or any other cause, the Commonwealth office location to which proposals are to be returned is closed on the proposal response date, the deadline for submission will be automatically extended until the next Commonwealth business day on which the office is open, unless the Issuing Office otherwise notifies Offerors. The hour for submission of proposals shall remain the same. The Issuing Office will reject, unopened, any late proposals.

I-12. Proposal Requirements.

A. Proposal Submission: To be considered, Offerors should submit a complete response to this RFP to the Issuing Office, using the format provided in **Section I-12B**, providing **10 paper copies [one marked "ORIGINAL"] of the Technical Submittal and one (1) paper copy of the Cost Submittal and two (2) paper copies of the Small Diverse Business and Small Business (SDB/SB) Participation Submittal and related Letter(s) of Intent**. In addition to the paper copies of the proposal, Offerors shall submit two **complete and exact** copies of the entire proposal (Technical, Cost and SDB/SB submittals, along with all requested documents) on CD-ROM or Flash drive in Microsoft Office or Microsoft Office-compatible format. The electronic copy must be a mirror image

of the paper copy and any spreadsheets must be in Microsoft Excel. The Offerors may not lock or protect any cells or tabs. The CD or Flash drive should clearly identify the Offeror and include the name and version number of the virus scanning software that was used to scan the CD or Flash drive before it was submitted. The Offeror shall make no other distribution of its proposal to any other Offeror or Commonwealth official or Commonwealth consultant. Each proposal page should be numbered for ease of reference. An official authorized to bind the Offeror to its provisions must sign the proposal. If the official signs the **Proposal Cover Sheet (Appendix A** to this RFP) and the Proposal Cover Sheet is attached to the Offeror's proposal, the requirement will be met. For this RFP, the proposal must remain valid for 180 days or until a contract is fully executed. If the Issuing Office selects the Offeror's proposal for award, the contents of the selected Offeror's proposal will become, except to the extent the contents are changed through Best and Final Offers or negotiations, contractual obligations.

Each Offeror submitting a proposal specifically waives any right to withdraw or modify it, except that the Offeror may withdraw its proposal by written notice received at the Issuing Office's address for proposal delivery prior to the exact hour and date specified for proposal receipt. An Offeror or its authorized representative may withdraw its proposal in person prior to the exact hour and date set for proposal receipt, provided the withdrawing person provides appropriate identification and signs a receipt for the proposal. An Offeror may modify its submitted proposal prior to the exact hour and date set for proposal receipt only by submitting a new sealed proposal or sealed modification which complies with the RFP requirements.

B. Proposal Format: Offerors must submit their proposals in the format, including heading descriptions, outlined below. To be considered, the proposal must respond to all proposal requirements. Offerors should provide any other information thought to be relevant, but not applicable to the enumerated categories, as an appendix to the Proposal. All cost data relating to this proposal and all Small Diverse Business and Small Business cost data should be kept separate from and not included in the Technical Submittal. Offerors should not reiterate technical information in the cost submittal. Each Proposal shall consist of the following **three** separately sealed submittals:

1. Technical Submittal:
 - a. In response to **Part III**; and
 - b. Complete, sign and include **Appendix B – Domestic Workforce Utilization Certification**;
2. Cost Submittal, in response to RFP **Part IV**; and

3. Small Diverse Business and Small Business (SDB/SB) Participation Submittal, in response to RFP **Part V**:
 - a. Complete and include **Appendix F - SDB/SB Participation Submittal Form**; and
 - b. Complete and include **Appendix G - SDB/SB Letter of Intent**. Offeror must provide a Letter of Intent for each SDB and SB listed on the SDB/SB Participation Submittal Form

The Issuing Office reserves the right to request additional information which, in the Issuing Office's opinion, is necessary to assure that the Offeror's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to the RFP.

The Issuing Office may make investigations as deemed necessary to determine the ability of the Offeror to perform the Project, and the Offeror shall furnish to the Issuing Office all requested information and data. The Issuing Office reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Offeror fails to satisfy the Issuing Office that such Offeror is properly qualified to carry out the obligations of the RFP and to complete the Project as specified.

- I-13. Economy of Preparation.** Offerors should prepare proposals simply and economically, providing a straightforward, concise description of the Offeror's ability to meet the requirements of the RFP.
- I-14. Alternate Proposals.** The Issuing Office has identified the basic approach to meeting its requirements, allowing Offerors to be creative and propose their best solution to meeting these requirements. The Issuing Office will not accept alternate proposals.
- I-15. Discussions for Clarification.** Offerors may be required to make an oral or written clarification of their proposals to the Issuing Office to ensure thorough mutual understanding and Offeror responsiveness to the solicitation requirements. Offerors may also be required by the Issuing Office to allow a site visit inspection by one or more members of the selection committee or their delegates. The Issuing Office will initiate requests for clarification. Clarifications may occur at any stage of the evaluation and selection process prior to contract execution.
- I-16. Prime Contractor Responsibilities.** The selected Offeror must perform the largest percentage of work as compared to its subcontractors and suppliers. Nevertheless, the contract will require the selected Offeror to assume responsibility for all services offered in its proposal whether it produces them itself or by subcontract. Further, the Issuing Office will consider the selected Offeror to be the sole point of contact with regard to all contractual matters.

I-17. Proposal Contents.

- A. Confidential Information. The Commonwealth is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Offerors' submissions in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, Offerors should not label proposal submissions as confidential or proprietary or trade secret protected. Any Offeror who determines that it must divulge such information as part of its proposal must submit the signed written statement described in subsection c. below and must additionally provide a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.
- B. Commonwealth Use. All material submitted with the proposal shall be considered the property of the Commonwealth of Pennsylvania and may be returned only at the Issuing Office's option. The Commonwealth has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Offeror copyright designations contained on proposals, the Commonwealth shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.
- C. Public Disclosure. After the award of a contract pursuant to this RFP, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq. If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests. Refer to **Appendix C** of the RFP for a **Trade Secret Confidential Proprietary Information Notice Form** that may be utilized as the signed written statement, if applicable. If financial capability information is submitted in response to Part III of this RFP such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

I-18. Best and Final Offers.

- A. While not required, the Issuing Office reserves the right to conduct discussions with Offerors for the purpose of obtaining "best and final offers." To obtain best and final offers from Offerors, the Issuing Office may do one or more of the following, in any combination and order:
1. Schedule oral presentations;

2. Request revised proposals;
3. Conduct a reverse online auction; and
4. Enter into pre-selection negotiations.

B. The following Offerors will **not** be invited by the Issuing Office to submit a Best and Final Offer:

1. Those Offerors, which the Issuing Office has determined to be not responsible or whose proposals the Issuing Office has determined to be not responsive.
2. Those Offerors, which the Issuing Office has determined in accordance with **Part II, Section II-5**, from the submitted and gathered financial and other information, do not possess the financial capability, experience or qualifications to assure good faith performance of the contract.
3. Those Offerors whose score for their technical submittal of the proposal is less than 70% of the total amount of technical points allotted to the technical criterion.

The issuing office may further limit participation in the best and final offers process to those remaining responsible offerors which the Issuing Office has, within its discretion, determined to be within the top competitive range of responsive proposals.

- C.** The Evaluation Criteria found in **Part II, Section II-4**, shall also be used to evaluate the Best and Final offers.
- D.** Price reductions offered through any reverse online auction shall have no effect upon the Offeror's Technical Submittal.
- E.** Any reduction to commitments to Small Diverse Businesses and Small Businesses must be proportional to the reduction in the total price offered through any BAFO process or contract negotiations unless approved by BDISBO.

I-19. News Releases. Offerors shall not issue news releases, Internet postings, advertisements or any other public communications pertaining to this Project without prior written approval of the Issuing Office, and then only in coordination with the Issuing Office.

I-20. Restriction of Contact. From the issue date of this RFP until the Issuing Office selects a proposal for award, the Issuing Officer is the sole point of contact concerning this RFP. Any violation of this condition may be cause for the Issuing Office to reject the offending Offeror's proposal. If the Issuing Office later discovers that the Offeror has engaged in any violations of this condition, the Issuing Office may reject the offending Offeror's

proposal or rescind its contract award. Offerors must agree not to distribute any part of their proposals beyond the Issuing Office. An Offeror who shares information contained in its proposal with other Commonwealth personnel and/or competing Offeror personnel may be disqualified.

I-21. Issuing Office Participation. Offerors shall provide all services, supplies, facilities, and other support necessary to complete the identified work, except as otherwise provided in this **Part I, Section I-22**

I-22. Term of Contract. The initial term of the contract will commence on the Effective Date and will end December 31, 2020. After the initial term, the contract is renewable for up to two (2) one-year periods upon the mutual written consent of the parties. The Issuing Office will fix the Effective Date after the contract has been fully executed by the selected Offeror and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. The selected Offeror shall not start the performance of any work prior to the Effective Date of the contract and the Commonwealth shall not be liable to pay the selected Offeror for any service or work performed or expenses incurred before the Effective Date of the contract.

I-23. Offeror's Representations and Authorizations. By submitting its proposal, each Offeror understands, represents, and acknowledges that:

- A.** All of the Offeror's information and representations in the proposal are material and important, and the Issuing Office may rely upon the contents of the proposal in awarding the contract(s). The Commonwealth shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the Proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.
- B.** The Offeror has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Offeror or potential offeror.
- C.** The Offeror has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is an Offeror or potential offeror for this RFP, and the Offeror shall not disclose any of these items on or before the proposal submission deadline specified in the Calendar of Events of this RFP.
- D.** The Offeror has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- E.** The Offeror makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.

- F.** To the best knowledge of the person signing the proposal for the Offeror, the Offeror, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last **four** years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Offeror has disclosed in its proposal.
- G.** To the best of the knowledge of the person signing the proposal for the Offeror and except as the Offeror has otherwise disclosed in its proposal, the Offeror has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Offeror that is owed to the Commonwealth.
- H.** The Offeror is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Offeror cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.
- I.** The Offeror has not made, under separate contract with the Issuing Office, any recommendations to the Issuing Office concerning the need for the services described in its proposal or the specifications for the services described in the proposal.
- J.** Each Offeror, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Offeror's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- K.** Until the selected Offeror receives a fully executed and approved written contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Offeror shall not begin to perform.

I-24. Notification of Selection.

- A. Contract Negotiations.** The Issuing Office will notify all Offerors in writing of the Offeror selected for contract negotiations after the Issuing Office has determined, taking into consideration all of the evaluation factors, the proposal that is the most advantageous to the Issuing Office.
- B. Award.** Offerors whose proposals are not selected will be notified when contract negotiations have been successfully completed and the Issuing Office has received the final negotiated contract signed by the selected Offeror.

I-25. Debriefing Conferences. Upon notification of award, Offerors whose proposals were not selected will be given the opportunity to be debriefed. The Issuing Office will schedule the debriefing at a mutually agreeable time. The debriefing will not compare

the Offeror with other Offerors, other than the position of the Offeror's proposal in relation to all other Offeror proposals. An Offeror's exercise of the opportunity to be debriefed does not constitute nor toll the time for filing a protest (See **Section I-26** of this RFP).

- I-26. RFP Protest Procedure.** The RFP Protest Procedure is on the DGS website at <http://www.dgs.pa.gov/Documents/Procurement%20Forms/Handbook/Pt1/Pt%20I%20Ch%2058%20Bid%20Protests.pdf>. A protest by a party not submitting a proposal must be filed within **seven** days after the protesting party knew or should have known of the facts giving rise to the protest, but no later than the proposal submission deadline specified in the Calendar of Events of the RFP. Offerors may file a protest within **seven** days after the protesting Offeror knew or should have known of the facts giving rise to the protest, but in no event may an Offeror file a protest later than **seven** days after the date the notice of award of the contract is posted on the DGS website. The date of filing is the date of receipt of the protest. A protest must be filed in writing with the Issuing Office. To be timely, the protest must be received by 4:00 p.m. on the seventh day.
- I-27. Use of Electronic Versions of this RFP.** This RFP is being made available by electronic means. If an Offeror electronically accepts the RFP, the Offeror acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of a conflict between a version of the RFP in the Offeror's possession and the Issuing Office's version of the RFP, the Issuing Office's version shall govern.

PART II

CRITERIA FOR SELECTION

- II-1. Mandatory Responsiveness Requirements.** To be eligible for selection, a proposal must:
- A.** Be timely received from an Offeror (see **Part I, Section I-11**); and
 - B.** Be properly signed by the Offeror (see **Part I, Section I-12, A**).
- II-2. Technical Nonconforming Proposals.** The two (2) Mandatory Responsiveness Requirements set forth in **Section II-1** above (A-B) are the only RFP requirements that the Commonwealth will consider to be *non-waivable*. The Issuing Office reserves the right, in its sole discretion, to (1) waive any other technical or immaterial nonconformities in an Offeror's proposal, (2) allow the Offeror to cure the nonconformity, or (3) consider the nonconformity in the scoring of the Offeror's proposal.
- II-3. Evaluation.** The Issuing Office has selected a committee of qualified personnel to review and evaluate timely submitted proposals. Independent of the committee, BDISBO will evaluate the Small Diverse Business and Small Business Participation Submittal and provide the Issuing Office with a rating for this component of each proposal. The Issuing Office will notify in writing of its selection for negotiation the responsible Offeror whose proposal is determined to be the most advantageous to the Commonwealth as determined by the Issuing Office after taking into consideration all of the evaluation factors.
- II-4. Evaluation Criteria.** The following criteria will be used in evaluating each proposal:
- A. Technical:** The Issuing Office has established the weight for the Technical criterion for this RFP as **60%** of the total points. Evaluation will be based upon the following in order of importance:
 - 1. **Formulary Support.** This refers to the contractor's ability and experience in developing, maintaining and supporting custom formularies for Medicare PDPs and standard formularies for non-Medicare prescription drug plans.
 - 2. **Call Center and Member Support.** This refers to the ability of the contractor to maintain a fully functional call center providing quality member support that integrates effectively with both PSERS general retirement call center and the Health Options Program call center maintained by PSERS' third-party administrator, CoreSource.
 - 3. **Direct Contract EGWP Support.** This refers to the contractor's capabilities and experience in working with Medicare Direct Contract

Employer Group Waiver Prescription Drug Plans and Indirect Contract Employer Group Waiver Plans, including interaction with and filings to the Centers for Medicare and Medicaid Services (CMS).

4. **Administrative Services.** This refers to the contractor's experience with and ability to provide administrative services relating to the Medicare PDP and the under-65 prescription drug program, including claims adjudication, member enrollment, eligibility maintenance, clinical management, Medication Therapy Management, member education programs, and other administrative services required for the programs.
5. **Communication Services.** This refers to the contractor's ability and experience in communicating with physicians, pharmacists, members and the client's third party administrator and consultants in the administration of the program, and to the contractor's ability to maintain full access including interactive pharmacy and formulary look-up tools on the PSERS Health Options Program website.
6. **Pharmacy Network.** This refers to the contractor's capabilities in providing a Medicare compliant pharmacy network and an integrated mail-order services, including internet member access, facility volume and backup capabilities.

The final Technical scores are determined by giving the maximum number of technical points available to the proposal with the highest raw technical score. The remaining proposals are rated by applying the Technical Scoring Formula set forth at the following webpage:

<http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/default.aspx>.

- B. **Cost:** The Issuing Office has established the weight for the Cost criterion for this RFP as **20%** of the total points. The cost criterion is rated by giving the proposal with the lowest total cost the maximum number of Cost points available. The remaining proposals are rated by applying the Cost Formula set forth at the following webpage:
<http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/default.aspx>.
- C. **Small Diverse Business and Small Business Participation:** BDISBO has established the minimum evaluation weight for the Small Diverse Business and Small Business Participation criterion for this RFP as 20% of the total points.
 1. The Small Diverse and Small Business point allocation is based entirely on the percentage of the contract cost committed to Small Diverse Businesses and Small Businesses.

2. A total combined SDB/SB commitment less than one percent (1%) of the total contract cost is considered de minimis and will receive no Small Diverse Business or Small Business points.
3. Two thirds (2/3) of the total points are allocated to Small Diverse Business participation (SDB %).
4. One third (1/3) of the total points is allocated to Small Business participation (SB %).
5. Based on a maximum total of 200 available points for the Small Diverse Business and Small Business Participation Submittal, the scoring mechanism is as follows:

Small Diverse Business and Small Business Raw Score =

$$\mathbf{200 (SDB\% + (1/3 * SB \%))}$$

6. Each Offeror's raw score will be pro-rated against the Highest Offeror's raw score by applying the formula set forth on the following webpage: http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/RFP_SCORING_FORMULA.aspx.
7. The Offeror's prior performance in meeting its contractual obligations to Small Diverse Businesses and Small Businesses will be considered by BDISBO during the scoring process. To the extent the Offeror has failed to meet prior contractual commitments, BDISBO may recommend to the Issuing Office that the Offeror be determined non-responsible for the limited purpose of eligibility to receive Small Diverse Business and Small Business points.

D. Domestic Workforce Utilization: Any points received for the Domestic Workforce Utilization criterion are bonus points in addition to the total points for this RFP. The maximum amount of bonus points available for this criterion is 3% of the total points for this RFP. To the extent permitted by the laws and treaties of the United States, each proposal will be scored for its commitment to use domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those Offerors who will perform the contracted direct labor exclusively within the geographical boundaries of the United States or within the geographical boundaries of a country that is a party to the World Trade Organization Government Procurement Agreement. Those who propose to perform a portion of the direct labor outside of the United States and not within the geographical boundaries of a party to the World Trade Organization

Government Procurement Agreement will receive a correspondingly smaller score for this criterion. See the following webpage for the Domestic Workforce Utilization Formula:

<http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/default.aspx>.

II-5. Offeror Responsibility. To be responsible, an Offeror must submit a responsive proposal and possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance of the contract.

In order for an Offeror to be considered responsible for this RFP and therefore eligible for selection for best and final offers or selection for contract negotiations:

- A. The total score for the technical submittal of the Offeror's proposal must be greater than or equal to **70%** of the **available technical points**; and
- B. The Offeror's financial information must demonstrate that the Offeror possesses the financial capability to assure good faith performance of the contract. The Issuing Office will review the Offeror's previous three financial statements, any additional information received from the Offeror, and any other publicly-available financial information concerning the Offeror, and assess each Offeror's financial capacity based on calculating and analyzing various financial ratios, and comparison with industry standards and trends.

An Offeror which fails to demonstrate sufficient financial capability to assure good faith performance of the contract as specified herein may be considered by the Issuing Office, in its sole discretion, for Best and Final Offers or contract negotiation contingent upon such Offeror providing contract performance security for the first contract year cost proposed by the Offeror in a form acceptable to the Issuing Office. Based on the financial condition of the Offeror, the Issuing Office may require a certified or bank (cashier's) check, letter of credit, or a performance bond conditioned upon the faithful performance of the contract by the Offeror. The required performance security must be issued or executed by a bank or surety company authorized to do business in the Commonwealth. The cost of the required performance security will be the sole responsibility of the Offeror and cannot increase the Offeror's cost proposal or the contract cost to the Commonwealth.

Further, the Issuing Office will award a contract only to an Offeror determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, Contractor Responsibility Program.

II-6. Final Ranking and Award.

- A.** After any best and final offer process conducted, the Issuing Office will combine the evaluation committee's final technical scores, BDISBO's final Small Diverse Business and Small Business Participation Submittal scores, the final cost scores, and (when applicable) the domestic workforce utilization scores, in accordance with the relative weights assigned to these areas as set forth in this Part.
- B.** The Issuing Office will rank responsible offerors according to the total overall score assigned to each, in descending order.
- C.** The Issuing Office must select for contract negotiations the offeror with the highest overall score.
- D.** The Issuing Office has the discretion to reject all proposals or cancel the request for proposals, at any time prior to the time a contract is fully executed, when it is in the best interests of the Commonwealth. The reasons for the rejection or cancellation shall be made part of the contract file.

PART III

TECHNICAL SUBMITTAL

III-1. Requirements. Prospective bidders are to offer comprehensive pharmacy benefit management (PBM) services for PSERS HOP direct-contract PDP and under-65 prescription drug plan, including but not limited to:

- A. Support a Medicare Direct Contract PDP**, comply with all (current and future) CMS requirements, and prepare and/or submit information to CMS as required,
- B. Support a custom Medicare formulary** for the direct contract PDP,
- C. Provide a network** of retail pharmacies and a mail-service and specialty pharmacy capable of servicing HOP participants enrolled in each of the fee-for-service prescription drug programs,
- D. Provide toll-free customer** service support to members. The effective date for prescription drug program under the new contract will January 1, 2018. However, the winning bidder must be willing to provide customer service support for the option selection period starting October 1, 2017. This support will include the winning bidder's call center and interaction with the PSERS PDP website and other services to minimize member disruption and answer member questions,
- E. Support the HOPbenefits.com** website as required and set forth in the RFP,
- F. Participate in planning sessions** to coordinate and manage the Health Options Program, and,
- G. Emergency Preparedness.** Contingency plans must be in place in cases of emergencies such as weather events, power/system outages, or pandemics.

To support continuity of operations during an emergency, including a pandemic, the Commonwealth needs a strategy for maintaining operations for an extended period of time. One part of this strategy is to ensure that essential contracts that provide critical business services to the Commonwealth have planned for such an emergency and put contingencies in place to provide needed goods and services.

- 1. Describe how you anticipate such a crisis will impact your operations.
- 2. Describe your emergency response continuity of operations plan. Please attach a copy of your plan, or at a minimum, summarize how your plan addresses the following aspects of pandemic preparedness:
 - a. Employee training (describe your organization's training plan, and how frequently your plan will be shared with employees)

- b. Identified essential business functions and key employees (within your organization) necessary to carry them out
- c. Contingency plans for:
 - i. How your organization will handle staffing issues when a portion of key employees are incapacitated due to illness.
 - ii. How employees in your organization will carry out the essential functions if contagion control measures prevent them from coming to the primary workplace.
- d. How your organization will communicate with staff and suppliers when primary communications systems are overloaded or otherwise fail, including key contacts, chain of communications (including suppliers), etc.
- e. How and when your emergency plan will be tested, and if the plan will be tested by a third-party.

Offeror Response

III-2. Statement of the Project. State in succinct terms your understanding of the project presented or the service required by this RFP.

Offeror Response

III-3. Qualifications.

A. **Company Overview.**

B. **Prior Experience.** Include experience in Medicare Prescription Drug Program support and pharmacy benefit management services, including Direct Contract or “800 Series” EGWPs. Experience described should be of work done by individuals and departments who will be assigned to this project, as well as that of Offeror’s organization and book of business. Studies or projects referred to must be identified and the name of the customer shown, including the name, address, and telephone number of the responsible official of the customer, company, or agency who may be contacted.

C. **Personnel.** Provide an organizational chart that illustrates the structure of Offeror’s organization as well as includes the number of executive and professional personnel, operational, analytical, clinical, compliance, etc., who will be engaged in the work. Show where these personnel will be physically located during the time they are engaged in the Project. For key personnel such as account executive, account manager, and clinical pharmacist include the

employee's name and, through a resume or similar document, the Project personnel's education and experience in Medicare Prescription Drug Program support services and Pharmacy Benefit Management services. Indicate the responsibilities each individual will have for this Project, how long each has been with your company, and what percentage of their time will be dedicated to this project. Identify by name any subcontractors you intend to use and the services they will perform, and identify if any subcontractors are offshore entities. Please confirm that all personnel are not excluded by the Department of Health and Human Services Office of the Inspector General or by the General Services including any members of your board of directors, and any key management or executive staff or any major stockholder.

D. **Subcontractors:** Provide a subcontracting plan for all subcontractors, including small diverse business and small business subcontractors, who will be assigned to the Project. The selected Offeror is prohibited from subcontracting or outsourcing any part of this Project without the express written approval from the Commonwealth. Upon award of the contract resulting from this RFP, subcontractors included in the proposal submission are deemed approved. For each position included in your subcontracting plan provide:

1. Name of subcontractor;
2. Address of subcontractor;
3. Number of years worked with the subcontractor;
4. Number of employees by job category to work on this project;
5. Description of services to be performed;
6. What percentage of time the staff will be dedicated to this project;
7. Geographical location of staff; and
8. Resumes (if appropriate and available).

The Offeror's subcontractor information shall include (through a resume or a similar document) the employees' names, education and experience in the services outlined in this RFP. Information provided shall also indicate the responsibilities each individual will have in this Project and how long each has been with subcontractor's company.

Offeror Response

III-4. Training. If appropriate, indicate recommended training of agency personnel. Include the agency personnel to be trained, the number to be trained, duration of the program,

place of training, curricula, training materials to be used, number and frequency of sessions, and number and level of instructors.

Offeror Response

III-5. Financial Capability. Describe your company's financial stability and economic capability to perform the contract requirements. Provide your company's financial statements (audited, if available) for the past three fiscal years. Financial statements must include the company's Balance Sheet and Income Statement or Profit/Loss Statements. Also include a Dun & Bradstreet comprehensive report, if available. If your company is a publicly traded company, please provide a link to your financial records on your company website in lieu of providing hardcopies. The Commonwealth reserves the right to request additional information it deems necessary to evaluate an Offeror's financial capability.

Offeror Response

III-6. Work Plan. Describe in narrative form your technical plan for accomplishing the work described in the Management Summary, II-2. Use the Requirements in **Part III-1** and the Tasks in this **Part III-6** of this RFP as your reference point. Offeror's inability to perform any of the services as described in the Requirements of Part III-1 and the Tasks in Part III-6 should be described fully. When describing Offeror's plan for addressing the Management Summary components, indicate the number of person hours allocated to each task. Where applicable and provides contextual benefit to Offeror's responses, include a Program Evaluation and Review Technique (PERT) or similar type display, time related, showing each event. If more than one approach is apparent or, where one approach is recommended over another, provide comment on all options and indicate the recommendation of the Offeror to satisfy the services required by this RFP.

A. Maintain Custom Formulary: Your formulary services should include:

1. PBM shall develop and maintain the formulary submission files (formulary, prior authorization, and step therapy)
2. PBM shall provide CMS-approved P&T Committee review and approval of the formulary.
3. PBM shall provide formulary drug placement recommendations consistent with P&T and implement based on PSERS determination.
4. PBM shall submit all required monthly, quarterly and annual filings with CMS.
5. PBM must be knowledgeable and compliant with all CMS requirements and regulations for formulary, utilization management programs, and transition processes and waivers applying to direct contract EGWP plans.

6. Management of the abridged and comprehensive formulary documents and the online formulary lookup tool and provision of this information as needed for the PSERS Medicare PDP website.
7. All needed MTM, PA, and utilization management filings.
8. All needed first and second level appeals processes, per CMS requirement for the formulary.
9. All formulary updates as required by CMS.

B. Call center and member support services should:

1. Provide toll-free customer service.
2. Review and approve or reject prior authorizations.
3. Advise current and prospective members regarding the formulary status, total cost and member's payment at retail and mail service of prescription drugs.
4. Resolve member issues with the pharmacies, including mail service.
5. Verify member eligibility.
6. Provide mail order status.
7. Respond to all prescription drug questions without transferring to the HOP Administrative Unit Call Center.
8. Interact with PSERS and HOP Administrative Unit Call Centers.
9. Provide call statistics specific to PSERS' members and separate for Medicare and Pre-65.
10. Maintain a call tracking system requiring calls to be logged for each member or client inquiry.
11. Properly categorize calls as appeals or grievances, as defined by the CMS Technical Reporting specifications
12. Meet all CMS requirements related to member services call centers including staffing, operating hours, interpreter services, and technical support.

- C.** Direct Contract PDP Support with CMS services should include:
1. Timely submission of required information/reports to CMS on behalf of PSERS
 2. Provide all necessary information to PSERS for required plan sponsor filings.
 3. Provide a Medicare Compliant MTM program
 4. Provide effective fraud, waste, and abuse program
 5. Prescription Drug Event (PDE) Requirements – Part D Sponsors
 - a. Submit timely PDE records
 - i. Submit original PDEs within 30 days following Date Claim Received or Date of Service (whichever is later),
 - ii. Resolve rejected records and re-submit within 90 days following receipt of rejected record status from CMS, and
 - iii. Submit adjustments and deletions within 90 days following discovery of issue requiring change.
 - b. Promptly resolve rejected PDE records and take corrective action to prevent a recurrence of the issue.
 6. Pass through any subsidies (Premium, LICs, Reinsurance, and Coverage Gap Discount) to the Plan upon request.
- D.** Administrative services should include:
1. Claims Adjudication.
 2. Member enrollment and eligibility maintenance.
 3. Patient and Provider Education.
 4. Network Pharmacy Management.
 5. Data Reporting & On-Line Query Tool.
 6. COB reporting to members.
 7. Distribution of ID cards and current pharmacy directories.
 8. Provide detailed claim data electronically to PSERS or its designees in a NCPDP or mutually agreed upon format with each billing cycle.

9. Prescription Drug Event production and submission.
10. Management of grievance, coverage determination, and appeals processes.
11. On-line, real-time claims system access.

E. Communication services should include:

1. Work closely with PSERS and its third party administrator, CoreSource, in order to provide and/or support all CMS/Medicare required communications.
2. Provide data in usable format for designer and then provide sign off/approval on designed version of Abridged and Comprehensive Formulary and Pharmacy Directory.
3. Provide appropriate updates to current version and approval of appropriate sections of the Evidence of Coverage (EOC) document.
4. Provide a HOP specific web link for hopbenefits.com with the following functionality:
 - a. Pharmacy look-up that identifies 24-hour and 90-day retail pharmacies, and pharmacies capable of e-prescribing.
 - b. Prescription drug lookup identifying formulary status, dispensing limitations, and cost at retail and mail service and cost calculator comparing the Basic and Enhanced Options that have at least the functionality of the lookup at HOPbenefits.com. The cost calculator should reflect both mail order and local pharmacy pricing for pharmacies in the member's locality.
5. Provide Pre-65 Program highlights brochure text and coordinate mailing with PSERS.

F. Pharmacy Network access services should include:

1. Maintenance of a CMS approved Medicare PDP pharmacy network in the United States.
2. Maintenance of a nationwide pharmacy network covering the PSERS eligible non-Medicare retiree population.

If you are unable to perform any required service indicate clearly: a) what you are currently unable to do, and, b) what steps will be taken (if any) to meet the requirement, the timetable for that process and who will be responsible for the implementation, along with that person's qualifications.

Include any additional information in your proposal that you consider useful to PSERS in selecting a contractor. However, direct responses to all of the questions set forth above must be provided and will be looked upon favorably.

Offeror Response

III-7. Questions. In order for your proposal to be considered and accepted, your organization must provide answers to the questions presented in this section. Reference should not be made to a prior response, or to your standard contract, unless the question involved specifically provides such an option. Please restate the question as part of the response for each question. Please keep the same numbering scheme as this section. As indicated, a copy of this RFP has been supplied electronically to facilitate your response.

A. Formulary / Clinical

1. Confirm Offeror's ability, willingness, and agreement to provide all of the formulary services listed in **Part III-6, (A), Maintain Custom Formulary.**
2. Provide a description of how Offeror will perform each of **Part III-6, (A)** services.
3. PSERS has provided its 2017 plan designs, formulary and critical care list of drugs for both populations in **Exhibit 1** and **Exhibit 2**. Describe any issues or difficulties Offeror would have in administering these plan designs, formulary, and drug lists, in accordance with CMS rules and pursuant to the PSERS plan designs.
4. Confirm Offeror's Pharmacy and Therapeutics (P&T) Committee meets CMS requirements, as outlined in Medicare Prescription Drug Benefit Manual, Chapter 6.
5. Describe the process by which Offeror's P&T supports custom formulary clients, including how the dedicated account management team will work with Offeror's P&T to ensure PSERS custom formulary needs are being addressed and met.
6. Indicate if Offeror will make its P&T meeting minutes available to PSERS, upon request.
7. Describe the process for managing monthly formulary updates.
8. How are negative formulary changes communicated to members?
9. How many custom formularies do you presently support?

10. Consistent with your standard Medicare formulary and Exhibit 3, list three cost effective formulary customizations Offeror would recommend to PSERS and why they should be considered.
11. PSERS supports a strong “generic first” approach to formulary management and relies heavily on consumer incentives to maintain a lowest cost mix of drugs. What tools are available to promote formulary compliance and education? Include frequency of mailings, faxes, telephone interventions [provide samples of letters sent to patients, physicians, and pharmacies].
12. Please indicate and describe any other Medicare formulary options utilized by existing clients that Offeror currently manages and/or administers.
13. Describe Offeror’s point of sale Drug Utilization Review (DUR) Program. Indicate any features of the program that differentiate Offeror from other PBMs.
14. Explain whether there exists flexibility in implementing a client-specific DUR edit/program.

B. Call Center and Member Support Services

1. Confirm Offeror’s ability, willingness, and agreement to provide all of the services listed in **Part III-6, (B) Call Center and Member Support Services**.
2. Provide a description of how Offeror will perform each of the **Part III-6, (B)** services.
3. Identify the primary call center that will handle PSERS member services. If there is a change to the primary call center dedicated to PSERS, indicate if and how PSERS will be notified of the change prior to it occurring. Describe the types of calls that will be handled by Offeror’s call center. Will the primary call center handle the retail, mail order, and specialty pharmacy programs? If not, please explain.
4. Describe the call center organization and structure. How many member service representatives are located at the primary call center? What is the ratio of supervisor/team leaders to member service representatives at the primary call center?
5. Do any member service representatives work from home? If so, please describe the structure and oversight to support.
6. Provide the 2015 and 2016 (year-to-date) member service representative annual turnover rate for the call center that will be handling PSERS’ member calls.

7. Please name and describe position of each member of the client account management team.
8. What influence does the client account management team have within the call center and the services the call center provides to clients?
9. How are escalated complaints managed and resolved?
10. PSERS expects that the selected organization will successfully resolve all member issues related to the pharmacy benefit in a timely and complete manner and without referral of members to the HOP Administration Unit. Confirm Offeror's understanding of this expectation and describe the approach to assuring the resolution of member issues.
11. What are the call center operating hours?
12. Indicate if there will be a designated member service representative(s) to service PSERS members. If so, please describe and include the anticipated number of designated member service representatives.
13. Please describe in detail the client-specific training member services representatives will receive in order to support PSERS.
14. For the member service center proposed, provide the following based on the most recent quarterly data available:

	EGWP PDP Services
Total number of calls	
Percent of calls abandoned:	
Percent of calls handled by a live representative:	
Number of seconds to reach a live member service representative:	

15. Do member service representatives have on-line access to real-time claim processing and eligibility information? Provide a description of the information to which representatives have access in order to provide member support.
16. Describe Offeror's Call Center support for members who are hearing impaired or who are limited English speaking.

17. Describe how multiple member services phone calls are tracked (i.e. does the member service representative have access to information from members' previous calls)? If so, please explain.
18. Describe Offeror's member issue tracking system.
19. Indicate if member services calls are recorded. If so, what percent of calls are recorded? Can the recordings be accessed at a later date and used to resolve member disputes? Describe the period of time for which recorded calls are retained.
20. Describe Offeror's website that will be accessed by PSERS members. Indicate if this website is maintained for HIPAA and CMS compliance.
21. Indicate if Offeror performs membership satisfaction surveys and with what frequency. Indicate if these are performed client-specific or for a particular section of the book of business.
22. If applicable, please provide a copy of the latest results of the survey.
23. Please indicate Offeror's willingness to perform a client specific membership satisfaction survey if so requested by PSERS. If yes, please include any additional cost for performing this service in your pricing proposal. (Please do not include cost information in this section of your proposal)?
24. How are members informed of available network pharmacies?
25. Describe how members receive reminders regarding refills and medication adherence.
26. Describe how Offeror's call center representatives properly categorize calls as appeals or grievances, as defined by the CMS Technical Reporting specifications.
27. Describe how call center representatives educate members of the plan's MTM program.
28. Describe the call center's pharmacy technical support for both members and providers.
29. Will PSERS be assigned a dedicated customer account manager? If not, how many other accounts would the individual be handling?

C. Direct Contract EGWP Support

1. Confirm Offeror's ability, willingness, and agreement to provide all of the services listed in **Part III-6, (C) Direct Contract PDP Support with**

CMS. Provide a description of how Offeror will perform each of the **Part III-6, (C)** services.

2. Describe offeror’s understanding of and experience with supporting the unique requirements of a direct contract EGWP. Explain how these services are separated from other types of PDP clients that Offeror supports. Describe your current experience administering Medicare Part D prescription drug plans.
3. Please provide the Part D Medicare star ratings for each of the PDP plans for which Offeror is the Contract Holder with CMS.

PDP Contract #	PDP Contract Name	2014	2015	2016	2017

4. Describe in detail Offeror’s fraud, waste and abuse control programs.
5. Confirm that Offeror will provide all CMS required filings related to certification of compliance to all fraud, waste and abuse programs.
6. Describe in detail the programs, systems, and procedures Offeror utilizes to detect, report, and combat fraud and abuse. Please provide a sample of fraud and abuse reports that are provided to clients.
7. Describe the process in place to ensure that clients are credited for prescription claims submitted but not obtained by the PSERS member (Return to stock situations).
8. Summarize the quality assurance programs Offeror presently has in place and list the most important actions these programs have taken in the past year to improve overall performance.
9. Indicate if Offeror has a Medication Therapy Management (MTM) Program in operation that meets the CMS 2017 requirements. Please describe by book of business/plan types the MTM program description, and 2016 CMR completion rate(s), and describe how custom changes to the MTM would be supported if requested.
10. Indicate if Offeror can and will support an MTM carve-out, should PSERS elect to contract for these services separately from this Agreement.

11. Confirm Offeror will support the plan’s annual Data Validation Audit, as required by CMS.
12. Confirm Offeror will distribute the Plan to Plan reports to the plan or its designee within two (2) days of receipt from CMS.
13. Confirm Offeror’s ability and willingness to support the plan with its Acumen reporting (i.e. Patient Safety Analysis, PDE outliers, Overutilization Monitoring System Reporting, etc.)
14. Describe Offeror’s PDE production and file submission process. How often are PDE records submitted? What is the process for adjusting PDE data if required?
15. Provide Offeror’s annual PDE data rejection rate for each of the past three (3) calendar years (show each year separately).
16. Describe how Offeror will guarantee all PDE records are produced and submitted to CMS timely and accurately.
17. Describe the member grievance protocols in place for PBM services.
18. Describe Offeror’s PDE production and file submission process. How often are PDE records submitted? What is the process for adjusting PDE data if required?
19. Provide Offeror’s annual PDE data rejection rate for the past three calendar years (show separately).
20. Describe how Offeror will guarantee all PDE records are produced and submitted to CMS timely and accurately.

D. Administrative Services

1. Confirm Offeror’s ability, willingness, and agreement to provide all of the services listed in **Part III-6, (D) Administrative Services**. Provide a description of how Offeror will perform each of the **Part III-6, (D)** services.
2. Provide the latest annual report or other financial reports that indicates the financial position of Offeror’s organization.
3. Complete the following table:

Parent Company	
Year PBM Established	
Number of PBM Employees: Current	
1 year prior	

2 years prior	
Membership count (total covered lives -2015): Current	
1 year prior	
2 years prior	
% from top 10 clients	
% from Medicare PDP plans	
Number of Medicare EGWP PDP Clients	
Total drug spend dollars processed (2015)	
Number of Clients Added: Past 1 year	
Past 2 years	
Number of Clients Terminated: Past 1 year	
Past 2 years	

4. References - Provide the name, address, and telephone numbers of at least three current clients that are similar with respect to coverage, group size, industry, and/or location. Please include at least one public sector reference.
5. Please confirm that PSERS (and/or its selected representatives) has full rights to audit claims, processes, and rebates in order to verify compliance with contractual obligations, that your organization will fully cooperate with such audits, that no fees will be charged to support such audits, that you will respond to audit findings within 30 days, and that PSERS' audit rights will extend for no less than three (3) years after the termination of the contract. Please detail any proposed exceptions to the above requirements.
6. Indicate the number and description of any outstanding legal actions pending against Offeror's organization.
7. Please explain the nature and current status of the action(s).
8. How will Offeror assure PSERS that these actions will not disrupt business operations?
9. Indicate any organizations that have been acquired or sold by Offeror in the last 24 months.
10. Indicate if there have been significant staff relocations, or changes to computer or telephone systems in the last 12 months.
11. Indicate and describe any substantive changes to Offeror's organization, structure, claims systems or other computer system in the next 12-24 months. Indicate if PSERS would be designated a dedicated customer account manager. If not, how many other accounts would the individual be handling?
12. What is the annual turnover rate of Account Management staff over the past 12 months?

13. Describe the process for ensuring continuity of Account Management during absences or replacement situations.
14. Based on the latest available data, what percent of paper submit claims are processed (check issued) within 10 working days from the date of receipt? Specify time period. What actions are taken to minimize paper submitted claims?
15. Describe how Offeror manages out of network utilization, including any situations where out of network prescriptions are payable. Describe the process for member submitted claims for services rendered at a Network pharmacy. How are claims costs that exceed the contracted rate handled with the Network pharmacy? How does Offeror avoid duplicate payments of the same claim?
16. Provide detail on how a duplicate claim is defined and whether there is a different process or threshold for mail service claims. If duplicate payments or overpayments are discovered, what are the procedures for recovery of the overpayments or duplicate payments?
17. What percent of total clients received reimbursement or credit for discovered duplicates and overpayments?
18. Indicate if Offeror provides clients with on-line read/edit access to eligibility and read access to claim information.
19. Can on-line, real-time claim tracking be made available to PSERS?
20. Describe how eligibility is verified.
21. Explain the options available for accepting eligibility data.
22. How frequently can eligibility updates be made?
23. Explain how members are enrolled in the PBM's EGWP plan. Detail the process that PSERS and its enrollment and eligibility vendor partner would be utilizing to ensure timely and accurate enrollment for PSERS members.
24. Discuss how Offeror manages enrollment discrepancies (ie: issues with Medicare acceptance of enrollment request) with the Plan, its delegate and designees.
25. Specify how claim denials for experimental drugs are handled.
26. Indicate if clients are reimbursed for any amounts paid for any day supply dispensed for each claimant beyond the limits indicated by the Plan Design [members must pay to replace lost or stolen Rx's]
27. Describe the policy regarding members' reports of lost/broken medication, early refills, and emergency supplies?
28. Explain the coordination of benefit (COB) procedures. Can PSERS be provided Coordination of Benefits (COB) administration: 1) with

employer plans; 2) with current Medicare drug benefits; and 3) with new Medicare Part D benefits? What data is required from PSERS to perform COB?

29. Please explain the standard subrogation policy provisions and procedures and any options that are available, along with their advantages and disadvantages.
30. Indicate Offeror's ability to precisely administer the identical plan designs shown in **Exhibits 1, 2 and 3**. Describe any deviations.
31. Describe the claims submission and payment process, for mail order claims, from date of receipt to full adjudication of checks to patients.
 - a. What forms of payment are accepted from the claimant?
 - b. Can refills be phoned in with purchases made by credit card?
 - c. Can refills be submitted through a web application?
 - d. Are e-prescribed orders from physicians accepted?
 - e. How many days advanced notice must a claimant provide in order to guarantee that their supply is received before the existing supply is depleted?
 - f. How are prescriptions received prior to the allowable refill handled?
32. Describe the claims submission and payment process for Internet claims, from date of receipt to full adjudication.
 - a. What forms of payment are accepted from the claimant?
 - b. How many days advanced notice must a claimant provide in order to guarantee that their supply is delivered before the existing supply is depleted?
 - c. How are prescriptions received prior to the allowable refill handled?
 - d. Describe security systems and protocols in place to protect confidential patient records. Is the site VIPPS certified and licensed in every state?
33. List and explain the claim processing systems' standard automated claim edits that occur at time of claim submission.
34. Indicate if Offeror will agree to transfer complete and accurate electronic claim history and eligibility data to PSERS **at no additional cost** upon contract termination.
35. Indicate if Offeror will make available to PSERS and its designees the on-line claims data warehouse for the purposes of standard and ad-hoc report generation and queries.
 - a. How soon after the end of each month are claims reports available?

- b. Is AWP information available on the claim data warehouse?
 - c. Is the Medicare Part D initial coverage tier, coverage gap, catastrophic tier on the claims data warehouse identifiable on the claim?
36. Describe the information/reports PSERS can expect with regard to annual report/year end settlements.
 37. Describe the capability to apply rebates at the point of sale? If so, please describe the administrative and guarantee true-up process?
 38. How soon after the plan year ends will PSERS receive such reporting?
 39. Confirm that Offeror will provide a complete electronic claim file to PSERS, or its designate, at least monthly in a National Council for Prescription Drug Programs (NCPDP) standard format.
 40. Provide a sample of Drug Utilization Review (DUR) reports that are produced and monitored. Confirm these reports made available to PSERS at no additional cost.
 41. Provide a description of the specialty drug program, including coordination with medical providers and the medical claims administrator. Including, but not limited to:
 - a. Included product lists (without product pricing)
 - b. Number of specialty pharmacies in your network
 - c. Patient management processes
 - d. Open or closed pharmacy network
 - e. Biosimilar strategy
 42. If Offeror currently directs or sub-contracts any PBM functions to outside organizations, identify the organization that the contracts are with and list the PBM functions performed by the contracted organization
 43. If Offeror uses contractors, please provide the names and number of years of the business relationship. Indicate if Offeror has a contractual relationship with third party administrators/organizations in which you pay service fees or other fees that PSERS is directly or indirectly charged for? If so, identify these outside organizations that receive these service fees and explain the nature of the relationship.
 44. Please list all members and accompanying credentials of the pharmacy and therapeutic committee utilized by your organization.
 45. Describe Offeror's appeals process, including if any portion of appeals handling is sub-contracted.
 46. Confirm that Offeror's appeals processes meet all CMS Medicare Part D requirements. Describe how these processes are updated and kept current with CMS guidance and requirement updates.

47. PSERS wishes to include in the contract the right to cancel the contract at any time should it find performance of the organization paying claims [or performing non-claims paying functions] to be unsatisfactory. In addition, PSERS wishes to include a clause to the effect that, upon contract termination, the cost of any work required by a new administrator to bring records in unsatisfactory condition up to date shall be the obligation of your firm and such expenses shall be reimbursed by your firm. Please confirm that you agree to include these provisions in the final Agreement.
48. PSERS will require the response to the RFP to be attached to the agreement. Please confirm your agreement to this requirement.
49. Will Offeror agree to pay run out claims if your agreement is cancelled? For how long? Is there an additional charge for this service? If yes, additional charges should be clearly delineated in Offeror's financial proposal.
50. Indicate Offeror's agreement that for the duration of the Agreement and for 12 months after termination, that any direct contact, direct marketing, educational material, and other communication made to plan participants, other than responses to individual member inquiries regarding individual prescription claim or member services issues, are strictly prohibited without the prior authorization and approval of PSERS.
51. Indicate Offeror's agreement that all books, records, lists or names, plates, seals, passbooks, journals and ledgers and all data specific to this Plan shall be the property of and shall be used exclusively for this Plan at the direction of PSERS.
52. This Agreement will be governed by the laws of the Commonwealth of Pennsylvania and accordingly all policies must be in full accord with the laws of that state. It is the responsibility of the Offeror entering into the Agreement with PSERS to include all provisions required by the laws of the Commonwealth of Pennsylvania. Please confirm your agreement with this requirement.
53. Will offeror secure errors and omissions insurance, show evidence of it to the client and agree to advise the same if the coverage is terminated. Will you agree to make PSERS the beneficiary of this errors and omissions policy.
54. Please provide a detailed implementation plan for this program if Offeror is chosen.
55. Indicate Offeror agreement to participate in monthly meetings with PSERS and its vendors—which will occur at the direction of PSERS and will, at times, require onsite participation at the discretion of PSERS. The purpose of these meetings is to facilitate management of the Health Options Program, discuss plan performance, and to develop strategies for the success of the program.

56. Describe Offeror’s CMS compliant transition process Please provide a description of the compliant transition policy with communication pathways and sample information.

E. Emergency Preparedness

1. Describe the disaster recovery processes Offeror has in place currently and how any crisis rising to this level would impact current operations.

2. Describe Offeror’s emergency response continuity of operations plan. Please attach a copy of this plan, or at a minimum, summarize how this plan addresses the following aspects of pandemic preparedness:

- a. employee training (describe Offeror’s organization’s training plan, and how frequently this plan will be shared with employees)
- b. identified essential business functions and key employees (within the organization) necessary to carry them out
- c. Contingency plans for;
 - 1) How Offeror’s organization will handle staffing issues when a portion of key employees are incapacitated due to illness.
 - 2) How employees in the organization will carry out the essential functions if contagion control measures prevent them from coming to the primary workplace.
- d. How Offeror’s organization will communicate with staff and suppliers when primary communications systems are overloaded or otherwise fail, including key contacts, chain of communications (including suppliers), etc.
- e. How and when Offeror’s emergency plan will be tested, and if the plan will be tested by a third-party.
- f. Compliance with CMS requirements for ability to ensure annuitants have access to medications in the event of a Federal or State of emergency.

3. Please complete the following table indicating the provider of each PBM service:

PBM Service	Is service provided directly by employees of Offeror’s organization?	Is the provider of the service a non-US based organization	What is the name and address of the service provider?	What is the length of the current contract with service provider?
Formulary Management (appeals, utilization)				

management)				
Formulary Pharmacy and Therapeutics Committee				
Drug Manufacturer rebate contracting				
Retail pharmacy network contracting				
Customer service functions				
Member service functions (800 lines, internet, etc.)				
Mail Order drug purchasing and distribution				
Electronic Claim Payment System				
Client management reporting tools and standard report production.				

F. Communication Services

1. Confirm Offeror’s ability, willingness, and agreement to provide all of the services listed in **Part III-6, (E) Communication Services**. Provide a description of how Offeror will perform each of the **Part III-6, (E)** services.
2. Please provide examples of the services shown in **Part III-6, (E)**.
3. Please provide timelines and processes for approval and delivery of the services shown in **Part III-6, (E)**.
4. Provide a sample of communications material available to plan sponsors and plan participants with regard to network enrollment, network utilization, educational programs, ID cards, etc.
5. How is compliance with CMS requirements confirmed and regularly validated with respect to member communication materials?
6. Please indicate methods and frequency of interventions and include sample communication materials if applicable.
7. What services are available to members via the Internet? Please provide detail regarding current Internet capabilities. Will PSERS be allowed to link Offeror’s web services to their HOP website?

8. Does the member portal of Offeror's organization's website provide participant specific cost information?
9. Are participants able to view their deductible and out-of-pocket accumulators on the web site?
10. Are participants able to view the actual discounted cost of a drug, before participant cost share, in addition to their cost share, on the web site?
11. If participants are able to view the actual discounted cost of a drug on the website, would it reflect the Usual and Customary (U&C) price at specific retail pharmacies?
12. If participants are unable to view the actual discounted cost of a drug, including retail U&C, is Offeror willing to develop such a capability within 12 months? If so, please describe.
13. Indicate if there are programs in place specifically designed for members which will increase preferred brand and/or generic utilization? Please explain and include any sample member materials.

G. Pharmacy Network

1. Confirm Offeror's ability, willingness, and agreement to provide all of the services listed in **Part III-6, (F) Pharmacy Network Access**.
2. Provide a description of how Offeror will perform each of the **Part III-6, (F) services**.
3. Provide confirmation of Offeror's network as a CMS approved Medicare PDP pharmacy network for the United States.
4. Please confirm that you do not contract with any entity or individual shown on the HHS Office of Inspector General's list of excluded individuals/ entities located at:

<http://www.oig.hhs.gov/fraud/exclusions/listofexcluded.html>
5. Should PSERS wish to add a retail pharmacy to the network, the Offeror will contact the pharmacy and offer the contract for network inclusion within two (2) business days following PSERS request. Please confirm a willingness to comply with this provision.
6. Please confirm Offeror can provide a customized network without re-contracting and that doing so will not require an exclusive arrangement for specialty services.

7. Please confirm that Offeror can provide Specialty Pharmacy Services as part of the provider network arrangement.
8. Please confirm agreement to retain network contract records for 10 years for the purpose of auditing.
9. In addition to standard retail pharmacy contracts, does Offeror have any affiliations or alliances with retail pharmacy providers? If yes, with which provider(s) and in what ways will the relationship affect PSERS?
10. What areas are evaluated in Offeror’s provider audits?
11. How often are they performed?
12. Please complete the following table for the last calendar year.

	% of Network Pharmacies Audited Annually
Percent of Pharmacies Audited Annually: Desktop	
On-Site	
At Random	
By Independent Agent	
Percent of Pharmacies Needing Corrective Action	
Percent of Contracts Terminated due to Result of Audit	
Most Prevalent Reason for Termination	

13. Is the right to audit included in all standard provider contracts? (Yes/No)
14. What percentage of total ingredient costs do annual recoveries generally represent?
15. Are 100% of all recoveries returned to the plan sponsor?
16. How are individual physician prescribing patterns monitored?
17. What action is taken with physicians who have a high degree of non-compliance to improve their compliance?
18. If available, attach a copy of Offeror’s physician “report card” report.

19. If Offeror provides mail order benefits through a third party, explain any audit procedures in place to ensure proper dispensing and pricing practice adherence.
20. If mail order benefits are provided directly through a company owned by Offeror or a subsidiary, what audit authority will PSERS have in addition to the standard administrative audit authority?
21. Does Offeror produce network pharmacy report cards? If yes, explain the nature and uses of the report and include a sample.
22. Describe the capability and experience in accepting and processing electronic prescriptions sent directly from physicians, including existing connectivity to Surescripts E-prescription network.
23. Indicate what percent of Offeror's Medicare Part D prescriptions (retail and mail separately) processed in 2015 were received via E-prescription.
24. Describe any initiatives underway or planned to increase the utilization of electronic prescribing.
25. How is it assured that network pharmacies have adequate stock on hand?
26. Indicate if there is a 90-day supply contracted network of retail providers specifically for Medicare Part D services.
27. Indicate if network, mail, specialty, long-term care, home infusion and Indian and Tribal pharmacy provider agreements are compliant with CMS Part D requirements including access. Please provide a copy of the Part D provider agreement in place.
28. With regard to the mail order dispensing facility to be used for this account, provide the following:

	Primary Dispensing	Primary Front-End (if different than dispensing)
Years in Operation		
Location		

Claims Volume (2015)		
Annual Claim Volume Capacity		
Number of pharmacists employed		

29. How does Offeror monitor Network pharmacies for proper handling of all claims submitted for payment but not picked up by the covered member?
30. If a submitted mail order claim for a member cannot be completed in its entirety within a designated time-frame, what communications are provided to the member and what policy is followed for splitting orders? How is the un-sent portion of the order tracked from the time of splitting until fulfillment?
31. For the proposed PBM retail pharmacy network, provide the number of participating pharmacies and confirm whether any retail chains are excluded.
32. If certain pharmacy chains are excluded, please list each excluded chain and number of stores affected and reason for exclusion.
33. Indicate whether Offeror's organization can support a retail pharmacy network that would include preferred pharmacies in addition to other participating pharmacies. Describe how such a network would work, the advantages and disadvantages, and any experience you have with such pharmacy network arrangements.
34. Describe how a full pass-through network pricing arrangement is managed and auditable by a client. How many such arrangements are in place today?

H. Other (*Do not include specific cost information*)

1. Do you agree to guarantee your quoted fees for at least 180 days?
2. The fees presented in this proposal are binding during the life of this contract. Any unsolicited changes to these fees or additional fees may be grounds for termination. Will you comply with these conditions as stated herein?
3. Confirm that your fees include the cost of claims incurred/filled during the effective dates of this contract regardless of when they are actually processed and paid (run-out)?
4. Confirm that fees quoted are not contingent upon any minimum enrollment, utilization, or participation in any supplemental programs.

5. Fees must be based on only “true” claim transactions (not adjustments, errors, reversals, or “redos”). Please confirm that your quoted fees will be charged on only “true” transactions that would generate a payment.
6. Please verify that you will agree to discount audit methodologies for all AWP guarantees using Medi-Span as the time sensitive source of AWP pricing data.
7. How do you determine that plan members always receive this lowest price? What procedures are established to ensure that the pharmacy is in compliance with this provision?
8. How often is your MAC list updated?
9. Will you guarantee that on a dollar for dollar basis the average, realized discounts for brand and generic drugs will be no less than those quoted at retail and mail order for the life of the contract?
10. Verify that payments made to network pharmacies are equal to what PSERS ultimately is charged for each claim.
11. Are you willing to provide a guaranteed generic dispensing rate (GDR) for retail and mail order for the initial year of the contract and to negotiate guarantees for subsequent years? If so, please indicate the retail and mail order (separately) guaranteed generic dispensing rates. Note: shortfalls will be calculated by multiplying the shortfall in GDR by the difference between the average ingredient cost for multi-source brand drugs and multi-source generic drugs.
12. With respect to all pricing formulas presented, will you agree to permit an audit of your claim files, at your expense, by PSERS representatives to verify the reimbursement prices shown in this proposal?
13. Are there financial incentives to network pharmacies, physicians and other providers that are tied to utilization rates, compliance goals, quality of care outcomes or other performance results? If so, please explain and include any incentive-based dispensing fees, bonuses, withholds, retroactive capitations, etc.
14. Are there instances where members would be charged the greater of discounted ingredient costs plus dispensing fee or the plan copayment amount? If yes, will you be willing to waive this provision at retail and mail order?
15. How many distinct MAC listings do you currently administer? What are their average AWP discount yield levels based on latest available data?
16. Provide an electronic version of your entire current MAC list, including pricing by NDC. Indicate if the pricing is your acquisition price, or if a different price is charged to PSERS than your acquisition cost.

17. Does your MAC listing include Multi-Source Brand drugs? If yes, what is the average AWP discount realized on these products? Will you pass these additional savings along to PSERS?
18. Will MAC pricing be used at Mail Order? Home Infusion? Long Term Care? ITU? If so, is it the same MAC list that will be utilized to price Retail Claims?
19. Will MAC pricing be applied to Retail claims with a 90 day supply? If not, please explain.
20. Can you customize your MAC price list for this client? Would the savings increase if select pharmacies were removed from the network for this client? If so, explain and quantify additional savings.
21. Do your MAC price lists vary contractually between network pharmacies? If yes, why?
22. Do you agree to provide Retail/Mail Order unit cost equalization meaning that Mail Order unit costs prior to member cost sharing, dispensing fees and sales taxes charged to PSERS will be no greater than those at Retail and agree to produce a date sensitive comparison report showing unit costs charged to PSERS at a GCN level, and reimburse PSERS on a dollar for dollar basis for all instances where mail order unit costs exceed retail unit costs? Report and reconciliation will be provided on a semi-annual basis.
23. Do plans/members always pay the MAC price for applicable generics regardless of the pharmacies acquisition costs?
24. Do you receive manufacturer revenues, in addition to formulary rebates, which are associated with therapeutic drug switching activities or other promotional activities at retail or mail order?
25. How are manufacturer rebates billed and tracked by your firm? How do you report full pass-through rebates to your clients and how often are rebate payments made to clients? Is this payment cycle negotiable?
26. Do you agree to provide PSERS or its designee the right to audit actual rebate contracts? *Any conditions must be indicated here.*
27. Do you agree to provide PSERS or its designee a copy of the MAC list in effect in electronic form periodically or when changes are made?
28. Confirm formulary rebates from manufacturers of specialty, biosimilar, and generic drugs are passed to PSERS.
29. Will you offer a price inflation maximum guarantee for the first and subsequent years of the contract? If so, please indicate the guarantee and all conditions.

Offeror Response

III-8. Reports and Project Control

- A. Status Report.** A periodic monthly progress report covering activities, problems and recommendations. This report should be keyed to the work plan the Offeror developed in its proposal, as amended or approved by the Issuing Office.
- B. Problem Identification Report.** An “as required” report, identifying problem areas. The report should describe the problem and its impact on the overall project and on each affected task. It should list possible courses of action with advantages and disadvantages of each, and include Offeror recommendations with supporting rationale.
- C. Year-end Report.** An annual report summarizing the monthly experience report identified in subsection B. The report shall include:
 - 1. Summary of the year’s activity
 - 2. Detailed analysis of claims experience.
 - 3. Recommendations regarding plan design, eligibility requirements, customer service interface, communications material and other areas of operations for subsequent plan years.
 - 4. Work plan for implementing recommendations.
 - 5. Other information as requested

Offeror Response

III-9. Objections and Additions to Standard Contract Terms and Conditions. The Offeror will identify which, if any, of the terms and conditions (contained in **Part VI**) it would like to negotiate and what additional terms and conditions the Offeror would like to add to the standard contract terms and conditions. The Offeror’s failure to make a submission under this paragraph will result in its waiving its right to do so later, but the Issuing Office may consider late objections and requests for additions if to do so, in the Issuing Office’s sole discretion, would be in the best interest of the Commonwealth. The Issuing Office may, in its sole discretion, accept or reject any requested changes to the standard contract terms and conditions. The Offeror shall not request changes to the other provisions of the RFP, nor shall the Offeror request to completely substitute its own terms and conditions for **Part VI**. All terms and conditions must appear in one integrated contract. The Issuing Office will not accept references to the Offeror’s, or any other, online guides or online terms and conditions contained in any proposal.

Regardless of any objections set out in its proposal, the Offeror must submit its proposal, including the cost proposal, on the basis of the terms and conditions set out in **Part VI**. The Issuing Office will reject any proposal that is conditioned on the negotiation of the terms and conditions set out in **Part VI or to other provisions of the RFP as specifically identified above.**

Offeror Response

PART IV

COST SUBMITTAL

IV-1. Cost Submittal. The information requested in this **Part IV** shall constitute the Cost Submittal. The Cost Submittal shall be placed in a separate sealed envelope within the sealed proposal, separated from the technical submittal. The total proposed cost should be broken down into the components set forth in **Appendix D – Cost Submittal Worksheet**. The percentage of commitment to Small Diverse Businesses and Small Businesses should not be stated in the Cost Submittal. Offerors should **not** include any assumptions in their cost submittals. If the Offeror includes assumptions in its cost submittal, the Issuing Office may reject the proposal. Offerors should direct in writing to the Issuing Office pursuant to **Part I, Section I-9** of this RFP any questions about whether a cost or other component is included or applies. All Offerors will then have the benefit of the Issuing Office’s written answer so that all proposals are submitted on the same basis.

The Issuing Office will reimburse the selected Offeror for work satisfactorily performed after execution of a written contract and the start of the contract term, in accordance with contract requirements, and only after the Issuing Office has issued a notice to proceed.

PART V

SMALL DIVERSE BUSINESS AND SMALL BUSINESS PARTICIPATION SUBMITTAL

V-1. Small Diverse Business and Small Business General Information. The Issuing Office encourages participation by Small Diverse Businesses and Small Businesses as prime contractors, and encourages all prime contractors to make significant commitments to use Small Diverse Businesses and Small Businesses as subcontractors and suppliers.

A Small Business must meet each of the following requirements:

- The business must be a for-profit, United States business;
- The business must be independently owned;
- The business may not be dominant in its field of operation;
- The business may not employ more than 100 full-time or full-time equivalent employees;
- The business, by type, may not exceed the following three-year average gross sales:
 - Procurement Goods and Services: \$20 million
 - Construction: \$20 million
 - Building Design Services: \$7 million
 - Information Technology Goods and Services: \$25 million

For credit in the RFP scoring process, a Small Business must complete the DGS/BDISBO self-certification process. Additional information on this process can be found at: <http://www.dgs.pa.gov/Businesses/Small%20Business%20Contracting%20Program/Page/default.aspx>.

A Small Diverse Business is a DGS-verified minority-owned small business, woman-owned small business, veteran-owned small business, service-disabled veteran-owned small business, LGBT-owned small business, Disability-owned small business, or other small businesses as approved by DGS, that are owned and controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

For credit in the RFP scoring process, a Small Diverse Business must complete the DGS verification process. Additional information on this process can be found at: <http://www.dgs.pa.gov/Businesses/Minority,%20Women%20and%20Veteran%20Businesses/Pages/default.aspx>.

An Offeror that qualifies as a Small Diverse Business or a Small Business and submits a proposal as a prime contractor is not prohibited from being included as a subcontractor in separate proposals submitted by other Offerors.

A Small Diverse Business or Small Business may be included as a subcontractor with as many prime contractors as it chooses in separate proposals.

The Department's directory of self-certified Small Businesses and DGS/BDISBO-verified Small Diverse Businesses can be accessed from: **Error! Hyperlink reference not valid.**
<http://www.dgs.pa.gov/Businesses/Minority,%20Women%20and%20Veteran%20Businesses/Small-Diverse-Business-Verification/Pages/Finding-Small-Diverse-Businesses.aspx>.

Questions regarding the Small Diverse Business and Small Business Programs, including questions about the self-certification and verification processes can be directed to:

Department of General Services
Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO)
Room 601, North Office Building
Harrisburg, PA 17125
Phone: (717) 783-3119
Fax: (717) 787-7052
Email: [mailto: RA-BDISBOVerification@pa.gov](mailto:RA-BDISBOVerification@pa.gov)
Website: www.dgs.pa.gov

- V-2. Small Diverse Business and Small Business (SDB/SB) Participation Submittal.** All Offerors are required to submit **two (2)** copies of the Small Diverse Business and Small Business Participation Submittal Form contained in (**Appendix F**) and related Letter(s) of Intent (**Appendix G**). The submittal must be sealed in its own envelope, separate from the remainder of the proposal, and must be provided on the Small Diverse Business and Small Business Participation Submittal form, with information as follows:
- A.** Offerors must indicate their status as a Small Diverse Business and as a Small Business through selection of the appropriate checkboxes.
 - B.** Offerors must include a numerical percentage which represents the total percentage of the total cost in the Cost Submittal that the Offeror commits to paying to Small Diverse Businesses and Small Businesses as subcontractors.
 - C.** Offerors must include a listing of and required information for each of the Small Diverse Businesses and/or Small Businesses with whom they will subcontract to achieve the participation percentages outlined on the Small Diverse Business and Small Business Participation Submittal.
 - D.** Offerors must include a Letter of Intent (attached as **Appendix G** is a Letter of Intent template which may be used to satisfy these requirements) signed by both the Offeror and the Small Diverse Business or Small Business for each of the Small Diverse Businesses and Small Businesses identified in the Small Diverse Business and Small Business Participation Submittal form. At minimum, the Letter of Intent must include the following:

1. The fixed numerical percentage commitment and associated estimated dollar value of the commitment made to the Small Diverse Business or Small Business; and
 2. A description of the services or supplies the Small Diverse Business or Small Business will provide; and
 3. The timeframe during the initial contract term and any extensions, options and renewals when the Small Diverse Business or Small Business will perform or provide the services and/or supplies; and
 4. The name and telephone number of the Offeror's point of contact for Small Diverse Business and Small Business participation; and
 5. The name, address, and telephone number of the primary contact person for the Small Diverse Business or Small Business.
- E. Each Small Diverse Business and Small Business commitment which is credited by BDISBO along with the overall percentage of Small Diverse Business and Small Business commitments will become contractual obligations of the selected Offeror.

NOTE: Offerors will not receive credit for any commitments for which information as above is not included in the Small Diverse Business and Small Business Participation Submittal. Offerors will not receive credit for stating that after the contract is awarded they will find a Small Diverse or Small Business.

NOTE: Equal employment opportunity and contract compliance statements referring to company equal employment opportunity policies or past contract compliance practices do not constitute proof of Small Diverse Business and/or Small Business Status or entitle an Offeror to receive credit for Small Diverse Business or Small Business participation.

V-3. Contract Requirements—Small Diverse Business and Small Business Participation.

All contracts containing Small Diverse Business and Small Business Participation must contain the following contract provisions to be maintained through the initial contract term and any subsequent options or renewals:

- A. Each Small Diverse Business and Small Business commitment which was credited by BDISBO and the total percentage of such Small Diverse Business and Small Business commitments made at the time of proposal submittal, BAFO or contract negotiations, as applicable, become contractual obligations of the selected Offeror upon execution of its contract with the Commonwealth.

- B. All Small Diverse Business and Small Business subcontractors credited by BDISBO must perform at least 50% of the work subcontracted to them.
- C. The individual percentage commitments made to Small Diverse Businesses and Small Businesses cannot be altered without written approval from BDISBO.
- D. Small Diverse Business and Small Business commitments must be maintained in the event the contract is assigned to another prime contractor.
- E. The selected Offeror and each Small Diverse Business and Small Business for which a commitment was credited by BDISBO must submit a final, definitive subcontract agreement signed by the selected Offeror and the Small Diverse Business and/or Small Business to BDISBO within 30 days of the final execution date of the Commonwealth contract. A Model Subcontract Agreement which may be used to satisfy this requirement is provided in **Appendix H – Model Form of Small Diverse and Small Business Subcontract Agreement**. The subcontract must contain:
 - 1. The specific work, supplies or services the Small Diverse Business and/or Small Business will perform; location for work performed; how the work, supplies or services relate to the project; and the specific timeframe during the initial term and any extensions, options and renewals of the prime contract when the work, supplies or services will be provided or performed.
 - 2. The fixed percentage commitment and associated estimated dollar value that each Small Diverse Business and/or Small Business will receive based on the final negotiated cost for the initial term of the prime contract.
 - 3. Payment terms indicating that the Small Diverse Business and/or Small Business will be paid for work satisfactorily completed within 14 days of the selected Offeror's receipt of payment from the Commonwealth for such work.
 - 4. Commercially reasonable terms for the applicable business/industry that are no less favorable than the terms of the selected Offeror's contract with the Commonwealth and that do not place disproportionate risk on the Small Diverse Business and/or Small Business relative to the nature and level of the Small Diverse Business' and/or Small Business' participation in the project.
- F. If the selected Offeror and a Small Diverse Business or Small Business credited by BDISBO cannot agree upon a definitive subcontract within 30 days of the final execution date of the Commonwealth contract, the selected Offeror must notify BDISBO.
- G. The Selected Offeror shall complete the Prime Contractor's Quarterly Utilization Report and submit it to the contracting officer of the Issuing Office and BDISBO within ten (10) business days at the end of each quarter of the contract term and any subsequent options or renewals. This information will be used to track and confirm

the actual dollar amount paid to Small Diverse Business and Small Business subcontractors and suppliers and will serve as a record of fulfillment of the contractual commitment. If there was no activity during the quarter, the form must be completed by stating "No activity in this quarter." A late fee of \$100.00 per day may be assessed against the Selected Offeror if the Utilization Report is not submitted in accordance with the schedule above.

- H.** The Selected Offeror shall notify the Contracting Officer of the Issuing Office and BDISBO when circumstances arise that may negatively impact the selected Offeror's ability to comply with Small Diverse Business and/or Small Business commitments and to provide a corrective action plan. Disputes will be decided by the Issuing Office and DGS.

- I.** If the Selected Offeror fails to satisfy its Small Diverse Business and/or Small Business commitment(s), it may be subject to a range of sanctions BDISBO deems appropriate. Such sanctions include, but are not limited to, one or more of the following: a determination that the selected Offeror is not responsible under the Contractor Responsibility Program; withholding of payments; suspension or termination of the contract together with consequential damages; revocation of the selected Offeror's Small Diverse Business status and/or Small Business status; and/or suspension or debarment from future contracting opportunities with the Commonwealth.

PART VI

CONTRACT TERMS AND CONDITIONS

PROPOSED AGREEMENT FOR PRESCRIPTION DRUG BENEFITS ADMINISTRATION SERVICES (Including Business Associates Addendum and the Commonwealth's Standard Terms and Conditions)

THIS AGREEMENT ("Agreement") is made and entered into as of _____ by and between _____, a _____ corporation doing business as _____ ("ADMINISTRATOR"), and the Commonwealth of Pennsylvania, Public School Employees' Retirement System ("PSERS"), whose principal place of business is 5 North 5th Street, Harrisburg, Pennsylvania 17108-0125. ADMINISTRATOR and PSERS are collectively referred to herein as the "Parties" and each individually as a "Party."

WITNESSETH:

WHEREAS, PSERS sponsors a group health insurance program known as the Health Options Program ("HOP") for annuitant members of the Public School Employees' Retirement System and their eligible dependents and, as part of HOP, PSERS offers certain prescription drug expense benefits; and

WHEREAS, pursuant to that certain "Contract with Approved Employer/Union Entity," PSERS has been approved by the Centers for Medicare & Medicaid Services ("CMS") to offer a sponsor-group, direct contract Medicare Part D Prescription Drug Benefit Plan ("HOP Part D Plan") pursuant to which PSERS provides prescription drug benefits to eligible Medicare participants enrolled in HOP's Part D Plan ("HOP Part D Plan Participants"); and

WHEREAS, HOP also continues to offer a prescription drug benefit plan ("Pre-65 Plan") for Participants who are not eligible for Medicare ("Pre-65 Plan Participants"); and

WHEREAS, PSERS desires that HOP's Part D Plan and Pre-65 Plan (collectively, the "Benefit Plans") be administered on a uniform basis for all HOP Part D Plan Participants and Pre-65 Plan Participants (collectively, "Participants"); and

WHEREAS, PSERS, having determined the scope and extent of such prescription drug benefits and the reimbursement to be made therefore, desires that such benefits be administered as economically as possible; and

WHEREAS, ADMINISTRATOR is engaged in the business of performing administrative, managerial, consultative, claims processing and other services in connection with the administration of Medicare Part D Plans and Pre-65 health insurance plans operated by various payors of health care services; and

WHEREAS, PSERS desires to engage ADMINISTRATOR to provide certain services to assist PSERS in the administration of the Benefit Plans, and ADMINISTRATOR desires to accept such engagement in accordance with the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PSERS and ADMINISTRATOR, each intending to be legally bound, hereby agree as follows:

1. Definitions. The following capitalized terms, including their single and plural forms, shall have the meanings set forth below:

1.1 "Affiliate" means any entity, whether partnership, corporation, firm, individual, or otherwise, which either PSERS or ADMINISTRATOR, directly or indirectly, owns or controls, or which owns or is under common control with either PSERS or ADMINISTRATOR.

1.2 "Copayment(s)" means the charge that (a) a Pre-65 Plan Network Pharmacy may charge a Pre-65 Plan Participant at the time of the provision of Covered Prescription Drug Services pursuant to the Pre-65 Plan and HOP Option Selection Materials, or (b) a HOP Part D Plan Network Pharmacy may charge a HOP Part D Plan Participant at the time of the provision of Covered Prescription Drug Services pursuant to HOP Part D Plan and HOP Option Selection Materials, whether specified as a defined dollar amount, a percentage of eligible expenses, or otherwise.

1.3 "Covered Prescription Drug Services" means those covered outpatient prescription drugs and covered pharmacy products, services and supplies dispensed by (a) a Pre-65 Plan Network Pharmacy pursuant to the Pre-65 Plan and HOP Option Selection Materials, or (b) a HOP Part D Plan Network Pharmacy pursuant to the HOP Part D Plan and HOP Option Selection Materials.

1.4 "Governmental Authority" means any federal, state, county, municipal, local, or foreign government and any governmental agency, department, bureau, commission, authority, or body, and any court exercising jurisdiction over ADMINISTRATOR or PSERS.

1.5 "Intellectual Property" means all patents, trademarks, service marks, trade names, service names, registered copyrights, commercially significant unregistered copyrights, (including applications for all of the foregoing), slogans, logos, technology rights and licenses, computer software (including, without limitation, any source or object codes or related documentation), domain names, trade secrets, franchises, inventions and all improvements to any of the foregoing, and the Formularies.

1.6 "Law(s)" means any and all laws, ordinances, rules, regulations, statutes, restrictions, judgments, orders or decrees, requirements, and standards of any Governmental Authority, as adopted, amended, issued, or decreed from time to time including, without limitation, the Medicare and Medicaid Patient and Program Protection Act of 1987, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Omnibus Budget Reconciliation Act of 1990, the Drug Price Competition and Patent Term Restoration Act of 1984, the Medicare Laws and Regulations, all rules and regulations of the Department of Health and Human Services ("HHS") Office of the Inspector General ("OIG"), and federal and state consumer protection and fraud statutes.

1.7 "Medicare Laws and Regulations" means the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and its implementing regulations at 42 C.F.R. Parts 400-423, and all CMS guidance, manuals, policies, bulletins, instructions or directives related thereto.

1.8 "Mail Order Pharmacy" shall mean ADMINISTRATOR's mail service pharmacy.

1.9 “Services” means the services to be furnished by ADMINISTRATOR to PSERS, HOP and/or the Benefit Plans pursuant to the terms of this Agreement.

2. Engagement. PSERS hereby engages ADMINISTRATOR, and ADMINISTRATOR hereby accepts such engagement, to serve as the contracted prescription drug benefits administrator for HOP.

3. ADMINISTRATOR’s Services.

3.1 Services. ADMINISTRATOR shall provide services to PSERS in connection with the administration and operation of (a) the Pre-65 Plan as set forth in Exhibit A attached hereto and incorporated herein, and (b) the HOP Part D Plan as set forth on Exhibit B attached hereto and incorporated herein.

3.2 ADMINISTRATOR Compliance with Law and Licenses. ADMINISTRATOR shall provide Services to PSERS and the Benefit Plans in compliance with the terms and conditions of this Agreement, applicable Law, and the Medicare Laws and Regulations. In addition, ADMINISTRATOR shall obtain and maintain all federal, state and local licenses, permits, certificates, and other regulatory approvals (collectively, “Licenses”) that are required by applicable Law for ADMINISTRATOR to provide the Services and perform its obligations under this Agreement. In addition, ADMINISTRATOR, including the _____ Mail Order Pharmacy, shall not contract with or employ entities or individuals that are excluded by the HHS, OIG or included on the Excluded Parties List System maintained by the General Services Administration.

3.3 Mail Order Pharmacy. The _____ Mail Order Pharmacy shall maintain the following standards throughout the Term of the Agreement:

3.3.1 The _____ Mail Order Pharmacy shall be duly licensed under the laws of the state in which it is located, and any other states as required by applicable Law, and shall abide by all laws, rules, regulations, and directives promulgated by such states’ Boards of Pharmacy. Upon written request, ADMINISTRATOR shall provide PSERS with written evidence of the proper licensure of the _____ Mail Order Pharmacy. In the event that the licensure of the _____ Mail Order Pharmacy is lost, suspended, limited, or conditioned, ADMINISTRATOR shall notify PSERS in writing as soon as ADMINISTRATOR learns of such event.

3.3.2 All Covered Prescription Drug Services shall be dispensed by duly licensed personnel at the _____ Mail Order Pharmacy facility in accordance with applicable Law and generally accepted standards of practice in the local community of pharmacists.

3.3.3 The _____ Mail Order Pharmacy shall exercise its professional judgment in the dispensing of Covered Prescription Drug Services and may refuse to dispense Covered Prescription Drug Services based upon the professional judgment of its pharmacists.

3.4 Mail Order Pharmacy Control. PSERS acknowledges and agrees that the operation and maintenance of the _____ Mail Order Pharmacy and its facilities and equipment, and the provision of all Covered Prescription Drug Services by the _____ Mail Order Pharmacy, shall be solely and exclusively under the control and supervision of ADMINISTRATOR. All decisions regarding the provision of Covered Prescription Drug Services are made solely by ADMINISTRATOR and its respective duly authorized personnel, and not by PSERS. It is expressly understood that the relationship between a Participant and ADMINISTRATOR’s _____ Mail Order

Pharmacy shall be subject to the rules, limitations, and privileges incident to the pharmacist-patient relationship.

4. Obligations of PSERS.

4.1 Duties and Obligations. PSERS shall perform and be responsible for the duties and obligations set forth on (a) **Exhibit A** with respect to the Pre-65 Plan, and (b) **Exhibit B** with respect to the HOP Part D Plan.

4.2 PSERS Compliance with Law and Licenses. PSERS shall perform its obligations under this Agreement and operate its Benefit Plans in compliance with the terms and conditions of this Agreement, applicable Law, and the Medicare Laws and Regulations. In addition, PSERS shall, to the extent applicable, obtain and maintain all Licenses that are required by applicable Law for PSERS to perform its obligations under this Agreement.

5. Compensation.

5.1 Fees. PSERS shall compensate ADMINISTRATOR for its provision of Services as set forth in **Exhibit A-1** and **Exhibit B-1**, attached hereto and incorporated herein.

5.2 Payment Terms. ADMINISTRATOR's billing cycles run _____. ADMINISTRATOR shall submit invoices to PSERS for all fees and expenses as provided for in **Exhibit A-1** and **Exhibit B-1** within ten (10) business days after the end of each billing cycle. PSERS shall remit payment to ADMINISTRATOR via Electronic Fund Transfer ("EFT") within two (2) days following receipt of the invoice from ADMINISTRATOR. PSERS acknowledges and agrees that ADMINISTRATOR has no obligation to pay claims for Covered Prescription Drug Services provided by Pre-65 Plan Network Pharmacies or HOP Part D Plan Network Pharmacies until PSERS makes such funds available to ADMINISTRATOR for payment of such claims.

5.3 Right of Offset. The Parties acknowledge and agree that either Party may offset any unpaid, undisputed amounts owed to it pursuant to this Agreement against any amount due to the other Party, including, without limitation, Rebate (as defined in **Exhibit A**) amounts collected by ADMINISTRATOR from drug manufacturers on PSERS' behalf and fees for Services, provided, however, that the withholding Party shall provide the other Party with documentation of the offset and satisfaction of the unpaid amounts.

5.4 Late Payments and Late Fees. Any undisputed amounts that one Party owes to the other Party pursuant to this Agreement that have not been paid in full on their due date shall bear interest until paid in full at the annual rate of interest equal to the lower of (i) one and one half percent (1½ %) per month, or (ii) the maximum rate of interest then permitted by applicable Law. All such interest shall be immediately payable by the defaulting Party hereunder as late fees.

5.5 Retail Pharmacy Rates. PSERS shall pay ADMINISTRATOR the retail pharmacy rates as negotiated by the Parties and as set forth on **Exhibit A-1** and **Exhibit B-1**, which rates may not necessarily be the same rates that ADMINISTRATOR pays the Pre-65 Plan Network Pharmacies and the HOP Part D Plan Network Pharmacies.

5.6 Cost Certification. ADMINISTRATOR warrants that at no time during the Term of this Agreement will it execute any agreement with any similarly situated client that is more favorable than the one in effect between PSERS and ADMINISTRATOR, unless within sixty (60) days after the

execution thereof Administrator offers the same terms and conditions to PSERS. For purposes of this Section 5.6, a client will be deemed “similarly situated” if the agreement with such other client pursuant to which services are provided in respect of such other client’s health benefit plan(s): (i) covers the same type and category of services (e.g., commercial, Medicare Part D, mail order, specialty, home care, etc.) as provided to PSERS pursuant to this Agreement; (ii) covers substantially the same number of covered lives for each separate type and/or category of services provided to PSERS pursuant to this Agreement; and (iii) covers substantially the same number of covered lives, in the aggregate, for all services provided to PSERS pursuant to this Agreement.

6. ADMINISTRATOR’s Insurance. ADMINISTRATOR shall maintain during the Term of this Agreement a policy of errors and omissions insurance for the protection of PSERS with a limit of liability of at least \$5,000,000, to cover ADMINISTRATOR, and its officers and employees. ADMINISTRATOR shall provide certificates of said insurance to PSERS. ADMINISTRATOR thereafter shall file current certificates with PSERS during the Term of this Agreement and any extension hereof. If ADMINISTRATOR changes insurance carriers for insurance required hereunder, ADMINISTRATOR shall provide PSERS with notice of such change and shall provide PSERS with certificates of said insurance. All insurance policies maintained by ADMINISTRATOR shall contain a provision or endorsement that coverages afforded thereunder shall not be canceled or changed until the carrier or its underwriter has furnished to PSERS at least thirty (30) days prior written notice of any such cancellation or change. If ADMINISTRATOR fails to provide the foregoing insurance information to PSERS due to an oversight, such failure shall not constitute grounds for termination of this Agreement.

7. ADMINISTRATOR as an Independent Contractor. ADMINISTRATOR shall perform Services under this Agreement as an independent contractor and not as an employee or agent of the Commonwealth of Pennsylvania or PSERS and shall maintain workers’ compensation insurance for its own employees where the same is required. ADMINISTRATOR accepts full responsibility for the payment of, and shall pay when due, premiums for workers’ compensation insurance, Social Security taxes, all income tax deductions and any other taxes or payroll deductions required by Law for its employees, servants, or agents who perform Services pursuant to this Agreement.

8. Relationship of the Parties. PSERS acknowledges and agrees that the Services performed by ADMINISTRATOR pursuant to this Agreement shall not be provided to PSERS on an exclusive basis and that ADMINISTRATOR contracts with other benefit plan sponsors for the provisions of the same or similar services, which other plan sponsors may be competitors of PSERS. Notwithstanding the foregoing, ADMINISTRATOR shall be the sole provider of Services as set forth in this Agreement to and on behalf of PSERS and Participants for PSERS’ Benefit Plans.

9. Changes in ADMINISTRATOR’s Status. ADMINISTRATOR shall provide prompt written notice to PSERS of (i) any Change of Control of ADMINISTRATOR or material change in ADMINISTRATOR’s government or private accreditation, or licensing; (ii) the filing of a petition in bankruptcy; (iii) in connection with the administration or management of prescription drug benefits pursuant to this Agreement, litigation alleging ADMINISTRATOR’s negligence or fraud; and (iv) any instance in which the ADMINISTRATOR is criminally convicted or has a civil judgment entered against it for fraudulent activities or is sanctioned under any federal program involving the provision of health care or prescription drug services. For purposes of this Section 9, the term “Change of Control” means: (A) any sale of a ADMINISTRATOR’s assets that are essential to the business of ADMINISTRATOR, or essential to the performance of ADMINISTRATOR’s obligations under this Agreement; or (B) any stock purchase or merger where the shareholders of ADMINISTRATOR prior to the merger do not Control the surviving entity following the merger. The term “Control” means the possession, directly or indirectly, of power to direct and cause the direction of management or policies (whether through ownership of securities or other ownership interests, by contract, or otherwise); provided, however, that any person that

owns, directly or indirectly, more than fifty percent (50%) of the ownership interests of any other person is deemed to Control such person. The provisions of this Section 9 shall apply only to ADMINISTRATOR, _____ Mail Order Pharmacy and other Affiliates of Administrator that directly provide Services pursuant to this Agreement, and not to any other Affiliate of ADMINISTRATOR.

10. Indemnification.

10.1 ADMINISTRATOR's Indemnification Obligations. ADMINISTRATOR agrees to defend, indemnify, and hold harmless the Commonwealth of Pennsylvania, PSERS and PSERS' beneficiaries, directors, officers, employees, and agents (collectively, the "PSERS Indemnitees") from and against any and all liability, loss, damages (of every kind and nature), legal fees, costs, and expenses (including, without limitation, reasonable attorney, expert and accountant fees) (collectively, "Losses") arising from or relating to any claim which is attributable to: (i) the breach by ADMINISTRATOR or any of the ADMINISTRATOR Indemnitees (as defined below) of any of ADMINISTRATOR's representations, duties or obligations under this Agreement; or (ii) any negligent act or omission, or willful misconduct, by ADMINISTRATOR or any of the ADMINISTRATOR Indemnitees in connection with ADMINISTRATOR's representations or performance of ADMINISTRATOR's duties or obligations under this Agreement.

11. Records and Audits.

11.1. Confidentiality of Medical Records. ADMINISTRATOR and PSERS shall maintain the confidentiality, privacy and security of Participants health records in accordance with all applicable Laws and the Medicare Laws and Regulations, including, but not limited to, 42 C.F.R. § 423.136.

11.2 Maintenance of Records. ADMINISTRATOR and PSERS each shall keep and maintain, in accordance with prudent business practices and the Medicare Laws and Regulations, accurate, complete and timely books, records, files and accounts ("Records") of all transactions occurring in connection with this Agreement. ADMINISTRATOR and PSERS each shall retain such Records during the Term of this Agreement and for a period of at least (i) four (4) years, with respect to Records relating to Pre-65 Participants, and (ii) ten (10) years, with respect to records relating to HOP Part D Plan Participants, following the termination or expiration of this Agreement, or for such longer period of time as required by applicable Law or an on-going audit or investigation of ADMINISTRATOR, PSERS or another person that is being conducted by a Governmental Authority ("Government Audit"). Any Records that are the subject of an outstanding audit or inspection as contemplated hereunder may not be discarded, destroyed or purged until the audit or inspection has been fully completed. ADMINISTRATOR shall provide a complete electronic claim file in ADMINISTRATOR's standard claims history format, version 5.0, to PSERS, or its designee, no later than ten (10) days following the end of each calendar month. If PSERS requests that ADMINISTRATOR provide such claims files to PSERS in NCPDP version 2.0 format, PSERS shall pay an additional fee to ADMINISTRATOR for such service as mutually agreed to by the Parties.

11.3 Audits.

11.3.1 Audit of ADMINISTRATOR Records. ADMINISTRATOR, in accordance with applicable Law and the Medicare Laws and Regulations, shall permit HHS, the Comptroller General, CMS, PSERS, the Commonwealth of Pennsylvania or their designees, including the Auditor General of the Commonwealth of Pennsylvania, the right to inspect, evaluate and audit the facilities, offices, equipment, books, records, contracts, documents, papers and accounts relating to ADMINISTRATOR's performance of the Services pursuant to this Agreement. PSERS' right to audit ADMINISTRATOR ("PSERS Audit") must be conducted by an independent third party

("Independent Third Party") designated by PSERS, provided such Independent Third Party enters into a non-disclosure agreement with ADMINISTRATOR upon request. The right of HHS, the Comptroller General, CMS, PSERS, Independent Third Party, the Commonwealth of Pennsylvania or their designees to inspect, evaluate and audit any of the foregoing types of information of Administrator shall exist during the Term of this Agreement and for a period of (i) four (4) years, with respect to Records relating to Pre-65 Participants, and (ii) ten (10) years, with respect to records relating to HOP Part D Plan Participants, following the termination or expiration of this Agreement, or for such longer period of time as required by applicable Law or to complete an on-going Government Audit or PSERS' Audit.

11.3.2 Government Audit. Each Party shall notify the other Party as soon as reasonably practicable, but in no event later than five (5) business days, after becoming aware, whether in writing or orally, of any Government Audit. Each Party shall cooperate and comply with any Government Audit within the time periods specified by the Governmental Authority and shall comply with any requirements or directives issued by the Governmental Authority as a result of such Government Audit.

11.3.3 Payment for Audit. PSERS shall pay all costs associated with a PSERS Audit, whether performed directly by PSERS or an Independent Third Party; provided, however, PSERS shall not be obligated to pay for costs incurred by ADMINISTRATOR to respond to necessary and reasonable requests and other requirements made by PSERS or its Independent Third Party auditor in connection with a PSERS Audit. ADMINISTRATOR and PSERS shall each pay their own out-of-pocket costs associated with responding to any Government Audit.

11.3.4 Pharmacy Audits. ADMINISTRATOR will conduct real-time and retrospective desk audits of the Pre-65 Plan Pharmacy Network and HOP Part D Plan Pharmacy Network to assure appropriate billings by Pre-65 Plan Network Pharmacies and HOP Part D Plan Network Pharmacies (collectively, the "Pharmacies"). No more than once per calendar year and upon thirty (30) days prior written notice to ADMINISTRATOR, PSERS may request that ADMINISTRATOR conduct site audits of up to one percent (1%) of the Pharmacies. PSERS shall be responsible for all costs and expenses incurred in connection with such site audits.

12. Confidential Information. In connection with this Agreement, ADMINISTRATOR and PSERS (each, a "Disclosing Party") will disclose to each other (each, a "Recipient"), directly or indirectly, certain information that the Disclosing Party considers confidential or proprietary ("Confidential Information"). Except as prohibited by applicable Law, Confidential Information includes, without limitation, the terms and conditions of this Agreement, information relating to Participants, including lists of Participants and Participant prescription claim records, benefit designs and structure, utilization review and quality assurance procedures, Intellectual Property, business methods and processes, prices, the Pre-65 Plan Formulary, HOP Part D Plan Formulary and the operations of ADMINISTRATOR's Formulary Advisory Committee, claims adjudication processes, reimbursement procedures, Pre-65 Plan Network Pharmacy Agreements (as defined in **Exhibit A**), HOP Part D Plan Network Pharmacy Agreements (as defined in **Exhibit B**), Pre-65 Plan Rebate Agreements (as defined in **Exhibit A**), HOP Part D Plan Rebate Agreements (as defined in **Exhibit B**), the Pre-65 Plan Pharmacy Program Specifications (as defined in **Exhibit A**), the HOP Part D Plan Pharmacy Program Specifications (as defined in **Exhibit B**) customer lists, lists of Pre-65 Plan Network Pharmacies (as defined in **Exhibit A**), lists of HOP Part D Plan Network Pharmacies (as defined in **Exhibit B**), lists of drug manufacturers, marketing plans, software and financial systems, information relating to the operational aspects of this Agreement, and other information relating to each Party's business that is not generally available to the public.

12.1 Non-Disclosure of Confidential Information. The Recipient shall hold in confidence and shall not disclose any Confidential Information of the Disclosing Party, except (i) as expressly permitted under this Agreement, or (ii) as required by applicable Law, including the Medicare Laws and Regulations and the Commonwealth of Pennsylvania's "Right to Know Law," 65 P.S. §§67.101 et. seq., in which instance the Recipient shall provide the Disclosing Party with prior written notice of any such disclosure so that the Disclosing Party can seek an appropriate protective order. The Recipient shall disclose such Confidential Information only to its directors, officers, employees, agents and representatives who have a need to receive such Confidential Information in order to perform under this Agreement, are apprised of the confidential nature of the Confidential Information and are, or have agreed in writing to be, bound by the provisions of this Agreement. Each Party shall use best efforts to minimize disclosure of this Agreement and other Confidential Information to third parties including, without limitation, in circumstances where disclosure of this Agreement or other Confidential Information may be required by applicable Law or the Medicare Laws and Regulations.

12.2 Limitation on Obligations. The obligations specified in Section 12.1 above shall not apply with respect to any information which the Recipient can establish by written records: (i) was already in the Recipient's possession prior to disclosure hereunder; (ii) is or becomes available to the public through no wrongful act of the Recipient; (iii) is disclosed, without restriction on further disclosure, to the Recipient by a third party having no duty of confidentiality with respect to such information whether to the Disclosing Party or to another party, and having the legal right to disclose such information; (iv) is approved for release by written authorization of an officer of the Disclosing Party; or (v) has been developed by or for the Recipient independently by persons having no access to the Confidential Information.

12.3 Return and Destruction of Confidential Information. Immediately upon the expiration or other termination of this Agreement, each Party upon written request shall return to the other Party any and all copies of the other Party's Confidential Information, provided that one copy may be kept for archival purposes pursuant to the confidentiality and disclosure requirements of this Agreement. All Confidential Information disclosed by a Party under this Agreement is and shall remain the exclusive property of the Disclosing Party and the Disclosing Party shall retain all rights, title and interest therein.

13. Ownership and Intellectual Property. All reports and claims documents relating to and identifying PSERS and HOP prepared and delivered hereunder by ADMINISTRATOR shall be confidential and shall become the property of PSERS and shall not be published, circulated, or used in any manner by ADMINISTRATOR without PSERS' prior written approval. ADMINISTRATOR's books and records, programs, operations, procedures, software, reporting packages, user documentation and related information shall remain the sole and exclusive property of ADMINISTRATOR. Each Party shall retain all rights in all Intellectual Property that each owned prior to the Commencement Date, and this Agreement shall not be interpreted or construed to grant a Party any rights or licenses in the other Party's pre-existing Intellectual Property.

14. Name, Symbol and Service Mark. During the Term of this Agreement, ADMINISTRATOR and PSERS agree that they shall not use each other's name, symbol, logo, or service mark for any purpose whatsoever including, without limitation, in connection with marketing or publications describing, explaining, or otherwise discussing this Agreement, without the prior written approval of the other Party. ADMINISTRATOR and PSERS hereby grant each other approval to use each other's name, symbol, logo, or service mark in connection with informing Participants and the general public of ADMINISTRATOR's role in providing Services under this Agreement.

15. Business Associate Addendum. The Parties shall comply with the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder by HHS during the Term of this Agreement and any extension thereof. The Parties shall enter into a Business Associate Addendum, as required by HIPAA, the form and substance of which is set forth in **Exhibit D** attached hereto. Subject to the provisions of the Business Associate Addendum, PSERS grants ADMINISTRATOR permission during and after the Term of this Agreement to use and/or transfer to third parties de-identified Protected Health Information collected by ADMINISTRATOR or provided by PSERS for research, profiling and other business purposes. PSERS shall retain full ownership rights over all resultant data.

16. Conflict of Interest. ADMINISTRATOR covenants that to the best of its knowledge it has no interest and shall not knowingly acquire any interest, direct or indirect, that would conflict in any material manner or degree with the performance of its Services hereunder. ADMINISTRATOR further covenants that, in the performance of this Agreement, it will not knowingly employ any person having any such conflicting interest.

17. Subcontractors. **ADMINISTRATOR may delegate certain of its administrative functions hereunder to independent contractors. ADMINISTRATOR shall retain full responsibility and liability for the performance of the subcontracted service.**

18. Assignment or Transfer. Neither Party may assign or otherwise transfer this Agreement (whether voluntarily or by operation of law or otherwise), or any interest herein, or any claim arising hereunder to any other party or parties without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may assign this Agreement to an Affiliate without the consent of the other Party.

19. Commonwealth Contract Provisions. ADMINISTRATOR shall comply with the Commonwealth Contract Provisions attached hereto as **Exhibit E** and incorporated by reference herein, which provisions may be modified from time to time upon written notice to ADMINISTRATOR.

20. Notices. Any notice, demand, direction, instruction, or other communication required or permitted hereunder shall be in writing and shall be sufficiently given for all purposes when (i) sent by certified or registered U.S. mail, return receipt requested, postage prepaid, (ii) sent by a nationally recognized overnight courier service, or (iii) delivered in person to any Party at the following addresses or such other addresses as may be designated in writing from time to time by the Parties:

PSERS: Glen Grell, Executive Director
Public School Employees' Retirement System
5 North Fifth Street
Harrisburg, Pennsylvania 17101

ADMINISTRATOR: _____ (d/b/a _____)

21. Term.

21.1 Initial Term. The initial Term of this Agreement shall commence on the Effective Date (the “Commencement Date”) and shall terminate on December 30, 2020, unless earlier terminated pursuant to its terms (“Initial Term”).

21.2 Renewal Terms. At the conclusion of the Initial Term, and at the conclusion of each successive Renewal Term (as defined below), the Term of this Agreement may, upon the mutual written consent of the Parties be renewed for up to two (2) additional twelve (12) month periods (each such additional twelve month renewal period, a “Renewal Term” and all such Renewal Terms, if any, together with the Initial Term, the “Term”). The process for renewal of this Agreement shall be as follows: (i) ADMINISTRATOR shall submit proposed renewal terms to PSERS at least ninety (90) days prior to the expiration of the applicable Term; (ii) at least thirty (30) days prior to the expiration of the applicable term, PSERS shall provide ADMINISTRATOR with either (a) a signed letter of acceptance of such renewal terms which shall operate to renew this Agreement without any further action; or (b) a notice of its intent to terminate this Agreement which shall be effective upon the expiration of the applicable Term.

21.3 Approval by Contracting Officer. The Commencement Date shall be fixed by the Contracting Officer after the Agreement has been fully executed by ADMINISTRATOR and by PSERS and all approvals required by Commonwealth of Pennsylvania contracting procedures have been obtained. This Agreement shall not be a legally binding contract until after the Commencement Date is affixed and the fully-executed Agreement has been sent to ADMINISTRATOR. ADMINISTRATOR shall not start performance of any work prior to the Commencement Date, and the Commonwealth of Pennsylvania shall not be liable to pay ADMINISTRATOR for any Services performed or expenses incurred before the Commencement Date. No agency employee has the authority to verbally direct the commencement of any work under this Agreement.

22. Termination. The Initial Term, or any Renewal Term, of this Agreement may be terminated as follows:

22.1 Suspension, Revocation or Termination of Covered Prescription Drug Services. ADMINISTRATOR acknowledges that PSERS oversees and is ultimately accountable to CMS for all HOP Part D Plan functions and responsibilities contained in this Agreement. In the event that CMS or PSERS determines that ADMINISTRATOR has not performed satisfactorily with respect to any of the material Services provided in connection with the HOP Part D Plan, PSERS has the right to suspend, revoke or terminate the Services performed by ADMINISTRATOR, or this Agreement, provided, however, that, to the extent feasible and permissible under the Medicare Laws and Regulations, prior to such suspension, revocation or termination, PSERS shall provide ADMINISTRATOR with sixty (60) days prior written notice and an opportunity to cure the deficiency.

22.2 PSERS Termination for Convenience. Following expiration of the initial twelve (12) months of this Agreement, PSERS may terminate this Agreement at any time, without cause, by furnishing ADMINISTRATOR with written notice not less than ninety (90) days prior to the effective date of termination. In addition, at any time during the Term of this Agreement, PSERS may terminate this Agreement, for cause, upon furnishing ADMINISTRATOR written notice not less than ninety (90) days prior to the effective date of termination.

22.3 ADMINISTRATOR Termination for Convenience. ADMINISTRATOR may terminate this Agreement for any reason or no reason at all at any time by furnishing PSERS written notice not less than one hundred and eighty (180) days prior to the effective date of termination.

22.4 Non-Payment. In the event PSERS fails to pay ADMINISTRATOR on a timely basis, amounts due and owing under this Agreement, then ADMINISTRATOR may suspend performance of Services by furnishing PSERS written notice not less than ten (10) days prior to the effective date of suspension of performance. In the event PSERS fails to pay such amounts within such ten (10) day notice period, then ADMINISTRATOR may terminate this Agreement by furnishing PSERS written notice effective not less than twenty (20) days after the expiration of the ten (10) day notice period.

22.5 Effect of Termination; Run-Out Period. In the event of termination or expiration under this Agreement, ADMINISTRATOR shall be paid for all amounts due and owing through the effective date of such termination or expiration. Termination of this Agreement shall not affect the continuing obligations of either Party with respect to claims by Participants or Rebates earned for Covered Prescription Drug Services while this Agreement was in effect. Such claims for Covered Prescription Drug Services dispensed prior to the termination of this Agreement will be processed and paid for a run-out period not to exceed six (6) months following the termination date, provided that PSERS continues to make the payments specified in this Agreement. All unapplied funds previously received from PSERS shall be returned to PSERS within thirty (30) days of the end of such run-out period. ADMINISTRATOR shall provide appropriate claim files and mail service open prescription files for an orderly and smooth transition to the succeeding vendor, as well as all data needed for PSERS to comply with CMS reporting requirements relating to the HOP Part D Plan. Following the expiration or termination of this Agreement, ADMINISTRATOR shall provide reasonable support to assist PSERS in complying with any regulatory filing requirements under Medicare Laws and Regulations that are applicable to this Agreement and the Services provided hereunder for periods prior to such expiration or termination.

23. General Provisions.

23.1 Applicable Law. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of federal or state courts in Pennsylvania. ADMINISTRATOR consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. ADMINISTRATOR agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law. Any legal proceeding involving any contract claim asserted against PSERS arising out of this Agreement may only be brought before and subject to the exclusive jurisdiction of the Board of Claims of the Commonwealth of Pennsylvania pursuant to 62 Pa. C.S. §§1721-1726, and that such proceeding shall be governed by the procedural rules and laws of the Commonwealth of Pennsylvania, without regard to the principles of conflicts of law.

23.2 Change in Law. In the event of any change in local, state or federal laws, rules or regulations, including any judicial or administrative interpretation thereof, that materially alters the rights, duties, obligations or cost of performance of either Party under this Agreement, the Parties will negotiate in good faith mutually acceptable modifications of this Agreement. Such modifications may include, but are not limited to, changes in the benefit design, drug coverages and, to the extent that such changes affect the cost of performance, changes to fees under this Agreement. If PSERS and ADMINISTRATOR are unable to agree upon mutually acceptable modifications, then either PSERS or

ADMINISTRATOR may terminate this Agreement upon not less than sixty (60) days' prior written notice.

23.3 Reservation of Immunities. PSERS reserves all immunities, defenses, rights, or actions arising out of its sovereign status or from the Eleventh Amendment to the United States Constitution. No provision of this Agreement shall be construed as a waiver of any such immunities, defenses, rights, or actions.

23.4 Binding Effect. This Agreement inures to the benefit of and binds all Parties hereto and their respective successors and assigns.

23.5 No Third-Party Beneficiaries. This Agreement is not intended and shall not be construed to create third-party beneficiary rights in any person, including but not limited to any health care provider or Participant.

23.6 Amendment; Waiver. No amendment or modification of this Agreement shall have any force or effect unless it is in writing and signed by the Parties hereto. The failure of any Party to insist in any one or more instances upon performance of any terms or conditions of this Agreement shall not be construed as a waiver of future performance of any such term, covenant or condition, and the obligations of such Party with respect thereto shall continue in full force and effect.

23.7 Severability. If any one or more of the covenants, agreements, provisions, or terms of this Agreement shall be held contrary to any express provision of Law, or contrary to the policy of express Law though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements, provisions, or terms shall be deemed severable from the remaining covenants, agreements, provisions, or terms of this Agreement and shall in no way affect the validity or enforceability of the remainder of this Agreement or the rights of the Parties hereto.

23.8 Certification of Taxpayer Identification Number. Execution of this Agreement constitutes certification by ADMINISTRATOR that (i) the number appearing on the signature page is ADMINISTRATOR's correct taxpayer identification number and (ii) ADMINISTRATOR is not subject to backup withholding because (a) ADMINISTRATOR is exempt from backup withholding, (b) ADMINISTRATOR has not been notified by the I.R.S. that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the I.R.S. has notified ADMINISTRATOR that it is no longer subject to backup withholding.

23.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

23.10 Construction. The Parties have participated jointly in the negotiations and drafting of this Agreement and in the event of any ambiguity or question of intent or interpretation, no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

23.11 Warranty of Authority. ADMINISTRATOR represents, warrants and covenants to PSERS that the individual executing this Agreement on behalf of ADMINISTRATOR has the right, power and authority to enter into this Agreement on behalf of ADMINISTRATOR and has been duly authorized to do so by all necessary corporate action; and when this Agreement is executed by such individual, it shall create a valid and binding obligation of ADMINISTRATOR,

enforceable in accordance with the terms herein. PSERS represents, warrants and covenants to ADMINISTRATOR that the individual executing this Agreement on behalf of PSERS has the right, power and authority to enter into this Agreement on behalf of PSERS and has been duly authorized to do so by all necessary corporate action; and when this Agreement is executed by such individual, it shall create a valid and binding obligation of PSERS, enforceable in accordance with the terms herein.

23.12 Headings. The headings and captions in this Agreement are for convenience and reference purposes only and shall not be construed or deemed to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions hereof.

23.13 Entire Agreement. This Agreement (including any exhibits, addenda, or schedules attached hereto) constitutes the entire agreement between the Parties with respect to the subject matter hereof and except as expressly provided herein, this Agreement supersedes all prior contracts and undertakings, written or oral, between the Parties concerning the same subject matter.

23.14 Survival. The provisions of Sections 10, 11, 12, and 22.5 shall survive the expiration or termination of this Agreement for any reason whatsoever.

23.15 Force Majeure. Neither Party will incur any liability to the other Party if its performance of any obligation pursuant to the Agreement is prevented or delayed by causes beyond its control and without the fault or negligence of either Party. Causes beyond a Party's control may include, but are not limited to, acts of God or war, changes in applicable Law, or the requirements of any Governmental Authority, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes, and freight embargoes. The Party whose performance is delayed or impaired shall notify the other Party orally within five (5) days and in writing within ten (10) days of the date on which the Party becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the Agreement is prevented or delayed, and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. After receipt of such notification, the Party may elect either to terminate the Agreement or to extend the time for performance as reasonably necessary to compensate for the delay. In the event of a declared emergency by competent Governmental Authorities in the Commonwealth of Pennsylvania, PSERS by notice to ADMINISTRATOR, may suspend all or a portion of the Agreement. PSERS shall be obligated to pay ADMINISTRATOR for all Services performed prior to the date of suspension or termination due to the force majeure event.

HIPAA BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Agreement (“Agreement”) is made as of the Effective Date, by and between the Public School Employees’ Retirement System (“PSERS”) and _____ (“Associate”).

RECITALS

WHEREAS, PSERS and Associate intend to protect the privacy and provide for the confidentiality of Protected Health Information (“PHI”), including Individually Identifiable Health Information, and the security of Electronic Protected Health Information (“ePHI”) disclosed to or collected by Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws; and

WHEREAS, PSERS wishes to disclose certain information to Associate, and Associate is authorized to collect certain information (collectively, “Information”), pursuant to the terms of the Agreement, some of which may constitute PHI and/or Ephi; and

WHEREAS, the purpose of this Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Sections 160 through 164 of the Code of Federal Regulations (“CFR”), as the same may be amended from time to time.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, and the mutual promises and undertakings hereinafter set forth, and the exchange of information pursuant to the Agreement and this Addendum, the parties agree as follows:

1. Definitions

- a. “Business Associate” shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103.
- b. “Covered Entity” shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103.
- c. “Designated Record Set” shall have the meaning given to such term under HIPAA and the HIPAA regulations, including, but not limited to, 45 CFR Section 164.524.
- d. “Electronic Media” shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103.
- e. “Electronic Protected Health Information” or “ePHI” shall have the meaning given to such terms under HIPAA and HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103, that is transmitted by Electronic Media or maintained in Electronic Media, and shall be at all times considered PHI for purposes of this Agreement and the Agreement.
- f. “HITECH” shall mean the Health Information Technology for Economic and Clinical Health Act of 2009, Public Law 111-5, as set forth in 42 U.S.C. Sections 17921 – 17940 of the American Recovery and Reinvestment Act of 2009 and 45 CFR Sections 160 through 164.

- g. “Individually Identifiable Health Information” shall have the meaning given to such term under HIPAA, including, but not limited to the privacy regulation (“Privacy Rule”) and the security regulation (“Security Rule”) promulgated by the United States Department of Health and Human Services under the authority of HIPAA, and shall at all times be considered PHI for purposes of this Agreement and the Agreement.
- h. “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 164.103 and Section 164.501.

2. Obligations of Associate

- a. Permitted Uses and Disclosures. Associate may use and/or disclose PHI received by Associate pursuant to this Agreement (“PSERS’ PHI”) solely in accordance with the specifications set forth in the Agreement, and in conjunction with the services it provides pursuant to the Agreement, consistent with the manner in which PSERS is permitted to use and disclose such information by 45 CFR Section 164.502 (as it may be amended from time to time) or as otherwise permitted or required by law.
- b. Nondisclosure. Associate shall not use or further disclose PSERS’ PHI otherwise than as permitted or required by the Agreement or as required by law.
- c. Safeguards. Associate shall use appropriate safeguards as required by the Privacy Rule to prevent use or disclosure of PSERS’ PHI otherwise than as provided for by the Agreement or this Agreement. Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate’s operations and the nature and scope of its activities.
- d. Agents. Associate shall require any of its non-affiliated subcontractors and/or agents utilized in providing services to PSERS under the Agreement to agree, in writing, to adhere to equivalent restrictions and conditions on the use and/or disclosure of PHI that apply to Associate under this Agreement.
- e. Reporting of Disclosures. Associate shall report to PSERS any use or disclosure of PSERS’ PHI otherwise than as provided for by the Agreement of which Associate becomes aware.
- f. Associate’s Agents. Associate shall ensure that any agents, including subcontractors, to whom it provides PHI received for (or created or received by Associate on behalf of) PSERS agree to the same restrictions and conditions that apply to Associate with respect to such PHI.
- g. Availability of Information to PSERS. Associate shall make available to PSERS such information as PSERS may require to fulfill PSERS’ obligations to provide access to, provide a copy of, and account for disclosures with respect to PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Sections 164.524 and 164.528.

- h. Amendment of PHI. Associate shall make PSERS' PHI available to PSERS as PSERS may require to fulfill PSERS' obligations to amend PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 164.526, and Associate shall, as directed by PSERS, incorporate any amendments to PSERS' PHI into copies of such PHI maintained by Associate.
- i. Internal Practices. Associate shall make its internal practices, agreements, policies and procedures and books and records relating to the use and disclosure of PHI received from PSERS (or created or received by Associate on behalf of PSERS) available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining Associate's compliance with the Privacy Rule, HIPAA and the HIPAA Regulations.
- j. Accounting of Disclosures of PHI. Within thirty (30) days of receiving notice by PSERS that PSERS has received a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528, Associate shall provide to PSERS a list of disclosures (if any) made: for public health purposes, regarding abuse, neglect or domestic violence; to a health oversight agency; in the course of a judicial or administrative proceeding; for law enforcement purposes; to coroners, medical examiners and funeral directors; to organ procurement organizations; for research; as required by law; to prevent a serious harm to health or safety; to military and veterans officials; or for workers' compensation purposes. In each case Associate shall provide at least the following information with respect to each such disclosure: (a) the date of the disclosure; (b) the name of the entity or person who received the PHI; (c) a brief description of the PHI disclosed; (d) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure.
- k. Access to Designated Record Set. At such time as Associate holds all or a portion of a PSERS' member's Designated Record Set that is not in PSERS' possession, Associate shall provide such information to PSERS to allow PSERS to fulfill access requests made in compliance with 45 C.F.R. § 164.524 or, at its option, respond directly to such requests.
- l. Amendment to Designated Record Set. At such time as Associate holds and has edit control over portions of the Designated Record Set with respect to a PSERS covered member, Associate shall process at PSERS' cost, in the manner required by 45 C.F.R. § 526, requests for amendment to the Protected Health Information relevant to those persons.
- m. Security of ePHI. Associate shall comply with the privacy, security, and security breach notification provisions applicable to a Business Associate under Subtitle D of the HITECH Act, and any regulations promulgated thereunder. To the extent Associate creates, receives, maintains, or transmits the ePHI, it shall:
 - (i) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the ePHI;
 - (ii) require all of its non-affiliated subcontractors and agents utilized in providing services to PSERS to agree, in writing, to implement reasonable and appropriate safeguards for the ePHI as those that apply to Associate pursuant to this subsection m; and
 - (iii) report to PSERS, in writing, any security incident of which it becomes aware. For purposes of this Agreement, "security incident" shall mean successful unauthorized access or disclosure or modification, destruction or interference with the ePHI by a third party.

- n. Notification of Breach. During the term of the Agreement, Associate shall notify PSERS within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

3. Obligations of PSERS.

- a. Safeguards. PSERS shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Associate pursuant to the Agreement, in accordance with the standards and requirements of HIPAA and the HIPAA Regulations, until such PHI is received by Associate, and to obtain any consent or authorization required under the Privacy Rule or state law prior to transmitting the PHI to Associate.
- b. Arrangements Pertaining to Restrictions on Use/Disclosure of PHI. PSERS shall provide written notice of any arrangements permitted or required of PSERS under 45 C.F.R. parts 160 and 164 that may affect in any manner the use and/or disclosure of PHI by Associate under the Agreement and this Addendum including, but not limited to, restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. Section 164.522, entered into by PSERS.

4. Audits, Inspection and Enforcement. From time to time, upon reasonable notice, upon a reasonable determination by PSERS that Associate has breached the Agreement or this Addendum, PSERS may inspect the facilities, systems, books and records of Associate to monitor compliance with this Addendum. Associate shall promptly remedy any violation of any term of this Addendum and shall certify the same to PSERS in writing. The fact that PSERS inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does PSERS' (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of PSERS' rights under the Agreement or this Addendum.

5. Termination

- a. Material Breach. A breach by Associate of any provision of this Addendum, as reasonably determined by PSERS, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by PSERS pursuant to the Agreement.
- b. Reasonable Steps to Cure Breach. If PSERS knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate the Agreement, then PSERS shall take reasonable steps to cure such breach or end such violation, as applicable. If PSERS' efforts to cure such breach or end such violation are unsuccessful, PSERS shall either (i) terminate the Agreement, if feasible or (ii) if termination of the Agreement is not feasible, PSERS shall report Associate's breach or violation to the Secretary of the Department of Health and Human Services.
- c. Judicial or Administrative Proceedings. Either party may terminate the Agreement, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA or (ii) a finding or stipulation that the other party has violated any standard or requirement of

HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

d. Effect of Termination. Upon termination of the Agreement for any reason, Associate shall return and destroy all PHI received from PSERS (or created or received by Associate on behalf of PSERS) that Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, it shall continue to extend the protections of the Agreement and this Addendum to such information and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

6. Indemnification. Associate will indemnify, hold harmless and defend PSERS from and against any and all claims, losses, liabilities, costs and other expenses incurred as a result of, or arising directly or indirectly out of or in connection with: (i) any misrepresentation, breach of warranty or non-fulfillment of any undertaking on the part of the Associate under this Addendum; and (ii) any claims, demands, awards, judgments, actions and proceedings made by any person or organization arising out of or in any way connected with Associate's performance under this Addendum.

7. Disclaimer. PSERS makes no warranty or representation that compliance by Associate with this Addendum, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Associate's own purposes or that any information in Associate's possession or control, or transmitted or received by Associate, is or will be secure from unauthorized use or disclosure. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.

8. Certification. To the extent that PSERS determines that such examination is necessary to comply with PSERS' legal obligations pursuant to HIPAA relating to certification of its security practices, PSERS, or its authorized agents or contractors, may, at PSERS' expense, examine Associate's facilities, systems, procedures and records as may be necessary to certify to PSERS the extent to which Associate's security safeguards comply with HIPAA, the HIPAA regulations or this Addendum.

9. Amendment. The parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of the Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA Regulations and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that PSERS must receive satisfactory written assurance from Associate that Associate will adequately safeguard all PHI that it receives or creates pursuant to the Agreement or this Addendum. Upon PSERS' request, Associate agrees promptly to enter into negotiations with PSERS concerning the terms of an amendment to the Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Regulations or other applicable laws. PSERS may terminate the Agreement upon 30 days' written notice in the event (i) Associate does not promptly enter into negotiations to amend the Agreement when requested by PSERS pursuant to this Section or (ii) Associate does not enter into any amendment to the Agreement providing assurances regarding the safeguarding of PHI that PSERS reasonably deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA Regulations.

10. Assistance in Litigation or Administrative Proceedings. Associate shall make itself, and any subcontractors, employees or agents assisting Associate in the performance of its obligations under the Agreement or this Addendum, available to PSERS, at no cost to PSERS, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against PSERS, its directors, officers, or employees,

based upon claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security and privacy, except where Associate or its subcontractor, employee or agent is a named adverse party.

11. No Third Party Beneficiaries. Nothing express or implied in the Agreement or this Addendum is intended to confer, nor shall anything herein confer, upon any person other than PSERS, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

12. Effect on Agreement. Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Agreement shall remain in force and effect.

13. Interpretation. This Addendum and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, HIPAA regulations, and applicable state laws.

STANDARD CONTRACT
TERMS AND CONDITIONS FOR SERVICES

1. TERM OF CONTRACT

The term of the Contract shall commence on the Effective Date (as defined below) and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract. The Effective Date shall be fixed by the Contracting Officer after the Contract has been fully executed by the Contractor and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. The Contract shall not be a legally binding contract until after the Effective Date is affixed and the fully-executed Contract has been sent to the Contractor. The Contracting Officer shall issue a written Notice to Proceed to the Contractor directing the Contractor to start performance on a date which is on or after the Effective Date. The Contractor shall not start the performance of any work prior to the date set forth in the Notice to Proceed and the Commonwealth shall not be liable to pay the Contractor for any service or work performed or expenses incurred before the date set forth in the Notice to Proceed. No agency employee has the authority to verbally direct the commencement of any work under this Contract. The Commonwealth reserves the right, upon notice to the Contractor, to extend the term of the Contract for up to three (3) months upon the same terms and conditions. This will be utilized to prevent a lapse in Contract coverage and only for the time necessary, up to three (3) months, to enter into a new contract.

2. INDEPENDENT CONTRACTOR

In performing the services required by the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the Commonwealth.

3. COMPLIANCE WITH LAW

The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of the Contract.

4. ENVIRONMENTAL PROVISIONS

In the performance of the Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

5. POST-CONSUMER RECYCLED CONTENT

Except as specifically waived by the Department of General Services in writing, any products which are provided to the Commonwealth as a part of the performance of the Contract must meet the minimum percentage levels for total recycled content as specified in Exhibits A-1 through A-8 to these Standard Contract Terms and Conditions.

6. COMPENSATION/EXPENSES

The Contractor shall be required to perform the specified services at the price(s) quoted in the Contract. All services shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for work performed to the satisfaction of the Commonwealth. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract.

7. INVOICES

Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall send an *invoice itemized by line item* to the agency at the address referenced on the purchase order promptly after services are satisfactorily completed. The invoice should include only amounts due under the Contract/purchase order. The purchase order number must be included on all invoices. In addition, the Commonwealth shall have the right to require the Contractor to prepare and submit a “Work In Progress” sheet that contains, at a minimum, the tasks performed, number of hours, hourly rate, and the purchase order or task order to which it refers.

8. PAYMENT

- a. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) thirty (30) days after a proper invoice actually is received at the “Provide Service and Bill To” address if a date on which payment is due is not specified in the Contract (a “proper” invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.
- b. The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or purchase order. The Commonwealth’s purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of the Contract or purchase order.

9. TAXES

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. 23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this paragraph is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

10. WARRANTY

The Contractor warrants that all services performed by the Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or materials. Unless otherwise stated in the contract, all services and parts are warranted for a period of one year following completion of performance by the Contractor and acceptance by the Commonwealth.

The Contractor shall correct any problem with the service and/or replace any defective part with a part of equivalent or superior quality without any additional cost to the Commonwealth.

11. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY

The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of the Contract which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided to the commonwealth under the contract. The Contractor shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of the Contract. This is upon condition that the Commonwealth shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the Commonwealth may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization. The Contractor shall indemnify and hold the Commonwealth harmless from all damages, costs, and expenses, including attorney's fees that the Contractor or the Commonwealth may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Contract. If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing. If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of the Commonwealth, only those items of equipment or software which are held to be infringing, and to pay the Commonwealth: 1) any amounts paid by the Commonwealth towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the Commonwealth for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

12. OWNERSHIP RIGHTS

The Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the Commonwealth as part of the performance of the Contract.

13. ASSIGNMENT OF ANTITRUST CLAIMS

The Contractor and the Commonwealth recognize that in actual economic practice, overcharges by the Contractor's suppliers resulting from violations of state or federal antitrust laws are in fact borne by the Commonwealth. As part of the consideration for the award of the Contract, and intending to be legally bound, the Contractor assigns to the Commonwealth all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products and services which are the subject of this Contract.

14. HOLD HARMLESS PROVISION

The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract and shall, at the request of the Commonwealth, defend any and all actions brought against the Commonwealth based upon any such claims or demands.

15. AUDIT PROVISIONS

The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract. The Contractor shall preserve books, documents, and records that relate to costs or pricing data for the Contract for a period of three (3) years from date of final payment. The Contractor shall give full and free access to all records to the Commonwealth and/or their authorized representatives.

16. DEFAULT

- a. The Commonwealth may, subject to the provisions of Paragraph 17, Force Majeure, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in Paragraph 18, Termination Provisions) the whole or any part of this Contract for any of the following reasons:
 - 1) Failure to begin work within the time specified in the Contract or as otherwise specified;
 - 2) Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract terms;
 - 3) Unsatisfactory performance of the work;
 - 4) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 - 5) Discontinuance of work without approval;
 - 6) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
 - 7) Insolvency or bankruptcy;
 - 8) Assignment made for the benefit of creditors;
 - 9) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
 - 10) Failure to protect, to repair, or to make good any damage or injury to property; or
 - 11) Breach of any provision of this Contract.

- b. In the event that the Commonwealth terminates this Contract in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, services similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical services included within the terminated part of the Contract.
- c. If the Contract is terminated as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Issuing Office, such partially completed work, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed work including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.
- d. The rights and remedies of the Commonwealth provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- e. The Commonwealth's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.
- f. Following exhaustion of the Contractor's administrative remedies as set forth in Paragraph 19, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

17. FORCE MAJEURE

Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

The Contractor shall notify the Commonwealth orally within five (5) days and in writing within ten (10) days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Commonwealth may reasonably request. After receipt of such notification, the Commonwealth may elect either to cancel the Contract or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

In the event of a declared emergency by competent governmental authorities, the Commonwealth by notice to the Contractor, may suspend all or a portion of the Contract.

18. TERMINATION PROVISIONS

The Commonwealth has the right to terminate this Contract for any of the following reasons. Termination shall be effective upon written notice to the Contractor.

- a. **TERMINATION FOR CONVENIENCE:** The Commonwealth shall have the right to terminate the Contract for its convenience if the Commonwealth determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.
- b. **NON-APPROPRIATION:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the contract. The contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid for any appropriations available for that purpose
- c. **TERMINATION FOR CAUSE:** The Commonwealth shall have the right to terminate the Contract for Contractor default under Paragraph 16, Default, upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract for other cause as specified in this Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract for cause, then, at the Commonwealth's discretion, the Contract shall be deemed to have been terminated for convenience under the Subparagraph 18.a.

19. CONTRACT CONTROVERSIES

- a. In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum.
- b. The contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.
- c. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

20. ASSIGNABILITY AND SUBCONTRACTING

- a. Subject to the terms and conditions of this Paragraph 20, this Contract shall be binding upon the parties and their respective successors and assigns.
- b. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.

- c. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- d. Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.
- e. For the purposes of this Contract, the term “assign” shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- f. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.
- g. A change of name by the Contractor, following which the Contractor’s federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

21. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

During the term of the Contract, the Contractor agrees as follows:

- a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, or color.
- c. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined
- d. The Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- e. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services’ Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Contract Administration and Business Development.
- f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

- g. The Commonwealth may cancel or terminate the Contract, and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

22. CONTRACTOR INTEGRITY PROVISIONS

- a. For purposes of this clause only, the words “confidential information,” “consent,” “contractor,” “financial interest,” and “gratuity” shall have the following definitions.
 - 1) Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
 - 2) Consent means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.
 - 3) Contractor means the individual or entity that has entered into the Contract with the Commonwealth, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.
 - 4) Financial interest means:
 - a) Ownership of more than a five percent interest in any business; or
 - b) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
 - 5) Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
- b. The Contractor shall maintain the highest standards of integrity in the performance of the Contract and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
- c. The Contractor shall not disclose to others any confidential information gained by virtue of the Contract.
- d. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.
- e. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.
- f. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract except as provided therein.

- g. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.
- h. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
- i. The Contractor, by execution of the Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.
- j. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents or files of any type or form which refers to or concern the Contract. Such information shall be retained by the Contractor for a period of three years beyond the termination of the Contract unless otherwise provided by law.
- k. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

23. CONTRACTOR RESPONSIBILITY PROVISIONS

- a. The Contractor certifies, for itself and all its subcontractors, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid, a written explanation of why such certification cannot be made.
- b. The Contractor also certifies, that as of the date of its execution of this Bid/Contract, it has no tax liabilities or other Commonwealth obligations.
- c. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- d. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- e. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth, which results in the suspension or debarment of

the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

- f. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the internet at <http://www.dgs.state.pa.us> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No. (717) 783-6472
FAX No. (717) 787-9138

24. AMERICANS WITH DISABILITIES ACT

- a. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- b. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of subparagraph "a." above.

25. HAZARDOUS SUBSTANCES

The Contractor shall provide information to the Commonwealth about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the Contract. The Contractor must comply with Act 159 of October 5, 1984, known as the "Worker and Community Right to Know Act" (the "Act") and the regulations promulgated pursuant thereto at 4 Pa. Code Section 301.1 et seq.

- a. Labeling. The Contractor shall insure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Contractor is clearly labeled, tagged or marked with the information listed in Paragraph (1) through (4):
- 1) Hazardous substances:
 - a) The chemical name or common name,
 - b) A hazard warning, and
 - c) The name, address, and telephone number of the manufacturer.
 - 2) Hazardous mixtures:
 - a) The common name, but if none exists, then the trade name,

- b) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
 - c) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture,
 - d) A hazard warning, and
 - e) The name, address, and telephone number of the manufacturer.
- 3) Single chemicals:
- a) The chemical name or the common name,
 - b) A hazard warning, if appropriate, and
 - c) The name, address, and telephone number of the manufacturer.
- 4) Chemical Mixtures:
- a) The common name, but if none exists, then the trade name,
 - b) A hazard warning, if appropriate,
 - c) The name, address, and telephone number of the manufacturer, and
 - d) The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

A common name or trade name may be used only if the use of the name more easily or readily identifies the true nature of the hazardous substance, hazardous mixture, single chemical, or mixture involved.

Container labels shall provide a warning as to the specific nature of the hazard arising from the substance in the container.

The hazard warning shall be given in conformity with one of the nationally recognized and accepted systems of providing warnings, and hazard warnings shall be consistent with one or more of the recognized systems throughout the workplace. Examples are:

- NFPA 704, Identification of the Fire Hazards of Materials.
- National Paint and Coatings Assoc.: Hazardous Materials Identification System.
- American Society for Testing and Materials, Safety Alert Pictorial Chart.
- American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals.

Labels must be legible and prominently affixed to and displayed on the product and the carton, container, or package so that employees can easily identify the substance or mixture present therein.

- b. Material Safety Data Sheet. The contractor shall provide Material Safety Data Sheets (MSDS) with the information required by the Act and the regulations for each hazardous substance or hazardous mixture. The Commonwealth must be provided an appropriate MSDS with the initial shipment and with the first shipment after an MSDS is updated or product changed. For any other chemical, the contractor shall provide an appropriate MSDS, if the manufacturer, importer, or supplier produces or possesses the MSDS. The contractor shall also

notify the Commonwealth when a substance or mixture is subject to the provisions of the Act. Material Safety Data Sheets may be attached to the carton, container, or package mailed to the Commonwealth at the time of shipment.

26. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Commonwealth shall have the right to terminate the Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

27. APPLICABLE LAW

This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

28. INTEGRATION

The Contract, including all referenced documents, constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the Commonwealth or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties. All such amendments will be made using the appropriate Commonwealth form.

29. CHANGE ORDERS

The Commonwealth reserves the right to issue change orders at any time during the term of the Contract or any renewals or extensions thereof: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities; 2) to make changes to the services within the scope of the Contract; 3) to notify the Contractor that the Commonwealth is exercising any Contract renewal or extension option; or 4) to modify the time of performance that does not alter the scope of the Contract to extend the completion date beyond the Expiration Date of the Contract or any renewals or extensions thereof. Any such change order shall be in writing signed by the Contracting Officer. The change order shall be effective as of the date appearing on the change order, unless the change order specifies a later effective date. Such increases, decreases, changes, or modifications will not invalidate the Contract, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. The Contractor agrees to provide the service in accordance with the change order. Any dispute by the Contractor in regard to the performance required under any change order shall be handled through Paragraph 19, "Contract Controversies".

For purposes of this Contract, "change order" is defined as a written order signed by the Contracting Officer directing the Contractor to make changes authorized under this clause.

**APPENDIX A
PROPOSAL COVER SHEET
COMMONWEALTH OF PENNSYLVANIA
PSERS**

RFP# PSERS RFP 2016 - 3

Enclosed in three separately sealed submittals is the proposal of the Offeror identified below for the above-referenced RFP:

Offeror Information:	
Offeror Name	
Offeror Mailing Address	
Offeror Website	
Offeror Contact Person	
Contact Person's Phone Number	
Contact Person's Facsimile Number	
Contact Person's E-Mail Address	
Offeror Federal ID Number	
Offeror SAP/SRM Vendor Number	

Submittals Enclosed and Separately Sealed:	
<input type="checkbox"/>	Technical Submittal <input type="checkbox"/> Domestic Workforce Utilization Certification
<input type="checkbox"/>	Small Diverse Business and Small Business Participation Submittal <input type="checkbox"/> Small Diverse Business and Small Business Participation Submittal Form <input type="checkbox"/> Small Diverse Business and Small Business Letter(s) of Intent
<input type="checkbox"/>	Cost Submittal

<i>Signature</i>	
Signature of an official authorized to bind the Offeror to the provisions contained in the Offeror's proposal:	
Printed Name	
Title	

FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM WITH THE OFFEROR'S PROPOSAL MAY RESULT IN THE REJECTION OF THE OFFEROR'S PROPOSAL

**APPENDIX B
DOMESTIC WORKFORCE UTILIZATION CERTIFICATION**

To the extent permitted by the laws and treaties of the United States, each proposal will be scored for its commitment to use the domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those offerors who will perform the contracted direct labor exclusively within the geographical boundaries of the United States or within the geographical boundaries of a country that is a party to the World Trade Organization Government Procurement Agreement. Those who propose to perform a portion of the direct labor outside of the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement will receive a correspondingly smaller score for this criterion. In order to be eligible for any consideration for this criterion, offerors must complete and sign the following certification. This certification will be included as a contractual obligation when the contract is executed. Failure to complete and sign this certification will result in no consideration being given to the offeror for this criterion.

I, _____ [title] of _____ [name of Contractor] a _____ [place of incorporation] corporation or other legal entity, ("Contractor") located at _____ [address], having a Social Security or Federal Identification Number of _____, do hereby certify and represent to the Commonwealth of Pennsylvania ("Commonwealth") (Check **one** of the boxes below):

All of the direct labor performed within the scope of services under the contract will be performed exclusively within the geographical boundaries of the United States or one of the following countries that is a party to the World Trade Organization Government Procurement Agreement: Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom

OR

_____ percent (____%) [Contractor must specify the percentage] of the direct labor performed within the scope of services under the contract will be performed within the geographical boundaries of the United States or within the geographical boundaries of one of the countries listed above that is a party to the World Trade Organization Government Procurement Agreement. Please identify the direct labor performed under the contract that will be performed outside the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement and identify the country where the direct labor will be performed:

 [Use additional sheets if necessary]

The Department of General Services [or other purchasing agency] shall treat any misstatement as fraudulent concealment of the true facts punishable under Section 4904 of the *Pennsylvania Crimes Code*, Title 18, of Pa. Consolidated Statutes.

Attest or Witness:

 Corporate or Legal Entity's Name

 Signature/Date

 Signature/Date

 Printed Name/Title

 Printed Name/Title

**APPENDIX C
TRADE SECRET CONFIDENTIAL PROPRIETARY INFORMATION NOTICE FORM**

http://www.dgs.pa.gov/Documents/Procurement%20Forms/TradeSecret_ConfidentialPropertyInfoNotice.pdf

**APPENDIX D
COST SUBMITTAL WORKSHEET**

A. Dispensing Fees, Discounts, and Rebates

1. Provide your guaranteed discounts, dispensing fees, and rebates for each of the following:

Medicare Plan

	2018		2019		2020	
1 to 30 day Supply	@ Retail	@ Mail	@ Retail	@ Mail	@ Retail	@ Mail
Brand Drugs (Single Source and Multi Source as defined by MediSpan)						
Guaranteed Aggregate Minimum Discount from 100% AWP						
Guaranteed Aggregate Maximum Dispensing Fee/Rx						
Generic Drugs (as defined by MediSpan)						
Guaranteed Aggregate Minimum Discount from 100% AWP						
Guaranteed Aggregate Maximum Dispensing Fee/Rx						
Specialty Drugs						
Guaranteed Aggregate Minimum Discount from 100% AWP						
Guaranteed Aggregate Maximum Dispensing Fee/Rx						
Rebates						
Guaranteed % Pass-Through						
Guaranteed Minimum Rebate per Brand claim						
Guaranteed Minimum Rebate per Specialty claim						

	2018		2019		2020	
31 to 90 day Supply	@ Retail	@ Mail	@ Retail	@ Mail	@ Retail	@ Mail
Brand Drugs (Single Source and Multi Source as defined by MediSpan)						
Guaranteed Aggregate Minimum Discount from 100% AWP						
Guaranteed Aggregate Maximum Dispensing Fee/Rx						
Generic Drugs (as defined by MediSpan)						
Guaranteed Aggregate Minimum Discount from 100% AWP						
Guaranteed Aggregate Maximum Dispensing Fee/Rx						
Specialty Drugs						
Guaranteed Aggregate Minimum Discount from 100% AWP						
Guaranteed Aggregate Maximum Dispensing Fee/Rx						
Rebates						
Guaranteed % Pass-Through						
Guaranteed Minimum Rebate per Brand claim						
Guaranteed Minimum Rebate per Specialty claim						

	2018			2019			2020		
1 to 90 day Supply	@Home Infusion	@Long Term Care	@ITU	@Home Infusion	@Long Term Care	@ITU	@Home Infusion	@Long Term Care	@ITU
Brand Drugs (Single Source and Multi Source as defined by MediSpan)									
Guaranteed Aggregate Minimum Discount from 100% AWP									

Guaranteed Aggregate Maximum Dispensing Fee/Rx									
Generic Drugs (as defined by MediSpan)									
Guaranteed Aggregate Minimum Discount from 100% AWP									
Guaranteed Aggregate Maximum Dispensing Fee/Rx									
Specialty Drugs									
Guaranteed Aggregate Minimum Discount from 100% AWP									
Guaranteed Aggregate Maximum Dispensing Fee/Rx									
Rebates									
Guaranteed Minimum Rebate per Brand claim									
Guaranteed Minimum Rebate per Specialty claim									

Traditional (pre-65) Plan

	2018		2019		2020	
1 to 30 day Supply	@ Retail	@ Mail	@ Retail	@ Mail	@ Retail	@ Mail
Brand Drugs (Single Source and Multi Source as defined by MediSpan)						
Guaranteed Aggregate Minimum Discount from 100% AWP						
Guaranteed Aggregate Maximum Dispensing Fee/Rx						
Generic Drugs (as defined by MediSpan)						
Guaranteed Aggregate Minimum Discount from 100% AWP						
Guaranteed Aggregate Maximum Dispensing Fee/Rx						

	2018		2019		2020	
1 to 30 day Supply	@ Retail	@ Mail	@ Retail	@ Mail	@ Retail	@ Mail
Specialty Drugs						
Guaranteed Aggregate Minimum Discount from 100% AWP						
Guaranteed Aggregate Maximum Dispensing Fee/Rx						
Rebates						
Guaranteed Minimum Rebate per Brand claim						
Guaranteed Minimum Rebate per Specialty claim						

	2018		2019		2020	
31 to 90 day Supply	@ Retail	@ Mail	@ Retail	@ Mail	@ Retail	@ Mail
Brand Drugs (Single Source and Multi Source as defined by MediSpan)						
Guaranteed Aggregate Minimum Discount from 100% AWP						
Guaranteed Aggregate Maximum Dispensing Fee/Rx						
Generic Drugs (as defined by MediSpan)						
Guaranteed Aggregate Minimum Discount from 100% AWP						
Guaranteed Aggregate Maximum Dispensing Fee/Rx						
Specialty Drugs						
Guaranteed Aggregate Minimum Discount from 100% AWP						
Guaranteed Aggregate Maximum Dispensing Fee/Rx						
Rebates						
Guaranteed Minimum Rebate per Brand claim						

	2018		2019		2020	
31 to 90 day Supply	@ Retail	@ Mail	@ Retail	@ Mail	@ Retail	@ Mail
Guaranteed Minimum Rebate per Specialty claim						

- All discount guarantees must be based on AWP as published by Medispan on the date of service. Bidder agrees that PSERS may audit to verify that the contractual discount guarantees were obtained.
- Brand and Generic definition is based on the MediSpan Multisource Code on the date of service. Y is defined as a Generic drug. M, N, and O are defined as Brand drugs.
- PBM will measure network performance at component level with quarterly report based on date of service and an annual true up to the guarantees.
- PBM will manage the network including determination of which pharmacies are included in the network and all pharmacy contract negotiations and terms.
- Usual & Customary claims are included in the measurement of network guarantees.
- Single Source Generics are included in the generic discount guarantees.
- All discounts calculations are prior to (exclude) member cost sharing amounts.
- The following claims are excluded from network performance measurements: OTC claims, compound claims, paper claims (DMR), discount card programs claims, claims processed under state or federal mandated rates, flu vaccine program claims, and subrogation claims.
- Rebates should be based on Medicare the formulary being proposed.
- Rebate guarantees are applicable on channel specific basis such that any rebate shortfall at retail may not be offset by surplus at mail order. Any rebate shortfall at mail order may not be offset by surplus at retail.
- Rebate surpluses may not offset discount shortfalls or dispensing fee overages.
- PBM manages all rebate contract negotiations.
- PSERS will receive 100% of any price concession revenue PBM or its affiliate receives under this Agreement.
- Rebate guarantees will be reported quarterly with monthly distribution of funds upon receipt with an annual aggregate true up reconciliation 180 days after the end of the plan contract year.
- Rebate guarantees are based upon the benefit design provided with the RFP.
- All AWP discounts must be minimum guarantees based on a percentage reduction from the actual 11 digit NDC dispensed.
- Zero balance claims are included in the guarantee discount terms prior to the application of member cost share..
- Minimum discount guarantees are applicable on a channel specific basis such that any discount shortfall at retail may not be offset by surplus at mail order and any discount shortfall at mail order may not be offset by surplus at retail.

- Minimum discount guarantees are applicable on brand and generic specific basis such that any discount shortfall for brand drugs may not be offset by surplus for generic drugs and any discount shortfall for generic drugs may not be offset by a surplus for brand drugs.
- Minimum discount guarantee shortfalls may not be offset by savings from any dispensing fee surpluses. Dispensing fee overages may not be offset by a surplus in discount guarantees.

2. Provide an AWP-based pricing list of all specialty pharmaceuticals that your company dispenses and distributes to providers and patients. Your pricing must include adequate supplies of ancillaries such as needles, swabs, syringes, and containers. The following items must be included in your list:
 - a. Product Name and NDC
 - b. Therapeutic Group/Therapeutic Category
 - c. Guaranteed AWP Discount
 - d. Guaranteed per Claim Dispensing Fee

B. Administrative Fees

1. Provide your administrative fees assuming all services to support PSERS as a direct contract employer group waiver prescription drug plan. Indicate whether each listed service is included in the administrative fee, and, if not, indicate the incremental associated fee. Detail any additional fees for services not listed and be sure to list all charges. Otherwise, we will assume that the fees that you quote include all services and supplies that could reasonably be expected to be provided during the course of your administration of the plan.

Per Member Per Month Administrative Fee	2018		2019		2020	
	Included in Quoted Fee (Yes or No)	Cost if not Included in Quoted Fee	Included in Quoted Fee (Yes or No)	Cost if not Included in Quoted Fee	Included in Quoted Fee (Yes or No)	Cost if not Included in Quoted Fee
Customer Service for Members						
CMS Required Member Communications						
Electronic Claims Adjudication						
Implementation Support						
Eligibility submission						
Member Submitted Paper Claims						
COB Claims						
Pharmacy Audit Recoveries						

	2018		2019		2020	
Pharmacy Help Desk						
Pharmacy Network Management						
Pharmacy Reimbursement						
Concurrent DUR						
Retro DUR						
Prior Authorization						
Step Therapy						
Quality Management						
Physician Consultation						
Physician Direct Mailing						
Part D appeals & grievance handling						
Web-enabled Client Reporting-produced by Client						
Web-enabled Client Reporting-produced by Vendor						
Additional Reports						
Billing Reports						
Executive Summary						
Custom Ad-Hoc Reporting						
Part D Reporting for Eligibility and Claims to CMS and other reports as required						
Formulary Support and filing With CMS						
Part D appeals and grievance reporting						
Part D call center statistics reporting data for submission to CMS						
Member Communications (Includes 2 std ID cards)						
Mailed directly to Members						
Replacement Cards						
Customized booklets and ID cards						
Network Development Upon Request						
Plan Setup						
Other (specify)						

2. Provide your administrative fees assuming all services to support PSERS Pre-65 Plan. Indicate whether each listed service is included in the administrative fee, and, if not, indicate the

incremental associated fee. Detail any additional fees for services not listed and be sure to list all charges. Otherwise, we will assume that the fees that you quote include all services and supplies that could reasonably be expected to be provided during the course of your administration of the plan.

	2018		2019		2020	
Per Member Per Month Administrative Fee						
SERVICE	Included in Quoted Fee (Yes or No)	Cost if not Included in Quoted Fee	Included in Quoted Fee (Yes or No)	Cost if not Included in Quoted Fee	Included in Quoted Fee (Yes or No)	Cost if not Included in Quoted Fee
Customer Service for Members						
Electronic Claims Adjudication						
Implementation Support						
Eligibility submission						
Member Submitted Paper Claims						
COB Claims						
Pharmacy Audit Recoveries						
Pharmacy Help Desk						
Pharmacy Network Management						
Pharmacy Reimbursement						
Concurrent DUR						
Retro DUR						
Prior Authorization						
Step Therapy						
Quality Management						
Physician Consultation						
Physician Direct Mailing						
Web-enabled Client Reporting-produced by Client						
Web-enabled Client Reporting-produced by Vendor						
Additional Reports						
Billing Reports						
Executive Summary						
Custom Ad-Hoc Reporting						
Member Communications (Includes 2 std ID cards)						
Mailed directly to Members						
Replacement Cards						
Customized booklets and ID cards						

	2018		2019		2020	
Network Development Upon Request						
Plan Setup Other (specify)						

C. Performance Guarantees

1. Member Services

Measurement	Proposed Goal	\$ Amount @ Risk
Average Speed of Answer (To “Live” Representative)		
Calls Abandoned Rate		
Call Disconnect Rate		
Five-Day Written Response Rate to Member Inquiries Within Five (5) Days		
Member Coverage Determination and Appeals Resolutions		

2. Claims Processing

Measurement	Proposed Goal	\$ Amount @ Risk
Member Submit Claims Adjudicated In Five (5) Days		
Rejected Claims Adjudicated/Resolved in Seven (7) Days		
Financial Accuracy Rate Based on Applicable Pricing and Plan Design		
Claim processing system availability		

3. Account Services

Measurement	Proposed Goal	\$ Amount @ Risk
Monthly meetings with PSERS		
Response to Audits		

4. Network Access

Measurement	Proposed Goal	\$ Amount @ Risk
Geographic Access (Unless otherwise agreed to by)		

5. Mail Service Performance

Measurement	Proposed Goal	\$ Amount @ Risk
Mail Order Turnaround (without intervention)		
Mail Order Turnaround (with intervention)		
Mail Order Fill Accuracy		

6. Implementation

Measurement	Proposed Goal	\$ Amount @ Risk
<p>Bidder guarantees program implementation substantially in accordance with a mutually agreed upon written schedule, subject to timely performance of PSERS obligations. PSERS must provide all necessary information at a mutually agreeable timeframe before the January 1, 2018 implementation date. Program implementation performance guarantee includes:</p> <ul style="list-style-type: none"> Contract delivery ID Card production and delivery prior to January 1, 2018 Plan startup Initial billing Initial reporting. 		

7. Medicare Part D

Measurement	Requirement	\$ Amount @ Risk
Provide And Maintain Timely CMS Formulary Submission Files	PBMto Provide Required Files At Least Three Business Days Prior To CMS Delivery Date	
Member Appeals Resolution	Expedited Appeals Resolved Within 24 Hours, 7 Calendar Days For Standard Appeals	
Member Coverage Determination Resolution	Expedited Coverage Determinations Resolved Within 24 Hours, 72 Hours For Standard Coverage	

	Determinations	
CMS Reporting Requirements	Reports Delivered To Plan 5 Business Days Prior To CMS Deadline	
Prescription Drug Event Submission	100% Of Paid Claims Submitted To CMS Within 60 Days Of Fill Date	
Prescription Drug Event Error Resolution	99.5% of all rejected PDE records will be corrected and resubmitted to CMS within 30 days	
Member Explanation Of Benefits (EOB) Mailings	98% Of All EOB's Accurate And Mailed To Members No Later Than The 15th Of The Month Following The Claim Incurred Date	

Listing SDB and SB Subcontractors

The Offeror must list in the chart below the SDBs and SBs that will be used to meet the percentage commitments provided above. Include the SDB/SB firm name, SDB or SB designation, SDB/SB Primary Contact Information, a description of the service or supplies the SDB/SB will provide, fixed percent of total contract cost committed, estimated dollar value of each commitment, and an indication as to the Offeror’s intent to utilize the SDB/SB subcontractor for contract options or renewals. Include as many pages as necessary. **Offerors must also include a Letter of Intent as indicated in RFP Part V, Section V-2 for each SDB/SB listed.**

SDB/SB Name	SDB or SB	Primary Contact Name & Email	Description of Services or Supplies to be provided	% of total Contract Cost Committed	Estimated \$ value of Commitment	Will SDB/SB be used for options/renewals? (yes/no)

**APPENDIX F
SMALL DIVERSE AND SMALL BUSINESS
LETTER OF INTENT**

[DATE]

[SDB/SB Contact Name

Title

SDB/SB Company Name

Address

City, State, Zip]

Dear **[SDB/SB Contact Name]**:

This letter serves as confirmation of the intent of **[Offeror]** to utilize **[Small Diverse Business (SDB) or Small Business (SB)]** on RFP **[RFP number and Title]** issued by the **[Commonwealth agency name]**.

If **[Offeror]** is the successful vendor, **[SDB or SB]** shall provide **[identify the specific work, goods or services the SDB/SB will perform]** during the initial term of the prime contract and during any extensions, options or renewal periods of the prime contract exercised by the Commonwealth, as more specifically set forth below: **[identify the specific time periods during the initial contract term and any extensions, options and renewals when the component work, goods or services will be provided or performed.]**

These services represent **[identify fixed numerical percentage commitment]** of the total cost in the **[Offeror's]** cost submittal for the initial term of the contract. Dependent on final negotiated contract pricing and actual contract usage or volume, it is expected that **[SDB or SB]** will receive an estimated **[identify associated estimated dollar value that the fixed percentage commitment represents]** during the initial contract term.

[SDB/SB] represents that it meets the small or small diverse business requirements set forth in the RFP and all required documentation has been provided to **[Offeror]** for its SDB/SB submission.

We look forward to the opportunity to serve the **[Commonwealth agency name]** on this project. If you have any questions concerning our small business or small diverse business commitment, please feel free to contact me at the number below.

Sincerely,

Acknowledged,

Offeror Name

Title

Company

Phone number

SDB or SB Name

Title

Company

Phone number

APPENDIX G

MODEL FORM OF SMALL DIVERSE AND SMALL BUSINESS SUBCONTRACTOR AGREEMENT

This Subcontractor Agreement ("Subcontract") is made effective as of _____, 20____, by and between _____, ("Contractor") and _____, a Small Diverse Business or Small Business ("Subcontractor") (collectively referred to as the "Parties").

RECITALS

Contractor has entered into a contract dated _____ (the "Prime Contract") with the Department of _____ of the Commonwealth of Pennsylvania ("Commonwealth"). Under the Prime Contract, Contractor has agreed to provide certain supplies, services or construction ("Services") to the Commonwealth.

In connection with the Procurement leading to the Prime Contract, Contractor and Subcontractor entered into a letter agreement dated _____ ("Letter of Intent") whereby the Contractor committed a certain percentage of work ("Small Diverse Business or Small Business Commitment") under the Prime Contract to the Subcontractor.

As contemplated by the Letter of Intent and in accordance with the provisions of the Procurement and Prime Contract, the Parties have agreed to enter into this Subcontract to fulfill the Small Diverse Business or Small Business Commitment expressed in the Letter of Intent and as required by the Prime Contract.

DEFINITIONS

The following words and terms when used in this Subcontract shall have the following meanings:

Bureau – The Department's Bureau of Diversity, Inclusion and Small Business Opportunities.

Contracting Officer – The person authorized to administer and make written determinations for the Commonwealth with respect to the Prime Contract.

Department – The Department of General Services of the Commonwealth of Pennsylvania.

Issuing Office – The department, board, commission or other agency of the Commonwealth of Pennsylvania that issued the Procurement.

Procurement – The Invitation for Bids, Request for Quotes, Request for Proposals or other solicitation and all associated final procurement documentation issued by the Commonwealth to obtain proposals from firms for award of the Prime Contract.

Small Business – A business in the United States which is independently owned, not dominant in its field of operation, employs no more than 100 full-time or full-time equivalent employees, and earns less than \$7 million in gross annual revenues for building design, \$20 million in gross annual revenues for sales and services and \$25 million in gross annual revenues for those businesses in the information technology sales or service business.

Small Diverse Business – A Department-verified minority-owned small business, woman-owned small business, veteran-owned small business, service-disabled veteran-owned small business, LGBT-owned small business, or disability-owned small business.

AGREEMENT

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. Subcontractor Representations. Subcontractor represents and warrants to Contractor as follows:

(a) Subcontractor is self-certified as a Small Business in accordance with the requirements and procedures established by the Bureau of Diversity, Inclusion and Small Business Opportunities; [Subcontractor is also verified as a Small Diverse Business by the Bureau of Diversity, Inclusion and Small Business Opportunities in accordance with the requirements and procedures established by the Bureau;]

(b) Subcontractor possesses the necessary knowledge, experience, expertise, capital, resources and personnel required to perform the Services it will provide under this Subcontract;

(c) Subcontractor (i) is duly organized, validly existing and in good standing under the laws of its state of incorporation or organization, (ii) has the power and authority to own its properties and to carry on business as now being conducted, and (iii) has the power to execute and deliver this Subcontract;

(d) The execution and performance by Subcontractor of the terms and provisions of this Subcontract have been duly authorized by all requisite action, and neither the execution nor the performance of this Subcontract by Subcontractor will violate any provision of law, any order of any court or other agency of government, the organizational documents of Subcontractor or any indenture, agreement or other instrument to which Subcontractor is a party, or by which Subcontractor is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, or except as may be provided by this Subcontract, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Subcontractor pursuant to, any such indenture agreement or instrument;

(e) Subcontractor has obtained all licenses, permits and approvals required to perform the Services it will provide under this Subcontract; and

(f) Subcontractor is not under suspension or debarment by the Commonwealth or any other governmental entity, instrumentality or authority.

2. Contractor Representations. Contractor represents and warrants to Subcontractor as follows:

(a) Contractor (i) is duly organized, validly existing and in good standing under the laws of its state of incorporation or organization, (ii) has the power and authority to own its properties and to carry on business as now being conducted, and (iii) has the power to execute and deliver this Subcontract;

(b) The execution and performance by Contractor of the terms and provisions of this Subcontract by Contractor have been duly authorized by all requisite action, and neither the execution nor the performance of this Subcontract will violate any provision of law, any order of any court or other agency of government, the organizational documents of Contractor or any indenture, agreement or other instrument to which Contractor is a party, or by which Contractor is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, or except as may be provided by this Subcontract, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Contractor pursuant to, any such indenture agreement or instrument;

(c) Contractor has obtained all licenses, permits and approvals required to perform the Services to be provided by Contractor under the Prime Contract; and

(d) Contractor is not under suspension or debarment by the Commonwealth or any other governmental entity, instrumentality or authority.

3. Relationship of the Parties. The provisions of this Subcontract are not intended to create, nor shall be deemed or construed to create, any joint venture, partnership or other relationship between Contractor and Subcontractor, other than that of independent entities contracting with each other solely for the purpose of carrying out the provisions of this Subcontract. Neither of the Parties to this Subcontract, nor any of their respective employees, agents, or other representatives, shall be construed to be the agent, employee or representative of the other party. Neither party shall have the authority to bind the other party, nor shall a party be responsible for the acts or omissions of the other party, unless otherwise stated in this Subcontract. Similarly, the Parties expressly acknowledge that neither the Contractor nor the Subcontractor is an agent, employee or representative of the Commonwealth and each party covenants not to represent itself accordingly.

4. Prime Contract Flow-Down.

(a) General. This agreement is a subcontract under the Prime Contract and all provisions of the Prime Contract and any amendments thereto applicable to the Services being performed by the Subcontractor shall extend to and be binding upon the Parties as part of this Subcontract.

(b) Specific. The Parties agree to comply with the following provisions of the Prime Contract, which are incorporated herein by reference:

- (1) The Americans with Disabilities Act Provisions.
- (2) Nondiscrimination/Sexual Harassment Clause.
- (3) Contractor Integrity Provisions.
- (4) Contractor Responsibility Provisions.

(c) Termination. Should the Prime Contract be terminated pursuant to the terms and conditions provided in the Procurement, such termination shall have the same effect on this Subcontract. Payment for Services provided as of the date of termination must be made in accordance with the Section 13 of this Subcontract.

(d) Audit Provisions. The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents, and records of the Parties to the extent that the books, documents, and records relate to the Parties' compliance with the provisions set forth in subsection (b) above or to the Small Diverse Business or Small Business Commitment effectuated through this Subcontract. The Parties shall preserve such books, documents, and records for a period of three years from the date of final payment hereunder. The Parties shall give full and free access to all such records to the Commonwealth and/or its authorized representatives.

5. Order of Precedence. The Letter of Intent, Procurement and Prime Contract are incorporated herein by reference into this Subcontract. In the event of any conflict or inconsistency among the individual components of this Subcontract, such conflict or inconsistency shall be resolved by observing the following order of precedence:

- (a) This Subcontract;
- (b) The Letter of Intent;
- (c) The Prime Contract; and
- (d) The Procurement.

6. Further Action. The Parties shall take such actions and complete, execute and deliver any and all documents or instruments necessary to carry out the terms and provisions of this Subcontract, to effectuate the purpose of this Subcontract, and to fulfill the obligations of each party hereunder.

7. Description of Services. Subcontractor will perform the following Services for the Contractor which Contractor is obligated to provide to the Commonwealth under the Prime Contract:

[DESCRIBE IN DETAIL THE SPECIFIC SUPPLIES, SERVICES OR CONSTRUCTION THE SUBCONTRACTOR WILL PROVIDE OR PERFORM]

8. Small Diverse Business or Small Business Commitment. The above-referenced Services represent ___ % of the final negotiated total cost for the initial term of the Prime Contract. Any proposed change to the Small Diverse Business or Small Business Commitment must be submitted in writing to the Bureau which will make a recommendation to the Commonwealth Contracting Officer regarding a course of action.

9. Performance of Services. Subcontractor may not subcontract more than 50% of the work subcontracted to it hereunder without written permission from the Bureau. Subcontractor will perform the Services strictly in accordance with any applicable plans and specifications as contained in the Prime Contract and the reasonable deadlines set by Contractor in view of the requirements of the Prime Contract, and in a good workmanlike manner consistent with industry standards, meeting all applicable local, state and federal laws, regulations and policies.

10. Location of Services. Subcontractor will provide the Services at the following address(es):

11. Timeframe for Performance of Services. The Services will be provided by Subcontractor during the initial term of the Prime Contract, and during any extensions, options or renewal periods of the Prime Contract exercised by the Commonwealth, as more specifically set forth below:

[IDENTIFY THE SPECIFIC TIME PERIODS DURING THE INITIAL CONTRACT TERM AND EXTENSIONS, OPTIONS AND RENEWALS WHEN THE SUBCONTRACTOR WILL PERFORM COMPONENT SERVICES]

12. Pricing of Services. Subcontractor shall provide or perform the Services at the pricing specified in Exhibit ___ to this Subcontract. [ATTACH A BILL OF MATERIALS, RATE CARD OR OTHER APPROPRIATE COST SHEET COVERING THE SERVICES TO BE PROVIDED.]

13. Payment for Services. Contractor shall exert reasonable and diligent efforts to collect prompt payment from the Commonwealth. Contractor shall pay Subcontractor in proportion to amounts received from the Commonwealth which are attributable to the Services performed by Subcontractor. Contractor shall pay Subcontractor within fourteen (14) days after the Contractor

receives such payment from the Commonwealth, unless the parties expressly agree upon a different payment schedule or structure as set forth below:

14. Utilization Reports. Both the Contractor and Subcontractor shall complete Quarterly Utilization Reports (or similar type documents containing the same information) and submit them to the Contracting Officer and to the Bureau within ten (10) business days at the end of each quarter. This information will be used to determine the actual dollar amount paid to Subcontractor and will also serve as a record of fulfillment of Contractor's Small Diverse Business and Small Business Commitments. If there was no activity during the quarter, then the form must be completed by stating "No activity in this quarter." A late fee of \$100.00 per day may be assessed against the Contractor if its Utilization Report is not submitted in accordance with the schedule above.

15. Change Orders. If the Commonwealth issues any change order or other formal contract instrument either expanding or limiting the work to be performed under the Prime Contract, the Parties shall accept such Change Orders. Contractor agrees to provide Subcontractor with written notice of any such change orders that affect the Services to be provided by the Subcontractor hereunder as soon as practical after Contractor receives such notice. Any resulting increase or decrease in the Services, Small Diverse Business or Small Business Commitment provided for in Paragraphs 7 or 8 above must be in writing, mutually agreed to, and signed by both Parties and communicated to the Bureau. If the Parties are unable to reach an agreement regarding any adjustment to the Services, Small Diverse Business or Small Business Commitment necessitated by a Commonwealth Change Order, the Parties must submit the matter in writing to the Bureau which will make a recommendation to the Contracting Officer regarding a course of action.

16. Force Majeure. Neither party will incur any liability to the other if its performance of any obligation under this Subcontract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemic and quarantines, general strikes throughout the trade, and freight embargoes. The existence of such causes beyond a party's control shall extend the period for performance to such extent as may be necessary to enable complete performance in the exercise of reasonable diligence after the causes have been removed.

17. Dispute Resolution.

(a) The Parties will attempt to resolve any dispute arising out of or relating to this Subcontract through friendly negotiations.

(1) The Parties expressly acknowledge and confer upon the Bureau and Contracting Officer the authority to adjudicate disputes that the Parties cannot resolve amicably

concerning the Parties' compliance with their Small Diverse Business and Small Business Commitments as provided in the Prime Contract and this Subcontract.

(2) The Bureau may recommend to the Contracting Officer a range of sanctions it deems appropriate if the Bureau determines a party has failed to satisfy or perform its Small Diverse Business or Small Business commitment. Such sanctions include, but are not limited to, one or more of the following: a determination that the party is not responsible under the Contractor Responsibility Program; withholding of Prime Contract and/or Subcontract payments; suspension or termination of the Prime Contract and/or Subcontract together with consequential damages; revocation of the party's Small Business self-certification status and/or Small Diverse Business verification status; and/or suspension or debarment of one or both parties from future contracting opportunities with the Commonwealth.

(3) The Parties' acknowledge that their prior performance in meeting their Small Diverse Businesses and Small Businesses contractual obligations will be considered by the Bureau during future procurement scoring processes. To the extent a party has failed to meet prior contractual commitments, the Bureau may recommend to the Issuing Office that the party be determined non-responsible for the limited purpose of eligibility to receive SDB/SB points or consideration as a qualified Small Diverse Business or Small Business.

(b) Nothing herein shall be construed to prevent either party from seeking such relief as provided by law in a court or tribunal of competent jurisdiction.

18. Notices. Any written notice to any party under this Subcontract shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.) with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, and sent to the following:

If to Contractor:

If to Subcontractor:

19. Waiver. No waiver by either party of any breach of this Subcontract shall be deemed to waive any other breach. No acceptance of payment or performance after any breach shall be deemed a waiver of any breach. No failure or delay to exercise any right by a party upon

another's default shall prevent that party from later exercising that right, nor shall such failure or delay operate as a waiver of any default.

20. Severability. If any provision of this Subcontract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Subcontract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

21. Assignment. Neither party may assign or transfer this Subcontract without the prior written consent of the Commonwealth. If Contractor's Prime Contract with the Commonwealth is assigned to another contractor, the new contractor must maintain the Small Diverse Business and Small Business Commitment set forth in the Prime Contract as implemented through this Subcontract.

22. Applicable Law. This Subcontract shall be governed by the laws of the Commonwealth of Pennsylvania.

23. Entire Agreement. This Subcontract constitutes the entire agreement of the Parties regarding the subject of this Subcontract as of the date of execution. No other agreement or understandings, verbal or written, expressed or implied, are a part of this Subcontract unless specified herein.

24. Amendment. This Subcontract may be modified or amended only if made in writing and signed by both Parties. Any proposed change to the Contractor's Small Diverse Business or Small Business Commitment to Subcontractor must be submitted in writing to the Bureau which will make a recommendation to the Contracting Officer regarding a course of action.

25. Binding Effect. This Subcontract shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, representatives, successors and assigns.

26. Counterparts. This Subcontract may be executed by the Parties in counterparts, each of which together shall be deemed an original but all of which together shall constitute one and the same instrument. A party's delivery of a duly executed signature page of this Subcontract in electronic format shall have the same force and effect as delivery of an original signature page.

ADDITIONAL TERMS AND CONDITIONS

[THE PARTIES MAY INCLUDE ADDITIONAL TERMS AND CONDITIONS APPROPRIATE FOR THE SERVICES TO BE PROVIDED SO LONG AS THEY ARE COMMERCIALY REASONABLE TERMS FOR THE APPLICABLE BUSINESS OR INDUSTRY, ARE NO LESS FAVORABLE THAN THE TERMS OF THE PRIME CONTRACT, AND DO NOT PLACE DISPROPORTIONATE RISK ON THE SMALL DIVERSE BUSINESS OR SMALL BUSINESS RELATIVE TO THE NATURE AND LEVEL OF THE SMALL DIVERSE BUSINESS' OR SMALL BUSINESS' PARTICIPATION IN THE PROJECT. SUCH TERMS MAY INCLUDE:

Background Checks
Confidentiality/Disclosure of Information
Data Security
Insurance
Invoicing Requirements
Environmental Protection
Intellectual Property Rights
Record Retention/Audits
Service Level Agreements (SLAs) (consistent with Prime Contract SLAs)
Public Works Construction Requirements (including Bonding, E-Verify, Prevailing Wage, and Prompt Payment provisions)

IN WITNESS WHEREOF, the Parties hereto have caused this Subcontract to be executed by their duly authorized officers as set forth below.

Contractor

Subcontractor

Insert Company Name

Insert Company Name

By: _____
Signature

By: _____
Signature

Printed Name

Printed Name

Title

Title

Date

Date

EXHIBIT 1
PRE-65 PLAN PHARMACY PROGRAM SPECIFICATIONS

The Hop Pre-65 Medical Plan - Plan Document and Summary Plan Description

[HTTPS://WWW.HOPBENEFITS.COM/PDFS/2017/PSERS_17_PRE-65-GUIDE-WEB_FINAL.PDF](https://www.hopbenefits.com/pdfs/2017/PSERS_17_PRE-65-GUIDE-WEB_FINAL.PDF)

The Hop Pre-65 Medical Plan – 2017 Critical Care List

https://www.hopbenefits.com/pdfs/2017/PSERS_17_Pre-65_Critical-Care-Drug-List.pdf

EXHIBIT 2
HOP MEDICARE PART D PLAN PHARMACY PROGRAM SPECIFICATIONS

Value, Basic, and Enhanced Medicare Rx Options

https://www.hopbenefits.com/pdfs/2017/PSERS_17_Med-Eligible-Guide-WEB_FINAL.pdf

https://www.hopbenefits.com/pdfs/2017/PSERS_ANOC_2017_Final_with-Notice_WEB_FINAL.pdf

2017 Custom Formulary

https://www.hopbenefits.com/pdfs/2017/PSERS%20CompForm_January%202017_FINALr.PDF

<https://www.optumrx.com/pdpclientformulary/formulary.asp?var=17199PSERS&infoid=17199PSERS&page=&par>

The VALUE, BASIC and ENHANCED MEDICARE RX OPTIONS ANNUAL NOTICE OF CHANGE AND EVIDENCE OF COVERAGE can be viewed at:

http://www.hopbenefits.com/pdfs/2017/2017_ANOC_EOC.pdf

**EXHIBIT 3
HOP MEDICARE PART D PLAN BENEFIT SUMMARY**

SCHEDULE OF BENEFITS (EFFECTIVE FOR 2017 CALENDAR YEAR)

Member Pays	Value Option	Basic Option	Enhanced Option
Annual Deductible	\$400	\$0	\$0
Initial Coverage Level Up to \$3,700	Coinsurance	Fixed Co-pays or Coinsurance	Fixed Co-pays or Coinsurance
Generic (0 – 30 day supply)	25%	\$8.00	\$7.00
Generic (30 – 90 day supply)	25%	\$24.00	\$21.00
Preferred Brand (0 – 90 day supply)	25%	30% (maximum of \$100 for up to a 30 day supply and \$200 for a 30-90 day supply)	25% (maximum of \$75 for up to a 30 day supply, \$150 for a 30-90 day supply at retail, and \$140 for 90 day supply at mail)
Non-Preferred Brand (0-90 day supply)	25%	40% (no maximum)	35% (maximum of \$100 for up to a 30 day supply, \$200 for a 30-90 day supply at retail, and \$190 for 90 day supply at mail)
Specialty	25%	33%	33%
Medicare Coverage Gap to \$4,950 TrOOP	Coinsurance	Coinsurance	Coinsurance
Generic	51%	51%	25%
Brand (including Specialty)*	40%	40%	40%
Catastrophic Coverage Level After Max TrOOP			
Generic	The greater of 5% or \$3.30	The greater of 5% or \$3.30 to a maximum of \$250	The greater of 5% or \$3.30 to a maximum of \$100
Brand	The greater of 5% or \$8.25	The greater of 5% or \$8.25 to a maximum of \$250	The greater of 5% or \$8.25 to a maximum of \$100

*The 50% manufacturer's discount will be applied at the point-of-sale for all brand drugs from participating manufacturers as indicated on the CMS Labeler Code File.

EXHIBIT 4
CLAIMS DATA

To obtain detailed claims data a non-disclosure agreement must be executed by potential bidders. The following page is the Agreement. The claims data will be provided on a CD or DVD. Bidders may obtain the claims data by mail by sending an executed Agreement to the Issuing Officer.

**EXHIBIT 4A
LIMITED DATA USER AGREEMENT**

A limited data set is a set of records containing protected health information (PHI), from which direct identifiers have been removed, but in which certain potentially identifying information remains. The use or disclosure of a limited data set is limited to research, public health, and health care operations purposes only.

Name of data recipient:

Description of data: **Commonwealth of Pennsylvania, Public School Employees Retirement System (PSERS) prescription drug claims data for its population.**

Purpose of use: **PSERS will disclose PHI in the form of a limited data set, to Pharmacy Benefit Managers (PBMs) that will submit bids in response to this RFP. The data will be used by bidding PBMs to prepare the financial portion of their proposals.**

By signing this Agreement the recipient agrees:

- **Not to use or disclose any of the information, except for the specific purpose identified above, without prior written permission from PSERS or as otherwise required by law;**
- **To use appropriate safeguards to prevent use or disclosure of the information;**
- **To report to PSERS any use or disclosure of the information in contravention of this Agreement;**
- **Not to identify the information or contact the individuals to whom the information pertains, if applicable;**
- **To properly dispose of all data provided by PSERS upon completion of the project described above in “Purpose of use.”**

PSERS may, in its sole discretion, disqualify the bid of any PBM if such PRM has breached this Agreement or violated law. In addition, such PBM shall cure the breach or end the violation immediately. PSERS shall report violations of law to the appropriate authorities.

Signature of Recipient Representative

Date

Signature of PSERS Representative

Date

8471738v2/05047.177