

PART IV – CONTRACT DOCUMENT

COMMONWEALTH CONTRACT REQUIREMENTS

FOR

GROUP MEDICARE ADVANTAGE PLANS
AND
COMPANION PRE-65 MANAGED CARE PLANS

**ISSUING OFFICE: COMMONWEALTH OF PENNSYLVANIA,
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM**

INVITATION FOR APPLICATION NUMBER: PSERS IFA 2018-01

DATE OF ISSUANCE: March 30, 2018

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FOR
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PART IV

CONTRACT DOCUMENT

AGREEMENT FOR MEDICARE ADVANTAGE PLAN AND MANAGED CARE PLAN SERVICES

THIS AGREEMENT (“Agreement”), entered into as of the last date of execution set forth below (“Effective Date”), is by and between the Public School Employees’ Retirement System (“PSERS”), an independent administrative board of the Commonwealth of Pennsylvania having its principal place of business at 5 North Fifth Street, Harrisburg, Pennsylvania, and _____ (“ADMINISTRATOR”).

RECITALS:

WHEREAS, PSERS sponsors an employee health benefits program which consists of various health coverage plans (“Health Options Program”) for the benefit of PSERS’ eligible retirees and eligible dependents (“Participants”), including among others, the HOP Medical Plan (“HOP Medical Plan”) and the HOP Pre-65 Medical Plan (“HOP Pre-65 Medical Plan”);

WHEREAS, as part of the Health Options Program, PSERS desires to add one or more Medicare Advantage plan(s) for newly eligible Participants eligible for Medicare (“Medicare Advantage Plan”) and one or more companion Pre-65 managed care plan(s) for newly eligible Participants not eligible for Medicare (“Pre-65 Plan”) and a physical fitness plan available to all Health Options Program Participants (collectively, the “Benefit Plans”);

WHEREAS, as part of the Health Options Program, PSERS offers the opportunity for fully-insured Medicare Advantage plans to continue to provide services for certain existing Participants eligible for Medicare under one or more Medicare Advantage plans (“Legacy MA Plans”) and under fully-insured companion Pre-65 managed care plans for certain existing participants not eligible for Medicare (“Legacy Pre-65 Plan”) (collectively, the “Legacy Benefit Plans”);

WHEREAS, as part of the Health Options Program, PSERS offers the opportunity for a New Active fully-insured Medicare Advantage plan (“New Active MA Plan”) and companion Pre-65 managed care plan (“New Active Pre-65 Plan) (collectively, the “New Active Benefit Plans”) and upon approval of the New Active Benefit Plans, the current active Benefit Plans will be frozen to new enrollment, similar to the current Legacy Benefit Plans, if any;

WHEREAS, ADMINISTRATOR desires to provide a Medicare Advantage Plan for Medicare eligible Health Options Program Participants and a companion Pre-65 Managed Care Plan for eligible Health Options Program Participants residing in the geographic area for which the ADMINISTRATOR has made application;

WHEREAS, ADMINISTRATOR desires to continue providing one or more Legacy Benefit Plans to eligible Health Options Program Participants who previously elected such Legacy Benefit Plans and who have not elected to change from that coverage;

WHEREAS, ADMINISTRATOR and PSERS each desire to consolidate certain contractual commitments that will be common to and govern the Benefit Plans or any applicable Legacy Benefit Plans and New Active Benefit Plans.

NOW, THEREFORE, in consideration of the mutual promises set forth below, as well as other good and valuable consideration, and intending to be legally bound, the parties agree as follows.

ARTICLE 1. TERM

1.1 Commencement Date. This Agreement shall take effect on the Effective Date.

1.2 Insurance Commencement Date. Insurance benefits (other than insurance benefits through the Legacy Benefit Plans), as outlined herein, and PSERS' obligation to make premium payments, shall take effect as of January 1 of 2019 (the "Insurance Commencement Date").

1.3 Term. This Agreement shall begin on the Effective Date and expire on December 31, 2019 (the "Term"), unless otherwise terminated as provided herein.

1.4 Procedure for Future Application and Approval.

Except as may be modified by the applicable Invitation for Application, the following procedure shall be followed:

(a) No later than May 11 of each year, the ADMINISTRATOR shall submit to PSERS a fully completed application to provide coverage for the following calendar year. Such application will demonstrate the ADMINISTRATOR's qualification to provide benefits under the agreement provided in the appropriate Invitation for Application, utilizing the application form provided by PSERS for such request. The application will include representations of the ADMINISTRATOR's ability to comply with all requirements of such agreement and to provide the benefit programs requested. In addition, the application will include the ADMINISTRATOR's proposed plan design for the following calendar year for each plan offered, along with a best estimate proposal of the premium rates that will apply to each plan. To be considered, the application submission shall be fully completed in every detail and executed by duly authorized officials of the ADMINISTRATOR with authority to bind that organization.

(b) PSERS will review the application and notify the ADMINISTRATOR of its preliminary determination for selection or nonselection to participate in the following calendar year. If ADMINISTRATOR has been selected to participate, PSERS reserves the right to request ADMINISTRATOR to discuss and revise the proposed plan design(s) to maintain consistency in benefits offered to eligible Health Options Program participants. Such preliminary selection shall be communicated within forty five (45) days following the application deadline.

(c) No later than June 6 of each year, the ADMINISTRATOR shall submit to PSERS proposed rates for each Medicare Advantage Plan, Pre-65 Plan, Legacy Benefit Plans, and New Active Benefit Plans proposed to be in force for the following calendar year.

(d) PSERS will review the proposed rates and may request that the ADMINISTRATOR submit a revised final plan design and final rates for the appropriate calendar year no later than July 11 of the preceding calendar year.

(e) PSERS' final notification of approval to the Term will be evidenced by the complete execution of the Agreement, which appends and incorporates by reference below the Invitation For Application and the ADMINISTRATOR's application, as revised to include all final negotiated plan designs and rates.

ARTICLE 2. BENEFIT PLANS AND LEGACY BENEFIT PLANS

2.1 Benefit Plans and Legacy Benefit Plans.

(a) The parties agree that services covered by, and the terms and conditions for, the Benefit Plans, Legacy Benefit Plans, and New Active Benefit Plans shall be set forth in the documents that will be attached to the application, as attachments and incorporated therein by reference as if fully set forth.

(b) Such documents shall include at a minimum:

(1) For Medicare Advantage plans:

(i) Evidence of Coverage ("EOC"), the final Centers for Medicare and Medicaid Services ("CMS") approved EOC shall be submitted to PSERS within 10 days of publication, but not later than December 31, 2018, and

(ii) Summary of Plan Benefits;

(2) For Pre-65 plans:

(i) Detailed benefit description,

(ii) Summary of Plan Benefits, and

(iii) Commercial insurance contract (if required by ADMINISTRATOR); and

(3) For ancillary fitness programs provided to eligible Health Options Program Participants in the HOP Medical Plan and the HOP Pre-65 Medical Plan:

(i) Summary of Benefits.

2.2 Centers for Medicare & Medicaid Services and Social Security Act. PSERS and ADMINISTRATOR acknowledge that the Medicare Advantage Plans are insured and administered pursuant to the terms of insurance contracts governed by CMS and CMS guidelines and regulations. Accordingly, PSERS and ADMINISTRATOR agree to cooperate to resolve any conflict between provisions of this Agreement and CMS regulations and guidelines.

2.3 Benefit Plans Covering Pre-65 Participants. PSERS and ADMINISTRATOR acknowledge that all contracts associated with any plans covering eligible Pre-65 Participants under this Agreement are insured and governed by the Pennsylvania Insurance Code and

applicable regulations. Accordingly, PSERS and ADMINISTRATOR agree to cooperate to resolve any conflict between provisions of this Agreement and the Pennsylvania Insurance Code and regulations.

ARTICLE 3. ELIGIBILITY

3.1 Eligibility Determination. PSERS (or its third party administrator) shall identify all Participants eligible for enrolling in the Benefit Plans, the Legacy Benefit Plans, and the New Active Benefit Plans, as well as the specific Benefit Plan or Legacy Benefit Plan for which the Participants are eligible. ADMINISTRATOR agrees to cooperate with PSERS to facilitate its receipt of eligibility data and to process enrollments, terminations and other transactions.

3.2 Age 65 and Over and Medicare Eligible. ADMINISTRATOR agrees to provide a single plan design offering for eligible Health Options Program Participants age 65 and over and Medicare eligible, as such plan design is proposed in the ADMINISTRATOR's application and approved by PSERS for the plan year. Such single plan design offering will be the only plan from ADMINISTRATOR available to such eligible Health Options Program Participants age 65 and over and Medicare eligible during an Option Selection Period or Open Enrollment. ADMINISTRATOR acknowledges that PSERS may approve an ADMINISTRATOR's application on a region by region basis. ADMINISTRATOR further acknowledges that PSERS will offer one or more Medicare supplement plans to all such eligible Health Options Program Participants, and may offer other Medicare Advantage Plans to that group from other participating Administrators.

3.3 Under Age 65 and Not Medicare Eligible. ADMINISTRATOR agrees to provide a single plan design offering for eligible Health Options Program Participants under age 65 and not eligible for Medicare, as such plan design is proposed in the ADMINISTRATOR's application and approved by PSERS for the plan year. Such single plan design offering will be the only plan from ADMINISTRATOR available to such eligible Health Options Program Participants under age 65 and not Medicare eligible during an Option Selection Period or Open Enrollment. ADMINISTRATOR acknowledges that PSERS may approve an ADMINISTRATOR's application on a region by region basis. ADMINISTRATOR further acknowledges that PSERS will offer one or more self-insured medical plan options for eligible Pre-65 Participants, and may offer other Pre-65 Plans to that group from other participating Administrators.

3.4 Option Selection Period. PSERS agrees to provide an annual coordinated election for current Health Options Program Participants held during a designated period of time during the last four (4) months of each calendar year (the "Option Selection Period"). The enrollment changes made during the Option Selection Period shall become effective the first day of the following calendar year. The annual Option Selection Period shall, at minimum, consist of notification of retiree health benefit plan options, changes in premiums or benefits and the ability to enroll or disenroll, and other notifications that may be required by CMS. From time to time, PSERS may hold a limited or full Open Enrollment Period, in which PSERS retirees eligible but not participating in the Health Options Program may be offered the availability of enrolling themselves and their dependents in some or all plan options without incurring a qualifying event. To the extent that PSERS determines to offer an Open Enrollment Period, PSERS will notify

ADMINISTRATOR of that decision and will coordinate with ADMINISTRATOR on the process for notifying non-participants of the Open Enrollment Period.

3.5 Newly Eligible Additional Plan Participants. PSERS agrees to provide an open enrollment period for each newly eligible PSERS retiree having a qualifying event that allows entry to the Health Options Program. PSERS shall provide each such newly eligible additional plan Participant with the plan benefit options available to that Participant based on the Participant's residence address. Such options will include the ADMINISTRATOR's accepted plans in accordance with sections 3.2 and 3.3, as appropriate.

3.6 Legacy Benefit Plan Participants. Eligible Health Options Program participants who are currently participating in a Legacy Benefit Plan maintained by ADMINISTRATOR that was in effect prior to the Effective Date may remain in the Legacy Benefit Plan in which they are enrolled, provided ADMINISTRATOR has proposed to continue such Legacy Benefit Plan for the plan year, as reflected in the application, and further provided that PSERS has accepted the ADMINISTRATOR's application for that year. Participants in a Legacy Benefit Plan who elect to change to any other currently offered Benefit Plan may not subsequently elect to return to the Legacy Benefit Plan.

3.7 Benefit Plan Participants. Upon approval of the New Active Benefit Plans, eligible Health Options Program participants who are participating in a current active Benefit Plan maintained by ADMINISTRATOR that was in effect prior to the Effective Date may remain in the current Benefit Plan in which they are enrolled, provided ADMINISTRATOR has proposed to continue such Benefit Plan for the plan year, as reflected in the application, and further provided that PSERS has accepted the ADMINISTRATOR's application for that year. Participants in a Benefit Plan who elect to change to any other currently offered New Active Benefit Plan may not subsequently elect to return to the current active Benefit Plan.

3.8 Transmittal of Enrollee Information. PSERS, or its third party administrator, shall from time to time provide ADMINISTRATOR with accurate and complete enrollee information pertaining to such eligible retirees and dependents in a format mutually agreeable to both parties. ADMINISTRATOR and PSERS agree to provide health care coverage for Medicare eligible Participants electing coverage effective on the first day of the month following approval by CMS and the satisfaction of applicable processing time frames. ADMINISTRATOR will process such applications received from PSERS or its designated third party administrator in a timely manner.

3.9 Relocated Participants. ADMINISTRATOR understands and acknowledges that Participants may, during the term of this Agreement, move in and out of points within the ADMINISTRATOR'S service area. In such a case, ADMINISTRATOR agrees to process the relevant change within thirty (30) days of receiving notice of same. PSERS agrees to offer the relocating Participant who moves out of ADMINISTRATOR's service area an opportunity to make another selection from Benefit Plans offered at the location to which the Participant moves.

ARTICLE 4. PAYMENT OF PREMIUMS

4.1 In General. PSERS shall pay applicable per month premium amounts for enrolled retirees and dependents to ADMINISTRATOR, on or before the 15th day of the month covered

by the premium. Premium amounts will be made as set forth in ADMINISTRATOR's application, as set forth in the attached exhibits.

4.2 Reconciliation of Premiums and Enrollment. ADMINISTRATOR agrees to provide reconciliation of premiums paid for Health Options Program Participants electing ADMINISTRATOR's Benefit Plan(s), Legacy Benefit Plan(s), and New Active Benefit Plan(s) and to work with PSERS' third party administrator to match enrollment records following each monthly transmission of premiums.

4.3 Administrative Premium Load. PSERS reserves the right to charge participants selecting ADMINISTRATOR's Benefit Plans, Legacy Benefit Plans, and New Active Benefit Plans a premium load to defray administrative expenses. The premium load will be applied in the same manner to all Benefit Plans for all selected administrators.

ARTICLE 5. CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

5.1 Contract Documents. The following are hereby incorporated by reference and made a part of this Agreement.

- Exhibit 1. Application or Renewal Application (without inclusion of the incorporated Attachments)
- Exhibit 2. Attachments to the Application or Renewal Application as revised and attached hereto, in effect for the year
- Exhibit 3. Contract Requirements and Vendor Qualification
- Exhibit 4. Commonwealth of Pennsylvania Contract Terms and Conditions
- Exhibit 5. General Information

5.2 Order of Precedence. If any conflict or discrepancy should arise in the terms and conditions of this Agreement and the Exhibits identified above, or the interpretation thereof, the order of precedence for resolution shall be as follows:

1. This AgreementIV
2. Application, as attached hereto (Exhibit 1)
3. Attachments to the Application, as revised and attached hereto, in effect for the year (Exhibit 2)
4. Contract Requirements and Vendor Qualification (Exhibit 3)
5. Commonwealth of Pennsylvania Contract Terms and Conditions (Exhibit 4)
6. General Information (Exhibit 5)

ARTICLE 6. RECORDS AND AUDITS

6.1 Confidentiality of Medical Records. ADMINISTRATOR and PSERS shall maintain the confidentiality, privacy and security of Participants' health records in accordance with standards established under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Medicare laws and regulations, including, but not limited to, 42 C.F.R. § 423.136 and applicable state laws and regulations.

6.2 Maintenance of Records. ADMINISTRATOR and PSERS each shall keep and maintain accurate, complete and timely books, records, files and accounts ("Records") of all transactions pursuant to HIPAA, applicable Medicare laws and regulations and applicable state laws and regulations, as well as CMS requirements and the Preferred Provider Organization ("PPO") and Health Maintenance Organization ("HMO") and Drug Contracts. ADMINISTRATOR and PSERS each shall retain such records during the term of this Agreement and for such period of time as required by HIPAA, applicable Medicare laws and regulations, CMS requirements, applicable state laws and regulations, or as may otherwise be required by a governmental authority having jurisdiction over this Agreement, CMS requirements, and any contract governing a Benefit Plan, Legacy Benefit Plan, or New Active Benefit Plan offered by the ADMINISTRATOR under this Agreement.

6.3 Provider Directory. ADMINISTRATOR shall provide a current contracted provider directory to PSERS in hard copy and make the same available via Internet access.

6.4 Reconciliation and Audits.

(a) Reconciliation.

(i) Subject to the requirements of this Section 6.4 and applicable laws and regulations and ADMINISTRATOR's external audit policies (a current copy of which shall be promptly provided by ADMINISTRATOR to PSERS upon request), PSERS shall have the right to conduct an audit and reconciliation of enrollment and eligibility for claims paid under this Agreement. The audit and reconciliation shall be coordinated with ADMINISTRATOR's external audit services department and will be limited to reviews of claim records, membership data and benefit file summaries, and other documents considered relevant and applicable by ADMINISTRATOR. Audit sampling methodology shall be mutually agreed to by the parties and must be based on the universe of the eligible Participants under review. A preliminary draft of the audit report shall be submitted to ADMINISTRATOR at least fifteen (15) days prior to issuance of the final report. ADMINISTRATOR shall be provided with the opportunity to respond to the draft audit report within a reasonable period of time prior to its finalization.

(ii) PSERS shall provide notice in writing to the ADMINISTRATOR of its desire to conduct an audit. Audits shall be conducted only for a period no greater than twelve (12) months preceding the request for audit. Audits shall not be conducted for the same scope and time frame or portion of time of a previously conducted audit unless PSERS is required by a governmental agency to audit a period or periods for which a final audit has been performed or in cases of fraud or suspected fraud. Audits shall be conducted during normal working business hours at the offices of ADMINISTRATOR.

(iii) ADMINISTRATOR shall correct any discrepancies found during the audit provided for under this Section 6.4 and shall make appropriate payment to account for any underpayment of benefits to the Participant and/or PSERS.

(b) Government Audit. In the event that one party is subject to an audit related to a Benefit Plan, Legacy Benefit Plan, or New Active Benefit Plan by a Governmental Authority, it shall notify the other party as soon as reasonably practicable, but not later than five (5) business days after receiving Notice of such audit (“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 the requirements or directives issued by the Governmental Authority as a result of such Government Audit. ADMINISTRATOR and PSERS shall each pay its own out-of-pocket costs associated with responding to a Government Audit.

ARTICLE 7. LEGAL COMPLIANCE

7.1 Compliance with Law and Licenses. ADMINISTRATOR shall perform its obligations hereunder (including those described in the Benefit Plans, Legacy Benefit Plans, and New Active Benefit Plans) in compliance with the terms and conditions of this Agreement and applicable law, including, Medicare laws and regulations, federal laws and regulations and state laws and regulations. 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 perform its obligations under this Agreement. ADMINISTRATOR shall not contract with or employ entities or individuals that are excluded by the U.S. Department of Health and Human Services, the Office of the Inspector General or included on the Excluded Parties List System maintained by the General Services Administration.

ARTICLE 8. ADMINISTRATOR INSURANCE

8.1 Insurance. ADMINISTRATOR shall provide to PSERS certification of its errors and omissions insurance coverage in accordance with the levels required in Contract Requirements in Exhibit 3. Such certification shall be provided at least annually, and within thirty (30) days following any material change in the insurance amounts or coverage.

ARTICLE 9. CUSTOMER SERVICE AND WEBSITE

9.1 Customer Service Support. ADMINISTRATOR shall provide and maintain full access to customer service as described in Exhibit 3 - Contract Requirements for each Health Options Program participant electing the ADMINISTRATOR’s Benefit Plans, Legacy Benefit Plans, or New Active Benefit Plans.

9.2 Website. ADMINISTRATOR shall provide web access that will provide Health Options Program participants with information pertaining to the benefits provided herein. Such web access shall be in accordance with the provisions of Exhibit 3 - Contract Requirements, shall be

fully operational as of the Insurance Commencement Date, and include a link to www.HOPbenefits.com.

ARTICLE 10. PERFORMANCE STANDARDS

10.1 Performance. ADMINISTRATOR shall meet the performance standards outlined in Exhibit 3 - Contract Requirements. ADMINISTRATOR shall be subject to the penalty provisions included in its Application Form for failure to maintain such performance standards.

ARTICLE 11. BRAND NAME LABELING

11.1 Co-Branding. ADMINISTRATOR shall be allowed to co-brand marketing materials only for the mutually agreed upon Benefit Plans, Legacy Benefit Plans, or New Benefit Plans applicable to ADMINISTRATOR for that plan year. Any co-branding must be in strict accordance with the PSERS Health Options Program name and mark utilization provisions contained in Exhibit 3 - Contract Requirements, and only to the extent permitted by applicable CMS policies.

11.2 PSERS Health Options Program Mark. PSERS will provide ADMINISTRATOR with its registered Health Options Program mark, which shall be treated as intellectual property belonging to PSERS. ADMINISTRATOR agrees to request approval in advance of release of any materials containing the Health Options Program mark and shall not release any such materials containing the Health Options Program mark unless or until it receives PSERS' approval.

ARTICLE 12. HOLD HARMLESS

12.1 Hold Harmless. ADMINISTRATOR agrees to defend and hold harmless PSERS, its officers, directors, employees, agents, or representatives ("PSERS Defended Party") for any and all claims, demands, liabilities, fines, assessments, damages, and costs, including reasonable attorney fees, arising out of: (a) allegations of ADMINISTRATOR's breach of this Agreement; (b) any negligent or willful acts or omissions of ADMINISTRATOR or any of ADMINISTRATOR's officers, directors, employees, agents, affiliates and subsidiaries related to the services provided under this Agreement; and (c) allegations of a breach of the Benefit Plans, Legacy Benefit Plans, or New Active Benefit Plans caused by ADMINISTRATOR's performance or non-performance of its obligations.

12.2 Notice of Claim. A PSERS Defended Party shall give prompt notice to ADMINISTRATOR of the assertion of any claim or the commencement of any action or proceeding in respect to which its rights under this Article 12 may be sought; provided, however, that the failure of such defended party to give such notice to ADMINISTRATOR shall not affect such PSERS Defended Party's rights hereunder except to the extent that ADMINISTRATOR is actually prejudiced thereby. In the case of a settlement, the PSERS Defended Party shall obtain written release of all liability in form and substance reasonably acceptable to ADMINISTRATOR.

12.3 Survival of Termination. The provisions set forth in this Article 12 shall survive expiration or termination of this Agreement.

ARTICLE 13. GENERAL PROVISIONS

13.1 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.

13.2 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.

13.3 Changes in ADMINISTRATOR's Status. ADMINISTRATOR shall provide prompt written notice to PSERS of: (a) any Change of Control of ADMINISTRATOR or material change in ADMINISTRATOR's government or private accreditation, or licensing, including without limitation any sanction imposed by CMS or other regulatory body on ADMINISTRATOR's ability to enroll new participants or to retain existing Participants; (b) the filing of a petition in bankruptcy; (c) in connection with the administration or management of Benefit Plan, Legacy Benefit Plan, or New Active Benefit Plan benefits pursuant to this Agreement, litigation alleging ADMINISTRATOR's negligence or fraud; and (d) any instance in which 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 13.3, the term "Change of Control" means: (i) any sale of ADMINISTRATOR's assets that are essential to the business of ADMINISTRATOR, or essential to the performance of ADMINISTRATOR's obligations under this Agreement; or (ii) any stock purchase or merger in which 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 13.3 shall apply only to ADMINISTRATOR and affiliates of ADMINISTRATOR that directly provide services pursuant to this Agreement, and not to any other affiliate of ADMINISTRATOR.

13.4 Confidential and Proprietary 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 and Proprietary Information"). Except as prohibited by applicable law, Confidential and Proprietary Information includes, without limitation,

information relating to Participants, including lists of Participants and Participant claim records, utilization review and quality assurance procedures, intellectual property, business methods and processes, claims adjudication processes, reimbursement procedures, marketing plans, software and financial systems, audited financial statements, 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.

13.5 Non-Disclosure of Confidential and Proprietary Information. The Recipient shall hold in confidence and shall not disclose any Confidential and Proprietary Information of the Disclosing Party, except: (a) as expressly permitted under this Agreement; or (b) as required by applicable law, including the Medicare laws and regulations, Insurance laws and regulations and the Commonwealth of Pennsylvania's "Right to Know Law," 65 P.S. §§ 66.1-66.9, in which instance the Recipient may, but shall not be required to, 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 and Proprietary Information only to its directors, officers, employees, agents and representatives who have a need to receive such Confidential and Proprietary Information in order to perform under this Agreement. The obligations of the Recipient pursuant to this Section 13.5 shall be coextensive with applicable document retention and archival requirements of Pennsylvania law.

13.6 Limitation on Obligations. The obligations specified in Section 13.5 above shall not apply with respect to any information which the Recipient can establish by written records: (a) was already in the Recipient's possession prior to disclosure hereunder; (b) is or becomes available to the public through no wrongful act of the Recipient; (c) 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; (d) is approved for release by written authorization of an officer of the Disclosing Party; or (e) has been developed by or for the Recipient independently by persons having no access to the Confidential and Proprietary Information.

13.7 Return and Destruction of Confidential and Proprietary Information. Subject to document retention laws and Commonwealth of Pennsylvania archival requirements, 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 and Proprietary Information, provided that one copy may be kept for archival purposes pursuant to the confidentiality and disclosure requirements of this Agreement. If return or destruction of any Confidential and Proprietary Information is not feasible, Recipient shall limit further uses and disclosures of such Confidential and Proprietary Information to those purposes making return or destruction infeasible and continue to apply the protections of this Agreement to such Confidential and Proprietary Information for so long as the Recipient retains such Confidential and Proprietary Information. All Confidential and Proprietary 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.

13.8 Ownership and Intellectual Property. All reports and claims documents relating to and identifying PSERS and the Health Options Program 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 Effective 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.

13.9 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.

13.10 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 obligations hereunder. ADMINISTRATOR further covenants that, in the performance of this Agreement, it will not knowingly employ any person having any such conflicting interest.

13.11 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.

13.12 Assignment or Transfer. Neither party may assign or otherwise transfer this Agreement (whether voluntarily or by operation of law or otherwise), or any interest herein, or any claim arising hereunder to any other party or parties without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, either party may assign this Agreement to an affiliate without the consent of the other party. Except as otherwise provided in the Change of Control provisions of this Agreement, nothing herein is intended to prevent a successor entity of ADMINISTRATOR from assuming the duties and obligations of this Agreement.

13.13 Commonwealth Contract Provisions. ADMINISTRATOR shall comply with the Commonwealth of Pennsylvania Standard Contract Terms attached hereto and incorporated herein by reference; which provisions may be modified from time to time upon written notice to ADMINISTRATOR.

13.14 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: (a) sent by certified or registered U.S. mail, return receipt requested, postage prepaid; (b) sent by a nationally recognized overnight courier service; or (c) 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. If to PSERS:

Executive Director
Public School Employees' Retirement System

5 North Fifth Street
Harrisburg, Pennsylvania 17101

If to ADMINISTRATOR, at the address and contact specified in ADMINISTRATOR's Application.

ARTICLE 14. TERMINATION

14.1 Suspension, Revocation or Termination of Covered Services. In the event that PSERS determines that ADMINISTRATOR has not performed satisfactorily with respect to any of the material services provided in connection with the Benefit Plans, Legacy Benefit Plans, or New Active Benefit Plans, 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 thirty (30) days prior written notice and an opportunity to cure the deficiency.

14.2 PSERS Termination for Convenience. PSERS may terminate this Agreement at any time for any reason or no reason at all by giving ADMINISTRATOR written notice not less than sixty (60) days prior to the effective date of termination.

14.3 ADMINISTRATOR Termination for Convenience. ADMINISTRATOR may terminate this Agreement for any reason or no reason at all at any time by giving PSERS written notice not less than sixty (60) days prior to the effective date of termination.

14.4 Non-Payment. Except as otherwise provided in the contracts governing the Benefit Plans, Legacy Benefit Plans, and New Active Benefit Plans, in the event that PSERS fails to pay ADMINISTRATOR within sixty (60) days of the date on which a payment became due amounts due and owing under this Agreement, ADMINISTRATOR may suspend its performance of services by giving PSERS written notice not less than ten (10) days prior to the effective date of suspension of performance. In the event that PSERS fails to pay such amounts within such ten (10) day notice period, ADMINISTRATOR may terminate this Agreement by giving PSERS written notice effective not less than twenty (20) days after the expiration of the ten (10) day notice period.

ARTICLE 15. ADDITIONAL PROVISIONS

15.1 Applicable Law. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of federal or state courts in Pennsylvania. ADMINISTRATOR hereby agrees and acknowledges that 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. 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 personal jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

15.2 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 to comply with such change. Such modifications may include, but are not limited to, changes in the benefit design, drug coverage 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.

15.3 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.

15.4 Binding Effect. This Agreement inures to the benefit of and binds all parties hereto and the parties' respective successors and assigns.

15.5 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 Health Options Program Participant.

15.6 Amendment and 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.

15.7 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.

15.8 Certification of Taxpayer Identification Number. Execution of this Agreement constitutes certification by ADMINISTRATOR that: (a) the number appearing on the signature page of the Application is ADMINISTRATOR's correct taxpayer identification number; and (b) ADMINISTRATOR is not subject to backup withholding because: (i) ADMINISTRATOR is exempt from backup withholding; (ii) ADMINISTRATOR has not been notified by the Internal Revenue Service ("IRS") that it is subject to backup withholding as a result of a failure to report all interest or dividends; or (iii) the IRS has notified ADMINISTRATOR that it is no longer subject to backup withholding.

15.9 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.

15.10 Construction. The parties have participated jointly in the negotiation 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.

15.11 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.

15.12 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.

15.13 Entire Agreement. This Agreement, including all Exhibits hereto and including the Information Security Addendum 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.

15.14 Survival. The provisions of Sections 6.1, 6.2, 6.4, 13.4, 13.5, 13.6, 13.7, 13.8, 13.9, and 15.3 shall survive the expiration or termination of this Agreement for any reason whatsoever.

15.15 Force Majeure. Except as otherwise provided in the Benefit Plans, 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: (a) describe fully such cause(s) and its effect on performance; (b) state whether performance under the Agreement is prevented or delayed; and (c) 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, as soon as is practicable, by written or oral 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.

15.16 Relationship of Blue Cross Blue Shield Plans. If ADMINISTRATOR is a Blue Cross Blue Shield Plan, ADMINISTRATOR is an independent corporation operating under licenses from the Blue Cross and Blue Shield Association (“the Association”), which is a national association of independent Blue Cross and Blue Shield Plans throughout the United States. Although all of these independent Blue Cross and Blue Shield Plans operate from a license with the Association, each of them is a separate and distinct corporation. The Association allows ADMINISTRATOR to use the familiar Blue Cross and Blue Shield words and symbols. ADMINISTRATOR, which is entering into this Agreement, is not contracting as an agent of the national Association. Only ADMINISTRATOR shall be liable to PSERS for any of ADMINISTRATOR’s obligations under this Agreement. This Section does not add any obligations to this Agreement.

15.17 Low Income Subsidy Pass Through and Reduction Waiver Payment Application. PSERS agrees that any Low Income Subsidy it receives from CMS for a Participant will be used first to reduce the portion of the monthly Participant premium paid for by the Participant, with any remainder then used to reduce the PSERS’ premium contribution, if any. “Low Income Subsidy” is the subsidy towards premium available to Part D eligible individuals who meet the low-income eligibility requirements set forth in 42 CFR § 423.773. PSERS agrees that if the sum of the Medicare Advantage Benefit Plan, Legacy Benefit Plan, or New Active Benefit Plan premiums paid by the Participant and those paid by PSERS are less than the Low Income Subsidy amount, any amount above the total Medicare Advantage Benefit Plan, Legacy Benefit Plan, or New Active Benefit Plan premiums due hereunder will be returned to CMS. ADMINISTRATOR agrees that, if the Low Income Subsidy for any Participant is less than the portion of the Medicare Advantage Benefit Plan, Legacy Benefit Plan, or New Active Benefit Plan premiums paid by the participant, PSERS will provide a communication to the Participant comparing the consequences of enrolling in such Medicare Advantage Benefit Plan, Legacy Benefit Plan, or New Active Benefit Plan with the consequences of enrolling in other PSERS Health Options Program Medicare Advantage Benefit Plans, Legacy Benefit Plans, or New Active Benefit Plan that have a monthly participant premium that is equal to or less than the participant’s Low Income Subsidy.

15.18 Involuntary Disenrollment. In certain circumstances, a Medicare eligible Participant may be disenrolled on either a voluntary or involuntary basis. PSERS and ADMINISTRATOR will work cooperatively to ensure that Medicare eligible Participant disenrollments are handled in accordance with the CMS Enrollment and Disenrollment Guidance. At a minimum, disenrollments will be conducted in accordance with one of the following procedures:

- a. For voluntary disenrollments and for involuntary disenrollments other than those described in (b.) below, ADMINISTRATOR will process the disenrollment under the individual disenrollment requirements specified in the CMS Enrollment and Disenrollment Guidance.
- b. For involuntary disenrollments that occur when PSERS determines that a Participant is no longer eligible to participate in the ADMINISTRATOR’s Medicare Advantage Plan, Legacy MA Plan, or New Active MA Plan, PSERS and ADMINISTRATOR agree that eligible Participants

will be offered the opportunity to enroll in any of the Medicare supplement options offered by PSERS and in the HOP Medicare Prescription Drug Plan or in another Medicare Advantage Benefit Plan offered under the PSERS Health Options Program.

PSERS and ADMINISTRATOR also agree:

- i. PSERS will (including in cases where the ADMINISTRATOR or PSERS terminates this Contract):
 - (1) Provide a prospective notice to the affected Participant(s): alerting them of the termination event and describing other ADMINISTRATOR or health insurance options that may be available through PSERS. This notice must be sent no less than thirty (30) days prior to the effective date of disenrollment. PSERS' communications to Participants for the annual Option Selection Period shall be considered as meeting this prospective notice requirement;
 - (2) Except in the case where ADMINISTRATOR terminates this agreement, provide a prospective notice of the termination event to ADMINISTRATOR. This notice must be sent at least sixty (60) days prior to the effective date of disenrollment; and
 - (3) Provide ADMINISTRATOR with all information necessary for ADMINISTRATOR to submit a complete disenrollment request transaction to CMS.
- ii. Where applicable, ADMINISTRATOR agrees that it will send notice to the Participant stating that his/her plan is changing, including information about benefits, premiums and/or copayments, at least twenty-one (21) calendar days prior to the effective date of enrollment into another Benefit Plan offered by ADMINISTRATOR under this Agreement.
- iii. ADMINISTRATOR shall provide PSERS with copies of all notices described in this subsection.
- c. PSERS agrees to retain, for a period of ten (10) years from the effective date of disenrollment, and to provide to ADMINISTRATOR upon request, documents evidencing PSERS' adherence to the requirements set forth in this Section.

IN WITNESS WHEREOF, the Parties hereto, each intending to be legally bound hereby, have caused this Agreement for Medicare Advantage Plan and Managed Care Plan Services to be executed as of the last date of execution set forth below.

COMMONWEALTH OF
PENNSYLVANIA,
PUBLIC SCHOOL EMPLOYEES'
RETIREMENT SYSTEM

Federal Tax Identification Number

By: Glen R. Grell _____ Date _____
Title: Executive Director

By: Joseph E. Wasiak, Jr. _____ Date _____
Title: Assistant Executive Director

AGREEMENT FOR MEDICARE ADVANTAGE PLAN
AND MANAGED CARE PLAN SERVICES

[ADMINISTRATOR]

_____ Federal Tax Identification Number

By: _____ Date _____
Title: _____

By: _____ Date _____
Title: _____

Approved as to form and legality:

Deputy Attorney General Date
Office of Attorney General

Charles K Serine Date
Chief Counsel for PSERS

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”). 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 () - and () - and by e-mail at 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.

X. Accommodation of Additional Protections.

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

XI. 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.

XII. 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.

XIII. 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.

XIV. 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.

XV. Survival; Order of Precedence.

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

XVI. 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.