

HEALTH CARE PLAN CONSULTING AND MANAGEMENT SERVICES
AGREEMENT FOR HEALTH OPTIONS PROGRAM
(INCLUDING MEDICARE PRESCRIPTION DRUG PLAN)

THIS HEALTH CARE PLAN CONSULTING AND MANAGEMENT SERVICES AGREEMENT FOR HEALTH OPTIONS PROGRAM (INCLUDING MEDICARE PRESCRIPTION DRUG PLAN) ("**Agreement**") is made and entered into as of this ____ day of _____, ____ ("**Effective Date**") by and between [PLACEHOLDER FOR VENDOR NAME][PLACEHOLDER FOR LEGAL ENTITY TYPE AND JURISDICTION OF FORMATION] ("**Consultant**"), whose principal place of business is [PLACEHOLDER FOR PRINCIPAL PLACE OF BUSINESS] and the Commonwealth of Pennsylvania, Public School Employees' Retirement Board ("**Board**"), whose principal place of business is 5 North 5th Street, Harrisburg, Pennsylvania 17101. The Consultant and the Board are collectively referred to herein as the "**Parties**" and each individually as a "**Party**."

RECITALS:

WHEREAS, as provided in the Act of May 17, 2001 (P.L. 26, No. 9), the General Assembly of the Commonwealth of Pennsylvania enacted the Public School Retirees' Health Insurance Act, Title 24, Pa. C.S. §§ 8701 - 9102 ("**Health Act**") to provide for the sponsorship of a group health insurance program to make available health care benefits to each eligible person as defined in the Health Act (individually and collectively the "**Eligible Persons**");

WHEREAS, in furtherance of the directive of the Health Act, the Board sponsors a group health plan known as the Health Options Program ("**HOP**");

WHEREAS, the Health Act gives the Board administrative powers to administer the HOP, including, but not limited to, to contract for services, consultants and other professional personnel as needed to operate the HOP;

WHEREAS, the HOP offers a range of health insurance and prescription drug plan options provided by health insurance carriers and providers through whom the Board has contracted;

WHEREAS, the Board contracts with the Center for Medicare and Medicaid Services (CMS) to be able to offer an Employer/Union Direct Prescription Drug Program (PDP);

WHEREAS, the Board desires to self-fund the hospital, medical/surgical and major medical health insurance options made available through and that are set forth in the separately maintained HOP Medical Plan, the Value Medical Plan and HOP Pre-65 Medical Plan;

WHEREAS, the Board conducts an annual open enrollment period for Eligible Persons to consider the selection of options that requires the preparation and presentation of option information to and interaction with Eligible Persons;

WHEREAS, the Board desires to engage a health care consultant and project manager to perform the consulting and project management services required for the operation of the HOP as described in this Agreement;

WHEREAS, the Board issued PSERS' Request for Proposal No. PSERS RFP [PLACEHOLDER FOR NUMBER] to solicit the engagement of a health care consultant and project manager to perform the consulting and project management services required for the operation of the HOP as described in this Agreement;

WHEREAS, the Consultant submitted a response to PSERS' Request for Proposal No. PSERS RFP [PLACEHOLDER FOR NUMBER]; and

WHEREAS, the Board desires to accept the Consultant's response subject to the terms of a definitive written agreement and completion of the applicable Commonwealth of Pennsylvania procurement requirements.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and other valuable consideration and intending to be legally bound hereby, the Board and the Consultant agree as follows:

ARTICLE I
TERM AND TERMINATION

- 1.1 Initial Term. The initial term of this Agreement shall commence on the Effective Date and shall terminate on [PLACEHOLDER FOR TIME AND DATE], unless earlier terminated pursuant to its terms ("**Initial Term**").
- 1.2 Renewal Terms. On or before the conclusion of (a) the Initial Term and (b) if applicable, a Renewal Term (as defined below), but not after a fifth (5th) Renewal Term, the Term of this Agreement may, upon the mutual written agreement of the Parties, be renewed for up to twelve (12) months commencing immediately after the end of the then expiring Term (each such additional twelve (12) month period, a "Renewal Term" and all such Renewal Terms, if any, together with the Initial Term, the "Term"). The Initial Term and any Renewal Term shall be extended as follows: (a) the Consultant shall submit proposed terms for the Renewal Term to the Board at least ninety (90) days before the expiration of the applicable Term; (b) at least thirty (30) days before the expiration of the applicable Term, the Board shall provide the Consultant with either (i) a signed letter of acceptance of such renewal terms or other negotiated terms which shall operate to extend the Term without any further action; or (ii) a notice of its intent to terminate this Agreement which shall be effective upon the expiration of the applicable Term. The Board reserves the right, upon notice to the Consultant, to extend the Term of this Agreement for up to three (3) months upon the same terms and conditions.
- 1.3 Approval by Contracting Officer. The Effective Date shall be fixed by the Contracting Officer [PLACEHOLDER FOR WHERE DEFINED] after (a) this Agreement has been fully executed by the Consultant and the Board and (b) all approvals required by Commonwealth of Pennsylvania contracting procedures have been obtained. This Agreement shall not be a legally binding contract until after the Effective Date is affixed and the fully-executed Agreement has been sent to the Consultant. The Consultant shall not start performance of any work before the Effective Date, and the Board shall not be liable to pay the Consultant for any services performed or expenses incurred before the Effective Date. No agency employee has the authority to verbally direct the commencement of any work under this Agreement.
- 1.4 Termination. The Board may terminate this Agreement by giving at least ninety (90) days written notice to the Consultant. The Consultant may terminate this Agreement by giving at least one-hundred eighty (180) days written notice to the Board. Following the written notice of the termination of this Agreement, the Consultant shall provide to the Board such assistance that the Board may reasonably request to provide an orderly transition of the Consulting and Project Management Services to a replacement service provider, including the transfer of records and data relating to the Consulting and Project Management Services in the possession or control of the Consultant. Upon termination of this Agreement, the Consultant shall have no further obligation to provide the Consulting and Project Management Services.

- 1.5 Return of Records at Termination. Upon the termination of this Agreement, the Consultant shall cause the orderly and prompt transfer of all records in whatever form maintained resulting from the Consulting and Project Management Services to the Board unless otherwise directed in writing by the Board.

ARTICLE II
DUTIES OF CONSULTANT

- 2.1 Generally. The Consultant shall perform the services set forth in this Agreement, including (a) the fixed price services – services the cost of which are at fixed prices (“**Fixed Price Services**”), and (b) unit price services and projects – services the cost of which are based upon hourly rates (the “**Unit Price Services and Projects**” and together with the Fixed Price Services, collectively the “**Consulting and Project Management Services**”). The Consultant shall not assign or transfer any of the Consultant’s obligations under this Agreement, including to any subcontractor, unless the Consultant makes a request to the Board in writing in advance, and the Board consents to such assignment which consent may be withheld at the reasonable discretion of the Board. For all purposes under this Agreement, the actions or non-actions of an individual or entity to which an obligation is assigned shall constitute the actions or non-actions of the Consultant and if such actions or non-actions constitute a breach of this Agreement, shall constitute the breach of the Consultant. Any such permitted assignee shall perform in accordance with the terms of this Agreement.
- 2.2 Standard of Care. In providing the Consulting and Project Management Services, the Consultant shall (a) use the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character, and with like aims and (b) perform in accordance with all applicable standards in the industry and all applicable laws and governmental regulations.
- 2.3 Fixed Price Services. The Consultant shall provide the Fixed Price Services [TO BE INSERTED ON A SCHEDULE OR INCLUDED BELOW CONSISTENT WITH THE RFP].
- 2.4 Unit Price Services and Projects. The Consultant shall provide the Unit Price Services and Projects [TO BE INSERTED ON A SCHEDULE OR INCLUDED BELOW CONSISTENT WITH THE RFP].

ARTICLE III
DUTIES OF PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

- 3.1 Fees. [PLACEHOLDER FOR OBLIGATION AND TERMS OF PAYMENT]

- 3.2 Provision of Data. The Board agrees to supply to the Consultant (either directly or through its agents and representatives) on a timely basis all data, documentation and information reasonably needed by the Consultant to perform the Consulting and Project Management Services ("**Board Provided Information**"). The Consultant shall have the right to rely on the accuracy and completeness of the Board Provided Information. Subject to complying with the recognized standard of care, the Consultant shall have no responsibility for independently verifying or checking provided Board Provided Information for accuracy or completeness.

ARTICLE IV
FEES

- 4.1 Consulting and Project Management Fees. The consulting and project management fees for the Consulting and Management Services (“**Consulting and Project Management Fees**”) payable by the Board to the Consultant during (a) the Initial Term shall be as set forth in Exhibit A and (b) any Renewal Term shall be subject to the agreement of the Parties reached as part of the renewal process under Section 1.2. In the event of the termination of this Agreement before the expiration of a Term, the Board shall only be obligated to pay for the Consulting and Project Management Services through the last day of the shortened Term, and if Consulting and Project Management Services are not rendered for a full calendar month, the amount owed for that calendar month shall be prorated based on the number of days in that calendar month.
- 4.2 Services Included in Consulting and Project Management Fees. The Consulting and Project Management Fees include all fees, expenses and costs for the Consulting and Management Services. The Consultant assumes responsibility for the payment of all expenses and/or costs that the Consultant may incur to provide the Consulting and Management Services. The Board shall have no obligation to pay any amount other than the Consulting and Project Management Fees.
- 4.2.01 In the event that the Parties determine that additional services are required to carry out the terms of this Agreement other than Consulting and Management Services, the Parties shall use their best efforts to develop procedures for such additional services. The terms and conditions applicable to such additional services shall be governed either by an amendment to this Agreement or by a separate written agreement.
- 4.3 [PLACEHOLDER FOR ANY OTHER AMOUNTS PAYABLE BY THE BOARD, IF ANY, AND THE TIME AND MANNER OF PAYMENT INCLUDING OUT-OF-POCKET EXPENSES]

ARTICLE V
GENERAL PROVISIONS

- 5.1 Confidentiality of Reports. All documents, data, reports, and materials prepared by or for the Consultant in the performance of Consulting and Project Management Services in whatever form maintained (collectively the “**Consultant’s Prepared Information**”) shall be confidential. Except to the extent that any Consultant’s Prepared Information incorporates the Consultant's proprietary software, technique, methodologies, know-how and report formats (collectively, "**Consultant's Proprietary Information**"), all Consultant’s Prepared Information delivered by the Consultant to the Board under the terms of this Agreement (collectively, the "**Deliverables**"), shall become the sole and exclusive property of the Board and shall not be published, circulated, or used in any manner by the Consultant without the Board's prior written approval. To the extent that Consultant's Proprietary Information is incorporated into such Deliverables, the Board shall have a perpetual, nonexclusive, worldwide, royalty-free license to use, copy, and modify Consultant's Proprietary Information as part of the Deliverables solely for internal use and for the intended purpose of such Deliverables.
- 5.2 Access to Information via a Website. In the event that the Consultant utilizes a data warehouse or any other type of on-line data center to make information provided pursuant to this Agreement ("**Information**") available to the Board, the Consultant shall use its best efforts to cause the website operator to remove or disable any website user agreement that the Board would otherwise be required to execute to gain access to the Information. The Consultant agrees and warrants that if the Board is required to affirmatively accept terms and conditions in order to access the Information, such acceptance shall not be deemed by the Consultant or the website operator to create a contract or agreement, but such acceptance instead shall be regarded as a mere technical formality to gain access to the website and the terms and conditions of any such user agreement shall not be binding on Board and shall be without force or effect. The terms and conditions regarding the availability and use of the Information shall be governed exclusively by this Agreement, and the Board shall not be required to enter into any agreement with a third party to gain access to the Information.
- 5.3 Conflict of Interest. The Consultant represents that it has no interest and agrees that Consultant shall not acquire any interest, direct or indirect, that would conflict in any material manner or degree with the performance under this Agreement. The Consultant agrees that in the performance of this Agreement, it will not knowingly employ any person having any such conflicting interest.
- 5.4 Waiver. Failure of either the Board or the Consultant to require the strict performance of any provision of this Agreement shall not constitute waiver of, or estoppel against asserting the right to require such performance, nor will a waiver or estoppel in one case constitute a waiver or estoppel with respect to a later breach whether of similar nature or otherwise.

5.5 Notices.

5.5.01 Any notice, request, demand or other communication permitted or required to be given under this Agreement shall be in writing and shall be deemed to have been duly given, made and received hereunder: (a) on the next Business Day following the day when deposited for overnight next business day delivery, fees prepaid to the intended Party with a reputable, established overnight courier service that regularly maintains records of its pick-ups and deliveries, (b) on the fourth (4th) Business Day following the date when deposited with the United States Postal Service as registered or certified mail, postage prepaid, return receipt requested, or (c) immediately upon delivery by hand or by email transmission (with proof of receipt), in each case to the address/email address of such Party as set forth below. Any notice received by email at the addressee's email address or otherwise at the addressee's location on any Business Day after 5:00 p.m. (prevailing time in New York City), or on any day that is not a Business Day shall be deemed to have been received on the next Business Day. "Business Day" means each day that is not a Saturday, Sunday or other day on which the offices of the Commonwealth of Pennsylvania or the Consultant are closed.

For purposes of notice to the Board:

Terrill J. Sanchez
Executive Director
Public School Employees'
Retirement System
5 N. 5th Street
Harrisburg, PA 17101
Email: tesanchez@pa.gov

Jennifer A. Mills
Deputy Executive Director and Director
of Defined Contributions Investments
Public School Employees' Retirement
System
5 N. 5th Street
Harrisburg, PA 17101
Email: jenmills@pa.gov

With a copy to: Director Health Insurance Office at the same address

For purposes of notice to the Consultant:

[PLACEHOLDER FOR NOTICE CONTACT INFORMATION]

5.5.02 Either Party may from time to time change its address/email address for receipt of notices and other communications by giving the other Party notice of the change pursuant to this Section.

5.6 Assignment or Transfer.

5.6.01 The Consultant may not assign or otherwise transfer this Agreement, whether voluntarily or by operation of law and whether by sale, merger, division,

consolidation, encumbrance, sale of stock, or otherwise, or any interest, or any claim arising under this Agreement, to any other party or parties without the prior written consent of the Board. Such consent may not be unreasonably withheld.

5.6.02 The Board may assign this Agreement or assign its rights or delegate its obligations and liabilities under this Agreement either in whole or in part (an "Assignment") at any time and without the Consultant's consent, to any entity. The Board shall give the Consultant written notice of any Assignment and the effective date thereof. The Assignment shall neither affect nor diminish any rights or duties that the Consultant or the Board may then or thereafter have relating to any period prior to the effective date of the Assignment. Upon the acceptance of the Assignment and the assumption of the duties under this Agreement by the assignee, the Board shall be released and discharged, to the extent of the Assignment, from all further duties under this Agreement.

5.7 Warranties and Representations.

5.7.01 The Board and the Consultant each warrant that it has the authority to enter into this Agreement.

5.7.02 The Board represents that its enabling legislation is the Health Act. The Board acknowledges that the Board is the sponsor of the HOP. In this capacity, the Board acknowledges that it is responsible for all policies and procedures related to the administration of HOP.

5.7.03 The Consultant certifies that it is not currently under suspension or debarment by the Commonwealth of Pennsylvania, any other state, or the federal government. If the Consultant enters into any subcontracts under this Agreement with subcontractors that are currently suspended or disbarred by the Commonwealth of Pennsylvania or the federal government, or that became suspended or disbarred by the Commonwealth of Pennsylvania or the federal government during the term of this Agreement, or any extensions or renewals of this Agreement, the Board shall have the right to require the Consultant to terminate such subcontracts.

5.7.04 The Consultant agrees that it shall be responsible for reimbursing the Board and the Commonwealth of Pennsylvania for all necessary and reasonable costs and expenses incurred by the Office of the Inspector General relating to an investigation of the Consultant's compliance with the terms of this or any other agreement between the Consultant and the Board or Commonwealth which results in the suspension or debarment of the Consultant.

5.8 Applicable Law. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania. The Parties consent to service of process in any manner authorized by Pennsylvania law. Any legal proceeding involving any contract claim asserted by the Consultant against the Board arising out of any 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. In addition, the Consultant and all persons furnished by the Consultant shall comply at their expense, where applicable, with the Internal Revenue Code, Health Insurance Portability and Accountability Act, the Fair Labor Standards Act, the Occupational Safety and Health Act, the Americans With Disabilities Act, the Family and Medical Leave Act of 1993, all federal, state and local anti-discrimination laws, and all other federal, state and local laws, ordinances, regulations and codes including procurement of required permits and certificates required to be complied with by the Consultant in connection with the Consultant performing its obligations under this Agreement. The Consultant shall indemnify the Board for any loss or damage that may be sustained by reason of the Consultant's failure to do so.

- 5.9 Additional Contract Provisions. The Consultant agrees to comply with: (a) Contract Terms and Conditions – Paper Contract which provisions may be modified from time to time with written notice to the Consultant and (b) the Data and Information Security Addendum, each of which are attached hereto and marked Exhibit B and Exhibit C, respectively. As used in Exhibit B, the following terms shall have the following meanings: (1) “Contractor” means the Consultant; (2) “Commonwealth” means the Board and as the context may require, and/or the Commonwealth of Pennsylvania; (3) “Contract” means this Agreement. The Contracting Officer for the Board shall be the Executive Director, Commonwealth of Pennsylvania, Public School Employees’ Retirement System, 5 North 5th Street, Harrisburg, Pennsylvania 17101. In the event of a conflict among this Agreement (without regard to the Standard Contract Terms and Conditions – Paper Contract and the Data and Information Security Addendum) and the Standard Contract Terms and Conditions – Paper Contract and/or, the Data and Information Security Addendum, the terms of the documents will control in the following order of precedence (from higher to lower): (a) Data and Information Security Addendum, (b) Standard Contract Terms and Conditions – Paper Contract and (c) this Agreement.
- 5.10 HIPAA Compliance. The Consultant acknowledges and agrees that it shall comply with: (a) the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder by the U.S. Department of Health of Human Services and other applicable laws during the Term of this Agreement and (b) the "HIPAA Business Associate Agreement" entered into by the Parties in the form attached hereto and marked Exhibit F.
- 5.11 Maintenance, Preservation, and Review of Records. The Consultant shall maintain all records, books, and accounts pertaining to the Consulting and Project Management Services and payments hereunder in accordance with generally accepted accounting principles consistently applied. All such records, books, and accounts shall be maintained and preserved during the Initial Term and any subsequent Renewal Term(s), if applicable and for four years thereafter. During such period, the Board, or any other Department or representative of the Commonwealth of Pennsylvania, shall have the right to inspect, duplicate, and audit such records, books, and accounts pertaining to this Agreement for all purposes authorized and permitted by law. The Consultant may preserve such records, books, and accounts in original form or on microfilm, magnetic tape, or any other generally recognized and accepted process.

- 5.12 Reservation of Immunities. The Board reserves all immunities, defenses, rights, or actions arising out of its status as a sovereign entity 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.
- 5.13 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, and subject to the provisions in Section 5.7 (Assignment or Transfer), assigns.
- 5.14 Amendment. No amendment or modification of this Agreement shall have any force or effect unless it is in writing and signed by the Parties.
- 5.15 Counterparts. This Agreement may be executed in one or more counterparts and such execution may occur by manual signature on a copy of this Agreement physically delivered, on a copy of this Agreement transmitted by facsimile transmission or on a copy of this Agreement transmitted as an imaged document attached to an email, or by "Electronic Signature", which is hereby defined to mean inserting an image, representation or symbol of a signature into an electronic copy of this Agreement by electronic, digital or other technological methods. Each counterpart executed in accordance with the foregoing shall be deemed an original, with all such counterparts together constituting one and the same instrument. The exchange of executed counterparts of this Agreement or of executed signature pages to counterparts of this Agreement, in either case by facsimile transmission or as an imaged document attached to an email transmission, shall constitute effective execution and delivery of this Agreement and may be used for all purposes in lieu of a manually executed and physically delivered copy of this Agreement.
- 5.16 Severability. If any one or more of the covenants, agreements, provisions, or terms of this Agreement shall be held contrary to any 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 and shall in no way affect the validity or enforceability of the remainder of this Agreement or the rights of the parties hereto.
- 5.17 Rules of Construction. The following rules shall be followed in interpreting the provisions of this Agreement. 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, constructions, or meaning of the provisions hereto. The term "Agreement" shall be deemed to include all such exhibits and schedules and any other documents expressly incorporated, by reference, into this Agreement. All words and phrases in this Agreement shall be construed to include the singular or plural number, and the masculine, feminine, or neuter gender, both as the context requires. The term "include(s)" or "including" shall be deemed to mean "without limitation." Any statutory or regulation reference in this Agreement shall include a reference to any successor to such statute/regulation and/or revision thereof. The words "shall," "will," and "must" are obligatory and require performance of the stated condition, etc. during the term of this

Agreement and if the context requires after the term, during such additional period to give effect to the provision. The word “may” is intended to be permissive, imparting a right, but not an obligation, to perform..

- 5.18 Defense of Lawsuits. If a claim is brought with respect to any issue regarding the HOP, the Consultant shall do the following:
- 5.18.01 If the claim is brought against the Consultant, the Consultant shall promptly notify the Board of the claim and shall defend the claim;
- 5.18.02 If the claim is brought against the Consultant and the Board or the HOP, the Consultant shall arrange for the joint defense so long as there are no conflicts of interest among the Parties and the Parties agree to the joint defense subject to Section 5.26. If there will not be a joint defense, the Consultant shall defend the claim made against the Consultant; and
- 5.18.03 If the claim is brought against the Board and/or the HOP and the Consultant is not a party, the Board shall promptly notify the Consultant. The Consultant shall review the complaint with the Board and provide all necessary information and assistance to the Board for the defense of the Board, and if applicable, HOP and the Board shall determine how to proceed subject to Section 5.26.
- 5.18.04 In addition to its obligations under Section 5.26, the Consultant shall be responsible for the legal costs and expense of any claim brought solely against the Consultant.
- 5.18.05 The Consultant has the right to settle any claim in which neither the Board nor HOP is a party; provided, however that the Consultant shall first consult with the Board prior to settling any claim in which the Board or HOP has a direct interest.
- 5.19 Independent Contractors. Neither Party to this Agreement, nor their respective directors, officers, agents or employees, shall be deemed to be the agent or principal of the other. Neither the Board nor any of its agents, directors, officers or employees is the agent or representative of the Consultant and neither Board nor its agents, directors, officers or employees shall be liable for any acts or omissions of the Consultant or any of its agents or employees, or any other person or organization with which the Consultant has made or hereafter shall make arrangements for the performance of services under this Agreement.
- 5.20 Disaster Recovery. The Consultant shall maintain a formalized disaster recovery and back-up plan to ensure against the loss of data.
- 5.21 Ownership of Information. All Board or HOP-specific documents, records, reports, and management data related to the Consulting and Management Services shall at all times be considered the property of the Board. The Consultant may, however, retain copies of any documents that might be necessary to defend any suit related to the subject matter of this Agreement and/or as necessary to comply with the Consultant’s business continuity and

document retention policies. The records described in this provision do not include the Consultant's proprietary information.

- 5.22 Confidential Information and Protected Health Information. Personally-identifiable information of individuals participating or receiving benefit under HOP may include names, dates of birth and social security numbers ("**Confidential Information**"). Because of the sensitivity of such information, the Consultant shall keep such Confidential Information in confidence and take all safeguards and precautions to ensure the confidentiality of Confidential Information. The Consultant shall be liable for any breach of confidentiality by the Consultant and any subcontractor of the Consultant regarding such Confidential Information. The Consultant and any subcontractor of the Consultant shall use the Confidential Information only in performing the Consulting and Project Management Services. Confidential information shall not be used by the Consultant and any subcontractor of the Consultant, for purposes other than those stated in this Agreement, without the authorization of the individual whose Confidential Information is affected unless required pursuant to legal process or unless prescribed by statute or government regulation. The Consultant shall, however, disclose Confidential Information to the Board in cases involving actual or suspected fraud or misrepresentation. The Consultant shall comply with the requirements specified in the HIPAA Business Associate Agreement in its handling and use of Protected Health Information as defined in the HIPAA Business Associate Agreement.
- 5.23 Board Proprietary Information. Any specifications, drawings, sketches, models, toll free numbers, computer or other apparatus programs, samples, tools, technical or business information or data, written, oral or otherwise (all hereinafter designated "**Board Proprietary Information**") furnished to the Consultant under this Agreement or in contemplation of this Agreement shall remain the property of the Board. All copies of such Board Proprietary Information in written, graphic or other tangible or electronic form shall be returned to the Board at the Board's request, provided that the Consultant may retain an archival copy of all such Board Proprietary Information that might be necessary to defend/support the Consultant's work under this Agreement and/or as necessary to comply with the Consultant's business continuity and document retention policies. Unless such Board Proprietary Information was previously known to the Consultant free of any obligation to keep it in confidence, or has been or is subsequently made public by the Board or a third party, it shall be kept in confidence by the Consultant, shall be used only in performing under this Agreement, and may not be used for other purposes except upon such terms as may be agreed upon between the Consultant and the Board in writing.
- 5.24 Survival of Obligations. All provisions of this Agreement which are by their nature intended to continue beyond the termination, cancellation or expiration of this Agreement in whole or in part, including, by way of illustration only and not limitation, prompt transfer of information (Section 1.5), those pertaining to use of information, including ownership of information and data and confidentiality (Section 5.1 and Section 5.23), obligations under federal law relating to the protection of "protected health information" (Section 5.10 and Section 5.22), and maintenance, preservation and review of records (Section 5.11), reservation of immunities (Section 5.12), waiver (Section 5.4), reimbursement (Section

5.7.04), applicable law (Section 5.8), claims (Section 5.8 and Section 5.18), and indemnification of an Indemnified Party by the Consultant (Section 5.26), shall survive termination, cancellation or expiration of this Agreement.

5.25 Exhibits, Addendum and Schedules. The following Exhibits, Addendum and Schedules are hereby incorporated by reference herein, attached hereto, and made a part of this Agreement:

5.25.01 Exhibit A - Fee Schedule

5.25.02 Exhibit B - Standard Contract Terms and Conditions – Paper Contract

5.25.03 Exhibit C - Data and Information Security Addendum

5.25.04 Exhibit D - PSERS Request for Proposal

5.25.05 Exhibit E - Consultant's Proposal

5.25.06 Exhibit F - HIPAA Business Associate Agreement

5.25.07 Exhibit G - Medicare Modernization Act Addendum

[PLACEHOLDER FOR SCHEDULES]

Except as otherwise provided, any change to any exhibit, schedule or addendum hereunder shall be made only as agreed upon in writing by the Consultant and the Board.

5.26 Consultant Indemnification Obligations. The Consultant shall indemnify and hold harmless the Board, its members and their designees, the HOP, and each of the directors, officers, agents and employees of the foregoing, and each employee of the Commonwealth of Pennsylvania, Public School Employees' Retirement System (a/k/a/ PSERS) (each of the foregoing individually and collectively an "Indemnified Party") from and against any and all damages, claims, demands, suits, costs, disbursements, actions, expenses and liabilities of any nature, including attorney's fees and disbursements (individually and collectively "**Claims**") suffered or incurred by the Indemnified Party which arise out of or result from the Consulting and Project Management Services, or the failure to perform Consulting and Project Management Services, by the Consultant, its officers, directors, members/managers, employees and agents under this Agreement, provided that the Board gives the Consultant prompt notice of any such Claims. Failure by the Board to notify the Consultant promptly shall not serve as a bar on the Board to seek indemnification, hold harmless or defense of Claims under this Section. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General ("**OAG**") has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If delegated, the Consultant shall defend at the Consultant's expense, actions brought against each Indemnified Party, based upon any such Claim and the cost of such defense shall be borne by the Consultant. Further, the Board agrees to cooperate with all reasonable requests of the Consultant made in the defense of such suits. Neither Party may enter into a settlement of any claim or suit without the other Party's written consent, which will not be unreasonably withheld.

- 5.27 Releases Void. Neither Party shall require: (a) waivers or releases of any personal rights that conflict with the terms of this Agreement, or (b) execution of documents that conflict with the terms of this Agreement, from employees or representatives of the other in connection with visits to its premises and both Parties agree that no such releases or waivers or documents shall be pleaded by them or third persons in any action or proceeding.
- 5.28 Insurance. The Consultant shall maintain and cause the Consultant's subcontractors to maintain during the term of this Agreement: (a) Worker' Compensation insurance as prescribed by the law of the state or nation in which the work is performed; (b) employer's liability insurance with limits of at least one million dollars (\$1,000,000) for each occurrence; (c) if the use of motor vehicles is required, comprehensive automobile liability insurance with combined single limits of at least one million (\$1,000,000) for bodily injury and property damage for each occurrence; (d) commercial general liability ("CGL") insurance, including blanket contractual liability and broad form property damage, with limits of at least one million dollars (\$1,000,000) combined single limit for bodily injury and property damage for each occurrence; (e) professional liability or errors and omissions insurance which does not exclude coverage for fiduciary acts, in the amount of at least two million dollars (\$2,000,000) per claim, with an annual aggregate of at least five million dollars (\$5,000,000) inclusive of legal defense costs; and (f) fidelity (crime) coverage with limits of at least five million dollars (\$5,000,000).

The Consultant shall furnish adequate proof of the foregoing insurance at the request of the Board. The Board shall be promptly notified in writing prior to cancellation or any change in the Consultant's insurance coverage. If it is not reasonably possible for the Consultant to provide such prior notice, the notice will be provided to the Board as soon as reasonably possible after the event that affects insurance coverage.

- 5.29 Entire Agreement. This Agreement shall constitute the entire agreement between the Parties with respect to the subject matter described herein and shall not be modified or rescinded, except by a writing signed by both Parties; provided, however, that notwithstanding the foregoing, the Board may modify HOP and shall notify the Consultant of any such modification provided the modification is in compliance with and does not violate any portion of Section 5.9 (Applicable Law). The provisions of this Agreement supersede all prior oral and written quotations, communications, agreements and understandings of the Parties with respect to the subject matter of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized officers.

[PLACEHOLDER FOR CONSULTANT NAME]

Federal Tax Identification Number: [PLACEHOLDER FOR CONSULTANT TIN]

By: _____
Name: _____
Title: _____
Date: _____

COMMONWEALTH OF PENNSYLVANIA,
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

Federal Tax Identification Number- _____

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

[PLACEHOLDER FOR ADDITIONAL SIGNATURES RELATED TO COMMONWEALTH REQUIREMENTS]