

**REQUEST FOR PROPOSALS FOR**  
**Medicare Employer Group Waiver**  
**Prescription Drug Plan**  
**and Pharmacy Benefit Management Services**  
**Effective January 1, 2022**

**ISSUING OFFICE**

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

**RFP NUMBER**  
**PSERS RFP 2021-1**

**DATE OF ISSUANCE**  
**February 18, 2021**

Small Diverse Businesses (SDB) and Veteran Business Enterprises (VBE) are encouraged to respond to this solicitation. If you haven't verified as an SDB or VBE within Pennsylvania, you may miss out on contracting opportunities designed to increase the Commonwealth's spending with SDBs and VBEs. These opportunities will be available for goods, services, information technology services and products, as well as design, engineering and construction contracts.

To review SDB and VBE program eligibility and for more information on seeking certification, please visit [www.dgs.pa.gov](http://www.dgs.pa.gov) and follow the links to "Small Diverse Business Program" or "Small Business Contracting Program" located under the "Businesses" heading. Direct customer assistance is also available from staff within the Bureau of Diversity, Inclusion, and Small Business Opportunities ("BDISBO") by calling 717-783-3119 or via email at [gs-bdisbo@pa.gov](mailto:gs-bdisbo@pa.gov).

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## **CALENDAR OF EVENTS**

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

<b>Activity</b>	<b>Responsibility</b>	<b>Date</b>
Deadline to RSVP to the SDB and VBE Goal Information Session via email to <a href="mailto:cgusler@pa.gov">cgusler@pa.gov</a>	Potential Offerors	February 23, 2021 By 2:00 p.m. EST
Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO) Goal Setting Information Session (See Section I-8)	BDISBO/Potential Offerors	February 24, 2021 10:00 a.m. EST
Deadline to submit Questions via email to <a href="mailto:cgusler@pa.gov">cgusler@pa.gov</a>	Potential Offerors	February 26, 2021 4:00 p.m. EST
Answers to Potential Offeror questions posted to eMarketplace at <a href="http://www.emarketplace.state.pa.us/Search.aspx">http://www.emarketplace.state.pa.us/Search.aspx</a> no later than this date.	Issuing Office	March 8, 2021
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 <sup>th</sup> Street Harrisburg, PA 17101	Offerors	March 16, 2021 Close of Business
Finalist presentations if necessary. Offerors should be available to present in person if requested.	Selected Offerors	April 26, 2021 – May 5, 2021

## 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 **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 Public School Employees’ Retirement System’s (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 Cathy Gusler, Public School Employees’ Retirement System, 5 North 5th Street, Harrisburg, PA 17101, [cgusler@pa.gov](mailto:cgusler@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 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 96,000 individuals currently in an Employer Direct Contract Medicare Part D Employer Group Waiver Plan (EGWP), with PSERS holding the Part D contract with Centers for Medicare and Medicaid Services (CMS). PSERS offers its members three Medicare Rx plan options, The Basic and Enhanced options utilize a custom formulary, while the Value option utilizes the current PBM’s standard Medicare formulary. Plan Option details can be found at [hopbenefits.com](http://hopbenefits.com). Offerors may submit proposals for a Direct Contract EGWP, where PSERS will continue to hold the Medicare Part D contract with CMS, an Indirect Contract EGWP, whereby the Offeror holds the contract with CMS, or both. 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. There are an additional 200 individuals in an under-65 non-Medicare pharmacy benefit program. Additional detail is provided in **Part III** of this RFP.

See **Exhibit 1** – *Pre-65 Plan Pharmacy Program Specifications* and **Exhibit 2** – *HOP Medicare Part D Plan Pharmacy Program Specifications* for links to the Pre-65 Plan and Medicare Part D Plan descriptions and formularies. See **Exhibit 3** – *HOP Medicare Part D Plan Benefit Summary* for the 2021 schedule of benefits. **Exhibit 4** – *Claims Data* will be provided once the Offeror has submitted the signed NDA, which is noted in Appendix A.

## 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 a full service Pharmacy Benefit Manager (PBM) who can administer the current plan designs and utilize education and information strategies to enhance members' satisfaction with the program.

**As noted in Part I-3 above, PSERS is seeking proposals for a Direct Contract EGWP and/or an Indirect Contract EGWP. Please identify what type of contract is proposed, and if one Offeror would like to bid on both the Direct and Indirect EGWP, please submit two complete proposals. Certain questions included in Part III are specific to one type of response or the other (Parts III-5 A, C, and E), and only the questions for the applicable type of EGWP should be included in the response.**

- I-4. 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 containing the Contract Terms and Conditions as shown in **Part VI**. 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.
- I-5. 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-6. 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-7. Questions & Answers.** If an Offeror has any questions regarding this RFP, the Offeror must submit the questions by email (**with the subject line "PSERS RFP 2021-1 Question"**) to the Issuing Officer named in **Part I, Section I-2** of the RFP. If the Offeror has questions, they may be submitted as they arise via email, but **no later than** the date indicated on the Calendar of Events. The Issuing Officer shall post the answers to the questions to eMarketplace at <http://www.emarketplace.state.pa.us/Search.aspx> on an ongoing basis until the deadline stated on the Calendar of Events. When an Offeror submits a question 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, the question and answer will be provided to all Offerors through an addendum.

All questions and responses as posted to eMarketplace are considered as an addendum to, and part of, this RFP in accordance with RFP **Part I, Section I-9**. Each Offeror shall be responsible to monitor eMarketplace 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 in **Part I, Section I-25**.

- I-8. New SDB and VBE Goal Information Session.** The Commonwealth has made significant changes to the SDB and VBE requirements, and failure to meet these requirements may result in your proposal being deemed nonresponsive. Therefore, the Issuing Office will hold an SDB and VBE Goal Information Session for this RFP which we highly recommend you attend. The purpose of this Session is to provide an overview of the RFP SDB and VBE Participation submission instructions. Offerors may ask questions in accordance with **Section I-7, Questions and Answers** with respect to information provided in this session. Offerors may also ask questions during the Session. Any questions asked during the session must also be asked in writing in accordance with **Section I-7, Questions and Answers**. Any answers furnished during the Session 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.

The location, date, and time of the SDB and VBE Goal Information Session are as follows:

SDB and VBE Goal Information Session – Teams meeting – Wednesday, February 24, 2021 at 10:00 AM.

An RSVP to the SDB and VBE Goal Information Session is due via email to the Issuing Officer, Cathy Gusler [cgusler@pa.gov](mailto:cgusler@pa.gov) February 23, 2021 by 2:00 PM.

- I-9. 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 eMarketplace at <http://www.emarketplace.state.pa.us/Search.aspx>. It is the Offeror's responsibility to periodically check eMarketplace for any new information or addenda to the RFP. Answers to the questions asked during the Questions & Answers period also will be posted to eMarketplace as addenda to the RFP.
- I-10. Response Date.** To be considered for selection, electronic proposal submissions as described in **Part I, Section I-11** 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-11. 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-11B**, providing **ten (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 (SDB) Participation Submittal (which must include either the SDB Utilization Schedule, the Good Faith Efforts Documentation to Support Waiver Request, or both) and the Veteran Business Enterprise (VBE) Participation Submittal (which must include either the VBE Utilization Schedule, the Good Faith Efforts Documentation to Support Waiver Request, or both).** In addition to the paper copies of the proposal, Offerors shall submit one **complete and exact** copy 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. Offerors should ensure that there is no costing information in the technical submittal. Offerors should not reiterate technical information in the cost submittal. The CD, DVD 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, DVD 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 B)** 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 (BAFO) 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 clearly identified revised sealed proposal or sealed modification marked as "Revised Proposal" 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 Veteran Business Enterprise 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 **four** separately sealed submittals:

1. Technical Submittal, in response to **Part III**:
  - a. Complete, sign and include **Appendix C – Domestic Workforce Utilization Certification**; and
  - b. Complete, sign and include **Appendix D, Iran Free Procurement Certification Form**.
2. Cost Submittal, in response to RFP **Part IV** (please only provide the version applicable to the Direct Contract EGWP or an Indirect Contract EGWP, consistent with the proposal type identified on your cover sheet);
3. SDB Participation Submittal (which must include the SDB Utilization Schedule, the Good Faith Efforts Documentation to Support Waiver Request, or both), in response to RFP **Part V**; and
4. VBE Participation Submittal (which must include the VBE Utilization Schedule, the Good Faith Efforts Documentation to Support Waiver Request, or both), in response to RFP **Part V**.

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-12. 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-13. 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 only accept alternate proposals to the extent that they are for a Direct Contract EGWP and an Indirect Contract EGWP, as described in Part I-3.

**I-14. 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 responsiveness to the solicitation requirements. 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-15. Prime Contractor Responsibilities.** The selected Offeror must perform at least 50% of the total contract value. 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 regarding all contractual matters.

**I-16. 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 on CD, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes. The CD should clearly identify the Offeror, note that it is a redacted copy and include the name and version number of the virus scanning software that was used to scan the CD before it was submitted. *If a written statement and redacted version of the proposal is not submitted at the time of the proposal submission, the proposal will be subject to release as submitted with only the financial capability redacted.*

**B. Commonwealth Use.** All material submitted with the proposal shall be considered the property of the Commonwealth of Pennsylvania. 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 in 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 E** 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-17. Best and Final Offers (BAFO).**

- 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 an 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 75% 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 online auction shall have no effect upon the Offeror's Technical Submittal.
- I-18. 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-19. 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-20. 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-20**
- I-21. Term of Contract.** The term of the contract will commence on the Effective Date and will end December 31, 2023 (the "Initial Agreement Period"). At the end of the Initial Agreement Period, PSERS shall have the right, in its sole discretion, to renew the Agreement beyond the Initial Agreement Period for an additional twelve months to December 31, 2024 (the "Second Agreement Period"). In the event that this Agreement is renewed for the Second Agreement Period, PSERS shall have the right, in its sole discretion, to renew the Agreement beyond the Second Agreement Period for an additional twelve months to December 31, 2025 (the "Third Agreement Period"). In the event that this Agreement is renewed for the Third Agreement Period, PSERS shall have the right, in its sole discretion, to renew the Agreement beyond the Third Agreement Period for an additional twelve months to December 31, 2026 (the "Fourth Agreement Period"). 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.
- I-22. 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 (4)** 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. The Offeror is not currently engaged, and will not during the duration of the contract engage, in a boycott of a person or an entity based in or doing business with a jurisdiction which the Commonwealth is not prohibited by Congressional statute from engaging in trade or commerce.

**I-23. 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-24. 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-25** of this RFP).

**I-25. RFP Protest Procedure.** The RFP Protest Procedure is on the Pennsylvania Department of General Services (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 that has not or has not yet submitted a proposal must be filed no later than the proposal submission deadline specified in the Calendar of Events of the RFP. Offerors may file a protest within **seven (7)** 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 (7)** 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 (7<sup>th</sup>) day.

**I-26. 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 ensure 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-10**); and
  - B.** Be properly signed by the Offeror (see **Part I, Section I-11A**); and
  - C.** Contain a completed SDB participation submittal and additional required documentation; and either (a) agree to meet the SDB participation goal in full or (b) receive an approved GFE waiver from any unmet portion of the SDB participation goal; and
  - D.** Contain a completed VBE participation submittal and additional required documentation; and either (a) agree to meet the VBE participation goal in full or (b) receive an approved VBE waiver from any unmet portion of the VBE participation goal.
- II-2. Technical Nonconforming Proposals.** The four (4) Mandatory Responsiveness Requirements set forth in **Section II-1** above (A-D) 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. 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.

The Commonwealth will not score the SDB and VBE Participation Submittals. Rather, Offerors must commit to meeting the SDB and VBE participation goals or make good faith efforts to meet the SDB and VBE participation goal as more fully explained in **Part V**. Although the SDB and VBE Participation Submittals will not be scored, the Issuing Office, in conjunction with BDISBO when necessary, will evaluate the SDB Participation Submittal, the VBE Participation Submittal, and additional required documentation to determine whether they have been completed in accordance with Part V and in a manner that demonstrates the Offeror is responsive and responsible.

**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 **65%** of the total points. Evaluation will be based upon the following:

- 1. Formulary and Clinical Management.** This refers to the contractor's ability and experience in developing and maintaining evidence-based, industry leading clinical rules, programs, and formularies, including custom formularies, to manage costs and optimize patient care.
- 2. Call Center and Member Support.** This refers to the contractor's ability to provide and 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, currently Trustmark.
- 3. Prescription Drug Plan (PDP) Support Services.** This refers to the contractor's experience with and ability to provide administrative services relating to the Medicare EGWP including compliance with all CMS requirements, timely CMS submissions and other administrative services required for the program.
- 4. Administrative Services.** This refers to the contractor's experience with an ability to provide PBM services such as claim adjudication, management reporting, enrollment and eligibility maintenance and other administrative services required for the program
- 5. Communication Services.** This refers to the contractor's ability and experience in communicating with members, providers and PSERS's third party administrator and consultants in the administration of the program, and to the contractor's ability to maintain 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 pharmacy network and integrated mail-order and specialty pharmacy 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(s) with the highest raw technical score. The remaining proposals are rated by applying the Technical Scoring Formula set forth at the following webpage:

[https://www.dgs.pa.gov/Materials-Services-Procurement/Procurement-Resources/Pages/RFP\\_SCORING\\_FORMULA.aspx](https://www.dgs.pa.gov/Materials-Services-Procurement/Procurement-Resources/Pages/RFP_SCORING_FORMULA.aspx)

- B. Cost:** The Issuing Office has established the weight for the Cost criterion for this RFP as **35%** 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: [https://www.dgs.pa.gov/Materials-Services-Procurement/Procurement-Resources/Pages/RFP\\_SCORING\\_FORMULA.aspx](https://www.dgs.pa.gov/Materials-Services-Procurement/Procurement-Resources/Pages/RFP_SCORING_FORMULA.aspx)
- C. 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: <InstructionsForCalculatingDomesticWorkforceUtilizationScores.doc>

- D. Iran Free Procurement Certification and Disclosure.** Prior to entering a contract worth at least \$1,000,000 or more with a Commonwealth entity, an Offeror must: a) certify it is not on the current list of persons engaged in investment activities in Iran created by the Pennsylvania Department of General Services (“DGS”) pursuant to Section 3503 of the Procurement Code and is eligible to contract with the Commonwealth under Sections 3501-3506 of the Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e). All Offerors must complete and return the Iran Free Procurement Certification form, (**Appendix D, Iran Free Procurement Certification Form**), which is attached hereto and made part of this RFP. The completed and signed Iran Free Procurement Certification form must be submitted as part of the Technical Submittal.

See the following web page for current Iran Free Procurement list:

<https://www.dgs.pa.gov/Documents/Procurement%20Forms/ProposedIranFreeProcurementList.pdf>

- 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 75% 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 who 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 is conducted, the Issuing Office will combine the evaluation committee's final technical 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. Statement of the Project.** State in succinct terms your understanding of the project presented, or the service required by this RFP. **Please indicate in this section whether the Proposal is in response to a Direct Contract or an Indirect Contract.**

***Offeror Response***

**III-2. Qualifications.**

A. **Company Overview.** Include a list of all officers, directors, or principals.

***Offeror Response***

B. **Prior Experience.** Include experience in Medicare Prescription Drug Program support and pharmacy benefit management services, including Direct Contract or “800 Series” Indirect Contract EGWPs. Offeror should list longest running in force EGWP contract still in effect (in years) and note number of covered lives for that group. 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. Experience referenced must include client name, dates of service address, and contact information.

***Offeror Response***

C. **Personnel.** Include the number of executive and professional personnel, analysts, auditors, researchers, programmers, consultants, 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 years of experience in Medicare Prescription Drug Program support services and Pharmacy Benefit Management services. Indicate years employed by your PBM for each member of the proposed account team. Indicate the responsibilities each individual will have in this Project and how long each has been with your company. Indicate the percentage of time each individual will be assigned to this Project and the number of other accounts they will be working on while assigned to this Project.

***Offeror Response***

D. **Subcontractors:** Provide a subcontracting plan for all subcontractors, including Small Diverse Business and Veteran Business Enterprise 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-3. 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. Also, include in your response detail on how training is tailored to meet the unique needs of a retiree population.

#### ***Offeror Response***

**III-4. 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-5. Work Plan.** Describe in narrative form your technical plan for accomplishing the work using the task descriptions as your reference point. Modifications of the task descriptions are permitted; however, reasons for changes should be fully explained. Indicate the number of person hours allocated to each task. Include a Program Evaluation and Review Technique (PERT) or similar type display, time related, showing each event. If more than one approach is apparent, comment on why you chose this approach.

#### **Tasks:**

- A.** Formulary and clinical management should include: **(please respond to the appropriate section for Direct Contract or Indirect Contract responses):**

#### **For Direct Contract Only:**

1. Develop and maintain the formulary submission files (formulary, prior authorization, and step therapy)
2. Provide CMS-approved Pharmacy and Therapeutics (P&T) Committee review and approval of the custom and standard formularies.
3. Provide formulary drug placement recommendations consistent with P&T and implement based on PSERS determination.
4. Provide on-going recommendations on cost containment, rebate optimization and benefit design strategies.
5. Submit all required monthly, quarterly and annual filings with CMS.
6. 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.
7. 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.
8. All needed Medication Therapy Management (MTM), PA, and utilization management filings.



9. All needed first and second level appeals processes, per CMS requirement for the formulary.
10. All formulary updates as required by CMS.

**For Indirect Contract Only:**

1. Develop and maintain the formulary submission files (formulary, prior authorization, and step therapy).
2. Provide CMS-approved P&T Committee review and approval of the custom and standard formularies.
3. Provide on-going recommendations on cost containment, rebate optimization and benefit design strategies.
4. Submit all required monthly, quarterly, and annual filings with CMS.
5. 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.
10. Processes in place to minimize member disruption and ensure members receive their medications without delay (i.e., how do you ensure members with an approved PA already in place will receive their medication without disruption)?

**B. Call center and member support services should:**

1. Provide toll-free customer service solely for PSERS members.
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.
13. Provide only US-based call center and member support services.

**C. PDP Support Services (please respond to the appropriate section for Direct Contract or Indirect Contract responses):**

**For Direct Contract Only:**

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 a Medicare compliant Drug Management Program (DMP).
5. Provide effective fraud, waste, and abuse program.
6. 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, low income cost sharing subsidy (LICS), Reinsurance, and Coverage Gap Discount) to the Plan upon request.

**For Indirect Contract Only:**

- 1. Timely submission of required information/reports to CMS on behalf of PSERS.
  - a. Certification of compliance with all fraud, waste and abuse provisions as required
  - b. Formulary submissions as required
  - c. Network access submissions as required
- 2. Provide a Medicare Compliant MTM Program
- 3. Provide a Medicare compliant Drug Management Program (DMP).
- 4. 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.

4. Pass through any subsidies (Premium, LICS, Reinsurance, and Coverage Gap Discount) to the Plan upon request.

**D.** Administrative services should include:

1. Assignment of a cross-functional implementation team.
2. Claims adjudication.
3. Member enrollment and eligibility maintenance.
4. Management reporting & on-line query tool.
5. COB reporting to members.
6. Provide audit support for all CMS sponsored and required audit activities.
7. Detailed member-level claim data file to PSERS or its designees in a National Council for Prescription Drug Programs (NCPDP) or mutually agreed upon format with each billing cycle.
8. Management of grievance, coverage determination, and appeals processes.
9. On-line, real-time claims system access.

**E.** Communication services should include: **(please respond to the appropriate section for Direct Contract or Indirect Contract responses):**

**For Direct Contract Only:**

1. Provide data in usable format for designer and then provide sign off/approval on designed version of Abridged and Comprehensive Formulary and Pharmacy Directory.
2. Provide appropriate updates to current version and approval of appropriate sections of the Evidence of Coverage (EOC) document.
3. Provide a CMS compliant, 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 Value, 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.

4. Provide Pre-65 Program highlights brochure text and coordinate mailing with PSERS.

**For Indirect Contract Only:**

1. Distribute member ID Cards and current Pharmacy Directories
2. 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 Value, 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.
4. Provide Pre-65 Program highlights brochure text and coordinate mailing with PSERS.
5. CMS required publications and other PBM related campaigns.

**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 non-Medicare retiree population.

**G.** Member enrollment and eligibility maintenance, including but not limited to the transition of participant records from the current pharmacy benefit manager to the new prescription drug program.

**H.** Design and produce all necessary program materials, member letters and notifications, claim forms and instructions to effectively administer the benefits of the program.

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-6. 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-5, (A), Formulary and Clinical Management**.
2. Provide a description of how Offeror will perform each of **Part III-5, (A)** services.
3. PSERS has provided its 2021 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. Please provide a comprehensive and abridged version of your proposed formularies to align with the current PSERS formularies.
5. Please provide a formulary disruption analysis for each of the formularies referenced above. This should include:
  - a. the number of members that would have current drug be excluded, or moved from preferred to non-preferred under proposed formulary
  - b. the number of Rx claims that would move to excluded, or move from preferred to non-preferred tiers
  - c. a list of covered formulary drugs that would serve as replacements for currently covered drugs that would be excluded under your formulary

6. Please provide a comprehensive and abridged version of your proposed formularies to align with the current PSERS formularies.
7. Confirm Offeror's P&T Committee meets CMS requirements, as outlined in Medicare Prescription Drug Benefit Manual, Chapter 6.
8. 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 formulary needs are being addressed and met.
9. Indicate if Offeror will make its P&T meeting minutes available to PSERS, upon request.
10. Describe the process by which formulary changes are made, including member communication notices and indicate how often formulary changes are made.
11. How are negative formulary changes communicated to members? How much advance notice in days do you provide members of any formulary changes?
12. How many custom formularies do you presently support?
13. 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.
14. PSERS supports a strong "generic first" approach to formulary management and relies heavily on consumer incentives to maintain the 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].
15. Please indicate and describe any other Medicare formulary options utilized by existing clients that Offeror currently manages and/or administers.
16. Describe Offeror's point of sale Drug Utilization Review (DUR) Program. Indicate any features of the program that differentiate Offeror from other PBMs.
17. Explain your firm's 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-5, (B) Call Center and Member Support Services**.
2. Provide a description of how Offeror will perform each of the **Part III-5, (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 2019 and 2020 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? Please detail 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. Include in your



response the specific training members will receive on working with a senior population.

14. For the member service center proposed, provide the following based on the most recent quarterly data available:

	<b>EGWP PDP Services</b>
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 how members can opt out of the Interactive Voice Response (IVR) to speak with a live member service representative.
17. Describe Offeror’s Call Center support for members who are hearing impaired or who are limited English speaking.
18. 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.
19. Describe Offeror’s member issue tracking system.
20. 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.
21. Describe Offeror’s website that will be accessed by PSERS members. Indicate how this website is maintained for HIPAA and CMS compliance.
22. Indicate if Offeror performs membership satisfaction surveys for EGWP enrollees and with what frequency. Indicate if these are performed client-specific or for a particular section of the book of business.
23. If applicable, please provide a copy of the latest results of the survey.

- 24. Please indicate Offeror’s willingness to perform a client specific membership satisfaction survey if requested by PSERS, at your own cost. If there is any additional cost for performing this service, please include it in your pricing proposal. (Please do not include cost information in this section of your proposal.)
- 25. How are members informed of available network pharmacies?
- 26. Describe how members receive reminders regarding refills and medication adherence.
- 27. Describe how Offeror’s call center representatives properly categorize calls as appeals or grievances, as defined by the CMS Technical Reporting specifications.
- 28. Describe how call center representatives educate members of the plan’s MTM program.
- 29. Describe the call center’s pharmacy technical support for both members and providers.
- 30. Will PSERS be assigned a dedicated customer account manager? If not, how many other accounts would the individual be handling?

**C. PDP Support Services**

- 1. Confirm Offeror’s ability, willingness, and agreement to provide all of the services listed in **Part III-5, (C) PDP Support Services**.
- 2. Provide a description of how Offeror will perform each of the **Part III-5, (C) Services**.
- 3. 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.
- 4. 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	2017	2018	2019	2020	2021

5. Describe in detail the Offeror's Drug Management Program (DMP) services.
6. Describe in detail the Offeror's process to include Additional Beneficiary Information Initiative (ABII) file information into the adjudication system.
7. Describe in detail the Offeror's process to pass through any subsidies (Premium, LICs, Reinsurance, and Coverage Gap Discount) to the Plan upon request.
8. Describe in detail Offeror's fraud, waste and abuse control programs.
9. Confirm that Offeror will provide all CMS required filings related to certification of compliance to all fraud, waste and abuse programs.
10. 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.
11. 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.
12. Indicate if Offeror has a Medication Therapy Management (MTM) Program in operation that meets the CMS 2021 requirements. Please describe by book of business/plan types the MTM program description, 2020 CMR completion rate(s), and describe how custom changes to the MTM would be supported if requested.
13. Indicate if Offeror can and will support an MTM carve-out, should PSERS elect to contract for these services separately from this Agreement.
14. Confirm Offeror will support the plan's annual Data Validation Audit, as required by CMS.
15. Confirm Offeror will distribute the Plan-to-Plan reports to the plan or its designee within two (2) days of receipt from CMS.
16. 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.)
17. 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?
18. Provide Offeror's annual PDE data rejection rate for each of the past three (3) calendar years (show each year separately).

19. Describe how Offeror will guarantee all PDE records are produced and submitted to CMS timely and accurately.
20. Describe the member grievance protocols in place for PBM services.
21. 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?
22. Provide Offeror's annual PDE data rejection rate for the past three calendar years (show separately).
23. 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-5, (D) Administrative Services**.
2. Provide a description of how Offeror will perform each of the **Part III-5, (D)** services.
3. Provide the latest annual report or other financial reports that indicates the financial position of Offeror's organization. Include any Financial Strength Ratings or Credit Ratings from the national ratings agencies.
4. Complete the following table:

Parent Company	
Year PBM Established	
Number of PBM Employees: Current	
1 year prior	
2 years prior	
Group Membership count (total covered lives -2020) 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 (2020)	
Number of Clients Added: Past 1 year	
Past 2 years	
Number of Clients Terminated: Past 1 year	
Past 2 years	

5. References - Provide the name, address, and telephone numbers of at least three current clients that are similar with respect to plan design, group size, and/or industry. Please indicate dates of service as well. Please include at least one public sector reference.
6. 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.
7. Indicate the number and description of any outstanding legal actions pending against Offeror's organization.
8. Please explain the nature and current status of the action(s).
9. How will Offeror assure PSERS that these actions will not disrupt business operations?
10. Indicate any organizations that have been acquired or sold by Offeror in the last 24 months.
11. Indicate if there have been significant staff relocations, or changes to computer or telephone systems in the last 12 months.
12. 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?
13. What is the annual turnover rate of Account Management staff over the past 12 months?
14. Describe the process for ensuring continuity of Account Management during absences or replacement situations.
15. Confirm that you will provide client satisfaction survey to PSERS so that PSERS can assess your performance. Please provide a sample of your survey.
16. 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?
17. 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?

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, and what platform is utilized.
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 (i.e., 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 Verified Internet Pharmacy Practice Sites (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 query/reporting tool 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 Average Wholesale Price (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 or NCPDP equivalent 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 P&T 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. In addition, PSERS reserves the right to audit for the duration of the agreement and for a period of three (3) years following expiration or termination thereof. 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 contract is terminated? For how long? Is there an additional charge for this service?
50. Indicate Offeror's agreement that for the duration of the Agreement and for twelve (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 materially changed or terminated?
54. Will you agree to make PSERS the beneficiary of this errors and omissions policy?
55. Please provide a detailed implementation plan for this program if Offeror is chosen. Implementation should begin no later than July 1, 2021. At a minimum, the Implementation Project Plan must provide specific details on the following:
  - a. Identification and timing of significant responsibilities and tasks
  - b. Names, titles, and implementation experience of key implementation staff and time dedicated to PSERS during implementation
  - c. Identification and timing of PSERS' responsibilities
  - d. Transition requirements with the incumbent vendors
  - e. Staff assigned to attend and present at Open Enrollment/educational sessions
  - f. Member communication plan - including development and assistance to PSERS, prior to Open Enrollment, and on-site Open Enrollment meetings
  - g. Data and timing requirements from current vendors to ensure transition of care and prior- authorization data is appropriately transferred

56. How long will the Implementation Team stay involved after Program 'go-live' date for troubleshooting before a handoff to the Account Management team?
57. 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.
58. PSERS, as a Commonwealth entity, is prohibited from agreeing to all forms of indemnification clauses. Do you agree to exclude indemnification clauses?
59. Describe Offeror's CMS compliant transition process. Please provide a description of the compliant transition policy with communication pathways and sample information.

**F. Communication Services**

1. Confirm Offeror's ability, willingness, and agreement to provide all services listed in **Part III-5, (E) Communication Services**.
2. Provide a description of how Offeror will perform each of the **Part III-5, (E)** services.
3. Please provide examples of the services shown in **Part III-5, (E)**.
4. Please provide timelines and processes for approval and delivery of the services shown in **Part III-5, (E)**.
5. 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.
6. Confirm that letters are able to be customized with PSERS' logo as requested by PSERS?
7. Confirm that PSERS will be provided an opportunity to review, edit to the extent that the edits clarify the benefits and approve all communication materials (including letters, brochures, electronic, website, etc.) prior to being sent to members and providers.
8. How is compliance with CMS requirements confirmed and regularly validated with respect to member communication materials?

9. Please indicate methods and frequency of interventions and include sample communication materials if applicable.
10. 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?
11. Does the member portal of Offeror's organization's website provide participant specific cost information?
12. Are participants able to view their deductible and out-of-pocket accumulators on the web site?
13. 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?
14. 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?
15. 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 twelve (12) months? If so, please describe.
16. 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 services listed in **Part III-5, (F) Pharmacy Network**.
2. Provide a description of how Offeror will perform each of the **Part III-5, (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:  
  
<https://oig.hhs.gov/exclusions/index.asp>
5. Describe in detail the Offeror's process to include the Precluded Prescriber list into the adjudication system.

6. 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.
7. Please confirm Offeror can provide a customized network without re-contracting and that doing so will not require an exclusive arrangement for specialty services.
8. Please confirm that Offeror can provide Specialty Pharmacy Services as part of the provider network arrangement.
9. Please confirm agreement to retain network contract records for ten (10) years for the purpose of auditing.
10. 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?
11. What areas are evaluated in Offeror's provider audits?
12. How often are they performed?
13. 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	

14. Is the right to audit included in all standard provider contracts? (Yes/No)
15. What percentage of total ingredient costs do annual recoveries generally represent?

16. Are 100% of all recoveries returned to the plan sponsor?
17. How are individual physician prescribing patterns monitored?
18. What action is taken with physicians who have a high degree of non-compliance to improve their compliance?
19. If available, attach a copy of Offeror's physician "report card" report.
20. If Offeror provides mail order benefits through a third party, explain any audit procedures in place to ensure proper dispensing and pricing practice adherence.
21. 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?
22. Does Offeror produce network pharmacy report cards? If yes, explain the nature and uses of the report and include a sample.
23. Describe the capability and experience in accepting and processing electronic prescriptions sent directly from physicians, including existing connectivity to Surescripts E-prescription network.
24. Describe the support Offeror provides for the CMS required real-time benefit tools, both for members and prescribers.
25. Indicate what percent of Offeror's Medicare Part D prescriptions (retail and mail separately) processed in 2020 were received via E-prescription.
26. Describe any initiatives underway or planned to increase the utilization of electronic prescribing.
27. How is it assured that network pharmacies have adequate stock on hand?
28. Indicate if there is a 90-day supply contracted network of retail providers specifically for Medicare Part D services.
29. 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.
30. 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 (2020)		
Annual Claim Volume Capacity		
Number of pharmacists employed		

31. How does Offeror monitor Network pharmacies for proper handling of all claims submitted for payment but not picked up by the covered member?
32. If a submitted mail order claim for a member cannot be completed in its entirety within a designated timeframe, 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?
33. For the proposed PBM retail pharmacy network, provide the number of participating pharmacies and confirm whether any retail chains are excluded.
34. If certain pharmacy chains are excluded, please list each excluded chain and number of stores affected and reason for exclusion.
35. 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.
36. 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. 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:

<b>PBM Service</b>	<b>Is service provided directly by employees of Offeror’s organization?</b>	<b>Is the provider of the service a non-US based organization</b>	<b>What is the name and address of the service provider?</b>	<b>What is the length of the current contract with service provider?</b>
Formulary Management				
Formulary Pharmacy and Therapeutics Committee				
Drug Manufacturer rebate contracting				
Retail pharmacy network contracting				
Member appeals				
Member service functions				

Mail Order drug purchasing and dispensing				
Specialty drug purchasing and dispensing				
Electronic Claim Payment System				

**I. 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 Medicare Administrative Contractor’s (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. Will you guarantee that all pricing guarantees by component (e.g., retail generic discount guarantee) will stand alone and cannot be used to make up shortfalls in any other pricing guarantee component?
11. Verify that payments made to network pharmacies are equal to what PSERS ultimately is charged for each claim.
12. 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.

13. 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?
14. 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.
15. 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?
16. How many distinct MAC listings do you currently administer? What are their average AWP discount yield levels based on latest available data?
17. Provide an electronic version of your entire current MAC list, including pricing by National Drug Codes (NDC). Indicate if the pricing is your acquisition price, or if a different price is charged to PSERS than your acquisition cost.
18. 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?
19. 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?
20. Will MAC pricing be applied to Retail claims with a 90-day supply? If not, please explain.
21. Can you customize your MAC price list for PSERS? Would the savings increase if select pharmacies were removed from the network for PSERS? If so, explain and quantify additional savings.
22. Do your MAC price lists vary contractually between network pharmacies? If yes, why?
23. 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.

24. Do plans/members always pay the MAC price for applicable generics regardless of the pharmacies acquisition costs?
25. 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?
26. 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?
27. Do you agree to provide PSERS or its designee the right to audit actual rebate contracts? *Any conditions must be indicated here and note if a rebate aggregator is utilized.*
28. 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?
29. Confirm ALL earned formulary rebates from manufacturers of specialty, biosimilar, and generic drugs are passed to PSERS.
30. 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.
31. Confirm your agreement with the Performance Guarantees (**Exhibit 5**) submitted with this RFP.

***Offeror Response***

**III-7. Requirements.**

- A. **Comply with all (current and future) CMS requirements**, and prepare and/or submit information to CMS as required, and communicate how these changes will be operationalized and communicated to any affected members

***Offeror Response***

- B. **Support a standard or custom Medicare formulary,**

***Offeror Response***

- 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,

***Offeror Response***

- D. Provide PSERS-specific toll-free customer** service support to members. The effective date for prescription drug program under the new contract will January 1, 2022. However, the winning bidder must be willing to provide customer service support for the option selection period starting October 1, 2021. 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,

***Offeror Response***

- E. Support the HOPbenefits.com** website as required and set forth in the RFP,

***Offeror Response***

- F. Participate in planning sessions** to coordinate and manage the Health Options Program, and,

***Offeror Response***

- 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-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.

***Offeror Response***

**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.

***Offeror Response***

**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. The Board will not consider proposals that contain any limitations of Offeror liability for services provided. Any proposal containing such a limitation shall be rejected.

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 in accordance with **Part I, Section I-11A**. The total proposed cost should be broken down into the components set forth in **Appendix F & G – Cost Submittal Worksheet**. Please only provide the version applicable to the Direct Contract EGWP or an Indirect Contract EGWP, consistent with the proposal type identified on your cover sheet. The percentage of commitments to Small Diverse Businesses and Veteran Business Enterprises 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-7** 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 VETERAN BUSINESS ENTERPRISE PARTICIPATION INFORMATION

- V-1. SDB and VBE Participation Goals.** The Issuing Office and BDISBO have set an SDB Participation Goal and a VBE Participation Goal for this RFP which are listed on the SDB and VBE Participation Summary Sheet. The SDB and VBE Participation Goals were calculated based upon the market availability of SDBs and VBEs for work scopes identified for this solicitation and an assessment of past performance under the prior contract.

This is a significant programmatic change from the SDB and SB Participation program contained in prior RFPs issued by the Commonwealth. Offerors now must agree to meet the SDB and VBE Participation Goals in full or demonstrate they have made Good Faith Efforts to meet the Goals and obtain an approved waiver.

- V-2. Small Diverse Business (SDB) Participation Submittal, Appendix I.** The SDB Participation Submittal and associated required documentation shall be submitted in accordance with the Instructions for Completing SDB Participation Submittal and SDB Utilization Schedule and shall be submitted in accordance with Part 1, Section I-11A.
- V-3. Veteran Business Enterprise (VBE) Participation Submittal, Appendix J.** The VBE Participation Submittal and associated required documentation shall be submitted in accordance with the Instructions for Completing VBE Participation Submittal and VBE Utilization Schedule and shall be submitted in accordance with Part 1, Section I-11A.

**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 SDB or VBE Status or entitle an Offeror to receive credit towards the SDB or VBE participation goals.**

**V-3. Contract Requirements—SDB and VBE Participation.**

- A. SDB and VBE Participation Documents. All documents completed and submitted by the selected Offeror in connection with its SDB Participation Submittal (including the SDB Participation Submittal, SDB Utilization Schedule, and any Good Faith Efforts Documentation to Support Waiver Request of SDB Participation Goal) and its VBE Participation Submittal (including the VBE Participation Submittal, VBE Utilization Schedule, and any Good Faith Efforts Documentation to Support Waiver Request of VBE Participation Goal) shall be considered a part of the Contract and are hereby expressly incorporated into the Contract by reference thereto.
- B. Required contract terms. All contracts containing SDB and/or VBE participation must contain the following contract provisions to be maintained through the initial contract term and any subsequent options or renewals:

1. Each SDB participation commitment and each VBE participation commitment which was credited by BDISBO and the total percentage of the SDB participation commitments and VBE participation commitments made at the time of proposal submittal or contract negotiations, as applicable, become contractual obligations of the selected Offeror upon execution of its contract with the Commonwealth.
2. For purposes of monitoring compliance with the selected Offeror's SDB participation commitments and VBE participation commitments, the contract cost is the total amount paid to the selected Offeror throughout the initial contract term and all renewal option terms.
3. The selected offeror cannot alter its overall SDB or VBE commitments or commitments made to individual SDB or VBE subcontractors without written approval from the Issuing Officer and BDISBO.
4. Both the overall percentage of SDB and VBE commitments, and individual SDB and VBE commitments must be maintained in the event the contract is assigned to another prime contractor.

C. Subcontract requirements.

1. The selected offeror and each SDB listed on the SDB Utilization Schedule or VBE listed on the VBE Utilization Schedule must enter into a final, definitive subcontract agreement signed by the selected offeror and the SDB or VBE within 30 calendar days of the final execution date of the Commonwealth contract. A *Model Form of Small Diverse Business/Veteran Business Enterprise Subcontractor Agreement* which may be used to satisfy this requirement – is available as **Appendix K**.
2. In addition to any requirements in the offeror's contract documents, the subcontract must contain:
  - a. The specific work, supplies or services the SDB or VBE will perform; location for work performed; how the work, supplies or services relate to the contract; 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;
  - b. The fixed percentage commitment and/or associated estimated dollar value that each SDB or VBE will receive based on the final negotiated cost for the initial term of the prime contract and any renewal option terms;
  - c. Payment terms indicating that the SDB or VBE will be paid for work satisfactorily completed within 14 calendar days of the selected offeror's receipt of payment from the Commonwealth for such work. Subcontractors are encouraged to utilize electronic payment methods;



- d. 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 SDB or VBE relative to the nature and level of the SDB's or VBE's participation in the contract; and
  - e. The requirement that the SDB or VBE submit to BDISBO utilization reports.
3. If a subcontract agreement is required by the solicitation document and the subcontract terms omit any of the information required in subparagraph 2 but that information is otherwise reflected within the selected offeror's SDB Participation Submittal, VBE Participation Submittal, or associated documents (SDB Utilization Schedule, VBE Utilization Schedule, and Letters of Commitment), the information listed in the SDB Participation Submittal, VBE Participation Submittal, or associated documents is incorporated into the subcontract agreement. To the extent that any subcontract terms conflict with the requirements of paragraph (2) or information contained within the selected offeror's SDB Participation Submittal or VBE Participation Submittal and associated documents, the order of precedence is as follows: 1) the requirements of paragraph 2, 2) the selected offeror's SDB Participation Submittal, VBE Participation Submittal and associated documents; and 3) the terms of the subcontract agreement.
  4. If the selected offeror and a SDB listed on the SDB Utilization Schedule or VBE listed on the VBE Utilization Schedule cannot agree upon a definitive subcontract within 30 calendar days of the final execution date of the Commonwealth contract or as specified in the solicitation, the selected offeror must provide written notification to the issuing Agency and BDISBO.
  5. The prime contractor must provide a copy of any required subcontract with an SDB or VBE to BDISBO or the Agency within ten (10) business days of receiving such a request.

D. Utilization Reports.

1. The prime contractor must submit a Monthly Utilization Report to BDISBO and the contracting officer of the Issuing Office in the format required by BDISBO and within ten (10) business days at the end of each month of the contract term and any subsequent options or renewals. The Monthly Utilization Report must list payments made to each SDB or VBE subcontractor and any unpaid invoices over 30 calendar days old received from an SDB or VBE subcontractor, and the reason payment has not been made. This information will be used to track and confirm the actual dollar amount paid to SDB or VBE subcontractors and suppliers and will serve as a record of fulfillment of the contractual commitment(s). If there was no activity, the form must be completed by stating "No activity". A late fee of \$100.00

per day may be assessed against the prime contractor if the Utilization Report is not submitted in accordance with the schedule above.

2. The prime contractor must include in its agreements with its SDB and VBE subcontractors a requirement that the SDB and VBE subcontractors submit to BDISBO, within the time frame set forth within the solicitation document, a report identifying the prime contract, and listing:
    - a. Payments received from the prime contractor within the time frame covered by the report, and
    - b. Invoices for which the subcontractor has not been paid.
- E. Noncompliance with SDB and/or VBE commitments.
1. Upon BDISBO notifying the contracting Agency that a prime contractor did not comply with the SDB commitments or VBE commitments, the contracting Agency shall notify the prime contractor in writing of its findings and shall specify what corrective actions are required. The prime contractor is required to initiate the corrective actions within 10 business days and complete them within the time specified by the contracting Agency.
  2. If a contracting Agency determines that material noncompliance with SDB or VBE contract provisions exists and that the prime contractor refuses or fails to take the corrective action required by the contracting Agency, the contracting Agency, in consultation with BDISBO, may impose any and all sanctions and remedies available under the contract as it deems appropriate. Such sanctions or remedies include, but are not limited to, withholding of payments; termination of the contract along with consequential damages; revocation of the prime contractor's SB, SDB, and/or VBE status; a determination that the Offeror's SDB or VBE participation submittal be deemed non-responsible in future procurements; and/or any actions under the Commonwealth's Contractor Responsibility Program, up to and including suspension or debarment from future contracting opportunities with the Commonwealth.

## PART VI

### CONTRACT TERMS AND CONDITIONS

#### PROPOSED AGREEMENT FOR PRESCRIPTION DRUG BENEFITS ADMINISTRATION SERVICES

[TO BE MODIFIED AS APPLICABLE IF AN INDIRECT CONTRACT EGWP IS CHOSEN]

**(Including Business Associates Addendum, Information Security Addendum and the Commonwealth's Standard Terms and Conditions)**

THIS AGREEMENT ("Agreement") is made and entered into as of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ a \_\_\_\_\_ corporation ("ADMINISTRATOR"), and the Commonwealth of Pennsylvania, Public School Employees' Retirement System ("PSERS"), whose principal place of business is 5 North 5<sup>th</sup> 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 [ ]** attached hereto and incorporated herein, and (b) the HOP Part D Plan as set forth on **Exhibits [ ]** 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 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 [ ] with respect to the Pre-65 Plan, and (b) Exhibits [ ] 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 [ ], 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 [ ] 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 [ ]) 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 [ ].

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. 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 of any of ADMINISTRATOR’s representations, duties or obligations under this Agreement; or (ii) any negligent act or omission, or willful misconduct, by ADMINISTRATOR 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, at its own expense, will conduct real-time and retrospective desk audits and on-site 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"). PSERS may provide input to ADMINISTRATOR, when necessary, regarding the selection of specific Network Pharmacies to include in such audits. In addition, no more than once per calendar year, PSERS may request that ADMINISTRATOR conduct site audits of specific network pharmacies up to one percent (1%) of the total number of Network Pharmacies. PSERS shall be responsible for the standard site audit fee in connection with such requested 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 [ ]), HOP Part D Plan Network Pharmacy Agreements (as defined in Exhibit [ ]), Pre-65 Plan Rebate Agreements (as defined in Exhibit [ ]), HOP Part D Plan Rebate Agreements (as defined in Exhibit [ ]), the Pre-65 Plan Pharmacy Program Specifications (as defined in Exhibit

[ ]), the HOP Part D Plan Pharmacy Program Specifications (as defined in Exhibit [ ]) customer lists, lists of Pre-65 Plan Network Pharmacies (as defined in Exhibit [ ]), lists of HOP Part D Plan Network Pharmacies (as defined in Exhibit [ ]), 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. Without limiting the generality of the foregoing, the "HIPAA Business Associate Addendum" attached hereto as **Exhibit [ ]** is hereby made part of the Agreement and incorporated therein as if set forth in full. 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, upon 60 days' notice, 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 [ ]** 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 R. Grell, Executive Director  
Public School Employees' Retirement System  
5 North Fifth Street  
Harrisburg, Pennsylvania 17101

ADMINISTRATOR: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

21. Term.

21.1 Initial Agreement Period. The initial Agreement Period of this Agreement shall commence on January 1, 2022 (the "Commencement Date") and shall terminate on December 31, 2023, unless earlier terminated pursuant to its terms ("Initial Agreement Period").

21.2 Renewal Terms. At the conclusion of the Initial Agreement Period, PSERS shall have the right, in its sole discretion, to renew the Agreement for an additional twelve months to December 31, 2024 (the "Second Agreement Period"). In the event that this Agreement is renewed for the Second Agreement Period, PSERS shall have the right, in its sole discretion, to renew the Agreement beyond the Second Agreement Period for an additional twelve months to December 31, 2025 (the "Third Agreement Period"). In the event that this Agreement is renewed for the Third Agreement Period, PSERS shall have the right, in its sole discretion, to renew the Agreement beyond the Third Agreement Period for an additional twelve months to December 31, 2026 (the "Fourth Agreement Period"). (the Second Agreement Period, the Third Agreement Period, and the Fourth Agreement Period, if any, together with the Initial Agreement Period, 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 Agreement Period, the Second Agreement Period or the Third Agreement Period, 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 law's 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.

[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto, each intending to be legally bound hereby, have caused this Agreement for Prescription Drug Benefits Administration Services to be executed as of the day and year first above written.

COMMONWEALTH OF PENNSYLVANIA,  
PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT SYSTEM

\_\_\_\_\_  
Federal Tax Identification Number

\_\_\_\_\_  
By: \_\_\_\_\_ Date  
Title: Executive Director

\_\_\_\_\_  
By: \_\_\_\_\_ Date  
Title: Deputy Executive Director

\_\_\_\_\_  
[PBM] \_\_\_\_\_  
\_\_\_\_\_  
Federal Tax Identification Number

By: \_\_\_\_\_ Date  
Title: \_\_\_\_\_

By: \_\_\_\_\_ Date  
Title: \_\_\_\_\_

Approved as to form and legality:

\_\_\_\_\_  
Jackie W. Lutz Date  
Chief Counsel  
Public School Employees' Retirement System

\_\_\_\_\_  
Deputy Attorney General Date  
Office of Attorney General

**LIST OF EXHIBITS**  
*[To the proposed agreement]*

- EXHIBIT [1] Pre-65 Plan Pharmacy Program Specifications
- EXHIBIT [2] HOP Medicare Part D Plan Pharmacy Program Specifications
- EXHIBIT [3] HOP Medicare Part D Plan Benefit Summary
- EXHIBIT [4] Fees – Price Summary
- EXHIBIT [5] Business Associate Addendum
- EXHIBIT [6] Information Security Addendum
- EXHIBIT [7] Commonwealth of Pennsylvania Non-Standard Terms and Conditions

**EXHIBIT 1**

*[To the proposed agreement]*

**PRE-65 PLAN PHARMACY PROGRAM SPECIFICATIONS**

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

**[2021 HOP Pre-65 Medical Plan Guide \(PDF 1.24 MB\)](#)**

**[2021 Pre-65 Medical Plan Summary Plan Description \(SPD\) \(PDF 1MB\)](#)**

The Hop Pre-65 Medical Plan – 2021 Critical Care List

**[2021 HOP Pre-65 Medical Plan Critical Care Drugs List \(PDF 28KB\)](#)**

## EXHIBIT 2

*[To the proposed agreement]*

### HOP MEDICARE PART D PLAN PHARMACY PROGRAM SPECIFICATIONS

#### 2021 Value, Basic, and Enhanced Medicare Rx Options

- [Enhanced Medicare Rx Option](#) (PDF 35KB)
- [Basic Medicare Rx Option](#) (PDF 35KB)
- [Value Medicare Rx Option](#) (PDF 34KB)
- [Medicare Rx Options Comparison Chart](#) (PDF 52KB)

#### 2021 Formularies

Enhanced and Basic:

- [Comprehensive Formulary \(Effective as of February 1, 2021\)](#) (PDF 1.5 MB)
- [2021 Part D Formulary Lookup Tool](#)

Value:

- [Gold5 Comprehensive Formulary \(Effective as of February 1, 2021\)](#) (PDF 1.2 MB)
- [2021 Part D Formulary Lookup Tool](#)

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

Enhanced and Basic: [Annual Notice of Changes \(PDF 359 KB\)](#)

Value: [Annual Notice of Changes \(PDF 257 KB\)](#)

**EXHIBIT 3**

*[To the proposed agreement]*

**HOP MEDICARE PART D PLAN BENEFIT SUMMARY**

**SCHEDULE OF BENEFITS (EFFECTIVE FOR 2021 CALENDAR YEAR)**

	Member Pays	ENHANCED	BASIC	VALUE
	<b>Annual Deductible</b>	\$0	\$100 (Brand and Specialty only)	\$ 445
<b>Initial Coverage</b> (up to \$4,130 total Rx spend)	Preferred Generic Drugs	\$4 (\$12 for 90-days)	\$5 (\$15 for 90-days)	\$2 (\$6 for a 31-90 day supply); not subject to the annual deductible
	Non-Preferred Generic Drugs	\$11 (\$33 for 90-days)	\$12 (\$36 for 90-days)	25%
	Preferred Brand Drugs	25% up to \$150 (\$300 for 90-days) (\$280 for 90-days by mail)	30% up to \$200 (\$500 for 90-days) (\$450 for 90-days by mail)	25%
	Non-Preferred Brand Drugs	35% up to \$200 (\$400 for 90-days) (\$380 for 90-days by mail)	40%	25%
	Specialty Drugs	33%	30%	25%
<b>Coverage Gap</b> (Up to \$6,550 TrOOP)	Generic Drugs	25%	25%	25%
	Brand Drugs	25%	25%	25%
<b>Catastrophic Coverage</b> (no limit)	Generic Drugs	Greater of \$3.70 or 5% up to \$100	Greater of \$3.70 or 5% up to \$250	Greater of \$3.70 or 5%
	Brand Drugs	Greater of \$9.20 or 5% up to \$100	Greater of \$9.20 or 5% up to \$250	Greater of \$9.20 or 5%
<b>Formulary</b>		<b>PSERS Custom</b>	<b>PSERS Custom</b>	<b>OptumRx Gold5</b>

**EXHIBIT 4**

***[To the proposed agreement]***  
**FEES – PRICE SUMMARY**

[TBD]

## EXHIBIT 5

### *[To the proposed agreement]* BUSINESS ASSOCIATE ADDENDUM

This Business Associate Agreement (“Agreement”) is made as of the Commencement 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.
- a. “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.

## EXHIBIT 6

### *[To the proposed agreement]* INFORMATION SECURITY ADDENDUM

This Information Security Addendum (“Addendum”) made as of the Effective Date, by and between the Commonwealth of Pennsylvania, Public School Employees’ Retirement System (“PSERS”) and \_\_\_\_\_ (“ADMINISTRATOR”) sets forth additional terms and conditions with respect to information security applicable to the Agreement For Prescription Drug Benefits Administration Services (the “Agreement”). The terms and conditions agreed to in this Addendum are the minimum required for the Agreement and shall take precedence over any term of the Agreement which attempts to reduce, waive or remove these terms and conditions.

**WHEREAS, PSERS wishes to disclose certain information to ADMINISTRATOR, and ADMINISTRATOR is authorized to collect and/or use certain information, pursuant to the terms of the Agreement; and**

**WHEREAS, PSERS and ADMINISTRATOR intend to protect the privacy and provide for the confidentiality of such information.**

**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:**

I. Definitions.

- A. Authorized Persons. Authorized Persons include ADMINISTRATOR’s employees and contractors who have appropriate PSERS’ clearance and a specific need for such access in order to perform ADMINISTRATOR’s services for PSERS.
- B. Industry Standards. Industry Standards include National Institute of Standards and Technology (NIST) 800 Series, NIST Cybersecurity Framework and ISO 27001/2, or their generally recognized equivalents.
- C. PSERS’ Data. PSERS’ Data is any data or information that ADMINISTRATOR creates, obtains, accesses, receives (from PSERS or on behalf of PSERS), hosts or uses in the course of its performance of the Agreement;
- D. Public Data. Public Data means any specific information or data, regardless of form or format, that PSERS has actively and intentionally disclosed, disseminated, or made available to the public.
- E. Multi-Factor Authentication. The use of two or more of the authentication methods listed below. Two-factor would employ two of the methods; three-factor would employ one each of all three methods.
  - i. Something you know (e.g. PIN, password, shared information).
  - ii. Something you possess (e.g. token, smart card, digital certificate).
  - iii. Something you are (biometrics – e.g. fingerprint, voice, iris, face).



- F. Services. The services pursuant to the Agreement and any Statement of Work (“SOW”).
- G. Documentation. All documentation related to the Services, including but not limited to the SOW.
- H. PSERS’ Confidential Information. PSERS’ Data that is not Public Data, including but not limited to information containing personally identifiable information (“PII”), protected health information (“PHI”), and electronic protected health information (“ePHI”), as defined in HIPPA regulations, investment portfolio information, and trade secrets. (For the avoidance of doubt, trade secrets include but are not limited to limited partnership agreements, side letters, private placement memoranda and similar information.)

## II. Data Security.

- A. Compliance. ADMINISTRATOR shall comply with the Information Technology (“IT”) standards and policies issued by the Governor’s Office of Administration, Office for Information Technology (OA/OIT) (located at: <http://www.oa.pa.gov/Policies/Pages/itp.aspx>), including the accessibility standards set out in IT Bulletin ACC001, IT Accessibility Policy. The ADMINISTRATOR shall ensure that Services procured under this Contract comply with the applicable standards. In the event such standards change during ADMINISTRATOR’s performance, and the Commonwealth requests that ADMINISTRATOR comply with the changed standard, then any incremental costs incurred by ADMINISTRATOR to comply with such changes shall be paid for pursuant to a change order to the Contract.
- B. Data Protection. To the extent that ADMINISTRATOR is charged with creating, accessing, transmitting, maintaining, hosting, or using PSERS’ Data under the Agreement, ADMINISTRATOR shall preserve the confidentiality, integrity, and availability of PSERS’ Data by implementing and maintaining administrative, technical, and physical controls that conform to Commonwealth of Pennsylvania IT Policies and Industry Standards. Implemented security controls shall provide a level of security which is commensurate with the sensitivity of the data to be protected.
- C. Data Use and Access. ADMINISTRATOR shall use PSERS’ Data only and exclusively to support the performance of services for PSERS under the Agreement and not for any other purpose. With the exception of Public Data, absent PSERS’ prior written consent, ADMINISTRATOR shall not at any time during or after the term of the Agreement disclose PSERS’ Data to any person, other than Authorized Persons and PSERS personnel in connection with the performance of the services (except as required by law). If such disclosure is required by law, ADMINISTRATOR shall notify PSERS prior to such disclosure, unless such notification is prohibited by law.



- D. Data Backup. Where appropriate to protect the integrity and availability of PSERS' Data, ADMINISTRATOR shall maintain (and/or cause any third-party hosting company that it uses to maintain) a means to backup and recover PSERS' Data in the event that PSERS' Data is lost, corrupted or improperly destroyed. PSERS shall have the right to establish backup security for PSERS' Data and to keep backup PSERS' Data and PSERS' Data files in its possession if it chooses.
- E. Return of PSERS' Data. ADMINISTRATOR shall ensure that, upon request, PSERS can retrieve PSERS' Data in the event the ADMINISTRATOR is unable to continue providing the services under the Agreement due to termination of the Agreement or otherwise. In the event of a termination and upon PSERS' request, the ADMINISTRATOR will provide PSERS' Data in a mutually acceptable format.
- F. Destruction of PSERS' Data. ADMINISTRATOR shall erase, destroy, and/or render unrecoverable all PSERS' Data in ADMINISTRATOR's possession that is no longer required for the performance of its duties under the Agreement. Upon request, ADMINISTRATOR shall certify in writing that these actions have been completed within seven (7) days of PSERS' request.
- G. Effect of Termination. Unless directed otherwise by PSERS, upon termination of the Agreement for any reason, ADMINISTRATOR shall maintain PSERS' Data and continue to extend the protections of the Agreement and this Addendum to such information for a period of six months at which point it shall return and destroy all PSERS' Data received from PSERS (or created or received by ADMINISTRATOR on behalf of PSERS) regardless of form, and shall retain no copies of PSERS' Data. If return or destruction of PSERS' Data is not feasible, ADMINISTRATOR shall continue to extend the protections of the Agreement and this Addendum to such information and limit further use of PSERS' Data to those purposes that make the return or destruction of PSERS' Data infeasible.

### III. ADMINISTRATOR Security.

- A. Information Security Program. For the term of the Agreement, ADMINISTRATOR agrees that it has and will maintain a formal information security program which is appropriate for the types of services that it provides. Such program is and will be consistent with Industry Standards.
- B. ADMINISTRATOR Personnel. ADMINISTRATOR agrees that it shall only use highly qualified personnel and contractors in performing the Agreement and, to the extent not prohibited by applicable law, shall require each to pass a background check.
- C. Acceptance of Acceptable Use Policy. ADMINISTRATOR shall ensure that all ADMINISTRATOR personnel, including employees and contractors, who access PSERS' network as a part of performing the Agreement, will agree to PSERS' Acceptable Use Policy as found in Management Directive 205.34, as it may be amended from time to time.

- D. Multi-Factor Authentication. For services exposed to the Internet, where sensitive information is stored, processed, or transmitted, ADMINISTRATOR will provide Multi-Factor Authentication for user authentication to the web application via workstation and mobile browsers. If the service is provided via mobile application as well, that application must also be protected by Multi-Factor Authentication.
- E. Security Awareness Training. ADMINISTRATOR shall ensure its personnel and partners are provided cybersecurity awareness education and are adequately trained to perform their information security-related duties and responsibilities consistent with Commonwealth of Pennsylvania IT Policies.

#### IV. Security Incident and Breach Notification.

##### A. Security Notification

ADMINISTRATOR agrees to notify PSERS upon learning of: (i) unauthorized access, loss, alteration, theft or corruption of PSERS' Confidential Information; (ii) any event that creates a substantial risk to the confidentiality, integrity or availability of PSERS' Data; (iii) a breach of any of ADMINISTRATOR's security obligations under this Addendum; or (iv) any other event requiring notification under applicable law. In such an instance, ADMINISTRATOR agrees to:

- i. Take such action as may be necessary to preserve forensic evidence and eliminate the cause of the risk or breach within ADMINISTRATOR's reasonable control. As soon as practicable after discovery, ADMINISTRATOR shall undertake a thorough forensic investigation of any compromise or improper use and provide PSERS all information necessary to enable PSERS to fully understand the nature and extent of the compromise or improper use to the extent known.
- ii. And, notify PSERS by telephone at (717) 720-4699 and by e-mail at [RA-PSISO@pa.gov](mailto:RA-PSISO@pa.gov) regarding such an event without undue delay, and in any event, within 24 hours of discovery, and
- iii. To the extent that the breach or incident was the fault of ADMINISTRATOR:
  - a) assume the cost of informing all such affected individuals in accordance with applicable law, and
  - b) indemnify, hold harmless and defend PSERS and its trustees, officers, and employees from and against any claims, damages, or other harm related to such incident or breach.

##### B. Security Incident Investigations

ADMINISTRATOR agrees to cooperate with PSERS in investigating a security incident, as declared by PSERS, and provide the name and contact information of at least two (2) security contacts who will respond to PSERS in a timely manner, dependent on criticality, in the event that PSERS must investigate a security incident. The current security contacts are as follows:

Contact Names: \_\_\_\_\_  
Phone Numbers: \_\_\_\_\_  
Email Addresses: \_\_\_\_\_

V. Maintenance of Safeguards.

- A. ADMINISTRATOR shall maintain and follow Industry Standards with respect to any of PSERS' Confidential Information in ADMINISTRATOR's possession or control and protect such information against any loss, alteration, theft or corruption.
- B. At PSERS' request, ADMINISTRATOR shall provide PSERS with copies of its information security policies, processes, and procedures. ADMINISTRATOR will notify PSERS of any changes to its policies, processes, or procedures that relate to the security of PSERS' Confidential Information in ADMINISTRATOR's possession.

VI. Information Security Audit.

- A. PSERS shall have the right to review ADMINISTRATOR's information security program prior to the commencement of Services and from time to time during the Term of the Agreement. During the performance of the Services, on an ongoing basis annually and immediately in the event of a security incident, PSERS, including its professional advisors and auditors, at its own expense, shall be entitled to perform, or to have performed, an on-site assessment of ADMINISTRATOR's information security program.
- B. PSERS shall have the right to review ADMINISTRATOR's information security program through ADMINISTRATOR's annual submission to PSERS of its current SOC2 report. The report must document an assessment conducted by a qualified, independent third party. Assessment scope must address the services provided to PSERS, including but not limited to related people, process and technology.
- C. Upon PSERS' request, ADMINISTRATOR agrees to complete, within forty-five (45 days) of receipt of PSERS' request, an assessment questionnaire provided by PSERS regarding ADMINISTRATOR's information security program, including artifacts for a subset of controls.

VII. Application Security.

In the event the ADMINISTRATOR conducts application software development for PSERS, ADMINISTRATOR will either make source codes available for review by PSERS or will conduct source code scanning using a commercial security tool. Scans must be conducted annually and at any time significant code changes are made. Scan reports will be made available to PSERS within two weeks of execution. ADMINISTRATOR must disclose remediation timelines for high, medium, and low risk security code defects. Scans must occur before code is implemented in production. High risk security code defects may not be implemented in production without written

approval from either PSERS' Executive Director, Deputy Executive Director, or Assistant Executive Director.

#### VIII. Compliance with Applicable State and Federal Law.

ADMINISTRATOR shall comply with all applicable federal, state, and local laws concerning data protection and privacy when handling PSERS' Data.

#### IX. Enforcing Compliance.

ADMINISTRATOR shall enforce and be responsible for compliance by all its personnel and contractors with the provisions of this Information Security Addendum and all other confidentiality obligations owed to PSERS.

##### I. Accommodation of Additional Protections.

ADMINISTRATOR agrees to comply with such additional protections as PSERS shall reasonably request.

##### II. Termination.

A breach by ADMINISTRATOR 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.

##### III. Indemnification.

ADMINISTRATOR shall indemnify, hold harmless and defend PSERS from and against all claims, losses, liabilities, damages, judgments, costs and other expenses, including PSERS' costs and attorney fees, incurred as a result of, or arising directly or indirectly out of or in connection with ADMINISTRATOR's failure to meet any of its security obligations 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 ADMINISTRATOR's performance under this Addendum. Limitations on ADMINISTRATOR's liability, regardless of conflicting language elsewhere in the Agreement, shall not apply to claims related to ADMINISTRATOR's breach of the information security sections of this Addendum.

##### IV. Intellectual Property Infringement Indemnification.

ADMINISTRATOR shall indemnify, defend and hold PSERS harmless from any and all claims brought against PSERS alleging that the Services and/or Documentation or PSERS' use of the Services and/or Documentation constitutes a misappropriation or infringement of intellectual property ("IP") of any Third Party. ADMINISTRATOR agrees to be responsible for all costs or expenses, to include reasonable attorneys' fees

awarded or resulting from any claim. PSERS shall, after receiving notice of a claim, advise ADMINISTRATOR of such notification. Limitations on ADMINISTRATOR's liability, regardless of conflicting language elsewhere in any Agreement, shall not apply to claims related to ADMINISTRATOR's misappropriation or infringement of another's intellectual property.

V. ADMINISTRATOR Liability Insurance.

ADMINISTRATOR shall procure, and maintain for the duration of the contract, insurance against claims and damages which may arise from or in connection with the performance of its work to include IP infringement and privacy or data breaches coverage. Coverage shall have limits of no less than \$5,000,000.00 per occurrence and \$10,000,000.00 aggregate.

VI. Survival; Order of Precedence.

The provisions of this Addendum shall survive expiration or termination of the Agreement.

VII. Entire Agreement.

The Agreement, including any exhibits and/or schedules thereto, and this Addendum contain the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the Parties relating to such subject matter.

## EXHIBIT 7

*[To the proposed agreement]*

### COMMONWEALTH OF PENNSYLVANIA NONSTANDARD TERMS AND CONDITIONS

#### **1. CONTRACT-001.1c Contract Terms and Conditions – Stand-Alone (Jan 24, 2007)**

The Contractor and the Commonwealth agree that the following terms and conditions are part of the Contract:

#### **2. CONTRACT-002.3 Extension of Contract Term (Nov 30, 2006)**

The Commonwealth reserves the right, upon notice to the Contractor, to extend any single term of the Contract for up to three (3) months upon the same terms and conditions.

#### **3. CONTRACT-009.1c Patent, Copyright, and Trademark Indemnity (Oct 2013)**

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.

#### **4. CONTRACT-011.1a Compliance With Law (Oct 2006)**

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

#### **5. CONTRACT-017.1 Taxes (Dec 5, 2006)**

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. 23-23740001-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.

#### **6. CONTRACT-018.1 Assignment of Antitrust Claims (Oct 2006)**

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.



## 7. CONTRACT-027.1 Nondiscrimination/Sexual Harassment Clause (August 2018)

The Contractor agrees:

- A. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, 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 by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
- C. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.
- D. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- E. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
- F. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- G. The Contractor and each subcontractor represent that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment



Opportunity Commission (“EEOC”) and shall file an annual EEO-1 report with the EEOC as required for employers’ subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

**H.** The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.

**I.** The Contractor’s and each subcontractor’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 and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

**J.** 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.

## **8. CONTRACT-028.1 Contractor Integrity Provisions (Jan 2015)**

It is essential that those who seek to contract with the Commonwealth of Pennsylvania (“Commonwealth”) observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

**A. DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

**1. “Affiliate”** means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.

**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 the execution of this contract.

3. **“Contractor”** means the individual or entity, that has entered into this contract with the Commonwealth.

4. **"Contractor Related Parties"** means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.

5. **“Financial Interest”** means either:

- 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 holding any position of management.

6. **“Gratuity”** means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the *Governor’s Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b)*, shall apply.

7. **"Non-bid Basis"** means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

B. In furtherance of this policy, Contractor agrees to the following:

1. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.

2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

3. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

4. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than the Contractor's submission of the contract signed by Contractor.

5. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:

a. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;

b. been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;

c. had any business license or professional license suspended or revoked;

d. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and

e. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

6. Contractor shall comply with the requirements of the *Lobbying Disclosure Act* (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code* (25 P.S. §3260a).

7. When contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.

8. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the 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 that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

9. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third-party beneficiaries shall be created thereby.

10. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of anyone 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.

## **9. CONTRACT-029.1 Contractor Responsibility Provisions (Nov 2010)**

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

- A.** The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, 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/Contract, a written explanation of why such certification cannot be made.
- B.** The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
- 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, to the best knowledge of the Contractor, 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 that 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

**10. CONTRACT-030.1 Americans with Disabilities Act (April 1, 010)**

A. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28C.F.R. Section 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. Section 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.

**11. CONTRACT-032.1 Covenant Against Contingent Fees (Oct 2006)**

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.

**APPENDICES**  
*[To the Request for Proposal]*

**APPENDIX A, 99 - NON-DISCLOSURE AGREEMENT**

**APPENDIX B, 100 - PROPOSAL COVER SHEET**

**APPENDIX C, 101 - DOMESTIC WORKFORCE UTILIZATION CERTIFICATION**

**APPENDIX D, 102 - IRAN FREE PROCUREMENT CERTIFICATION**

**APPENDIX E, 103 - TRADE SECRET CONFIDENTIAL PROPRIETARY  
INFORMATION NOTICE FORM**

**APPENDIX F, 107 - COST SUBMITTAL FOR DIRECT CONTRACT PROPOSAL**

**APPENDIX G, 115 - COST SUBMITTAL FOR INDIRECT CONTRACT PROPOSAL**

**APPENDIX H, 123 - SMALL DIVERSE BUSINESS AND VETERAN BUSINESS  
ENTERPRISE SUMMARY SHEET**

**APPENDIX I, 124 - SMALL DIVERSE BUSINESS PARTICIPATION PACKET**

**APPENDIX J, 142 - VETERAN BUSINESS ENTERPRISE PARTICIPATION PACKET**

**APPENDIX K, 161 - MODEL FORM OF SMALL DIVERSE BUSINESS/VETERAN  
BUSINESS ENTERPRISE SUBCONTRACTOR AGREEMENT**



**APPENDIX A  
NON-DISCLOSURE AGREEMENT  
COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM  
RFP# PSERS 2021-1**

**Limited Data Use 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 promptly 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 PBM 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**



**APPENDIX B  
PROPOSAL COVER SHEET  
COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM  
RFP# PSERS 2021-1**

**Enclosed in three separately sealed submittals for Technical, Cost and SDB/SB is the proposal of the Offeror identified below for the above-referenced RFP:**

<b>Offeror Information:</b>	
Offeror Name	
Proposal for Direct Contract or Indirect Contract EGWP	<b>Direct Contract EGWP Indirect Contract EGWP</b>
Offeror Mailing Address	
Offeror Website	
Offeror Contact Person	
Contact Person's Phone Number	
Contact Person's E-Mail Address	
Offeror Federal ID Number	
Offeror SAP/SRM Vendor Number	

<b>Submittals Enclosed and Separately Sealed:</b>	
	Technical Submittal Domestic Workforce Utilization Certification Iran Free Procurement Certification
	Small Diverse Business Participation Submittal
	Veteran Business Enterprise Participation Submittal
	Cost Submittal

<b><i>Signature</i></b>	
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 C**  
**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] 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 D**  
**IRAN FREE PROCUREMENT CERTIFICATION FORM**

**(Pennsylvania’s Procurement Code Sections 3501-3506, 62 Pa.C.S. §§ 3501-3506)**

To be eligible for an award of a contract with a Commonwealth entity for goods or services worth at least \$1,000,000 or more, a vendor must either: a) certify it is **not** on the current list of persons engaged in investment activities in Iran created by the Pennsylvania Department of General Services (“DGS”) pursuant to Section 3503 of the Procurement Code **and** is eligible to contract with the Commonwealth under Sections 3501-3506 of the Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e).

To comply with this requirement, please insert your vendor or financial institution name and complete **one** of the options below. Please note: Pennsylvania law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Section 3503 of the Procurement Code.)

**OPTION #1 - CERTIFICATION**

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS **and** is eligible to contract with the Commonwealth of Pennsylvania Sections 3501-3506 of the Procurement Code.

<i>Vendor Name/Financial Institution (Printed)</i>	
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>

**OPTION #2 – EXEMPTION**

Pursuant to Procurement Code Section 3503(e), DGS may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to enter into a contract for goods and services.

If you have obtained a written exemption from the certification requirement, please fill out the information below, and attach the written documentation demonstrating the exemption approval.

<i>Vendor Name/Financial Institution (Printed)</i>	
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>

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

**Trade Secret/Confidential Proprietary Information Notice**

Instructions:

The Commonwealth may not assert on behalf of a third party an exception to the public release of materials containing information believed to be exempt from public disclosure, including trade secrets or confidential proprietary information, unless the materials are accompanied, at the time they are submitted, by this form or a document containing similar information. In addition, in order to protect the safety and security of individuals, infrastructure, and information technology systems, the Commonwealth requires third parties to designate as confidential any information submitted by the third parties that, if disclosed, would be reasonably likely to jeopardize safety or security.

It is the responsibility of the party submitting this form to ensure that all statements and assertions made below are legally defensible and accurate. The Commonwealth will not provide a submitting party any advice with regard to Pennsylvania's *Right-to-Know Law*, [65 P.S. §§ 67.101—67.3104](#), or laws relating to trade secret or confidential proprietary information.

**Name of submitting party:**

**Contact information for submitting party:**

**Please provide a brief overview of the materials that you are submitting** (e.g. bid proposal, quote, grant application, statement of work, technical schematics):

Please provide a brief explanation of why the materials are being submitted to the Commonwealth (e.g. response to bid, RFP or RFQ #12345, application for grant XYZ being offered by the Department of Health, documents required to be submitted under law ABC):

Please indicate if any information has been included that you believe is exempt from public disclosure by checking the appropriate box below: (Note: Financial information submitted in response to an RFP or IFB to demonstrate economic capability is exempt from public disclosure in accordance with Section 708(b)(26) of the Right-to-Know Law, 65 P.S. 67.708(b)(26)).

- No information has been included that I believe is exempt from public disclosure.
  
- Information has been included that I believe is exempt from public disclosure.

Please provide a list detailing which portions of the material being submitted you believe are exempt from public disclosure. This includes trade secret, confidential or proprietary information, or information that if disclosed would be reasonably likely to jeopardize the safety or security of an individual, infrastructure, or information technology system. Please provide an explanation of why you think those materials constitute a trade secret, confidential or proprietary information, or why disclosure of those materials would be reasonably likely to jeopardize safety or security. Also, please mark the submitted material in such a way to allow a reviewer to easily distinguish between the parts referenced below.

(You may attach additional pages if needed)

**Note:** Without substantial justification, the following information will not be considered a trade secret or confidential proprietary information:

- Any information submitted as part of a vendor’s cost response.
- Information submitted as part of a vendor’s technical response or statement of work that does not implicate safety and security or pertain to specific business practices or product specification.
- Information submitted as part of a vendor’s technical or small diverse business and small business response that is otherwise publicly available or otherwise easily obtained.
- Information detailing the name, quantity, and price paid for any product or service being purchased by the Commonwealth.

Page Number	Description	Explanation

### **Acknowledgment**

The undersigned party hereby agrees that it has read and completed this form and has marked the material being submitted in accordance with the instructions above. The undersigned party acknowledges that the Commonwealth is not liable for the use or disclosure of trade secret, confidential or proprietary information, or information that if disclosed would be reasonably likely to jeopardize the safety or security of an individual, infrastructure or information technology system, where that data or information has not been clearly marked as such, and which was not accompanied by a specific explanation included with this form.

The undersigned agrees to defend any action seeking release of the materials it believes to be trade secret, confidential or proprietary, or would be reasonably likely to result in a safety or security risk if disclosed. The undersigned also agrees to indemnify and hold harmless the Commonwealth, its agents and employees, from any judgments awarded against the Commonwealth in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives so long as the Commonwealth has possession of the submitted material, and will apply to all costs unless and until the undersigned provides a written statement or similar notice to the Commonwealth stating that it no longer wishes to exempt the submitted material from public disclosure.

The undersigned acknowledges that the Commonwealth is required to keep all records for at least as long as specified in its published records retention schedule.

The undersigned acknowledges that the Commonwealth reserves the right to reject the undersigned's claim that the information is trade secret, confidential, proprietary or is reasonably likely to result in a safety or security risk if disclosed, if the Commonwealth determines that the undersigned has not met the burden of establishing that the information constitutes a trade secret, confidential, or is otherwise exempt. The undersigned also acknowledges that if only a certain part of the submitted material is found to constitute a trade secret, is confidential or proprietary, or is otherwise exempt, the remainder of the submitted material will become public; only the protected information will be removed and remain nonpublic.

If being submitted electronically, the undersigned agrees that the mark below is a valid electronic signature.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**APPENDIX F  
 COST SUBMITTAL – DIRECT CONTRACT  
 COMMONWEALTH OF PENNSYLVANIA  
 PUBLIC SCHOOL EMPLOYEES’ RETIREMENT SYSTEM  
 RFP# PSERS 2021-1**

This version of the Cost Proposal is applicable to a **Direct Contract** EGWP only.

YOUR RESPONSES TO THE FOLLOWING SECTION PART IV – COST PROPOSAL WILL CONSTITUTE YOUR COST SUBMITTAL AND MUST BE SEPARATE FROM YOUR TECHNICAL AND DISADVANTAGED BUSINESS SUBMITTAL.

**Part IV. Cost Submittal.** The information requested 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. Any proposal failing to meet this requirement will be automatically disqualified. Complete all parts of the following schedule to show your cost proposal. 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-7**, 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.

**DIRECT CONTRACT EGWP  
 (Assuming 11/20/2021 HHS Rebate Rule is Not in Effect During Contract Period)**

**A. Fees, Discounts, and Rebates**

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

	2022			2023		
	@ Retail 1-33 days supply	@ Retail 34-90 days supply	@ Mail 1-90 days supply	@ Retail 1-33 days supply	@ Retail 34-90 days supply	@ Mail 1-90 days supply
<b>Brand Drugs (non-Specialty)</b>						
Minimum Guaranteed Discount from 100% AWP						
Dispensing Fee/Rx						
<b>Specialty Brand Drugs</b>						
Minimum Guaranteed Discount from 100% AWP						
Dispensing Fee/Rx						
<b>Single Source and Multi Source Generic Drugs</b>						
Minimum Guaranteed Discount from 100% AWP						
Dispensing Fee/Rx						



	2022			2023		
	@ Retail 1-33 days supply	@ Retail 34-90 days supply	@ Mail 1-90 days supply	@ Retail 1-33 days supply	@ Retail 34-90 days supply	@ Mail 1-90 days supply
<b>Rebates<sup>1</sup></b>						
Guaranteed Minimum Rebate per brand claim – Non-Specialty						
Guaranteed Minimum Rebate per brand claim - Specialty						

	2022			2023		
<b>90-day Supply</b>	@Home Infusion	@Long Term Care	@ITU	@Home Infusion	@Long Term Care	@ITU
<b>Brand Drugs (non-Specialty)</b>						
Minimum Guaranteed Discount from 100% AWP						
Dispensing Fee/Rx						
<b>Specialty Brand Drugs</b>						
Minimum Guaranteed Discount from 100% AWP						
Dispensing Fee/Rx						
<b>Single Source and Multi Source Generic Drugs</b>						
Minimum Guaranteed Discount from 100% AWP						
Dispensing Fee/Rx						
<b>Rebates</b>						
Minimum Guaranteed Rebate per brand claim – Non-Specialty						
Minimum Guaranteed Rebate per brand claim - Specialty						

All AWP discounts must be minimum guarantees based on a percentage reduction from the actual 11-digit NDC dispensed.

Minimum discount guarantee at mail order must be for all mail order prescriptions regardless of days supply.

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. Any discount shortfall at mail order may not be offset by surplus at retail.

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.

<sup>1</sup> The rebate guarantee should be based on PSERS' existing custom formulary.

Rebate guarantee surpluses may not offset rebate shortfalls from other contract years and may never offset shortfalls from any other types of financial guarantees.

All discount guarantees must be independently verifiable by a third party using a nationally recognized source of time sensitive AWP pricing data. Offeror agrees that PSERS may audit to verify that the contractual discount guarantees were obtained.

2. Provide an AWP-based guaranteed 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
  - b. Therapeutic Group/Therapeutic Category
  - c. Guaranteed AWP Discount
  - d. Guaranteed per Claim Dispensing Fee
  - e. Guaranteed per Claim Rebate
  - f. Limited Distribution (Y/N)
  - g. Brand/Generic
  
3. Indicate all claim categories which are excluded from discount or rebate guarantees:

Claim Category	Excluded from discount guarantee (Y/N)	Excluded from rebate guarantee (Y/N)
-member submitted direct claims		
-340B adjudicated claims		
-compound drugs		
-vaccines		
-OTC claims		
-limited distribution specialty drugs		
-indicate any other categories which are excluded		

**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	2022		2023	
	\$		\$	
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
Customer Service for Members				
CMS Required Member Communications				
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 Direct Mailing				
Part D appeals & grievance handling				
<b>Reporting Services</b>				
Web-enabled Client Reporting-produced by Client				
Web-enabled Client Reporting-produced by Vendor				
Additional Reports				
Billing Reports				
Custom Ad-Hoc Reporting				
<b>Implementation Package</b>				
Member Communications (Includes 2 std ID cards)				
Mailed directly to Members				
Replacement Cards				
Customized booklets and ID cards				
Network Development Upon Request				
Plan Setup				

### C. Requirements

1. Confirm agreement to guarantee your quoted fees for at least 180 days.
2. Confirm agreement that 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.
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. Confirm that offsetting of annual financial guarantees, whereby a shortfall in one category may be offset by a surplus in another category is limited only to rebate guarantees, and rebate surpluses may never offset any non-rebate financial guarantees.
6. Fees must be based on only “true” claim transactions (not adjustments, errors, reversals, or “redos”). Confirm that your quoted fees will be charged on only “true” transactions that would generate a payment.
7. Confirm that your fees will be guaranteed for the twelve-month period beginning on the contract effective date and for each succeeding full twelve-month period.
8. Confirm that retail pricing is based on a pass-through basis such that PSERS is billed an amount equal to the retail pharmacy.
9. Confirm that if you negotiated deeper discounts with network pharmacies during the contract term, such improvements will be passed to PSERS
10. Confirm agreement that PSERS may audit all pertinent files, reports, and contracts to verify all financial guarantees?
11. Confirm agreement that MAC pricing will apply at mail order and be identical to MAC pricing at retail,
12. 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.
13. Confirm formulary rebates from manufacturers of specialty, biosimilar, and generic drugs are passed to PSERS.

## PRE-AGE 65 Group Pricing

### A. Fees, Discounts, and Rebates

- Provide your guaranteed fees, discounts, and rebates for each of the following:

	2022			2023		
	@ Retail 1-33 days supply	@ Retail 34-90 days supply	@ Mail 1-90 days supply	@ Retail 1-33 days supply	@ Retail 34-90 days supply	@ Mail 1-90 days supply
<b>Brand Drugs (non-Specialty)</b>						
Minimum Guaranteed Discount from 100% AWP						
Dispensing Fee/Rx						
<b>Specialty Brand Drugs</b>						
Minimum Guaranteed Discount from 100% AWP						
Dispensing Fee/Rx						
<b>Single Source and Multi Source Generic Drugs</b>						
Minimum Guaranteed Discount from 100% AWP						
Dispensing Fee/Rx						
<b>Rebates<sup>2</sup></b>						
Guaranteed Minimum Rebate per brand claim – Non-Specialty						
Guaranteed Minimum Rebate per brand claim - Specialty						

All AWP discounts must be minimum guarantees based on a percentage reduction from the actual 11-digit NDC dispensed.

Minimum discount guarantee at mail order must be for all mail order prescriptions regardless of days supply.

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. Any discount shortfall at mail order may not be offset by surplus at retail.

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.

Rebate guarantee surpluses may not offset rebate shortfalls from other contract years and may never offset shortfalls from any other types of financial guarantees.

<sup>2</sup> The rebate guarantee should be based on your organization's broadest standard formulary.

All discount guarantees must be independently verifiable by a third party using a nationally recognized source of time sensitive AWP pricing data. Offeror agrees that PSERS may audit to verify that the contractual discount guarantees were obtained.

3. Provide an AWP-based guaranteed 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
  - b. Therapeutic Group/Therapeutic Category
  - c. Guaranteed AWP Discount
  - d. Guaranteed per Claim Dispensing Fee
  - e. Guaranteed per Claim Rebate
  - f. Limited Distribution (Y/N)
  - g. Brand/Generic
  
3. Indicate all claim categories which are excluded from discount or rebate guarantees:

Claim Category	Excluded from discount guarantee (Y/N)	Excluded from rebate guarantee (Y/N)
-member submitted direct claims		
-340B adjudicated claims		
-compound drugs		
-vaccines		
-OTC claims		
-limited distribution specialty drugs		
-indicate any other categories which are excluded		

**B. Administrative Fees**

1. Provide your administrative fees assuming all services to support PSERS Pre-Age 65 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.

	2022		2023	
<b>Per Member Per Month Administrative Fee</b>	\$		\$	
<b>SERVICE</b>	<b>Included in Quoted Fee (Yes or No)</b>	<b>Cost if not Included in Quoted Fee</b>	<b>Included in Quoted Fee (Yes or No)</b>	<b>Cost if not Included in Quoted Fee</b>
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				
Appeals Processing				
Quality Management				
Physician Direct Mailing				
<b>Reporting Services</b>				
Web-enabled Client Reporting-produced by Client				
Web-enabled Client Reporting-produced by Vendor				
Additional Reports				
Billing Reports				
Custom Ad-Hoc Reporting				
<b>Implementation Package</b>				
Member Communications (Includes 2 std ID cards)				
Mailed directly to Members				
Replacement Cards				
Customized booklets and ID cards				
Network Development Upon Request				
Plan Setup				

**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.**

**APPENDIX G**  
**COST SUBMITTAL – INDIRECT CONTRACT**  
**COMMONWEALTH OF PENNSYLVANIA**  
**PUBLIC SCHOOL EMPLOYEES’ RETIREMENT SYSTEM**  
RFP# PSERS 2021-1

This version of the Cost Proposal is applicable to an **Indirect Contract** EGWP only.

YOUR RESPONSES TO THE FOLLOWING SECTION PART IV – COST PROPOSAL WILL CONSTITUTE YOUR COST SUBMITTAL AND MUST BE SEPARATE FROM YOUR TECHNICAL AND DISADVANTAGED BUSINESS SUBMITTAL.

**Part IV. Cost Submittal.** The information requested 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. Any proposal failing to meet this requirement will be automatically disqualified. Complete all parts of the following schedule to show your cost proposal. 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-7**, 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.

**INDIRECT-CONTRACT EGWP**  
**(Assuming 11/20/2021 HHS Rebate Rule is Not in Effect During Contract Period)**

**A. Fees, Discounts, and Rebates**

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

	2022			2023		
	@ Retail 1-33 days supply	@ Retail 34-90 days supply	@ Mail 1-90 days supply	@ Retail 1-33 days supply	@ Retail 34-90 days supply	@ Mail 1-90 days supply
<b>Brand Drugs (non-Specialty)</b>						
Minimum Guaranteed Discount from 100% AWP						
Dispensing Fee/Rx						
<b>Specialty Brand Drugs</b>						
Minimum Guaranteed Discount from 100% AWP						
Dispensing Fee/Rx						
<b>Single Source and Multi Source Generic Drugs</b>						
Minimum Guaranteed Discount from 100% AWP						
Dispensing Fee/Rx						



	2022			2023		
	@ Retail 1-33 days supply	@ Retail 34-90 days supply	@ Mail 1-90 days supply	@ Retail 1-33 days supply	@ Retail 34-90 days supply	@ Mail 1-90 days supply
<b>Rebates<sup>3</sup></b>						
Guaranteed Minimum Rebate per brand claim – Non-Specialty						
Guaranteed Minimum Rebate per brand claim - Specialty						

	2022			2023		
<b>90-day Supply</b>	@Home Infusion	@Long Term Care	@ITU	@Home Infusion	@Long Term Care	@ITU
<b>Brand Drugs (non-Specialty)</b>						
Minimum Guaranteed Discount from 100% AWP						
Dispensing Fee/Rx						
<b>Specialty Brand Drugs</b>						
Minimum Guaranteed Discount from 100% AWP						
Dispensing Fee/Rx						
<b>Single Source and Multi Source Generic Drugs</b>						
Minimum Guaranteed Discount from 100% AWP						
Dispensing Fee/Rx						
<b>Rebates</b>						
Minimum Guaranteed Rebate per brand claim – Non-Specialty						
Minimum Guaranteed Rebate per brand claim - Specialty						

All AWP discounts must be minimum guarantees based on a percentage reduction from the actual 11-digit NDC dispensed.

Minimum discount guarantee at mail order must be for all mail order prescriptions regardless of days supply.

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. Any discount shortfall at mail order may not be offset by surplus at retail.

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.

<sup>3</sup> The rebate guarantee should be based on your organization's broadest Medicare formulary.

Rebate guarantee surpluses may not offset rebate shortfalls from other contract years and may never offset shortfalls from any other types of financial guarantees.

All discount guarantees must be independently verifiable by a third party using a nationally recognized source of time sensitive AWP pricing data. Offeror agrees that PSERS may audit to verify that the contractual discount guarantees were obtained.

4. Provide an AWP-based guaranteed 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
  - b. Therapeutic Group/Therapeutic Category
  - c. Guaranteed AWP Discount
  - d. Guaranteed per Claim Dispensing Fee
  - e. Guaranteed per Claim Rebate
  - f. Limited Distribution (Y/N)
  - g. Brand/Generic
  
3. Indicate all claim categories which are excluded from discount or rebate guarantees:

Claim Category	Excluded from discount guarantee (Y/N)	Excluded from rebate guarantee (Y/N)
-member submitted direct claims		
-340B adjudicated claims		
-compound drugs		
-vaccines		
-OTC claims		
-limited distribution specialty drugs		
-indicate any other categories which are excluded		

**B. Administrative Fees**

1. Provide your administrative fees assuming all services to support PSERS as an indirect-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.

	2022		2023	
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
Customer Service for Members				
CMS Required Member Communications				
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 Direct Mailing				
Part D appeals & grievance handling				
<b>Reporting Services</b>				
Web-enabled Client Reporting-produced by Client				
Web-enabled Client Reporting-produced by Vendor				
Additional Reports				
Billing Reports				
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				
<b>Implementation Package</b>				
Member Communications (Includes 2 std ID cards)				
Mailed directly to Members				
Replacement Cards				
Customized booklets and ID cards				

	2022		2023	
Network Development Upon Request				
Plan Setup				

**C. Requirements**

14. Confirm agreement to guarantee your quoted fees for at least 180 days.
15. Confirm agreement that 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.
16. 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)?
17. Confirm that fees quoted are not contingent upon any minimum enrollment, utilization, or participation in any supplemental programs.
18. Confirm that offsetting of annual financial guarantees, whereby a shortfall in one category may be offset by a surplus in another category is limited only to rebate guarantees, and rebate surpluses may never offset any non-rebate financial guarantees.
19. Fees must be based on only “true” claim transactions (not adjustments, errors, reversals, or “redos”). Confirm that your quoted fees will be charged on only “true” transactions that would generate a payment.
20. Confirm that your fees will be guaranteed for the twelve-month period beginning on the contract effective date and for each succeeding full twelve-month period.
21. Confirm that retail pricing is based on a pass-through basis such that PSERS is billed an amount equal to the retail pharmacy.
22. Confirm that if you negotiated deeper discounts with network pharmacies during the contract term, such improvements will be passed to PSERS
23. Confirm agreement that PSERS may audit all pertinent files, reports, and contracts to verify all financial guarantees?
24. Confirm agreement that MAC pricing will apply at mail order and be identical to MAC pricing at retail,
25. 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.
26. Confirm formulary rebates from manufacturers of specialty, biosimilar, and generic drugs are passed to PSERS.

## PRE-AGE 65 Group Pricing

### A. Fees, Discounts, and Rebates

- Provide your guaranteed fees, discounts, and rebates for each of the following:

	2022			2023		
	@ Retail 1-33 days supply	@ Retail 34-90 days supply	@ Mail 1-90 days supply	@ Retail 1-33 days supply	@ Retail 34-90 days supply	@ Mail 1-90 days supply
<b>Brand Drugs (non-Specialty)</b>						
Minimum Guaranteed Discount from 100% AWP						
Dispensing Fee/Rx						
<b>Specialty Brand Drugs</b>						
Minimum Guaranteed Discount from 100% AWP						
Dispensing Fee/Rx						
<b>Single Source and Multi Source Generic Drugs</b>						
Minimum Guaranteed Discount from 100% AWP						
Dispensing Fee/Rx						
<b>Rebates<sup>4</sup></b>						
Guaranteed Minimum Rebate per brand claim – Non-Specialty						
Guaranteed Minimum Rebate per brand claim - Specialty						

All AWP discounts must be minimum guarantees based on a percentage reduction from the actual 11-digit NDC dispensed.

Minimum discount guarantee at mail order must be for all mail order prescriptions regardless of days supply.

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. Any discount shortfall at mail order may not be offset by surplus at retail.

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.

Rebate guarantee surpluses may not offset rebate shortfalls from other contract years and may never offset shortfalls from any other types of financial guarantees.

<sup>4</sup> The rebate guarantee should be based on your organization's broadest standard formulary.

All discount guarantees must be independently verifiable by a third party using a nationally recognized source of time sensitive AWP pricing data. Offeror agrees that PSERS may audit to verify that the contractual discount guarantees were obtained.

5. Provide an AWP-based guaranteed 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
  - b. Therapeutic Group/Therapeutic Category
  - c. Guaranteed AWP Discount
  - d. Guaranteed per Claim Dispensing Fee
  - e. Guaranteed per Claim Rebate
  - f. Limited Distribution (Y/N)
  - g. Brand/Generic
  
3. Indicate all claim categories which are excluded from discount or rebate guarantees:

Claim Category	Excluded from discount guarantee (Y/N)	Excluded from rebate guarantee (Y/N)
-member submitted direct claims		
-340B adjudicated claims		
-compound drugs		
-vaccines		
-OTC claims		
-limited distribution specialty drugs		
-indicate any other categories which are excluded		

**B. Administrative Fees**

1. Provide your administrative fees assuming all services to support PSERS Pre-Age 65 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.

	2022		2023	
<b>Per Member Per Month Administrative Fee</b>	\$		\$	
<b>SERVICE</b>	<b>Included in Quoted Fee (Yes or No)</b>	<b>Cost if not Included in Quoted Fee</b>	<b>Included in Quoted Fee (Yes or No)</b>	<b>Cost if not Included in Quoted Fee</b>
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				
Appeals Processing				
Quality Management				
Physician Direct Mailing				
<b>Reporting Services</b>				
Web-enabled Client Reporting-produced by Client				
Web-enabled Client Reporting-produced by Vendor				
Additional Reports				
Billing Reports				
Custom Ad-Hoc Reporting				
<b>Implementation Package</b>				
Member Communications (Includes 2 std ID cards)				
Mailed directly to Members				
Replacement Cards				
Customized booklets and ID cards				
Network Development Upon Request				
Plan Setup				

**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.**

**APPENDIX H  
SMALL DIVERSE BUSINESS AND  
VETERAN BUSINESS ENTERPRISE SUMMARY SHEET**

**Small Diverse Business (SDB) and Veteran Business Enterprise (VBE)  
Participation Summary Sheet**

Solicitation/Project #: PSERS RFP 2021-1

Issuing Agency: Public School Employees' Retirement System

Name of Procurement/Project: Medicare Employer Group Waiver Prescription Drug Plan and Pharmacy Benefit Management Services

SDB Participation Goal (for MBE, WBE, LGBTBE, and DOBE): \_\_\_\_\_ 11%

VBE Participation Goal (for VBE and SDVBE): \_\_\_\_\_ 3%

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**Attachments:**

- |         |  |
|---------|--|
| SDB-1   | Instructions for completing SDB Participation Submittal and SDB Utilization Schedule |
| SDB-2   | SDB Participation Submittal  |
| SDB-3   | SDB Utilization Schedule   |
| SDB-3.1 | SDB Letter of Commitment   |
| SDB-4   | Guidance for Documenting Good Faith Efforts to meet the SDB Participation goal       |
| SDB-5   | Good Faith Efforts Documentation to Support Waiver Request of SDB Participation Goal |
|         |  |
| VBE-1   | Instructions for completing VBE Participation Submittal and VBE Utilization Schedule |
| VBE-2   | VBE Participation Submittal  |
| VBE-3   | VBE Utilization Schedule   |
| VBE-3.1 | VBE Letter of Commitment   |
| VBE-4   | Guidance for Documenting Good Faith Efforts to meet the VBE participation goal       |
| VBE-5   | Good Faith Efforts Documentation to Support Waiver Request of VBE Participation Goal |



**APPENDIX I**  
**SMALL DIVERSE BUSINESS PARTICIPATION PACKET**

***PLEASE READ BEFORE COMPLETING THESE DOCUMENTS***

*Bidders/Offerors do not need to return SDB-1 with their SDB Participation Submittal*

The following instructions include details for completing the SDB Participation Submittal (SDB-2) which Bidders or Offerors must submit in order to be considered responsive.

The following instructions also include details for completing the SDB Utilization Schedule (SDB-3), which Bidders or Offerors must submit for any portion of the SDB participation goal the Bidder or Offeror commits to meeting.

**A Bidder/Offeror's failure to meet the SDB participation goal in full or their failure to receive an approved Good Faith Efforts waiver for any unmet portion of the SDB participation goal will result in the rejection of the Bid or Proposal as nonresponsive.**

I. **SDB Participation Goal**: The SDB participation goal is set forth in the **Solicitation**. The Bidder/Offeror is encouraged to use a diverse group of subcontractors and suppliers from the SDB classifications to meet the SDB participation goal.

II. **SDB Eligibility**:

1. **Finding SDB firms**: Offerors can access the directory of **DGS-verified** SDB firms from the DGS Supplier Search directory at: <http://www.dgs.internet.state.pa.us/suppliersearch>.
2. **Only SDBs verified by DGS** and as defined herein may be counted for purposes of achieving the SDB participation goal. In order to be counted for purposes of achieving the SDB participation goal, the SDB firm, including an SDB prime, must be DGS verified for the services, materials or supplies that it has committed to perform on the SDB Utilization Schedule (SDB-3). A firm whose SDB verification is pending or incomplete as of the bid or proposal due date and time shall not be counted towards the SDB participation goal. Offerors cannot use self-certified SBs that do not have their SDB verification as of the bid or proposal due date and time to meet the SDB participation goal.
3. **SDB Requirements**: To be considered an SDB, a firm must be a **DGS-verified** small minority business enterprise (MBE); woman business enterprise (WBE); LGBT business enterprise (LGBTBE); Disability-owned business enterprise (DOBE); Service-Disabled Veteran-Owned Small Business Enterprise (SDVBE); or otherwise deemed disadvantaged by the Uniform Certification Program.

Additional information on the DGS verification process can be found at:

<https://www.dgs.pa.gov/Small%20Diverse%20Business%20Program/Pages/default.aspx>

**SDB-1**  
**INSTRUCTIONS FOR COMPLETING THE SMALL DIVERSE BUSINESS PARTICIPATION SUBMITTAL AND SDB UTILIZATION SCHEDULE.**

4. Dually verified firms. If a DGS-verified SDB is dually verified as a VBE, the firm may receive credit towards both the SDB participation goal and the VBE participation goal as set forth on the SDB and VBE Participation Summary Sheet.

*Example: The SDB participation goal is 10% and the VBE participation goal is 5%. A subcontractor is DGS-verified as both an SDB and a VBE and will perform 10% of the contract work. The prime contractor can satisfy both the SDB participation goal and the VBE participation goal through that subcontractor's performance of 10% of the contract work., unless otherwise agreed to by the parties in writing and approved by BDISBO and the Issuing Office. However, an SDB firm verified as both a WBE and MBE may not be double counted toward satisfying the SDB participation goal.*

5. Participation by SDB firms as prime bidders/offerors or subcontractors. A Bidder/Offeror that qualifies as an SDB and submits a bid or proposal as a prime contractor is not prohibited from being included as a subcontractor in separate proposals submitted by other Bidders/Offerors. An SDB may be included as a subcontractor with as many prime contractors as it chooses in separate bids or proposals and a prime contractor may not prohibit an SDB from committing to any other prime contractor.
6. Questions about SDB verification. Questions regarding the SDB program, 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 611, North Office Building  
Harrisburg, PA 17125  
Phone: (717) 783-3119  
Fax: (717) 787-7052  
Email: [RA-BDISBOVerification@pa.gov](mailto:RA-BDISBOVerification@pa.gov)  
Website: [www.dgs.pa.gov](http://www.dgs.pa.gov)

**III. Guidelines Regarding SDB Prime Self-Performance.**

1. An SDB firm participating as a prime bidder or offeror on a procurement may receive credit towards the SDB Participation goal established for the procurement through their own self-performance.

*Example: A solicitation has a 15% SDB participation goal. An SDB prime offeror self-performing contract work valued at only 10% of contract costs (if permitted by the solicitation documents) must still satisfy the remaining 5% SDB participation goal through subcontracting or must request a Good Faith Efforts Waiver for the unmet SDB participation goal. Failure to satisfy the remaining 5%*

**SDB-1**  
**INSTRUCTIONS FOR COMPLETING THE SMALL DIVERSE BUSINESS PARTICIPATION SUBMITTAL AND SDB UTILIZATION SCHEDULE.**

*SDB participation goal or failure to obtain a Good Faith Efforts waiver for the unmet portion of the SDB participation goal will result in rejection of that SDB prime's bid or proposal as nonresponsive.*

2. For an SDB prime bidder or offeror to receive credit for self-performance, the SDB prime bidder or offeror must list itself in the **SDB Utilization Schedule (SDB-3)**.
3. The SDB prime bidder or offeror must also include the classification category (MBE, WBE, LGBTBE, DOBE, and/or SDVBE) under which it is self-performing and include information regarding the work it will self-perform. For any portion of the SDB participation goal not met through the SDB prime bidder or offeror's self-performance, the SDB bidder or offeror must also identify on the **SDB Utilization Schedule (SDB-3)** the other SDB subcontractors it will use to meet the unmet portion of the goal or must request and receive a Good Faith Efforts waiver. IV.

**IV. Calculating SDB participation**

1. The selected Bidder or Offeror may only count dollar amounts actually paid to an SDB for performance of a Commercially Useful Function (the performance of a distinct element of work required for the Contract, with the requisite skill and expertise) towards satisfying its SDB participation commitments. In addition, the SDB subcontractor, through its own employees, must perform at least 50% of the amount of the subcontract.

**V. Additional Required Documentation.**

1. The Bidder or Offeror must submit along with its SDB Participation Submittal (SDB-2) a letter of commitment (LOC) (SDB-3-1) for each subcontractor included in its SDB Utilization Schedule (SDB-3). At a minimum, each LOC must contain the following unless otherwise specified by the solicitation documents:
  - a The fixed numerical percentage commitment and associated estimated gross dollar value of the commitment made to the SDB; and
  - b A description of the services or supplies the SDB will provide; and
  - c The timeframe during the initial contract term and any extensions, options and renewals when the SDB will perform or provide the services and/or supplies; and
  - d The name and telephone number of the Bidder or Offeror's point of contact for SDB participation; and

**SDB-1**  
**INSTRUCTIONS FOR COMPLETING THE SMALL DIVERSE BUSINESS PARTICIPATION SUBMITTAL AND SDB UTILIZATION SCHEDULE.**

- e The name, address, and telephone number of the primary contact person for the SDB; and
- f Signatures of representatives of both the Bidder/Offeror and the SDB subcontractor who are authorized to contractually bind their firm.

**VI. Document Submittal Errors.**

1. **Fatal errors.** The following errors will result in rejection of a bid or proposal as nonresponsive:
  - a. Failure to submit a completed **SDB Participation Submittal (SDB-2)**;
  - b. Failure to submit an **SDB Utilization Schedule (SDB-3)**, unless the bidder or offer is seeking a complete Good Faith Efforts waiver;
  - c. Failure to make commitments to and list **DGS-verified** SDBs that will be used to meet the SDB participation goal, unless the bidder or offeror's commitments to other DGS-verified SDBs meet or exceed the SDB Participation goal;
  - d. Failure to submit a Good Faith Efforts waiver request when not fully meeting the SDB participation goal.

*Example: A bidder/offeror lists a subcontractor that possesses a third-party certificate issued by one of the DGS-approved third party certifying entities; however, the subcontractor did not complete its DGS SDB verification as of the bid or proposal due date and time. The bidder/offeror does not receive credit for any commitments made to the subcontractor and has therefore not met the SDB participation goal. The bidder/offeror cannot cure this error. Therefore, the bid or proposal must be rejected as non-responsive.*

2. **Potentially curable errors.** The Issuing Office and BDISBO may provide Bidders or Offerors the opportunity to provide clarifications or to correct errors not listed as fatal errors above. If the additionally submitted information does not adequately address the or clarify the submittal, the bid or proposal may be rejected. **Bidders or Offerors are not permitted to add additional SDBs or make material changes as part of its clarifications or corrections in order to meet the SDB participation goal.**
3. **Solicitations with Multiple Lots or Base Bids.** If the Bid or Proposal contains separate Lots or multiple Base Bids, an Offeror must complete and submit a separate **SDB Participation Submittal (SDB-2)** and accompanying required documentation for EACH Lot or Base Bid for which it is submitting a bid or proposal. Each separate **SDB Participation Submittal** and accompanying required documentation must be labeled to identify the corresponding Lot or Base Bid. Failure to submit an **SDB Participation Submittal** and accompanying required documentation for each Lot or Base Bid will result in the rejection of the bid or proposal for each Lot or Base Bid for which an **SDB Participation Submittal** was not submitted.

**SDB-2**  
**SDB UTILIZATION SCHEDULE**

**CHECK ONE, AND ONLY ONE, BOX. FAILURE TO COMPLY WILL RESULT IN REJECTION OF YOUR BID/PROPOSAL.**

*Click on bold titles to navigate to that specific page.*

**I agree to meet the SDB participation goal in full.**

I have completed and am submitting with my bid or proposal an **SDB Utilization Schedule (SDB-3)**, which is required in order to be considered for award.

**I am requesting a partial waiver of the SDB participation goal.**

After making good faith outreach efforts as more fully described in the **Guidance for Documenting Good Faith Efforts to Meet the SDB Participation Goal**, I am unable to achieve the total SDB participation goal for this solicitation and am requesting a partial waiver of the SDB participation goal.

I have completed and am submitting with my bid or proposal both of the following, which are required in order to be considered for award:

1. an **SDB Utilization Schedule (SDB-3)** for that portion of the SDB participation goal that I will meet;  
AND

2. a **Good Faith Efforts Waiver Request** for the portion of the SDB participation goals that I am unable to meet.

**I am requesting a full waiver of the SDB participation goal**

After making good faith outreach efforts as more fully described in the **Guidance for Documenting Good Faith Efforts to Meet the SDB Participation Goal**, I am unable to achieve any part of the SDB participation goal for this solicitation and am requesting a full waiver of the SDB participation goal.

I have completed and am submitting with my bid or proposal a **Good Faith Efforts Waiver Request** for the complete SDB participation goal, which is required in order to be considered for award.

NOTE: SDB primes who are submitting as bidders or offerors must complete an **SDB Utilization Schedule (SDB-3)** identifying any self-performance towards the SDB participation goal.

**SDB-3**  
**SDB UTILIZATION SCHEDULE**

List in the chart below SDBs (including where applicable a prime bidder or offeror is self-performing a portion of the work) that will be used to meet the SDB participation goal (add additional pages if necessary). Submit a **Letter of Commitment (SDB-3-1)** for each SDB subcontractor (add additional Letters of Commitment as necessary).

SDB Name SAP Vendor Number (6-digit number provided by SDB) SDB Verification Number (located on DGS SDB verification)	Type of SDB (check all that apply)	Description of Work to be Performed (Statement of Work/Specification reference)	% Commitment (or % of work to be self-performed by SDB bidder/offeror)	Associated Dollar Value of Commitment
Name: ABC IT Solutions SAP Vendor Number: 123456 SDB Verification Number: 123456-2016-09-SB-M	MBE	IT staffing resources	%	\$
Name: SAP Vendor Number: SDB Verification Number:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> LGBTBE <input type="checkbox"/> DOBE <input type="checkbox"/> SDVBE		%	
Name: SAP Vendor Number: SDB Verification Number:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> LGBTBE <input type="checkbox"/> DOBE <input type="checkbox"/> SDVBE		%	
Name: SAP Vendor Number: SDB Verification Number:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> LGBTBE <input type="checkbox"/> DOBE <input type="checkbox"/> SDVBE		%	
Name: SAP Vendor Number: SDB Verification Number:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> LGBTBE <input type="checkbox"/> DOBE <input type="checkbox"/> SDVBE		%	
Attach additional sheets if necessary			Total % SDB commitment: _____	Total \$ amount: _____

**SDB-3-1**  
**LETTER OF COMMITMENT**

This Letter of Commitment serves as confirmation of the commitment by the prime Bidder or Offeror to utilize the Small Diverse Business (SDB) on the below-referenced Solicitation/Project.

Solicitation Number: \_\_\_\_\_

Solicitation Name: \_\_\_\_\_

	Bidder/Offeror Information	SDB Information
Name		
Address		
Point of Contact		
Telephone number		
Email address		

Services/Supplies and Time Frame. If Bidder/Offeror is the successful vendor, the SDB shall perform or provide the following services or supplies 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:

Services or supplies the SDB will provide: \_\_\_\_\_

Specific Time Frame the SDB will provide the services or supplies: \_\_\_\_\_

Percentage Commitment. These services or supplies represent \_\_\_\_\_% of the total cost of the Bidder/Offeror's cost submittal for the initial term of the contract. Depending on actual contract usage or volume, it is expected the SDB will receive \$ \_\_\_\_\_ during the initial contract term.

SDB verified. By signing below, the SDB represents that it meets the SDB requirements set forth in the Solicitation and all required documentation has been provided to the Bidder/Offeror for its SDB submission.

Sincerely,

Acknowledged

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Signature  
Bidder/Offeror Point of Contact Name

\_\_\_\_\_  
Signature  
SDB Point of Contact Name

*\* For purposes of monitoring compliance with SDB and VBE commitments, the work performed by a firm that is both an SDB and a VBE will be counted by BDISBO towards fulfilling both the SDB and VBE commitments unless otherwise writing and approved by BDISBO and the Issuing Office.*

**SDB-4**  
**GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET THE SMALL  
DIVERSE BUSINESS (SDB) PARTICIPATION GOAL**

*Bidders/Offerors do not need to return SDB-4 with their SDB Participation Submittal*

In order for its bid or proposal to be responsive, the Bidder or Offeror must either (1) meet the SDB participation goal and document its commitments for participation of SDB firms, or (2) when it does not meet the SDB participation goal, submit a Good Faith Efforts waiver request as set forth in Section IV below and the **Good Faith Efforts Documentation to Support Waiver Request (SDB-5)** of the SDB Participation Goal.

## **I. Definitions**

**SDB participation goal** – “SDB participation goal” refers to the SDB participation goal set for a procurement for MBE, WBE, LGBTBE, DOBE, and SDVBE utilization.

**Good Faith Efforts** - The “Good Faith Efforts” requirement means that when requesting a waiver, the Offeror must demonstrate that it took all necessary and reasonable steps to achieve the SDB participation goal. Those steps are considered necessary and reasonable when their scope, intensity, and relevance could reasonably be expected to obtain sufficient SDB participation, even if those steps were not fully successful. The Issuing Agency and Department of General Services’ Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO) will determine whether or not the Offeror requesting a Good Faith Efforts waiver made adequate Good Faith Efforts by considering the quality, quantity, and intensity of the Offeror’s efforts. Mere *pro forma* efforts are not Good Faith Efforts to meet the SDB participation requirements. The determination concerning the sufficiency of the Offeror's Good Faith Efforts is subjective; meeting quantitative formulas is not required.

**Identified Items of Work** – all reasonably identifiable sub contractable work opportunities under a resulting contract for performance by subcontractors.

**Identified SDBs**– all of the SDBs the Offeror has identified as available to perform the Identified Items of Work and should include all DGS-verified SDBs that are reasonably identifiable.

**Offeror** – for purposes of this **Good Faith Efforts Documentation to Support Waiver Request**, the term “Offeror” includes any entity responding to a solicitation, including invitations for bids, requests for proposals, and other types of best value solicitations.

**SDB** – “SDB” refers to Minority Business Enterprises (MBE), Women Business Enterprises (WBE), Disability-Owned Business Enterprises (DOBE), LGBT-Owned Business Enterprises (LGBTBE), Service-Disabled Veteran-Owned Small Business Enterprise (SDVBE) verified by BDISBO, or otherwise deemed disadvantaged by the Uniform Certification Program.

## **II. Types of Actions Agency and BDISBO will Consider**

The following is a list of types of actions the procuring agency and BDISBO will consider as part of the Offeror's Good Faith Efforts when the Offeror is unable to meet, in full, the SDB participation goal. This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.



**SDB-4**  
**GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET THE SMALL  
DIVERSE BUSINESS (SDB) PARTICIPATION GOAL**

**A. Identify Proposal Items as Work for SDBs**

1. Identified Items of Work

- (a) Offerors should reasonably identify sufficient items of work to be performed by SDBs.
- (b) Where appropriate, Offerors should break out contract work items into economically feasible units to facilitate SDB participation, rather than perform these work items with their own forces. **The ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the Offeror of the responsibility to make Good Faith Efforts to meet the SDB participation goal.**

**B. Identify SDBs to Solicit**

1. Identified SDBs

- (a) Offerors must reasonably identify the SDBs that are available to perform the Identified Items of Work.
- (b) Any SDBs identified as available by the Offeror should be certified to perform the Identified Items of Work.

**C. Solicit SDBs**

- 1. Offerors must solicit a reasonable number of identified SDBs for all Identified Items of Work by providing written notice. The Offeror must:
  - (a) provide the written solicitation to the Identified SDBs at least 10 days prior to Bid or Proposal due date to allow sufficient time for the Identified SDB to respond;
  - (b) send the written solicitation by first-class mail, facsimile, or e-mail using contact information in the BDISBO Directory, unless the Offeror has a valid basis for using different contact information; and
  - (c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the Identified SDB, and other requirements of the contract to assist Identified SDBs in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)

**SDB-4**  
**GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET THE SMALL  
DIVERSE BUSINESS (SDB) PARTICIPATION GOAL**

2. “All” Identified SDBs includes any SDB Firms the Offeror identifies as potentially available to perform the Identified Items of Work, but it does not include Identified SDBs who are no longer certified to perform the work as of the date the Offeror provides written solicitations.
3. “Electronic Means” includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested SDB cannot access the information provided by electronic means, the Offeror must make the information available in a manner that is accessible to the interested SDB.
4. Offerors must follow up on initial written solicitations by contacting Identified SDBs to determine their interest in bidding. The follow up contact may be made:
  - (a) by telephone using the contact information in BDISBO’s Directory, unless the Offeror has a valid basis for using different contact information; or
  - (b) in writing *via* a method that differs from the method used for the initial written solicitation.
5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, offerors must use all other reasonable and available means to solicit the interest of Identified SDBs certified to perform the work of the contract. Examples of other means include:
  - (a) attending any Supplier Forums, or Pre-Proposal or Pre-Bid conferences at which SDBs could be informed of contracting and subcontracting opportunities; and
  - (b) if recommended by the procurement, advertising with or effectively using the services of at least two diversity-focused entities or media, including trade associations, minority/women/disability/LGBT community organizations, minority/women/disability/LGBT contractors' groups, and local, state, and federal minority/women/disability/LGBT business assistance offices.

**D. Negotiate with Interested SDBs**

Offerors must negotiate in good faith with interested SDBs.

1. Evidence of negotiation includes, without limitation, the following:
  - (a) the names, addresses, and telephone numbers of SDBs that were considered;
  - (b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and

**SDB-4**  
**GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET THE SMALL  
DIVERSE BUSINESS (SDB) PARTICIPATION GOAL**

- (c) evidence as to why additional agreements could not be reached for SDBs to perform the work.
2. In negotiating with subcontractors, the offeror should consider a subcontractor's price and capabilities as well as the SDB participation goal.
  3. Additional costs incurred in finding and using SDBs are not sufficient justification for the Offeror's failure to meet the SDB participation goal, as long as such costs are reasonable. Factors to take into consideration when determining whether an SDB's quote is excessive or unreasonable include, without limitation, the following:
    - (a) dollar difference between the SDB subcontractor's quote and the average of other subcontractors' quotes received by the Offeror;
    - (b) percentage difference between the SDB subcontractor's quote and the average of other subcontractors' quotes received by the Offeror;
    - (c) percentage that the SDB subcontractor's quote represents of the total contract cost;
    - (d) whether the work described in the SDB and Non-SDB subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
    - (e) number of quotes received by the Offeror for that portion of the work.
  4. The factors in paragraph 3 above are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.
  5. The Offeror may not use its price for self-performing work as a basis for rejecting an SDB's quote as excessive or unreasonable.
  6. The "average of the other subcontractors' quotes received" by the Offeror refers to the average of the quotes received from all subcontractors. Offeror should attempt to receive quotes from at least three subcontractors, including one quote from an SDB and one quote from a non-SDB.
  7. The Offeror shall not reject an SDB as unqualified without sound justification based on a thorough investigation of the SDB's capabilities. For each SDB that is rejected as unqualified or that placed a subcontract quotation or offer that the Offeror concludes is not acceptable, the Offeror must provide a written detailed statement outlining the justification for its conclusion. The Offeror also must document the steps taken to verify the capabilities of the SDB and non-SDB Firms quoting similar work.

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**GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET THE SMALL  
DIVERSE BUSINESS (SDB) PARTICIPATION GOAL**

- (a) The factors to take into consideration when assessing the capabilities of an SDB include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.
- (b) The SDB's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of Proposals in the efforts to meet the SDB participation goal.

**E. Assisting Interested SDBs**

When appropriate under the circumstances, the procuring agency and BDISBO will consider whether the Offeror made reasonable efforts to assist interested SDBs in obtaining:

1. The bonding, lines of credit, or insurance required by the procuring agency or the Offeror; and
2. Necessary equipment, supplies, materials, or related assistance or services.

**III. Other Considerations**

In making a determination of Good Faith Efforts, the procuring agency and BDISBO may consider engineering estimates, catalogue prices, general market availability and availability of certified SDBs in the area in which the work is to be performed, other Proposals or offers and subcontract Proposals or offers substantiating significant variances between SDB and non-SDB costs of participation, and their impact on the overall cost of the contract to the Commonwealth and any other relevant factors.

The procuring agency and BDISBO may consider whether the Offeror decided to self-perform potentially sub contractable work with its own forces. The procuring agency and BDISBO also may consider the performance of other Offerors in meeting the SDB participation goal. For example, when the apparent successful Offeror fails to meet the SDB participation goal, but others meet it, this raises the question of whether, with additional reasonable efforts, the apparent successful Offeror could have met the SDB participation goal. If the apparent successful Offeror fails to meet the SDB participation goal but meets or exceeds the average SDB participation obtained by other Offerors, this, when viewed in conjunction with other factors, could be evidence of the apparent successful Offeror having made Good Faith Efforts.

**IV. Documenting Good Faith Efforts**

At a minimum, the Offeror seeking a Good Faith Efforts waiver of the SDB participation goal or a portion thereof must provide written documentation of its Good Faith Efforts along with its bid or proposal. The written documentation shall include the following:

**SDB-4**  
**GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET THE SMALL  
DIVERSE BUSINESS (SDB) PARTICIPATION GOAL**

**A. Items of Work (complete SDB-5, Part 1 – Identified Items of Work Offeror Made Available to SDBs)**

A detailed statement of the efforts made to select portions of the contract work proposed to be performed by SDBs in order to increase the likelihood of achieving the SDB participation goal.

**B. Outreach/Solicitation/Negotiation**

1. A detailed statement of the efforts made to contact and negotiate with SDBs including:

(a) the names, addresses, and telephone numbers of the SDBs who were contacted, with the dates and manner of contacts (letter, fax, e-mail, telephone, etc.)  
**(complete SDB-5, Part 2 – Identified SDB Firms and Records of Solicitations. Include letters, fax cover sheets, e-mails, etc. documenting solicitations); and**

(b) a description of the information provided to SDBs regarding the plans, specifications, and anticipated time schedule for portions of the contract work to be performed and the means used to provide that information.

2. The record of the Offeror's compliance with the outreach efforts set forth in **SDB-5, Part 3 - Outreach Efforts Compliance Statement.**

**C. Rejected SDBs (complete SDB-5, Part 4 - Additional Information Regarding Rejected SDB Quotes)**

1. For each SDB that the Offeror concludes is not acceptable or qualified, provide a detailed statement of the reasons for this conclusion, including the steps taken to verify the capabilities of the SDB and non-SDB firms quoting similar work.

2. For each SDB that the Offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Offeror's conclusion, including the quotes received from all SDB and non-SDB firms proposing on the same or comparable work. **(Include copies of all quotes received.)**

**D. Unavailable SDBs (complete SDB-5, Part 5 – SDB Subcontractor Unavailability Certificate)**

1. **For each SDB that the Offeror contacted but found to be unavailable, submit an SDB Subcontractor Unavailability Certificate** signed by the SDB, an email from the SDB indicating the SDB is unavailable, or a statement from the Offeror that the SDB refused to sign the SDB Subcontractor Unavailability Certificate.

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**GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET THE SMALL  
DIVERSE BUSINESS (SDB) PARTICIPATION GOAL**

**E. Other Documentation**

1. Submit any other documentation requested by BDISBO or the Procuring Agency to ascertain the Offeror's Good Faith Efforts.
2. Submit any other documentation the Offeror believes will help BDISBO or the Procuring Agency ascertain its Good Faith Efforts.

**SDB-5**

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST OF SDB PARTICIPATION GOAL**

<b>Project Description:</b>	
<b>Commonwealth Agency Name:</b>	
<b>Solicitation #:</b>	
<b>Solicitation Due Date and Time:</b>	
<b>Bidder/Offeror Company Name:</b>	
Bidder/Offeror Contact Name:	
Bidder/Offeror Contact Email:	
Bidder/Offeror Contact Phone Number:	

**Part 1 – Identified Items of Work Offeror Made Available to SDBs**

Identify those items of contract work that the Offeror made available to SDBs. This includes, where appropriate, those items the Offeror identified and subdivided into economically feasible units to facilitate the SDB participation. For each item listed, show the anticipated percentage of the total contract cost. Offeror must demonstrate that enough work to meet the SDB participation goal was made available to SDBs, and the total percentage of the items of work identified for SDB participation met or exceeded the SDB participation goal set for the procurement.

Identified Items of Work	Was this work listed in the solicitation?	Does Offeror normally self-perform this work?	Was this work made available to SDB Firms? If not, explain why.
	___ yes ___ no	___ yes ___ no	___ yes ___ no
	___ yes ___ no	___ yes ___ no	___ yes ___ no
	___ yes ___ no	___ yes ___ no	___ yes ___ no
	___ yes ___ no	___ yes ___ no	___ yes ___ no
	___ yes ___ no	___ yes ___ no	___ yes ___ no

Attach additional sheets if necessary.

**SDB-5**

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST OF SDB PARTICIPATION GOAL**

**Part 2 – Identified SDBs and Record of Solicitations**

Identify the SDBs solicited to provide quotes for the Identified Items of Work made available for SDB participation. Include the name of the SDB solicited, items of work for which quotes were solicited, date and manner of initial and follow-up solicitations, whether the SDB provided a quote, and whether the SDB is being used toward meeting the SDB participation goal. SDBs used to meet the SDB participation goal must be listed on the **SDB Utilization Schedule (SDB-2)**.

Note: Copies of all written solicitations and documentation of follow-up calls to SDBs must be attached to this form. For each Identified SDB listed below, Offeror should submit an SDB Subcontractor Unavailability Certificate signed by the SDB or a statement from the Offeror that the SDB refused to sign the SDB Subcontractor Unavailability Certificate.

<b>Name of Identified SDB and Classification</b>	<b>Describe Item of Work Solicited</b>	<b>Initial Solicitation Date &amp; Method</b>	<b>Follow-up Solicitation Date &amp; Method</b>	<b>Details for Follow-up Calls</b>	<b>Quote Received?</b>	<b>Quote Used?</b>	<b>Reason Quote Rejected</b>
SDB Name:  <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> LGBTBE <input type="checkbox"/> DOBE <input type="checkbox"/> SDVBE		Date:  <input type="checkbox"/> mail <input type="checkbox"/> email <input type="checkbox"/> fax	Date:  <input type="checkbox"/> mail <input type="checkbox"/> email <input type="checkbox"/> fax	Date and Time of Call:  Spoke with:  Left Message:	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> Used other SDB <input type="checkbox"/> Used non-SDB <input type="checkbox"/> Self performing
SDB Name:  <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> LGBTBE <input type="checkbox"/> DOBE <input type="checkbox"/> SDVBE		Date:  <input type="checkbox"/> mail <input type="checkbox"/> email <input type="checkbox"/> fax	Date:  <input type="checkbox"/> mail <input type="checkbox"/> email <input type="checkbox"/> fax	Date and Time of Call:  Spoke with:  Left Message:	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> Used other SDB <input type="checkbox"/> Used non-SDB <input type="checkbox"/> Self performing

Attach additional sheets as necessary.



**SDB-5**  
**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST OF**  
**SDB PARTICIPATION GOAL**

**Part 3 – SDB Outreach Compliance Statement**

- 1. List the Identified Items of Work for subcontracting opportunities for the solicitation along with specific work categories:**

- 2. Attach to this form copies of written solicitations (with Bid or Proposal instructions) used to solicit Identified SDBs for these subcontract opportunities.**

- 3. Offeror made the following attempts to contact the Identified SDBs:**

- 4. Bonding Requirements (Please Check One):**

This project does not involve bonding requirements.

Offeror assisted Identified SDBs to fulfill or seek waiver of bonding requirements.  
(DESCRIBE EFFORTS):

- 5. Pre-Bid/Proposal Conference or Supplier Forum (Please Check One):**

Offeror did attend the pre-Bid/Proposal conference or Supplier Forum

No Pre-Bid/Proposal conference or Supplier Forum was held

Offeror did not attend the pre-Bid/Proposal conference or Supplier Forum

**SDB-5**

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST OF SDB PARTICIPATION GOAL**

**Part 4 – Additional Information Regarding Rejected SDB Quotes**

This form must be completed if Part 2 indicates that an SDB quote was rejected because the Offeror is using a non-SDB or is self-performing the Identified Items of Work. List the Identified Items of Work, state whether the work will be self-performed or performed by a non-SDB, and if applicable, state the name of the non-SDB firm. Also include the names of all SDBs and non-SDB firms that provided a quote and the amount of each quote.

Describe Identified Items of Work not being performed by SDBs (include specific section from bid or proposal)	Self-performing or using non-SDB (provide name of non-SDB if applicable)	Amount of non-SDB quote \$	Name of other firms that provided quotes and whether they are SDB	Amount quoted \$	Reason why SDB quote was rejected along with brief explanation
	<input type="checkbox"/> self-performing <input type="checkbox"/> using Non-SDB Name:		<input type="checkbox"/> SDB <input type="checkbox"/> Non-SDB Name:		<input type="checkbox"/> price <input type="checkbox"/> capabilities <input type="checkbox"/> other
	<input type="checkbox"/> self-performing <input type="checkbox"/> using Non-SDB Name:		<input type="checkbox"/> SDB <input type="checkbox"/> Non-SDB Name:		<input type="checkbox"/> price <input type="checkbox"/> capabilities <input type="checkbox"/> other
	<input type="checkbox"/> self-performing <input type="checkbox"/> using Non-SDB Name:		<input type="checkbox"/> SDB <input type="checkbox"/> Non-SDB Name:		<input type="checkbox"/> price <input type="checkbox"/> capabilities <input type="checkbox"/> other
	<input type="checkbox"/> self-performing <input type="checkbox"/> using Non-SDB Name:		<input type="checkbox"/> SDB <input type="checkbox"/> Non-SDB Name:		<input type="checkbox"/> price <input type="checkbox"/> capabilities <input type="checkbox"/> other
	<input type="checkbox"/> self-performing <input type="checkbox"/> using Non-SDB Name:		<input type="checkbox"/> SDB <input type="checkbox"/> Non-SDB Name:		<input type="checkbox"/> price <input type="checkbox"/> capabilities <input type="checkbox"/> other

Attach additional sheets as necessary.

**SDB-5**  
**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST OF**  
**SDB PARTICIPATION GOAL**

**Part 5 – SDB Subcontractor Unavailability Certificate**

1. It is hereby certified that the firm of \_\_\_\_\_  
(Name of SDB)

located at \_\_\_\_\_  
(Number) (Street)

\_\_\_\_\_  
(City) (State) (Zip)

was offered an opportunity to bid on Solicitation No. \_\_\_\_\_

by \_\_\_\_\_  
(Name of Prime Contractor's Firm)

\*\*\*\*\*

2. \_\_\_\_\_ (SDB), is either unavailable for the work/service or  
unable to prepare a Proposal for this project for the following reason(s):

\_\_\_\_\_  
(Signature of SDB's Representative) (Title) (Date)

\_\_\_\_\_  
(DGS SDB Certification #) (Telephone #)

\*\*\*\*\*

3. If the SDB does not complete this form, the prime contractor must complete the following:

To the best of my knowledge and belief, the above-listed SDB is either unavailable for the work/service for this project, is unable to prepare a Proposal, or did not respond to a request for a price Proposal and has not completed the above portion of this submittal.

\_\_\_\_\_  
(Signature of Bidder/Offeror) (Title) (Date)

**APPENDIX J  
VETERAN BUSINESS ENTERPRISE PARTICIPATION PACKET**

**VBE-1**

**INSTRUCTIONS FOR COMPLETING THE VETERAN BUSINESS ENTERPRISE (VBE) PARTICIPATION SUBMITTAL AND VBE UTILIZATION SCHEDULE.**

*PLEASE READ BEFORE COMPLETING THESE DOCUMENTS Bidders/Offerors do not need to return VBE-1 with their VBE Participation Submittal*

**The following instructions include details for completing the VBE Participation Submittal (VBE-2) which Bidders or Offerors must submit in order to be considered responsive.**

**The following instructions also include details for completing the VBE Utilization Schedule (VBE-3), which Bidders or Offerors must submit for any portion of the VBE participation goal the Bidder or Offeror commits to meeting.**

**A Bidder/Offeror's failure to meet the VBE participation goal in full or their failure to receive an approved Good Faith Efforts waiver for any unmet portion of the VBE participation goal will result in the rejection of the Bid or Proposal as nonresponsive.**

- I. VBE Participation Goal:** The VBE participation goal is set forth in the solicitation. The Bidder/Offeror is encouraged to use a diverse group of subcontractors and suppliers from the VBE classifications to meet the VBE participation goal.
  
- II. VBE Eligibility:**
  1. **Finding VBE firms:** Offerors can access the directory of **DGS-verified** VBE firms from the DGS Supplier Search directory at: <http://www.dgs.internet.state.pa.us/suppliersearch>.
  
  2. **Only VBEs verified by DGS** and as defined herein may be counted for purposes of achieving the VBE participation goal. In order to be counted for purposes of achieving the VBE participation goal, the VBE firm, including an VBE prime, must be DGS-verified for the services, materials or supplies that it has committed to perform on the VBE Utilization Schedule (VBE-3). A firm whose VBE verification is pending or incomplete as of the bid or proposal due date and time shall not be counted towards the VBE participation goal. Offerors cannot use self-certified SBs that do not have their VBE verification as of the bid or proposal due date and time to meet the VBE participation goal.
  
  3. **VBE Requirements:** To be considered an VBE, a firm must be a **DGS-verified** Veteran-Owned Small Business Enterprise or Service-Disabled Veteran-Owned Small Business Enterprise.

Additional information on the DGS verification process can be found at:  
<https://www.dgs.pa.gov/Small%20Diverse%20Business%20Program/Pages/default.aspx>

4. Dually verified firms. If a DGS-verified SDB is dually verified as a VBE, the firm may receive credit towards both the SDB participation goal and the VBE participation goal as identified for the solicitation.

*Example: The SDB participation goal is 10% and the VBE participation goal is 5%. A subcontractor is DGS-verified as both an SDB and a VBE and will perform 10% of the contract work. The prime contractor can satisfy both the SDB participation goal and the VBE participation goal through that's subcontractor's performance of 10% of the contract work., unless otherwise agreed to by the parties in writing and approved by BDISBO and the Issuing Office.*

5. Participation by VBE firms as prime bidders/offerors or subcontractors. A Bidder/Offeror that qualifies as an VBE and submits a bid or proposal as a prime contractor is not prohibited from being included as a subcontractor in separate proposals submitted by other Bidders/Offerors. An VBE may be included as a subcontractor with as many prime contractors as it chooses in separate bids or proposals and a prime contractor may not prohibit an VBE from committing to any other prime contractor.
6. Questions about VBE verification. Questions regarding the VBE program, 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 611, North Office Building  
Harrisburg, PA 17125  
Phone: (717) 783-3119  
Fax: (717) 787-7052  
Email: [RA-BDISBOVerification@pa.gov](mailto:RA-BDISBOVerification@pa.gov)  
Website: [www.dgs.pa.gov](http://www.dgs.pa.gov)

### III. Guidelines Regarding VBE Prime Self-Performance.

1. An VBE firm participating as a prime bidder or offeror on a procurement may receive credit towards the VBE Participation goal established for the procurement through their own self-performance.

*Example: A solicitation has a 15% VBE participation goal. An VBE prime offeror self-performing contract work valued at only 10% of contract costs (if permitted by the solicitation documents) must still satisfy the remaining 5% VBE participation goal through subcontracting or must request a Good Faith Efforts Waiver for the unmet VBE participation goal. Failure to satisfy the remaining 5% VBE participation goal or failure to obtain a Good Faith Efforts waiver for the unmet portion of the VBE participation goal will result in rejection of that VBE prime's bid or proposal as nonresponsive.*

2. For an VBE prime bidder or offeror to receive credit for self-performance, the VBE prime bidder or offeror must list itself in the **VBE Utilization Schedule (VBE-3)**.
3. The VBE prime bidder or offeror must also include the classification category (Veteran-Owned Small Business Enterprise or Service-Disabled Veteran-Owned Small Business Enterprise) under which it is self-performing and include information regarding the work it will self-perform. For any portion of the VBE participation goal not met through the VBE prime bidder or offeror's self-performance, the VBE bidder or offeror must also identify on the **VBE Utilization Schedule (VBE-3)** the other VBE subcontractors it will use to meet the unmet portion of the goal or must request and receive a Good Faith Efforts waiver.

#### **IV. Calculating VBE participation**

1. The selected Bidder or Offeror may only count dollar amounts actually paid to an VBE for performance of a Commercially Useful Function (the performance of a distinct element of work required for the Contract, with the requisite skill and expertise) towards satisfying its VBE participation commitments. In addition, the VBE subcontractor, through its own employees, must perform at least 50% of the amount of the subcontract.

#### **V. Additional Required Documentation.**

1. The Bidder or Offeror must submit along with its VBE Participation Submittal (VBE-2) a letter of commitment (LOC) (VBE-3-1) for each subcontractor included in its VBE Utilization Schedule (VBE-3). At a minimum, each LOC must contain the following unless otherwise specified by the solicitation documents:
  - a. The fixed numerical percentage commitment and associated estimated gross dollar value of the commitment made to the VBE; and
  - b. A description of the services or supplies the VBE will provide; and
  - c. The timeframe during the initial contract term and any extensions, options and renewals when the VBE will perform or provide the services and/or supplies; and
  - d. The name and telephone number of the Bidder or Offeror's point of contact for VBE participation; and
  - e. The name, address, and telephone number of the primary contact person for the VBE; and
  - f. Signatures of representatives of both the Bidder/Offeror and the VBE subcontractor who are authorized to contractually bind their firm.

## VI. Document Submittal Errors.

1. **Fatal errors.** The following errors will result in rejection of a bid or proposal as non-responsive:
  - a. Failure to submit a completed **VBE Participation Submittal (VBE-2)**;
  - b. Failure to submit an **VBE Utilization Schedule (VBE-3)**, unless the bidder or offer is seeking a complete Good Faith Efforts waiver;
  - c. Failure to make commitments to and list **DGS-verified** VBEs that will be used to meet the VBE participation goal, unless the bidder or offeror's commitments to other DGS-verified VBEs meet or exceed the VBE Participation goal;
  - d. Failure to submit a Good Faith Efforts waiver request when not fully meeting the VBE participation goal.

*Example: A bidder/offeror lists a subcontractor that possesses a third-party certificate issued by one of the DGS-approved third party certifying entities; however, the subcontractor did not complete its DGS VBE verification as of the bid or proposal due date and time. The bidder/offeror does not receive credit for any commitments made to the subcontractor and has therefore not met the VBE participation goal. The bidder/offeror cannot cure this error. Therefore, the bid or proposal must be rejected as non-responsive.*

2. **Potentially curable errors.** The Issuing Office and BDISBO may provide Bidders or Offerors the opportunity to provide clarifications or to correct errors not listed as fatal errors above. If the additionally submitted information does not adequately address the or clarify the submittal, the bid or proposal may be rejected. **Bidders or Offerors are not permitted to add additional VBEs or make material changes as part of its clarifications or corrections in order to meet the VBE participation goal.**
3. **Solicitations with Multiple Lots or Base Bids.** If the Bid or Proposal contains separate Lots or multiple Base Bids, an Offeror must complete and submit a separate **VBE Participation Submittal (VBE-2)** and accompanying required documentation for EACH Lot or Base Bid for which it is submitting a bid or proposal. Each separate **VBE Participation Submittal** and accompanying required documentation must be labeled to identify the corresponding Lot or Base Bid. Failure to submit an **VBE Participation Submittal** and accompanying required documentation for each Lot or Base Bid will result in the rejection of the bid or proposal for each Lot or Base Bid for which an **VBE Participation Submittal** was not submitted.

**VBE-2**  
**VBE PARTICIPATION SUBMITTAL**

**CHECK ONE, AND ONLY ONE, BOX. FAILURE TO COMPLY WILL RESULT IN REJECTION OF YOUR BID/PROPOSAL.**

*Click on bold titles to navigate to that specific page.*

**I agree to meet the VBE participation goal in full.**

I have completed and am submitting with my bid or proposal an **VBE Utilization Schedule (VBE-3)**, which is required in order to be considered for award.

**I am requesting a partial waiver of the VBE participation goal.**

After making good faith out-reach efforts as more fully described in the **Guidance for Documenting Good Faith Efforts to Meet the VBE Participation Goal**, I am unable to achieve the total VBE participation goal for this solicitation and am requesting a partial waiver of the VBE participation goal.

I have completed and am submitting with my bid or proposal both of the following, which are required in order to be considered for award:

1. an **VBE Utilization Schedule (VBE-3)** for that portion of the VBE participation goal that I will meet;  
AND

2. a **Good Faith Efforts Waiver Request** for the portion of the VBE participation goals that I am unable to meet.

**I am requesting a full waiver of the VBE participation goal**

After making good faith outreach efforts as more fully described in the **Guidance for Documenting Good Faith Efforts to Meet the VBE Participation Goal**, I am unable to achieve any part of the VBE participation goal for this solicitation and am requesting a full waiver of the VBE participation goal. I have completed and am submitting with my bid or proposal a **Good Faith Efforts Waiver Request** for the complete VBE participation goal, which is required in order to be considered for award.

NOTE: VBE primes who are submitting as bidders or offerors must complete an **VBE Utilization Schedule (VBE-3)** identifying any self-performance towards the VBE participation goal.



**VBE-3**  
**VBE UTILIZATION SCHEDULE**

List in the chart below VBEs (including where applicable a prime bidder or offeror is self-performing a portion of the work) that will be used to meet the VBE participation goal (add additional pages if necessary). Submit a **Letter of Commitment (VBE-3-1)** for each VBE subcontractor (add additional Letters of Commitment as necessary).

SAP Vendor Number (6-digit number provided by VBE) VBE Verification Number (located on DGS VBE verification)	Type of VBE (check all that apply)	Description of Work to be Performed (Statement of Work/Specification reference)	% Commitment (or % of work to be self-performed by VBE bidder/offeror)	Associated Dollar Value of Commitment
Name: ABC IT Solutions SAP Vendor Number: 123456 VBE Verification Number: 123456-2016-09-SB-M	MBE	IT staffing resources	%	\$
Name: SAP Vendor Number: VBE Verification Number:	<input type="checkbox"/> VBE <input type="checkbox"/> SDVBE		%	
Name: SAP Vendor Number: VBE Verification Number:	<input type="checkbox"/> VBE <input type="checkbox"/> SDVBE		%	
Name: SAP Vendor Number: VBE Verification Number:	<input type="checkbox"/> VBE <input type="checkbox"/> SDVBE		%	
Name: SAP Vendor Number: VBE Verification Number:	<input type="checkbox"/> VBE <input type="checkbox"/> SDVBE		%	
Attach additional sheets if necessary			Total % VBE commitment	Total \$ amount:

**VBE-3-1  
LETTER OF COMMITMENT**

This Letter of Commitment serves as confirmation of the commitment by the prime Bidder or Offeror to utilize the Small Diverse Business (VBE) on the below-referenced Solicitation/Project.

Solicitation Number: \_\_\_\_\_

Solicitation Name: \_\_\_\_\_

	Bidder/Offeror Information	VBE Information
Name		
Address		
Point of Contact		
Telephone number		
Email address		

Services/Supplies and Time Frame. If Bidder/Offeror is the successful vendor, the VBE shall perform or provide the following services or supplies 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:

Services or supplies the VBE will provide:

Specific Time Frame the VBE will provide the services or supplies:

Percentage Commitment. These services or supplies represent \_\_\_\_\_% of the total cost of the Bidder/Offeror’s cost submittal for the initial term of the contract. Depending on actual contract usage or volume, it is expected the VBE will receive \$ \_\_\_\_\_ during the initial contract term.

VBE verified. By signing below, the VBE represents that it meets the VBE requirements set forth in the Solicitation and all required documentation has been provided to the Bidder/Offeror for its VBE submission.

Sincerely,

Acknowledged

Printed name

Printed name

Signature

Signature

Bidder/Offeror Point of Contact Name

VBE Point of Contact Name

*\*For purposes of monitoring compliance with SDB and VBE commitments, the work performed by a firm that is both an SDB and a VBE will be counted by BDISBO towards fulfilling both the SDB and VBE commitments unless otherwise agreed to by the parties in writing and approved by BDISBO and the Issuing Office.*

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*Bidders/Offerors do not need to return VBE-4 with their VBE Participation Submittal*

In order for its bid or proposal to be responsive, the Bidder or Offeror must either (1) meet the VBE participation goal and document its commitments for participation of VBE firms, or (2) when it does not meet the VBE participation goal, submit a Good Faith Efforts waiver request as set forth in Section IV below and the **Good Faith Efforts Documentation to Support Waiver Request (VBE-5)** of the VBE Participation Goal.

## **I. Definitions**

**Good Faith Efforts** - The “Good Faith Efforts” requirement means that when requesting a waiver, the Offeror must demonstrate that it took all necessary and reasonable steps to achieve the VBE participation goal. Those steps are considered necessary and reasonable when their scope, intensity, and relevance could reasonably be expected to obtain sufficient VBE participation, even if those steps were not fully successful. The Issuing Agency and Department of General Services’ Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO) will determine whether or not the Offeror requesting a Good Faith Efforts waiver made adequate Good Faith Efforts by considering the quality, quantity, and intensity of the Offeror’s efforts. Mere *pro forma* efforts are not Good Faith Efforts to meet the VBE participation requirements. The determination concerning the sufficiency of the Offeror's Good Faith Efforts is subjective; meeting quantitative formulas is not required.

**Identified Items of Work** – all reasonably identifiable sub contractable work opportunities under a resulting contract for performance by subcontractors.

**Identified VBEs**– all of the VBEs the Offeror has identified as available to perform the Identified Items of Work and should include all DGS-verified VBEs that are reasonably identifiable.

**Offeror** – for purposes of this **Good Faith Efforts Documentation to Support Waiver Request**, the term “Offeror” includes any entity responding to a solicitation, including invitations for bids, requests for proposals, and other types of best value solicitations.

**VBE** – “VBE” refers to Veteran-Owned Small Business Enterprises or Service-Disabled Veteran-Owned Small Business Enterprise verified by BDISBO.

**VBE participation goal** – “VBE participation goal” refers to the VBE participation goal set for a procurement for Veteran-Owned Small Businesses and Service-Disabled Veteran-Owned Small Businesses.

## **II. Types of Actions Agency and BDISBO will Consider**

The following is a list of types of actions the procuring agency and BDISBO will consider as part of the Offeror's Good Faith Efforts when the Offeror is unable to meet, in full, the VBE

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participation goal. This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

**A. Identify Proposal Items as Work for VBEs**

1. Identified Items of Work

- (a) Offerors should reasonably identify sufficient items of work to be performed by VBEs.
- (b) Where appropriate, Offerors should break out contract work items into economically feasible units to facilitate VBE participation, rather than perform these work items with their own forces. **The ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the Offeror of the responsibility to make Good Faith Efforts to meet the VBE participation goal.**

**B. Identify VBEs to Solicit**

1. Identified VBEs

- (a) Offerors must reasonably identify the VBEs that are available to perform the Identified Items of Work.
- (b) Any VBEs identified as available by the Offeror should be certified to perform the Identified Items of Work.

**C. Solicit VBEs**

- 1. Offerors must solicit a reasonable number of identified VBEs for all Identified Items of Work by providing written notice. The Offeror must:
  - (a) provide the written solicitation to the Identified VBEs at least 10 days prior to Bid or Proposal due date to allow sufficient time for the Identified VBE to respond;
  - (b) send the written solicitation by first-class mail, facsimile, or e-mail using contact information in the BDISBO Directory, unless the Offeror has a valid basis for using different contact information; and
  - (c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the Identified VBE, and other requirements of the contract to assist Identified VBEs in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)

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2. “All” Identified VBEs includes any VBE Firms the Offeror identifies as potentially available to perform the Identified Items of Work, but it does not include Identified VBEs who are no longer certified to perform the work as of the date the Offeror provides written solicitations.
3. “Electronic Means” includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested VBE cannot access the information provided by electronic means, the Offeror must make the information available in a manner that is accessible to the interested VBE.
4. Offerors must follow up on initial written solicitations by contacting Identified VBEs to determine their interest in bidding. The follow up contact may be made:
  - (a) by telephone using the contact information in BDISBO’s Directory, unless the Offeror has a valid basis for using different contact information; or
  - (b) in writing *via* a method that differs from the method used for the initial written solicitation.
5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, offerors must use all other reasonable and available means to solicit the interest of Identified VBEs certified to perform the work of the contract. Examples of other means include:
  - (a) attending any Supplier Forums, or Pre-Proposal or Pre-Bid conferences at which VBEs could be informed of contracting and subcontracting opportunities; and
  - (b) if recommended by the procurement, advertising with or effectively using the services of at least two veteran-focused entities or media, including trade associations, veteran community organizations, veteran contractors' groups, and local, state, and federal veteran business assistance offices.

**D. Negotiate with Interested VBEs**

Offerors must negotiate in good faith with interested VBEs.

1. Evidence of negotiation includes, without limitation, the following:
  - (a) the names, addresses, and telephone numbers of VBEs that were considered;
  - (b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and

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- (c) evidence as to why additional agreements could not be reached for VBEs to perform the work.
- 2. In negotiating with subcontractors, the offeror should consider a subcontractor's price and capabilities as well as the VBE participation goal.
- 3. Additional costs incurred in finding and using VBEs are not sufficient justification for the Offeror's failure to meet the VBE participation goal, as long as such costs are reasonable. Factors to take into consideration when determining whether an VBE's quote is excessive or unreasonable include, without limitation, the following:
  - (a) dollar difference between the VBE subcontractor's quote and the average of other subcontractors' quotes received by the Offeror;
  - (b) percentage difference between the VBE subcontractor's quote and the average of other subcontractors' quotes received by the Offeror;
  - (c) percentage that the VBE subcontractor's quote represents of the total contract cost;
  - (d) whether the work described in the VBE and Non-VBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
  - (e) number of quotes received by the Offeror for that portion of the work.
- 4. The factors in paragraph 3 above are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.
- 5. The Offeror may not use its price for self-performing work as a basis for rejecting an VBE's quote as excessive or unreasonable.
- 6. The "average of the other subcontractors' quotes received" by the Offeror refers to the average of the quotes received from all subcontractors. Offeror should attempt to receive quotes from at least three subcontractors, including one quote from an VBE and one quote from a non-VBE.
- 7. The Offeror shall not reject an VBE as unqualified without sound justification based on a thorough investigation of the VBE's capabilities. For each VBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Offeror concludes is not acceptable, the Offeror must provide a written detailed statement outlining the justification for its conclusion. The Offeror also must document the steps taken to verify the capabilities of the VBE and non-VBE Firms quoting similar work.

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- (a) The factors to take into consideration when assessing the capabilities of an VBE include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.
- (b) The VBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of Proposals in the efforts to meet the VBE participation goal.

**E. Assisting Interested VBEs**

When appropriate under the circumstances, the procuring agency and BDISBO will consider whether the Offeror made reasonable efforts to assist interested VBEs in obtaining:

1. The bonding, lines of credit, or insurance required by the procuring agency or the Offeror;  
and
2. Necessary equipment, supplies, materials, or related assistance or services.

**III. Other Considerations**

In making a determination of Good Faith Efforts, the procuring agency and BDISBO may consider engineering estimates, catalogue prices, general market availability and availability of certified VBEs in the area in which the work is to be performed, other Proposals or offers and subcontract Proposals or offers substantiating significant variances between VBE and non-VBE costs of participation, and their impact on the overall cost of the contract to the Commonwealth and any other relevant factors.

The procuring agency and BDISBO may consider whether the Offeror decided to self-perform potentially sub contractable work with its own forces. The procuring agency and BDISBO also may consider the performance of other Offerors in meeting the VBE participation goal. For example, when the apparent successful Offeror fails to meet the VBE participation goal, but others meet it, this raises the question of whether, with additional reasonable efforts, the apparent successful Offeror could have met the VBE participation goal. If the apparent successful Offeror fails to meet the VBE participation goal but meets or exceeds the average VBE participation obtained by other Offerors, this, when viewed in conjunction with other factors, could be evidence of the apparent successful Offeror having made Good Faith Efforts.

**IV. Documenting Good Faith Efforts**

At a minimum, the Offeror seeking a Good Faith Efforts waiver of the VBE participation goal or a portion thereof must provide written documentation of its Good Faith Efforts along with its bid or proposal. The written documentation shall include the following:

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**GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET THE SMALL  
DIVERSE BUSINESS (VBE) PARTICIPATION GOAL**

**A. Items of Work (complete VBE-5, Part 1 – Identified Items of Work Offeror Made Available to VBEs)**

A detailed statement of the efforts made to select portions of the contract work proposed to be performed by VBEs in order to increase the likelihood of achieving the VBE participation goal.

**B. Outreach/Solicitation/Negotiation**

1. A detailed statement of the efforts made to contact and negotiate with VBEs including:
  - (a) the names, addresses, and telephone numbers of the VBEs who were contacted, with the dates and manner of contacts (letter, fax, e-mail, telephone, etc.)(**complete VBE-5, Part 2 – Identified VBE Firms and Records of Solicitations. Include letters, fax cover sheets, e-mails, etc. documenting solicitations**); and
  - (b) a description of the information provided to VBEs regarding the plans, specifications, and anticipated time schedule for portions of the contract work to be performed and the means used to provide that information.
2. The record of the Offeror's compliance with the outreach efforts set forth in **VBE-5, Part 3 - Outreach Efforts Compliance Statement.**

**C. Rejected VBEs (complete VBE-5, Part 4 - Additional Information Regarding Rejected VBE Quotes)**

1. For each VBE that the Offeror concludes is not acceptable or qualified, provide a detailed statement of the reasons for this conclusion, including the steps taken to verify the capabilities of the VBE and non-VBE firms quoting similar work.
2. For each VBE that the Offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Offeror's conclusion, including the quotes received from all VBE and non-VBE firms proposing on the same or comparable work. (**Include copies of all quotes received.**)

**D. Unavailable VBEs (complete VBE-5, Part 5 – VBE Subcontractor Unavailability Certificate)**

1. **For each VBE that the Offeror contacted but found to be unavailable, submit an VBE Subcontractor Unavailability Certificate** signed by the VBE, an email from the VBE indicating the VBE is unavailable, or a statement from the Offeror that the VBE refused to sign the VBE Subcontractor Unavailability Certificate.



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**E. Other Documentation**

1. Submit any other documentation requested by BDISBO or the Procuring Agency to ascertain the Offeror's Good Faith Efforts.
2. Submit any other documentation the Offeror believes will help BDISBO or the Procuring Agency ascertain its Good Faith Efforts.

**VBE-5**

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST OF  
VBE PARTICIPATION GOAL**

<b>Project Description:</b>	
<b>Commonwealth Agency Name:</b>	
<b>Solicitation #:</b>	
<b>Solicitation Due Date and Time:</b>	

<b>Bidder/Offeror Company Name:</b>	
Bidder/Offeror Contact Name:	
Bidder/Offeror Contact Email:	
Bidder/Offeror Contact Phone Number:	

**Part 1 – Identified Items of Work Offeror Made Available to VBEs**

Identify those items of contract work that the Offeror made available to VBEs. This includes, where appropriate, those items the Offeror identified and subdivided into economically feasible units to facilitate the VBE participation. For each item listed, show the anticipated percentage of the total contract cost. Offeror must demonstrate that enough work to meet the VBE participation goal was made available to VBEs, and the total percentage of the items of work identified for VBE participation met or exceeded the VBE participation goal set for the procurement.

Identified Items of Work	Was this work listed in the solicitation?	Does Offeror normally self-perform this work?	Was this work made available to VBE Firms? If not, explain why.
	___yes ___no	___yes ___no	___yes ___no
	___yes ___no	___yes ___no	___yes ___no
	___yes ___no	___yes ___no	___yes ___no
	___yes ___no	___yes ___no	___yes ___no
	___yes ___no	___yes ___no	___yes ___no

Attach additional sheets if necessary.

**VBE-5**  
**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST OF**  
**VBE PARTICIPATION GOAL**

**Part 2 – Identified VBEs and Record of Solicitations**

Identify the VBEs solicited to provide quotes for the Identified Items of Work made available for VBE participation. Include the name of the VBE solicited, items of work for which quotes were solicited, date and manner of initial and follow-up solicitations, whether the VBE provided a quote, and whether the VBE is being used toward meeting the VBE participation goal. VBEs used to meet the VBE participation goal must be listed on the **VBE Utilization Schedule (VBE-2)**.

Note: Copies of all written solicitations and documentation of follow-up calls to VBEs must be attached to this form. For each Identified VBE listed below, Offeror should submit an VBE Subcontractor Unavailability Certificate signed by the VBE or a statement from the Offeror that the VBE refused to sign the VBE Subcontractor Unavailability Certificate.

<b>Name of Identified VBE and Classification</b>	<b>Describe Item of Work Solicited</b>	<b>Initial Solicitation Date &amp; Method</b>	<b>Follow-up Solicitation Date &amp; Method</b>	<b>Details for Follow-up Calls</b>	<b>Quote Received?</b>	<b>Quote Used?</b>	<b>Reason Quote Rejected</b>
VBE Name:  __ VBE __ SDVBE		Date:  __ mail __ email __ fax	Date:  __ mail __ email __ fax	Date and Time of Call:  Spoke with:  Left Message:	__ yes __ no	__ yes __ no	__ Used other VBE __ Used non-VBE __ Self performing
VBE Name:  __ VBE __ SDVBE		Date:  __ mail __ email __ fax	Date:  __ mail __ email __ fax	Date and Time of Call:  Spoke with:  Left Message:	__ yes __ no	__ yes __ no	__ Used other VBE __ Used non-VBE __ Self performing

Attach additional sheets as necessary.

**VBE-5**  
**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST OF**  
**VBE PARTICIPATION GOAL**

**Part 3 – VBE Outreach Compliance Statement**

- 1. List the Identified Items of Work for subcontracting opportunities for the solicitation along with specific work categories:**
  
  
  
  
  
  
  
  
  
  
- 2. Attach to this form copies of written solicitations (with Bid or Proposal instructions) used to solicit Identified VBEs for these subcontract opportunities.**
  
  
  
  
  
  
  
  
  
  
- 3. Offeror made the following attempts to contact the Identified VBEs:**

**4. Bonding Requirements (Please Check One):**

\_\_\_\_\_ This project does not involve bonding requirements.

\_\_\_\_\_ Offeror assisted Identified VBEs to fulfill or seek waiver of bonding requirements.  
(DESCRIBE EFFORTS):

**5. Pre-Bid/Proposal Conference or Supplier Forum (Please Check One):**

\_\_\_\_\_ Offeror did attend the pre-Bid/Proposal conference or Supplier Forum

\_\_\_\_\_ No Pre-Bid/Proposal conference or Supplier Forum was held

\_\_\_\_\_ Offeror did not attend the pre-Bid/Proposal conference or Supplier Forum

**VBE-5**  
**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST OF**  
**VBE PARTICIPATION GOAL**

**Part 4 – Additional Information Regarding Rejected VBE Quotes**

This form must be completed if Part 2 indicates that an VBE quote was rejected because the Offeror is using a non-VBE or is self-performing the Identified Items of Work. List the Identified Items of Work, state whether the work will be self-performed or performed by a non-VBE, and if applicable, state the name of the non-VBE firm. Also include the names of all VBEs and non-VBE firms that provided a quote and the amount of each quote.

Describe Identified Items of Work not being performed by VBEs (include specific section from bid or proposal)	Self-performing or using non-VBE (provide name of non-VBE if applicable)	Amount of non-VBE quote \$	Name of other firms that provided quotes and whether they are VBE	Amount quoted \$	Reason why VBE quote was rejected along with brief explanation
	<input type="checkbox"/> self-performing <input type="checkbox"/> using Non-VBE Name:		<input type="checkbox"/> VBE <input type="checkbox"/> Non-VBE Name:		<input type="checkbox"/> price <input type="checkbox"/> capabilities <input type="checkbox"/> other
	<input type="checkbox"/> self-performing <input type="checkbox"/> using Non-VBE Name:		<input type="checkbox"/> VBE <input type="checkbox"/> Non-VBE Name:		<input type="checkbox"/> price <input type="checkbox"/> capabilities <input type="checkbox"/> other
	<input type="checkbox"/> self-performing <input type="checkbox"/> using Non-VBE Name:		<input type="checkbox"/> VBE <input type="checkbox"/> Non-VBE Name:		<input type="checkbox"/> price <input type="checkbox"/> capabilities <input type="checkbox"/> other
	<input type="checkbox"/> self-performing <input type="checkbox"/> using Non-VBE Name:		<input type="checkbox"/> VBE <input type="checkbox"/> Non-VBE Name:		<input type="checkbox"/> price <input type="checkbox"/> capabilities <input type="checkbox"/> other
	<input type="checkbox"/> self-performing <input type="checkbox"/> using Non-VBE Name:		<input type="checkbox"/> VBE <input type="checkbox"/> Non-VBE Name:		<input type="checkbox"/> price <input type="checkbox"/> capabilities <input type="checkbox"/> other

Attach additional sheets as necessary.

**VBE-5**  
**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST OF**  
**VBE PARTICIPATION GOAL**

**Part 5 – VBE Subcontractor Unavailability Certificate**

1. It is hereby certified that the firm of \_\_\_\_\_  
(Name of VBE)

located at \_\_\_\_\_  
(Number) (Street)

\_\_\_\_\_  
(City) (State) (Zip)

was offered an opportunity to bid on Solicitation No. \_\_\_\_\_

by \_\_\_\_\_  
(Name of Prime Contractor's Firm)

\*\*\*\*\*

2. \_\_\_\_\_ (VBE), is either unavailable for the work/service or unable to prepare a Proposal for this project for the following reason(s):

\_\_\_\_\_  
(Signature of VBE's Representative) (Title) (Date)

\_\_\_\_\_  
(DGS VBE Certification #) (Telephone #)

\*\*\*\*\*

3.If the VBE does not complete this form, the prime contractor must complete the following:

To the best of my knowledge and belief, the above-listed VBE is either unavailable for the work/service for this project, is unable to prepare a Proposal, or did not respond to a request for a price Proposal and has not completed the above portion of this submittal.

\_\_\_\_\_  
(Signature of Bidder/Offeror) (Title) (Date)

**APPENDIX K**  
**MODEL FORM OF SMALL DIVERSE BUSINESS/VETERAN BUSINESS**  
**ENTERPRISE SUBCONTRACTOR AGREEMENT**

This Subcontractor Agreement ("Subcontract") is made effective as of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, ("Contractor") and \_\_\_\_\_, a Small Diverse Business or Veteran Business Enterprise ("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 Commitment") whereby the Contractor committed a certain percentage of work ("Small Diverse Business or Veteran Business Enterprise Commitment") under the Prime Contract to the Subcontractor.

As contemplated by the Letter of Commitment 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 Veteran Business Enterprise Commitment expressed in the Letter of Commitment 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 \$38.5 million in gross annual revenues.

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

*Veteran Business Enterprise* – A Department-verified veteran-owned small business or service-disabled veteran-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 verified as a Small Diverse Business or Veteran Business Enterprise 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 Veteran Business Enterprise 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 Commitment, 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 Commitment;
- (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 WITH THE CORRESPONDING UNITED NATIONS STANDARD PRODUCTS AND SERVICES CODES (UNSPSC)]

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8. Small Diverse Business or Veteran Business Enterprise 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 Veteran Business Enterprise Commitment must be submitted in writing to the Bureau and the Contracting Officer. The Bureau 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):

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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]

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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:

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14. Utilization Reports. Both the Contractor and Subcontractor shall complete Monthly 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 month. 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 Veteran Business Enterprise Commitments. If there was no activity during the month, then the form must be completed by stating "No activity in this month." A late fee of \$100.00 per day may be assessed against the Contractor if the Contractor's 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 Veteran Business Enterprise 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 Veteran Business Enterprise 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 Veteran Business Enterprise 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 Veteran Business Enterprise 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 Diverse Business and/or Veteran Business Enterprise 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 Business and Veteran Business Enterprise contractual obligations may be considered by the Commonwealth when reviewing future bids or proposals for responsiveness and responsibility.

(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:

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If to Subcontractor:

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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 Veteran Business Enterprise Commitments 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 Veteran Business Enterprise 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 VETERAN BUSINESS ENTERPRISE RELATIVE TO THE NATURE AND LEVEL OF THE SMALL DIVERSE BUSINESS' OR VETERAN BUSINESS ENTERPRISE'S 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

**LIST OF EXHIBITS**  
*[To the Request for Proposal]*

- EXHIBIT 1      Pre-65 Plan Pharmacy Program Specifications
- EXHIBIT 2      HOP Medicare Part D Plan Pharmacy Program Specifications
- EXHIBIT 3      HOP Medicare Part D Plan Benefit Summary
- EXHIBIT 4      Claims Data
- EXHIBIT 5      Performance Guarantees



**EXHIBIT 1**

*[To the Request for Proposal]*

**PRE-65 PLAN PHARMACY PROGRAM SPECIFICATIONS**

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

[2021 HOP Pre-65 Medical Plan Guide \(PDF 1.24 MB\)](#)

[2021 Pre-65 Medical Plan Summary Plan Description \(SPD\) \(PDF 1MB\)](#)

The Hop Pre-65 Medical Plan – 2021 Critical Care List

[2021 HOP Pre-65 Medical Plan Critical Care Drugs List \(PDF 28KB\)](#)

## EXHIBIT 2

*[To the Request for Proposal]*

### HOP MEDICARE PART D PLAN PHARMACY PROGRAM SPECIFICATIONS

#### 2021 Value, Basic, and Enhanced Medicare Rx Options

- [Enhanced Medicare Rx Option](#) (PDF 35KB)
- [Basic Medicare Rx Option](#) (PDF 35KB)
- [Value Medicare Rx Option](#) (PDF 34KB)
- [Medicare Rx Options Comparison Chart](#) (PDF 52KB)

#### 2021 Formularies

Enhanced and Basic:

- [Comprehensive Formulary \(Effective as of February 1, 2021\)](#) (PDF 1.5 MB)
- [2021 Part D Formulary Lookup Tool](#)

Value:

- [Gold5 Comprehensive Formulary \(Effective as of February 1, 2021\)](#) (PDF 1.2 MB)
- [2021 Part D Formulary Lookup Tool](#)

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

Enhanced and Basic: [Annual Notice of Changes \(PDF 359 KB\)](#)

Value: [Annual Notice of Changes \(PDF 257 KB\)](#)

**EXHIBIT 3**

*[To the Request for Proposal]*

**HOP MEDICARE PART D PLAN BENEFIT SUMMARY**

**SCHEDULE OF BENEFITS (EFFECTIVE FOR 2021 CALENDAR YEAR)**

	Member Pays	ENHANCED	BASIC	VALUE
	<b>Annual Deductible</b>	\$0	\$100 (Brand and Specialty only)	\$ 445
<b>Initial Coverage</b> (up to \$4,130 total Rx spend)	Preferred Generic Drugs	\$4 (\$12 for 90-days)	\$5 (\$15 for 90-days)	\$2 (\$6 for a 31-90 day supply); not subject to the annual deductible
	Non-Preferred Generic Drugs	\$11 (\$33 for 90-days)	\$12 (\$36 for 90-days)	25%
	Preferred Brand Drugs	25% up to \$150 (\$300 for 90-days) (\$280 for 90-days by mail)	30% up to \$200 (\$500 for 90-days) (\$450 for 90-days by mail)	25%
	Non-Preferred Brand Drugs	35% up to \$200 (\$400 for 90-days) (\$380 for 90-days by mail)	40%	25%
	Specialty Drugs	33%	30%	25%
<b>Coverage Gap</b> (Up to \$6,550 TrOOP)	Generic Drugs	25%	25%	25%
	Brand Drugs	25%	25%	25%
<b>Catastrophic Coverage</b> (no limit)	Generic Drugs	Greater of \$3.70 or 5% up to \$100	Greater of \$3.70 or 5% up to \$250	Greater of \$3.70 or 5%
	Brand Drugs	Greater of \$9.20 or 5% up to \$100	Greater of \$9.20 or 5% up to \$250	Greater of \$9.20 or 5%
<b>Formulary</b>		<b>PSERS Custom</b>	<b>PSERS Custom</b>	<b>OptumRx Gold5</b>

## **EXHIBIT 4**

***[To the Request for Proposal]***

### **CLAIMS DATA**

To obtain detailed claims data a non-disclosure agreement must be executed by potential offerors. Offerors may obtain the claims data by mail by sending an executed Limited Use Agreement to the Issuing Officer.

**EXHIBIT 5**  
**[To the Request for Proposal]**  
**PERFORMANCE GUARANTEES**

**PSERS\_EGWP Performance Guarantees**

PSERS and the selected Contractor will enter into a performance agreement with the standards and guarantees/penalties outlined below at risk each year for the duration of the Contract based on actual performance. The following describes the minimum performance guarantees that PSERS will include in the Contract with their selected Contractor. The Contractor will self-report results and PSERS will utilize their partners and internal staff to validate reported baseline and results for these outcomes. Contractor agrees to PSERS' right to independently audit and confirm all results. In the column titled, "Penalty Dollars at Risk", indicate the annual dollar amount you are willing to place at risk. In the column titled, "Confirm", indicate that you agree to meet the minimum criteria established by PSERS (Yes). **All measurements and standards are specific to PSERS' services, and not to be based on Contractor's performance for their book of business, or any other group that includes non-PSERS Members.**

<b>Name of Proposer:</b> _____	
Total Implementation Performance Guarantees Amount (in dollars) you are proposing to PSERS:	\$ _____
Total Ongoing Annual Performance Guarantees Amount (in dollars) you are proposing to PSERS:	\$ _____
Confirm PSERS may allocate the preferred weighting (e.g., 0% to 20%) for the Performance Guarantees below prior to the start of each Contractual Year.	<b>Confirm (Y/N):</b> _____

	Standard	Reporting and Assessment Intervals	Penalty Dollars at Risk (Add annual amounts)	Confirm (Y/N)
<b>Implementation Performance Guarantees</b>				
Clean Implementation	Contractor guarantees program implementation substantially in accordance with a mutually agreed upon written schedule, subject to timely performance of PSERS obligations. Program implementation performance guarantee includes: <ul style="list-style-type: none"> <li>• Contract delivery</li> <li>• ID Card production and delivery prior to January 1, 2022</li> <li>• Plan startup</li> <li>• Initial billing</li> <li>• Initial reporting</li> </ul>	One-time assessment, reported no later than one month after the 'go-live' date		
Implementation PSERS Satisfaction Level	PSERS must be generally satisfied with the overall implementation quality. Minor errors, meet most deadlines	One-time assessment, reported no later than one month after the 'go-live' date		

**Ongoing Performance Guarantees**

**Payment Accuracy & System Performance**

Protected Health Information	PBM guarantees no incidents in violation of HIPAA Security Rules which results in a transmission of electronic PHI for PSERS' covered members.	Reported and assessed quarterly. Penalty to be assessed per violation.		
Plan Administration Accuracy	Implementation of all plan design changes will be 100% accurate.	Reported and assessed quarterly.		
Pricing Change Accuracy	Implementation of all pricing changes will be 100% accurate.	Reported and assessed quarterly.		
Financial accuracy (electronic and paper claims)	Percentage of claim payments made without error relative to the total dollars paid will be at least 99%.  Statistically significant random sample of clean retail and mail order claims processed is reviewed to determine the percentage of claim dollars processed without ingredient cost, member co-payment, member eligibility, drug coverage, deductible application or payment errors.	Reported and assessed quarterly.		
Mail Service Non-Financial Accuracy	The mail service pharmacy shall guarantee dispensing accuracy of at least 99.95% (correct participant name, correct participant address, correct drug, correct dosage form, and correct strength).	Reported and assessed quarterly.		
System Downtime	Penalty for each unplanned and unannounced system downtime lasting more than 2 hours during normal business hours	Reported and assessed quarterly.		
Invoicing Errors	All invoicing errors will be credits back to the applicable PSERS Plan by next billing cycle or PBM will pay interest.	Reported and assessed quarterly.		
Claims Eligibility Data	Eligibility loads not to exceed 24-hours after receipt.	Reported and assessed quarterly.		
Eligibility Data Error Reporting	Eligibility file error reporting on all eligibility file updates will be provided to the PSERS Plans within 2 business days.	Reported and assessed quarterly.		
Eligibility Error Rate Audits	Error rate identified through quarterly audits shall not exceed, on an average basis, 1%.	Reported and assessed quarterly.		
Retail Pharmacy Audit	100% of participating retail pharmacies will be subject to automated review audits and 20% of participating pharmacies will be subject to further investigation (e.g., desk audits, on-site audits, etc.) as a result of the automated review audits.	Reported and assessed quarterly.		
Retail Pharmacy Turnover	Less than 5% of retail pharmacies will leave the retail network.	Reported and assessed quarterly.		
Claims Detail File	All claims detail files sent to external vendors will be provided within 5 days of request or scheduled delivery date.	Reported and assessed quarterly.		

**Account Management**

Contracting Cooperation	Response to recommended contract language changes within 10 business days.	One-time assessment, reported no later than one month after the contract is finalized.		
Client Approval of Member Communications	100% of all member communications must be reviewed and approved by PSERS - exceptions for drug recalls and urgent patient safety communications.	Reported and assessed quarterly.		
Online Reporting Data Availability	Online reporting data will be available within an annual average of fifteen (15) business days after the billing cycle that contains the last day of the month.	Reported and assessed annually.		
Delivery of Standard Reports	Within 30 days of end of reporting quarter.	Reported and assessed quarterly.		
Accuracy of Standard Reports	All standard reports provided will be 100% accurate.	Reported and assessed quarterly.		
Contractor must provide claims data monthly	Contractor will provide claim line detail for ALL claims in a mutually agreed upon format by the 15th calendar day of the month following the subject month, as described in the RFP.	Reported and assessed quarterly.		
Delivery of Reporting and Guaranteed Payments	Timely reporting and distribution of rebates, performance guarantees, financial guarantees, inflation protection, etc.	Reported and assessed quarterly.		
PBM Account Team's Performance	PSERS may assess a penalty in the amount of <b>\$30,000</b> per Contract Year if, after the first Contract Year and each successive Contract Year, PSERS Plan's benefits staff do not rate PBM account team's performance satisfactory for such Contract Year. Factors that may be considered include responsiveness, staff team turnover, meeting attendance, problem resolution. Beyond penalties, PSERS may request changes to Account team if performance does not meet client expectations.	Reported and assessed quarterly.		

Member Services				
Mail Turnaround – Prescriptions not requiring intervention	95% of prescriptions dispensed within average of 2 business days and 100% within average of 3 business days.	Reported and assessed quarterly.		
Mail Turnaround – Prescriptions requiring intervention	95% of prescriptions dispensed within average of 4 business days and 100% within average of 5 business days.	Reported and assessed quarterly.		
Paper Claims Turnaround	95% of prescriptions reimbursed within average of 10 business days and 100% within average of 14 business days.	Reported and assessed quarterly.		
Rejected Claims	90% of prescriptions adjudicated/resolved in seven (7) Business days.	Reported and assessed quarterly.		
ID Cards Mailing	98% of all ID cards are sent within 5 business days of receipt of eligibility. 99.9% of Members will have received accurate ID cards at least 10 business days before the beginning of each year based on the information confirmation from CMS. This includes replacement cards.	Reported and assessed quarterly.		
Mailing Member Materials	All applicable member materials (for example, mail order forms) will be mailed at least 10 days prior to the effective date and will be 100% accurate (provided the eligibility file was received at least 30 days prior to the effective date).	Reported and assessed quarterly.		
Phone Average Speed of Answer	99.9% of calls to PSERS-specific toll-free line shall be answered within 20 seconds (excluding IVR). Standard must be maintained each month.	Measured monthly. Reported and assessed quarterly.		
Phone Abandonment Rate	All calls to PSERS-specific toll-free line shall be answered with an abandonment rate of 3% or less. Standard must be maintained each month.	Measured monthly. Reported and assessed quarterly.		
Call Disconnect Rate	All calls to PSERS-specific toll-free line shall have a disconnect rate of 3% or less. Standard must be maintained each month.	Measured monthly. Reported and assessed quarterly.		
Written Inquiry Answer Time	95% of inquiries responded to in 5 business days. Standard must be maintained each month.	Measured monthly. Reported and assessed quarterly.		



**Member Services (continued)**

Member Satisfaction Survey	The PBM agrees to have a mutually agreed upon external vendor conduct a Member Satisfaction Survey for each contract year and that the Satisfaction Rate will be 90% or greater. A penalty of <b>\$100,000</b> per Contract Year may be assessed against the PBM for failure to meet this standard. "Member Satisfaction Rate" means (i) the number of Eligible Persons responding to PBM annual standard Patient Satisfaction Survey as being satisfied with the overall performance under the Integrated Program divided by (ii) the number of Eligible Persons responding to such annual Patient Satisfaction Survey; PSERS must provide timely approvals and responses, and a minimum of 20% of surveys must be returned for the Performance standard to be applicable.	Reported and assessed quarterly.		
Issue Resolution: Verbal Inquiries	PBM will resolve 99% of all telephone issues at the first point of contact (the number of telephone inquiries completely resolved at the time of initial contact divided by the total number of calls).	Measured monthly. Reported and assessed quarterly.		
<b>Network Access</b>				
Geographic Access	95% of members residing in an urban area and a suburban area will have access to one pharmacy in 5 miles and 95 percent of members residing in a rural area will have access to one pharmacy in 15 miles.	Reported and assessed quarterly.		
Provide and Maintain Timely CMS Formulary Submission Files	PBM to Provide Required Files At Least Three Business Days Prior To CMS Delivery Date	Reported and assessed quarterly.		
Member Appeals Resolution	Expedited Appeals Resolved Within 24 Hours, 7 Calendar Days for Standard Appeals	Reported and assessed quarterly.		
Member Coverage Determination Resolution	Expedited Coverage Determinations Resolved Within 24 Hours, 72 Hours for Standard Coverage Determinations	Reported and assessed quarterly.		
CMS Reporting Requirements	Reports Delivered to Plan 5 Business Days Prior To CMS Deadline	Reported and assessed quarterly.		
Prescription Drug Event Submission	100% Of Paid Claims Submitted to CMS Within 60 Days Of Fill Date	Reported and assessed quarterly.		
Prescription Drug Event Error Resolution	99.5% of all rejected PDE records will be corrected and resubmitted to CMS within 30 days	Reported and assessed quarterly.		
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	Reported and assessed quarterly.		