



West Virginia Public Employees Insurance Agency  
State of West Virginia  
Request for Proposals for Health Promotion and Wellness Services

RFP Number: IHPE170001

Release date: 04/10/2017

Bidders conference: 04/24/2017

Proposal Due Date: 05/22/2017

West Virginia Public Employees Insurance Agency  
601 57<sup>th</sup> St., S.E., Suite 2  
Charleston, West Virginia 25304-2345

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## **SECTION 1: GENERAL INFORMATION**

### **1.1 PURPOSE**

The West Virginia Public Employees Insurance Agency (hereinafter referred to as the Agency or PEIA) is soliciting proposals pursuant to **West Virginia Code §5-16-9** to acquire a contract for one or more pilot programs designed to complement the West Virginia Public Employees Insurance Agency’s Healthy Tomorrows incentive plan, to be effective [Effective Date--TBD]. The enclosed specifications and appendices have been developed to provide the information needed to respond to this RFP. It is the intent of the System to select one (1) [or more] qualified Vendor to provide the services described in this RFP; however, PEIA reserves and retains the right to select none.

*West Virginia Code §5-16-9 - Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.*

### **1.2 VENDOR UNDERSTANDING**

An RFP is generally used for the procurement of services in situations where price is not the sole determining factor and the award will be based on a combination of cost and technical factors (Best Value). Through its proposal, the bidder offers a solution to the objectives, problem, or need specified in the RFP, and defines how it intends to meet (or exceed) the RFP requirements.

By signing and submitting its proposal, the successful Vendor agrees to be bound by all the terms contained in this Request for Proposal (“RFP”).

### **1.3 SCHEDULE OF EVENTS**

|   |            |
|---|------------|
| Intent to Bid and Written Questions Submission Deadline ..... | 04/17/2017 |
| Non-Mandatory Pre-bid Conference.....                         | 04/24/2017 |
| Addendum Issued.....  | TBD        |
| Deadline for Proposal Submission/Bid Opening Date.....        | 05/22/2017 |
| Finalist Interviews (Oral Presentation).....                  | TBD        |
| BAFO.....   | 06/15/2017 |
| Contract Award and Effective Date.....                        | TBD        |

## **SECTION 2: INSTRUCTIONS TO VENDORS SUBMITTING BIDS**

### **2.1 REVIEW DOCUMENTS THOROUGHLY:**

The attached documents contain a solicitation for bids. Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked could lead to disqualification of a Vendor's bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Solicitation. Failure to do so may result in disqualification of Vendor's bid.

### **2.2 MANDATORY TERMS:**

The Solicitation may contain mandatory provisions identified by the use of the words "must," "will," and "shall." Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.

### **2.3 PREBID MEETING**

A **NON-MANDATORY PRE-BID** meeting will be held at the following place and time:

West Virginia Public Employees Insurance Agency  
601 57th St., S.E., Suite 2  
Charleston, West Virginia 25304-2345  
04/18/2017  
1:30 p.m. EST

A teleconference number will be provided to those who submit an intent to bid

All Vendors submitting a bid are encouraged to attend the pre-bid meeting. Failure to attend the pre-bid meeting will not disqualify a vendor, but no questions will be answered outside of the pre-bid meeting. Vendors may participate in the pre-bid meeting via teleconference. No one person attending the pre-bid meeting may represent more than one Vendor.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. PEIA will not accept any other form of proof or documentation to verify attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list on the attendance sheet his or her name and the name of the Vendor he or she is representing. Additionally, the person attending the pre-bid meeting should include the Vendor's E-Mail address, phone number, and Fax number on the attendance sheet. It is the Vendor's responsibility to locate the attendance sheet and provide the required information. Failure to complete the attendance sheet as required may result in disqualification of Vendor's bid. All Vendors should arrive prior to the starting time for the pre-bid. Vendors who arrive after the starting time but prior to the end of the pre-bid will be permitted to sign in, but are charged with knowing all matters discussed at the pre-bid.

Questions submitted at least five (5) business days prior to a scheduled pre-bid will be discussed at the pre-bid meeting if possible. Any discussions or answers to questions at the pre-bid meeting are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the Solicitation prior to bid opening.

#### **2.4 VENDOR QUESTION DEADLINE:**

Vendors may submit questions relating to this Solicitation to the contact listed below. Questions must be submitted in writing. All questions must be submitted on or before the date listed below and to the address listed below in order to be considered. A written response will be published in a Solicitation addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are nonbinding.

Submitted e-mails should have the assigned solicitation number in the subject line.

Question Submission Deadline: 04/17/2017 at 4:00 p.m. EST

Submit Questions to:

Thomas D. Miller, MA, LPC, ALPS  
Privacy & Security Officer  
West Virginia Public Employees Insurance Agency  
601 57<sup>th</sup> Street, SE, Suite 2  
Charleston, West Virginia 25304  
[Thomas.d.miller@wv.gov](mailto:Thomas.d.miller@wv.gov)

#### **2.5 VERBAL COMMUNICATION:**

Any verbal communication between the Vendor and any State personnel is not binding, including verbal communication at the non-mandatory pre-bid conference. Only information issued in writing and added to the Solicitation by an official written addendum by the Agency is binding.

The Vendor is strictly prohibited from communicating with any employee and/or agent of PEIA during the RFP process outside of the formal channels outlined in this solicitation. Any such communication shall be grounds for disqualification of the Vendor and will not be subject to appeal.

#### **2.6 BID SUBMISSION REQUIREMENTS:**

All bids must be submitted in a hard copy format, signed and delivered by the Vendor to PEIA at the address listed below on or before the date and time of the bid opening. Any bid received by PEIA staff is considered the possession of the PEIA and will not be returned

for any reason. PEIA will not accept bids, modification of bids, or addendum acknowledgment forms via e-mail. Acceptable delivery methods include hand delivery or delivery by courier. **The Technical and Cost proposals shall be submitted under separate sealed covers. The RFP Review Committee will review Technical proposals first and review the Cost proposals only for those bidders who achieve a minimum acceptable score (MAS). The MAS for this RFP shall be 35 out of 50 possible points.**

The vendor shall submit one (1) original and five (5) copies of their bid proposal as well as at least one (1) copy in an electronic format, e.g. a PDF, MS Word, or Excel format on a CD Rom or flash drive.

The bid delivery address is:

West Virginia Public Employees Insurance Agency  
Attention: Thomas Miller, Privacy & Security Officer  
601 57<sup>th</sup> St., S.E., Suite 2  
Charleston, West Virginia 25304-2345

A bid that is submitted should contain the information listed below on the face of the envelope or the bid may be rejected by PEIA:

SEALED BID:  
SOLICITATION NO.:  
BID OPENING DATE:  
BID OPENING TIME:  
CONTACT NUMBER:

See Section Five: Vendor Responses for format and submission requirements.

## **2.7 BID OPENING:**

Bids submitted in response to this Solicitation will be opened at the location identified below on the date and time listed below. Delivery of a bid after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when confirmation of delivery is provided by PEIA.

Bid Opening Date and Time:

May 22, 2017 2017 at 2:00 p.m.

Bid Opening Location:

West Virginia Public Employees Insurance Agency  
601 57<sup>th</sup> St., S.E., Suite 2

**2.8 ADDENDUM ACKNOWLEDGEMENT:**

Any changes or revisions to this Solicitation will be made by an official written addendum issued by PEIA. The Vendor should acknowledge receipt of all addenda issued with this Solicitation by completing an Addendum Acknowledgment Form, a copy of which is included herewith as **Appendix A**. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

**2.9 BID FORMATTING:**

Vendor has the right to submit their bid in the format of their choosing but is solely responsible for ensuring that the content clearly conveys their response to the solicitation and that all mandatory requirements have been met. The bid should be clear and concise; no more than seventy-five (75) pages; all pages numbered; including a response to each listed mandatory term and/or condition; with any references to attachments and/or appendices clearly marked.

**2.10 ALTERNATES:**

Any theory, projection, model, brand, or specification listed in this Solicitation establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular theory, model, brand or vendor. Vendors may bid alternate methodologies to a listed service provided that the alternate is at least equal to the intent, objectives, and scope of this contract and complies with the required specifications. The equality of any alternate being bid shall be determined by the State at its sole discretion. Any Vendor bidding an alternate theory, projection, cost model or brand should clearly identify the alternate items in its bid and should include a detailed description of the vendor's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items or services. Failure to provide information for alternate services or items may be grounds for rejection of a Vendor's bid.

**2.11 EXCEPTIONS AND CLARIFICATIONS:**

The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.

**2.12 COMMUNICATION LIMITATIONS:**

West Virginia Code of State Rules §148-1-6.6 prohibits communication with the State of West Virginia or any of its employees regarding this Solicitation during the solicitation, bid, evaluation or award periods, except through the Purchasing Division. Although this

solicitation does not fall under Purchasing Division purview, PEIA will adhere to the code as intended and will not allow communication between bidders and PEIA employees regarding this bid. Approval for any communication outside those channels outlined in this solicitation must be granted by the designated Agency contact.

**2.13 REGISTRATION:**

Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division for payment through wvOasis and must have paid the \$125 fee, if applicable.

**2.14 UNIT PRICE:**

Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.

**2.15 PREFERENCE:**

Vendor Preference may only be granted upon written request and only in accordance with the West Virginia Code § 5A-3-37 and the West Virginia Code of State Rules. A Vendor Preference Certificate form has been attached hereto to allow Vendor to apply for the preference. Vendor's failure to submit the Vendor Preference Certificate form with its bid will result in denial of Vendor Preference. Vendor Preference does not apply to construction projects.

**2.16 SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES:**

For any solicitations publicly advertised for bid, in accordance with West Virginia Code §5A-3-37(a)(7) and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the Purchasing Division with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to contract award to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority owned business shall be applied in accordance with W. Va. CSR § 148-22-9.

**2.17 WAIVER OF MINOR IRREGULARITIES:**

The Director reserves the right to waive minor irregularities in bids or specifications in accordance with West Virginia Code of State Rules § 148-1-4.6.

**2.18 ELECTRONIC FILE ACCESS RESTRICTIONS:**

Vendor must ensure that its submission to PEIA can be accessed and viewed by PEIA staff immediately upon bid opening. PEIA will consider any file that cannot be immediately



accessed and viewed at the time of the bid opening (such as, encrypted files, password protected files, or incompatible files) to be blank or incomplete as context requires, and are therefore unacceptable. A vendor will not be permitted to unencrypt files, remove password protections, or resubmit documents after bid opening to make a file viewable if those documents are required with the bid. A Vendor may be required to provide document passwords or remove access restrictions to allow PEIA to print or electronically save documents provided that those documents are viewable by PEIA prior to obtaining the password or removing the access restriction.

**2.19 NON-RESPONSIBLE:**

The PEIA Director reserves the right to reject the bid of any vendor as Non-Responsible in accordance with W. Va. Code of State Rules § 148-1-5.3, when the Director determines that the vendor submitting the bid does not have the capability to fully perform, or lacks the integrity and reliability to assure good-faith performance.”

**2.20 ACCEPTANCE/REJECTION:**

The Agency may accept or reject any bid in whole, or in part in accordance with W. Va. Code of State Rules § 148-1-4.5. and § 148-1-6.4.b.”

**2.21 YOUR SUBMISSION IS A PUBLIC DOCUMENT:**

Vendor’s entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

**DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.**

Submission of any bid, proposal, or other document to PEIA constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. PEIA will be compelled to disclose any document labeled “confidential,” “proprietary,” “trade secret,” “private,” or labeled with any other claim against public disclosure of the documents, to include any “trade secrets” as defined by West Virginia Code § 47-22-1 et seq. unless the vendor secures a protective Order from a Court of competent jurisdiction prohibiting such release. PEIA assumes no responsibility to protect the proprietary rights of any vendor. All submissions are subject to public disclosure without notice.

If PEIA receives a Freedom of Information Act request related to this solicitation it will notify any and/or all of the impacted vendors and advise them of the request(s) received. The vendor(s) will have ten (10) business days to respond and/or secure the necessary Order from a Court of Competent Jurisdiction prohibiting the release and/or disclosure. If PEIA does not receive a prohibiting Order, then it shall be compelled to release the

document(s) requested. The State of West Virginia, the West Virginia Department of Administration, nor the West Virginia Public Employees Insurance Agency cannot and will not assert any defense against the release of any documents and/or materials based on the grounds that said documents are labeled “confidential,” “proprietary,” “trade secret,” “private,” or labeled with any other claim against public disclosure of the documents and/or material(s). Each and every vendor shall be responsible for asserting and/or protecting their own proprietary right(s).

## **2.22 SCORING:**

RFP responses will be scored by a Director designated RFP Review Committee on a 50% Technical Response basis and a 50% Cost basis. The Technical and Cost proposals shall be submitted under separate sealed covers. The RFP Review Committee will review Technical proposals first and review the Cost proposals only for those bidders who achieve a minimum acceptable score (MAS). The MAS for this RFP shall be 35 out of 50 possible points.

Technical scoring will be based on:

Qualifications and Experience  
Approach and methodology/Detail in response  
References

Cost scoring will be based on the lowest bidder receiving the 50% and competitors pro-rated from that submitted price.

PEIA reserves the right to reject any and/or all submissions.

## **2.23 WITHDRAWAL:**

Prior to the proposal due date, a bidder may withdraw their proposal by submitting a written request for its withdrawal signed by the bidder’s authorized agent. The written withdrawal request will be directed to PEIA’s representative, Thomas Miller, at [thomas.d.miller@wv.gov](mailto:thomas.d.miller@wv.gov).

## **2.24 PROTEST INTENT OF AWARD:**

Bidders who have submitted a litigation bond may protest the award in accordance with the following procedure. Protests based on the contract award must be submitted in writing to the Director of the West Virginia PEIA within five (5) working days from the date of the contract award notice. Protest should be sent to:

Ted Cheatham, Director  
West Virginia Public Employees Insurance Agency  
601 57th St. SE, Suite 2

Charleston, West Virginia 25304-2345  
Telephone: 304-558-7850, ext. 52625

**All protests must contain:**

- 1. The name and address of the protesting proposer**
- 2. A statement of the grounds of the protest (see legal standard below)**
- 3. Supporting documentation**
- 4. The resolution or relief sought**

Failure to submit all of the required information shall be grounds for rejection of the protest by the Director of PEIA.

PEIA may refuse to review any protests when the matter involved is the subject of litigation before a court of competent jurisdiction; if the merits have previously been decided by a court of competent jurisdiction; or if it has been decided in a previous protest by the Director of PEIA. Subcontractors under a proposer's submission do not have standing to file a protest.

The Director will respond to the protest within five (5) business days of receipt of the written notice at the offices of PEIA.

Proposers in disagreement with the response of the Director may ask for further review of the protest by the Cabinet Secretary of the West Virginia Department of Administration. The request for further review should be sent to the address below within five (5) days of the Director's response:

John A. Myers, Cabinet Secretary  
WV Department of Administration  
Building 1, Room E-119  
1900 Kanawha Boulevard, E.  
Charleston, WV 25305

If the protesting vendor believes that due to the nature of the contract award an expedited determination is required, a request that the matter be directed immediately to the Department of Administration Cabinet Secretary should be in the original protest submitted to the Director of PEIA. If the director is in agreement with the reasons for the expedited request, the Director will forward the protest to the Department of Administration Cabinet Secretary and inform the requesting proposer of his/her written actions.

Decisions by the Department of Administration Cabinet Secretary shall be considered to be the final level of administrative relief. Any further appeal of the administrative decision of the Department of Administration Cabinet Secretary must be directed by statute to the Circuit Court of Kanawha County, Charleston, West Virginia.

**2.25 RESERVED RIGHT(S)**

The PEIA Director reserves the right to reject any and/or all bids with or without cause and/or to not award a contract from this solicitation based on budget(s), Agency business need(s), administrative direction, and/or other reasons. Per West Virginia Code §5-16-9 and §5-16-10 these rights are exclusive to the Director.

### **SECTION 3: GENERAL TERMS AND CONDITIONS:**

By submitting a bid for this procurement, the vendor agrees to the terms and conditions of this solicitation including, but not limited to, all vendor responsibilities, required submissions, and further agrees and understands that the terms and conditions of this solicitation shall constitute the material basis of the contract between the Agency and the vendor. This RFP may contain mandatory provisions identified by the use of the words “must,” “will,” and “shall.” Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.

Should the vendor, for any reason, take exception to the terms and conditions listed in this solicitation, it is their responsibility to:

- a. Cite the specific term and/or condition that they take exception to, and
- b. Provide a detailed written explanation of their stated exception, and
- c. Proffer a viable alternative to the cited term and/or condition.

PEIA reserves the right to reject exceptions taken by prospective vendors.

#### **3.1 CONTRACTUAL AGREEMENT:**

Issuance of an Award Document signed by the PEIA Director, or his designee, and approved as to form by the PEIA General Counsel constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor’s signature on its bid signifies Vendor’s agreement to be bound by and accept the terms and conditions contained in this Contract. This RFP, the vendor’s technical and cost proposal, and any subsequent submissions, such as BAFO, etc., will be incorporated into any final contract.

#### **3.2 DEFINITIONS:**

As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

**3.2.1 “Agency” or “Agencies”** means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

**3.2.2 “Bid” or “Proposal”** means the vendors submitted response to this solicitation.

**3.2.3 “Contract”** means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

**3.2.4 “Director”** means the Director of the West Virginia Public Employees Insurance Agency.

**3.2.5 “Award Document”** means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

**3.2.6 “Solicitation”** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

**3.2.7 “State”** means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

**3.2.8 “Vendor” or “Vendors”** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

**3.2.9 “HIPAA”** means the Health Insurance Portability and Accountability Act of 1996

**3.2.10 “Business Associate”** means as defined in 45 CFR Part 160.103

**3.2.11.1.1**

### **3.3 CONTRACT TERM; RENEWAL; EXTENSION:**

The term of this Contract shall be three (3) years with the option to renew in one (1) year periods as determined in accordance with the category that has been identified as applicable to this Contract below:

#### **[XXX] Term Contract**

**Initial Contract Term:** This Contract becomes effective on 07/01/2017 (or TBD) and extends for a period of three (3) year(s).

**Renewal Term:** This Contract may be renewed upon the mutual written consent of PEIA, and the Vendor. Any request for renewal should be submitted to PEIA thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Renewal of this Contract is limited to successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed thirty-six (36) months in total. Automatic renewal of this Contract is prohibited.

### **3.4 NOTICE TO PROCEED:**

Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Award Document will be considered notice to proceed.

### **3.5 INSURANCE:**

The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. Subsequent to contract award, and prior to the insurance expiration date, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies mandated herein, including but not limited to, policy cancelation, policy reduction, or change in insurers. The insurance coverages identified below must be maintained throughout the life of this contract. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed in this section.

Vendor must maintain:

**Commercial General Liability Insurance** in at least an amount of one-million dollars U.S. [\$1,000,000.00] or greater

**Professional/Malpractice/Errors and Omission Insurance** in at least an amount of one-million dollars U.S. [\$1,000,000.00] or greater

**Cyber Liability Insurance** in an amount of one-million dollars U.S. [\$1,000,000.00] or greater

### **3.6 WORKERS' COMPENSATION INSURANCE:**

The apparent successful Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

### **3.7 LITIGATION BOND:**

PEIA reserves the right to require any Vendor that files a protest of an award to submit a litigation bond in the amount equal to one percent of the lowest bid submitted or \$5,000, whichever is greater. The entire amount of the bond shall be forfeited if the hearing officer determines that the protest was filed for frivolous or improper purpose, including but not limited to, the purpose of harassing, causing unnecessary delay, or needless expense for the Agency. All litigation bonds shall be made payable to the Purchasing Division.

In lieu of a bond, the protester may submit a cashier's check or certified check payable to the Purchasing Division. Cashier's or certified checks will be deposited with and held by the State Treasurer's office. If it is determined that the protest has not been filed for frivolous or improper purpose, the bond or deposit shall be returned in its entirety.

**3.8 LIQUIDATED DAMAGES:**

Vendor shall pay liquidated damages in the amount of the value of the contract for any and/or all for errors and/or omissions on the part of the Vendor and/or for any gross misconduct and/or breach of fiduciary duty on the part of the vendor.

This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy.

**3.9 ACCEPTANCE:**

Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

**3.10 PRICING:**

The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification.

**3.11 PAYMENT:**

Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears.

**3.12 TAXES:**

The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

**3.13 ADDITIONAL FEES:**

Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia or included in the unit price or lump sum bid amount that Vendor is required by the solicitation

to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

**3.14 FUNDING:**

This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available.

**3.15 CANCELLATION:**

The PEIA Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. PEIA also reserves the right to cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-6.1.e.

**3.16 TIME:**

Time is of the essence with regard to all matters of time and performance in this Contract.

**3.17 APPLICABLE LAW:**

This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code or West Virginia Code of State Rules, and/or the PEIA Plan Document is void and of no effect.

The West Virginia Public Employees Insurance Agency is a Covered Entity as defined by 45 CFR §160.103 and the vendor would be considered a Business Associate of PEIA as defined by 45 CFR §160.103. As such, the following mandatory conditions shall apply:

3.17.1 The vendor will be required to sign the State of West Virginia Executive Branch Business Associate Agreement and corresponding Appendix A. SEE ATTACHMENT C of this solicitation.

3.17.2 The vendor shall be fully compliant with any and/or all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including, but not limited to the Health Information Technology for Economic and Clinical Health Act (HITECH) adopted as part of the American Recovery and Reinvestment Act of 2009 (ARRA) and the Omnibus Security Rule(s).

3.17.3 The vendor shall be responsible for ensuring that any and/or all subcontractors assigned work under the contract are fully compliant with the applicable provisions



of the Privacy and Security Rule(s) of HIPAA and that the terms and/or conditions of the contract, including the Business Associate Agreement, are fully communicated to any and/or all agents and/or subcontractors.

- 3.17.4 The vendor shall provide all administrative, technical, and physical safeguards necessary to protect the privacy, security, confidentiality, and integrity of any and/or all personally identifiable information and/or protected health information created, used, stored, maintained, and/or transmitted by said vendor in the course of performing the scope of work on this project. Said safeguards shall render data rendered unreadable, unusable, and/or indecipherable upon unauthorized access.
- 3.17.5 The vendor shall agree that any and/or all data collected, created, shared, and/or generated under the scope of work of this contract is the sole property of the West Virginia Public Employees Insurance Agency (PEIA) and may not be used for any other project(s), contract(s), or purpose(s) without the express written consent of PEIA. Any severance and/or change in status of a subcontractor, employee, collaborator, student, and/or agent, whether voluntary and/or involuntary, shall immediately terminate their rights to access, use, and/or otherwise have direct or indirect permission(s) with regard to said data.
- 3.17.6 The vendor shall agree that any and/or all data collected, created, shared, and/or generated under the scope of work of this contract will be kept secured, encrypted, and segregated in a manner so that, if needed and/or upon termination of the contract, it can be rendered unreadable, unusable, and/or indecipherable or otherwise destroyed accordance with applicable provisions of the HIPAA Security Rule(s).

### **3.18 COMPLIANCE:**

Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

### **3.19 ARBITRATION:**

Any references made to arbitration contained in this Contract, Vendor's bid, or in any industry and/or vendor related documents pertaining to this Contract are hereby deleted, void, and of no effect.

### **3.20 MODIFICATIONS:**

This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency and the Vendor. Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by PEIA in writing prior to the implementation of the change or commencement of work affected by the change.

### **3.21 WAIVER:**

The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

**3.22 SUBSEQUENT FORMS:**

The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

**3.23 ASSIGNMENT:**

Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments. Notwithstanding the foregoing, Purchasing Division approval may or may not be required on certain agency delegated or exempt purchases.

**3.24 WARRANTY:**

The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

**3.25 STATE EMPLOYEES:**

State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

**3.26 BANKRUPTCY:**

In the event the Vendor files for bankruptcy protection, the State of West Virginia may deem this Contract null and void, and terminate this Contract without notice.

**3.27 PRIVACY, SECURITY, AND CONFIDENTIALITY:**

The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the

disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

### **3.28 YOUR SUBMISSION IS A PUBLIC DOCUMENT:**

Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

#### **DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.**

Submission of any bid, proposal, or other document PEIA constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. PEIA will be compelled to disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. unless the vendor secures a protective Order from a Court of competent jurisdiction prohibiting such release. PEIA assumes no responsibility to protect the proprietary rights of any vendor. All submissions are subject to public disclosure without notice.

If PEIA receives a Freedom of Information Act request related to this solicitation it will notify any and/or all of the impacted vendors and advise them of the request(s) received. The vendor(s) will have ten (10) business days to respond and/or secure the necessary Order from a Court of Competent Jurisdiction prohibiting the release and/or disclosure. If PEIA does not receive a prohibiting Order, then it shall be compelled to release the document(s) requested. The State of West Virginia, the West Virginia Department of Administration, nor the West Virginia Public Employees Insurance Agency cannot and will not assert any defense against the release of any documents and/or materials based on the grounds that said documents are labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents and/or material(s). Each and every vendor shall be responsible for asserting and/or protecting their own proprietary right(s).

### **3.29 LICENSING:**

In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Upon request, the Vendor must provide all necessary releases to obtain information to enable the

Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

**3.30 ANTITRUST:**

In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

**3.31 VENDOR CERTIFICATIONS:**

By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein. Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

**3.32 VENDOR RELATIONSHIP:**

The relationship of the Vendor to the Agency shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation

and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the Agency, and shall provide the Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

**3.33 INDEMNIFICATION:**

The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

PEIA as an agency of the State cannot indemnify vendor.

**3.34 PURCHASING AFFIDAVIT:**

In accordance with West Virginia Code § 5A-3-10a, all vendors are required to sign, notarize, and submit the Purchasing Affidavit stating that neither the Vendor nor a related party owe a debt to the State in excess of \$1,000. The affidavit must be submitted prior to award, but should be submitted with the Vendor's bid. A copy of the Purchasing Affidavit is included herewith.

**3.35 ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE:**

This Contract may be utilized by other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"). Any extension of this Contract to the aforementioned Other Government Entities must be on the same prices, terms, and conditions as those offered and agreed to in this Contract, provided that such extension is in compliance with the applicable laws, rules, and ordinances of the Other Government Entity. If the Vendor does not wish to extend the prices, terms, and conditions of its bid and subsequent contract to the Other Government Entities, the Vendor must clearly indicate such refusal in its bid. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.

**3.36 CONFLICT OF INTEREST:**

Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

### **3.37 BACKGROUND CHECK:**

In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry. After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision. The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

### **3.38 AUDITING**

PEIA reserves the right to audit/validate/authenticate all materials and responses submitted with the firm's proposal pursuant to the Vendor Assurances provisions of HIPAA.

### **3.39 SUBCONTRACTOR LIST SUBMISSION**

The vendor must disclose the name(s) and primary contact person(s) of any and/or all subcontractors assigned to perform work under the scope of this contract. SEE ATTACHMENT C. It shall be the responsibility of the vendor to ensure that the terms and conditions of this solicitation and the contract, including the referenced Business Associate Agreement, are clearly communicated to any and/or all subcontractors assigned work under this contract.

### **3.40 PROPERTY**

The vendor agrees and understands that any and/or all tangible property purchased under the terms of this contract for the sole use of performing the scope of work under this contract shall be the property of the Agency and shall be returned to the Agency within thirty (30) days after the termination of the contract. Such materials may include, but not be limited to: computer(s), phones, software, exercise equipment, program supplies, cookbooks, diet plans, etc. It shall be the responsibility of the vendor to ensure that any

and/or all employees and/or subcontractors assigned to work on this contract are aware of this provisions and to employ such provisions as to adequately ensure compliance by their workforce.

### **3.41 REFERENCES**

The prospective vendor shall submit professional references in support of their bid response. Said references shall include the names, address, and contact information (phone number and e-mail) of three (3) current and one (1) former client of the vendor. References should be made aware that the State of West Virginia reserves the right to contact them regarding this solicitation and their vendor experience with the bidder. References shall be listed in ATTACHMENT H.

### **3.42 HIPAA COMPLIANCE**

The bidder must agree to become a Business Associate of PEIA as defined by 45 CFR §160.103. It must have policies and procedures in place consistent with the applicable provisions of the Privacy and Security Rule(s) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including the Health Information Technology for Economic and Clinical Health Act (HITECH), including the Omnibus Security Rule(s), and any other applicable state or federal law related to the privacy or security of personally identifiable information (PII) and/or protected health information (PHI). The vendor shall employ sufficient administrative, physical, and technical safeguards as to ensure the privacy, security, confidentiality, and integrity of any and/or all personally identifiable information (PII) and/or protected health information (PHI) used, transmitted, created, and/or stored by the vendor during the term(s) of this contract. The West Virginia State Government HIPAA Business Associate Addendum (BAA) approved by the Attorney General and available for viewing online at the Purchasing Division's website (<https://www.wv.us/purchase/vrc/hipaa.htm>), along with the attached Appendix A is hereby made part of the agreement resulting from this RFP. SEE ATTACHMENT C.

The vendor agrees to use suitable means to encrypt any and/or all personally identifiable information (PII) and/or protected health information (PHI) used, transmitted, created, and/or stored by the vendor during the term(s) of this contract.

### **3.43 DESIGNATED CONTACT:**

PEIA appoints the individual identified in this Section as the contract Administrator and the initial point of contact for matters relating to the final contract.

Felice B. Joseph, R. Ph.  
Pharmacy Director  
West Virginia Public Employees Insurance Agency  
601 57<sup>th</sup> Street, SE  
Charleston, West Virginia 25304  
[Felice.b.joseph@wv.gov](mailto:Felice.b.joseph@wv.gov)

**THE CONTRACT ADMINISTRATOR IS NOT TO BE CONTACTED DURING THE RFP PROCESS. THEY WILL ONLY BECOME INVOLVED UPON CONTRACT AWARD.**

**3.44 FEES AT RISK:**

The vendor is encouraged to accept certain Performance Guarantees and be willing to place fees at risk as part of those guarantees. Please detail any Performance Guarantees in ATTACHMENT D of this solicitation.

**3.45 ORAL PRESENTATIONS:**

PEIA reserves the right to request that Vendors who achieve a minimum acceptable score on their RFP response make an oral presentation to the RFP review committee. The purpose and intent of oral presentations will be to allow the RFP review committee to ask questions of clarifications of the prospective bidders and for the vendors to address any issues that they feel should be considered in evaluating them as a potential vendor to PEIA.

**3.46 BEST AND FINAL:**

PEIA reserves the right to enter into “Best and Final Offer” (BAFO) negotiations with one (1) or more finalists prior to contract award to ensure best value purchasing.

**SECTION FOUR: PROJECT SPECIFICATIONS**

**4.1 LOCATION**

Agency is located at 601 57<sup>th</sup> Street SE, Suite 2, Charleston, WV 25304

**4.2 PROJECT AND GOALS**

The objective of this Request for Proposals (RFP) is to solicit proposals for one or more pilot programs designed to complement the West Virginia Public Employees Insurance Agency’s (PEIA) Healthy Tomorrows incentive program, by providing health promotion and wellness services designed to improve the quality of life of PEIA members.

PEIA will consider selecting one or more proposals for implementation for the purposes of comparing program designs and the resulting outcomes regarding participation; satisfaction; health status, quality of life; cost effectiveness; and service quality.

Proposers should prepare a proposal based on the anticipated participation of between 4,000 and 10,000 policyholders. The program will be in a defined geographic area to be determined by PEIA and/or may be with one large participating employer group. One or



more of the pilot programs may be expanded state wide based upon member penetration, improvement in health outcomes and return on investment.

## **4.3 BACKGROUND**

### **4.3.1 EVOLUTION OF PEIA WELLNESS PROGRAMS**

Over the past two decades, West Virginia has been grappling with an epidemic of obesity and its related chronic conditions including: heart disease, diabetes, hypertension, sleep apnea, asthma, depression and musculoskeletal conditions. Although the Agency has employed varied and comprehensive efforts designed to engage the members with opportunities for health improvement, claims costs continue to escalate at an unsustainable pace.

In response, PEIA has diversified and intensified the interventions available to members who are motivated to change. Comprehensive programs have included: the PEIA Pathways to Wellness worksite program; the PEIA Weight Management Program; the PEIA Face to Face Diabetes Program; the Games for Health Project; the West Virginia Portions Campaign; a comprehensive tobacco cessation benefit; the Comprehensive Care Partnership (CCP); a web based health promotion platform and the use of financial incentives and penalties.

PEIA's first employment of a financial incentive was initiated in the year 2000, utilizing a tobacco premium differential. The tobacco user premium has since been raised three times to the current additional \$25 a month for an individual policy and additional \$50 a month for a family plan.

PEIA has also used rebates, copay waivers, premium incentives and deductibles, combined with supportive tools designed to increase awareness regarding modifiable risk factors. Most notable among these efforts have been "Improve Your Score" (IYS) and the more recent, "Healthy Tomorrows." Both utilized the following measures: total cholesterol, glucose, blood pressure and waist circumference. Healthy Tomorrows has remarkably achieved over an 80% policyholder compliance rate during its second year, which required submission of measurements. However, the Agency is now entering the most challenging iteration of the plan during the 2018 plan year requiring policyholders to not only obtain their measures, but to also achieve required minimum measurements in the moderate risk category. Failure of the policyholders to achieve these scores will result in an additional \$500 deductible.

### **4.3.2 CURRENT HEALTH PLANS**

Preferred Provider Benefit – PEIA offers four self-insured plans which provide health coverage, including a high deductible plan. PEIA also offers members to the Comprehensive Care Partnership CCP Program, which provides capitated payments to providers while offering patients lower copayments.

The Health Plan – The Health Plan is a Health Maintenance Organization offering two HMO options and one PPO.

Humana – Humana provides insurance coverage to retired public employees through a Medicare Advantage Prescription Drug Plan (MAPD) design.

Mountaineer Flexible Benefits – Mountaineer Flex offers a range of options including dental, vision, Health Savings Accounts and other services.

### **4.3.3 DEMOGRAPHICS**

PEIA currently has 70,000 active employees and 170,000 covered lives in the Preferred Provider Benefit plans. This RFP relates only to the PPB plans.

### **4.3.4 WORKSITE WELLNESS**

Since 1992, PEIA has offered a worksite wellness program which began with four pilot sites and expanded into a state-wide program covering 1,000 worksites. Services have been delivered through nine regional health promotion consultants who disseminate information and deliver hands on services through arrangements with volunteer worksite based worksite coordinators. Information is also disseminated via a website, e-newsletters, flyers and PEIA publications.

Although services have been redesigned and updated over time, the offerings have included: health risk assessments; health screens at worksites; health coaching; classes on topical lifestyle subjects; information and referral services; fitness classes (Zumba, yoga, Pilates, boot camp, Tai Chi, etc.) at worksites; nutrition education; cooking classes; musculoskeletal injury prevention programs addressing carpal tunnel syndrome, knee and back injuries; dissemination of Choosing Wisely information; farmers markets at work; and fitness assessments.

In 2014, PEIA commissioned a survey of PEIA members using a Likert scale to rate their preferences for health promotion offerings. With over 18,000 responses, the members chose a fitness benefit as their top priority, followed closely behind by access to affordable, healthy food.

In response to this member feedback, PEIA placed greater emphasis on the Work It Out fitness assessment program, increased the marketing of the PEIA Weight Management program, facilitated farmers' markets at worksites and promoted community supported agriculture in conjunction with local farmers.

It should be noted that after a brief offering of a web based wellness platform offered via HealthSmart/Cerner, PEIA ceased the service due to low participation. This is indicative of the lack of state wide broadband access; the tedious nature of the data input required and member experience which has shown that the initial novelty is not sustained.

#### 4.4 SCOPE OF WORK

PEIA is issuing a Request for Proposals (RFP) for one (1) or more pilot wellness services to be delivered to 4,000-10,000 policyholders which will be evaluated for possible future expansion state-wide. Spouses and dependents will not be included in the pilots. Services offered should provide supports designed to enable policyholders to make the necessary lifestyle changes which will result in measurably improved outcomes as indicated by the Healthy Tomorrows measures.

The pilot population will be in a condensed geographic area and not spread out statewide.

The pilot(s) may be built around face-to-face type programs with personal member engagement; or, they may be technology based and built around the effective use of web-based tools and/or applications integrating engagement with tools, activity tracking, the monitoring of diet and exercise; or, they may be a combination of face-to-face and technology based; or, the vendor(s) may propose an alternate health and wellness model designed and intended to meet the needs of PEIA and the target pilot population(s).

PEIA will determine the pilot population(s) to be covered by the scope of work under this contract.

**It is the intent of the Public Employees Insurance Agency to provide policyholders with the necessary tools and supports to achieve an improvement in their biometric numbers and their overall health, and thus, their quality of life and life expectancy.**

Given the rural nature of our state, demographics, and behavioral risk factors, we are encouraging bidders to propose interventions designed to maximize member engagement. We are seeking an innovative partner who will have a combination of offerings and products to motivate our members to participate. The vendor shall be expected to work closely with, and under the direction of, the designated PEIA staff and/or Health and Wellness Program Manager and/or his/her designee(s).

This RFP will place a premium on the capabilities of bidding vendors who can demonstrate varied opportunities for engaging PEIA policyholders, such as:

- Technology based wellness tools
  - o Mobile apps
  - o Web based tools
  - o Integrated technologies
- Gym memberships
- Fitness assessments and classes
- Nutrition education – dietary choices
- Healthy food discounts
- Individualized health coaching
- Online and face to face health education classes
- Rewards based incentive system(s)
- Stress management services including meditation, yoga and Tai Chi

- Worksite based farmer's markets

The proposed program must be able to quantify and/or measure using accepted modes and means of analysis the return on investment (ROI) achieved by the program implemented. Generic statements of ROI and/or cited research on Health and Wellness Program ROI can be used in the proposal but the actual ROI on the specific program(s) delivered under the scope of this contract must be measured and conveyed to PEIA. As part of their proposal, vendors shall state the modes and/or means to be used to measure ROI and any and/or all associated benchmarks.

The selected vendor(s) will be required to be, knowledgeable, conversant and able to communicate with the members about PEIA's disease management programs for appropriate referrals to applicable PEIA disease management programs. Current PEIA offerings include:

- The PEIA Weight Management Program, which provides members who have a Body Mass Index of 25 or greater; or if a woman, a waist circumference of 35 inches or more; for a man, 40 inches or more; with the services of dietitians and exercise professionals at approved fitness facilities across the state. This program can provide services for up to two continuous years, or a second attempt if the participant failed to complete the program on their first attempt.
- The Face to Face Diabetes Program, which provides eligible members diagnosed with diabetes coverage for scheduled visits with specially trained pharmacists and waived copayments for preferred or generic diabetes medications. Similar to the PEIA Weight Management Program, participation is capped at two years and provides for a second attempt, if the two years has not been completed.
- PEIA's comprehensive tobacco cessation benefit, providing coverage for nicotine withdrawal therapy, Zyban, Chantix and physician visits. In accordance with the Affordable Care Act, there is no out of pocket expense associated with these services.
- PEIA's CCP program(s) and the Healthy Tomorrow's initiatives. The CCP Program is a Comprehensive Care Program designed to allow members to take more responsibility for their primary care and focuses on preventive care as opposed to reactive care. The PEIA Healthy Tomorrows Program promotes healthier living, healthier lifestyles and policyholders that are aware of health concerns in their own bodies. PEIA members were encouraged to choose a doctor to build a working relationship and to get an annual biometric screening involving blood pressure, cholesterol, glucose, and other risk factors.

Any and/or all communications pieces to be used as part of the pilot(s) shall require the prior written approval of PEIA prior to their distribution. The cost(s) of said communications pieces should be included in the vendor pricing(s) submitted.

Vendors are encouraged to submit a fixed pricing model that shall include any and/or all products and/or services related to the program that are to be delivered and/or provided. Although the vendor may submit a per policyholder/per month cost proposal, PEIA is interested in pricing models that relate directly to those policyholders who are engaged and/or actively participating in health and wellness programming. Such models place more responsibility on the vendor to achieve actual member engagement and to be a true partner with PEIA in working towards a healthier population.

Vendors may propose multiple pricing models for consideration but any and/or all pricing model(s) submitted must be detailed and outline each and every product(s) and/or service(s) that is/are to be included in the program design, implementation, and delivery. PEIA shall not be responsible for any cost(s) incurred the preparation of the response(s) to this solicitation.

Vendors may, and are encouraged, to submit more than one (1) proposal. Each proposal submitted must follow the requirements as set forth in Section 2.6 of this RFP.

**It shall be the responsibility of the vendor to prepare, in a clear and concise manner, a compelling submission that fulfills the intent and scope of this solicitation.**

#### **4.4.1 MINIMUM REQUIREMENTS:**

**Bidders shall address each item listed in a question and answer format. To be eligible for consideration for this engagement, PEIA desires that the bidder meets, at a minimum, the following standards:**

- a. Preferably, three (3) years of experience in the wellness business as evidenced by contracts in place within the past 3 years
- b. Experience in providing wellness programs to populations of  $\geq 50,000$  covered lives
- c. A minimum return on investment of 1:1.5 – The methodology to determine ROI must be clear and well-defined using accepted modes and means of claims and/or data analytics.
- d. Demonstrated experience working in a rural state
- e. Qualified behavioral, exercise and nutrition professionals – preferably licensed and/or certified in their respective field(s)
- f. A sophisticated online platform and phone application designed to engage users in health education and interactive activities
- g. Sustained participation rate at a minimum of 40% of users
- h. Ability to integrate programs with PEIA's Healthy Tomorrows benefit design
- i. A secure data management system and provide evidence of capability
- j. Bidders shall provide a summary analysis of the health challenges faced by PEIA members and a proposed strategy for effective interventions and anticipated outcomes. Bidder's narrative shall also describe their interventions and how these tools or supports meet the above requirements. Bidders shall specifically address their philosophical understanding of health promotion and

wellness; how best to enable employees to take ownership of their health; their understanding of the challenges faced by individuals living in Appalachia; and how these conditions affect challenges of daily living; environmental affects; access to healthy food and fitness opportunities.

- k. Bidders shall provide sample wellness materials which shall be written on an eighth-grade level. Bidders shall also provide PEIA reviewers with access to their web based interactive system and phone application. Sample member marketing materials shall be provided. These materials, if referenced in the vendor's response, shall be clearly labeled in an Appendix.

#### **4.4.2 PARTICIPATION STANDARDS AND/OR SCOPE**

The following questions should shall be addressed in bidder's proposal. The format for the written response shall include: (The vendor shall restate the question in their response and the list their response thereafter – DO NOT SIMPLY LIST NUMBERED RESPONSES!)

- a. Describe your approach to long term wellness 3-5 years.
- b. How do you define engagement?
- c. What percentage of your populations is engaged at what level?
- d. Show actual data results from other clients?
- e. What is your client retention rate?
- f. What resources will you provide for the wellness program
- g. Have you received accreditation? Please provide details.
- h. Explain why your program is unique as compared to other vendors in the market.
- i. Explain how you register participants and enhance engagement.
- j. How do you deal with "unconnected" people, such as those with no smart phone or internet connectivity?
- k. How do you track and report intervention activity to the client and participant?
- l. Do you risk stratify populations for interventions? What methodology do you use?
- m. What activities are tracked for incentives? How are they tracked manually or automatically?
- n. How is your incentive program configured to drive engagement?
- o. How much can the client customize incentives? Please describe.
- p. Explain how you handle any tax implications for the client or participant due to incentives.
- q. Describe and provide samples of your marketing and promotional materials.
- r. Explain in detail the calculation for ROI, including all variations and methodologies with examples. Provide an example of this reporting from an actual client, if possible.
- s. Please provide a sample monthly reporting package for your clients
- t. Describe any innovative ideas, services and designs you would like to propose which may not be specified in this RFP

## **4.5 QUALIFICATIONS AND EXPERIENCE**

Vendors shall provide in **Attachment G**: information regarding their firm, such as staff qualifications and experience in completing similar projects; copies of any staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and what the project goals and objectives were and how they were met.

## **4.6 MANDATORY REQUIREMENTS**

The following mandatory requirements must be met by the Vendor as a part of the submitted proposal. Failure on the part of the Vendor to meet any of the mandatory specifications shall result in the disqualification of the proposal. The terms “must”, “will”, “shall”, “minimum”, “maximum”, or “is/are required” identify a mandatory item or factor. Decisions regarding compliance with any mandatory requirements shall be at the sole discretion of the Purchasing Division. The vendor must include an affirmation in their response that they agree to and will comply with the mandatory requirements listed below. SEE ATTACHMENT G.

**4.6.1** Vendor must be able to assume responsibility for all contractual activities offered in this proposal, whether or not that bidder directly performs them. Responsibility includes, but is not necessarily limited to: quality of work/service/product(s) delivered; on-time delivery; staff conduct/behavior; accuracy of reports and/or billing; and representing PEIA in a professional manner as a vendor and service provider to our members. The vendor will be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated contract.

**4.6.2** Vendor will provide a list of any current subcontractors, collaborators, and/or other third parties that will perform duties under this contract, including firm name and address, contact person, complete description of work to be subcontracted, and descriptive information concerning subcontractor’s organizational abilities. This information will be provided in Attachment X with the bid proposal.

PEIA reserves the right to approve all current and future subcontractors for this project and require the apparent successful bidder to replace subcontractors to all provisions of the contract. No subcontractor may perform work under this contract without the express written consent of PEIA.

**4.6.3** The vendor will be required to submit detailed reports to the Agency on the following metrics:

- a. Member engagement
- b. Contacts made

- c. Program implementation updates
- d. Resource utilization
- e. Member feedback and satisfaction
- f. Issues identified
- g. Return on Investment (ROI)
- h. Said reports will be provided monthly, quarterly, and annually with an Executive Summary of all program operations and outcomes.

The vendor will supply up to six (6) ad hoc reports per year to explore specific issues and/or information at the request of PEIA.

**4.6.4** The vendor shall immediately (no more than one (1) business day) report any event and/or incident involving the Health Promotion and/or Wellness Program that may result in any real and/or perceived harm to any member, provider, and/or the agency.

**4.6.5** The vendor shall agree that any and/or all data collected, created, shared, and/or generated under the scope of work of this contract is the sole property of the West Virginia Public Employees Insurance Agency (PEIA) and may not be used for any other project(s), contract(s), or purpose(s) without the express written consent of PEIA. Any severance and/or change in status of a subcontractor, employee, collaborator, student, and/or agent, whether voluntary and/or involuntary, shall immediately terminate their rights to access, use, and/or otherwise have direct or indirect permission(s) with regard to said data.

**4.6.6** The vendor shall agree that any and/or all data collected, created, shared, and/or generated under the scope of work of this contract will be kept secured, encrypted, and segregated in a manner so that, if needed and/or upon termination of the contract, it can be rendered unreadable, unusable, and/or indecipherable or otherwise destroyed accordance with applicable provisions of the HIPAA Security Rule(s).

**4.6.7** Bidders shall submit an evaluation plan addressing at a minimum:

- Numbers of participants
- Duration of participant in specific activity
- Member satisfaction
- Improved health outcomes as measured via Healthy Tomorrows
- Impact on health claims
- Impact on physical activity
- Impact on rate of injuries
- Impact on nutrition
- Impact on member knowledge relative to healthy behaviors

**4.6.8** The bidder shall provide detailed information about the members of the implementation team and account management including licenses, degrees,



certifications, accomplishment(s), and experience in health and wellness contract management.

**4.6.9** The following response attachments shall be included in the following order:

- Certificate of insurance
- Financial statements
- Accreditations, if any
- Financial ratings, if any

#### **4.7 ORAL PRESENTATIONS (AGENCY OPTION)**

The Agency has the option of requiring oral presentations of all Vendors participating in the RFP process who achieve a minimum acceptable score (MAS) on their technical proposal(s). If this option is exercised, it would be listed in the Schedule of Events (Section 1.3) of this RFP. During oral presentations, Vendors may not alter or add to their submitted proposal, but only clarify information. A description of the materials and information to be presented is provided below:

##### **4.7.1 Materials and Information Required at Oral Presentation:**

The vendor may only present information that directly clarifies and/or correlates to their previously submitted proposal(s). The Oral Presentation(s) will be for the RFP Review Committee to seek clarification, probe for detail, or ask other questions directly related to the RFP submission(s) made by the vendor.

### **SECTION FIVE: VENDOR PROPOSAL**

#### **5.1 ECONOMY OF PREPARATION**

Proposals should be prepared simply and economically providing a straightforward, concise description of the Vendor's abilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of the content.

Vendor has the right to submit their bid in the format of their choosing but is solely responsible for ensuring that the content clearly conveys their response to the solicitation and that all mandatory requirements have been met. The bid should be clear and concise; no more than seventy-five (75) pages; all pages numbered; including a response to each listed mandatory term and/or condition; with any references to attachments and/or appendices clearly marked.

#### **5.2 INCURRING COST**

Neither the Agency nor any of its employees or officers shall be held liable for any expenses incurred by any Vendor responding to this RFP, including but not limited to preparation, delivery, or travel.

### 5.3 PROPOSAL FORMAT

Vendors should provide responses in the format listed below:

**Title Page:** State the RFP subject, number, Vendor's name, business address, telephone number, fax number, name of contact person, e-mail address, and Vendor signature and date.

**Table of Contents:** Clearly identify the material by section and page number.

**Attachment A:** Within the attached response sheet (**ATTACHMENT E: VENDOR QUALIFICATIONS & EXPERIENCE**), provide the following: firm and staff qualifications and experience in completing similar projects; references; copies of any staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and what the project goals and objectives were and how they were met.

Also, describe the approach and methodology proposed for this project. This should include how each of the goals and objectives listed is to be met.

**Attachment B:** Complete **ATTACHMENT G: Mandatory Specification Checklist**. By signing and dating this attachment, the Vendor acknowledges that they meet or exceed each of these specifications as outlined in 4.5 of Section Four: Project Specifications. The State reserves the right to require documentation detailing how each is met at its discretion.

**Attachment C:** Complete **Attachment D: PRICING PAGE** included in this RFP and submit in a separate sealed envelope. Cost should be clearly marked.

**Oral Presentations:** If established by the Agency in the Schedule of Events (Section 1.3), all Vendors participating in this RFP will be required to provide an oral presentation, based on the criteria set in Section 4.7. During oral presentations, Vendors may not alter or add to their submitted proposal, but only to clarify information.

### 5.4 PROPOSAL SUBMISSION

All bids must be submitted in a hard copy format, signed and delivered by the Vendor to PEIA at the address listed below on or before the date and time of the bid opening. Any

bid received by PEIA staff is considered the possession of the PEIA and will not be returned for any reason. PEIA will not accept bids, modification of bids, or addendum acknowledgment forms via e-mail. Acceptable delivery methods include hand delivery or delivery by courier. All costs for delivery of proposals shall be at the bidder's expense. PEIA accepts no responsibility for mislabeled mail or damage occurring during shipping. Late submissions shall not be accepted.

**The Technical and Cost proposals shall be submitted under separate sealed covers. The RFP Review Committee will review Technical proposals first and review the Cost proposals only for those bidders who achieve a minimum acceptable score (MAS). The MAS for this RFP shall be 35 out of 50 possible points.**

The technical proposal must not contain any mention of the pricing guarantees, fees or other information contained in the cost proposal. However, information such as labor hours, categories, materials, subcontracts, and so forth, shall be contained in the technical proposal so that the bidder's understanding of the scope of work may be evaluated. The technical proposal shall disclose the bidder's technical approach in as much detail as possible, including, but not limited to the information required by the technical proposal instructions.

The format and content requirements for the technical and cost proposals must adhere to the instructions contained in this RFP. Failure to respond to a specific requirement may be used as a basis for rejection of the proposal from further consideration, or result in a score of "zero" or a "fail" for a particular item. Emphasis should be placed on conformance to the RFP instructions, responsiveness to requirements and completeness and clarity of content. Elaborate proposals are neither necessary nor desired. If the proposal is presented in a fashion that makes evaluation difficult or overly time consuming, it is likely that points will be lost in the evaluation process. Bidders shall not include any personal use items with the proposal.

Vendor has the right to submit their bid in the format of their choosing but is solely responsible for ensuring that the content clearly conveys their response to the solicitation and that all mandatory requirements have been met. The bid should be clear and concise; no more than seventy-five (75) pages; all pages numbered; including a response to each listed mandatory term and/or condition; with any references to attachments and/or appendices clearly marked.

The bid delivery address is:

West Virginia Public Employees Insurance Agency  
Attention: Thomas Miller, Privacy & Security Officer  
601 57<sup>th</sup> St., S.E., Suite 2  
Charleston, West Virginia 25304-2345

#### **5.4.1 TECHNICAL PROPOSAL FORMAT**

The vendor shall submit one (1) original and five (5) copies of their technical proposal as well as at least one (1) copy in an electronic format, e.g. a PDF, MS Word, or Excel format on a CD Rom or flash drive. If supplemental materials are included in the proposal, each copy of the proposal must include such supplemental materials. The original copy shall bear an original signature of the legally authorized representative in blue ink and shall be marked as “original”. One (1) complete copy of the original proposal shall be submitted on electronic media (e.g., USB drive, CD-ROM, or DVD-ROM) in a Microsoft Office Word or Excel (version 2007 or 2010) format, with the exception of supplemental materials which may be submitted in an Adobe.pdf format. Exhibits must be submitted in Microsoft Excel format.

Any and/or all appendices, attachments, and/or supplemental materials must be clearly labeled and identified in the table of contents. Any references to such appendices, attachments, and/or supplemental materials must be clearly cited and/or referenced in the Technical proposal(s). **It is the responsibility of the vendor to proof any and/or all submissions. PEIA will not assume any responsibility to convert, collate, sort, or otherwise edit and/or amend any vendor submission(s).**

The submission must be in a sealed envelope or package, labeled as below:

SEALED BID - CONFIDENTIAL  
PEIA WELLNESS PILOT PROGRAM  
TECHNICAL PROPOSAL

Any bid not meeting these submission requirements may be rejected.

#### **5.4.2 COST PROPOSAL FORMAT**

Under separate cover and in an envelope clearly marked “COST PROPOSAL”, the bidder shall submit their cost proposal based upon a clearly defined and detailed pricing model. Given that this solicitation is for pilot programs, with an expected potential use population of 4,000 to 10,000 eligible policyholders, vendors are encouraged to propose both a fixed price and per policyholder per month charge for this solicitation. If the bidder is proposing an array of products within their proposal (for example a fitness benefit AND access to a wellness platform) each product may be priced separately with the understanding that PEIA may choose one element and not the entire package. Otherwise, the bidder must indicate if the offerings are a combined package and priced with that understanding.

The vendor shall submit one (1) original and five (5) copies of their cost proposal as well as at least one (1) copy in an electronic format, e.g. a PDF, MS Word, or Excel format on a CD Rom or flash drive. If supplemental materials are included in the proposal, each copy of the proposal must include such supplemental materials. The original copy shall bear an original signature of the legally

authorized representative in blue ink and shall be marked as “original”. One (1) complete copy of the original proposal shall be submitted on electronic media (e.g., USB drive, CD-ROM, or DVD-ROM) in a Microsoft Office Word or Excel (version 2007 or 2010) format, with the exception of supplemental materials which may be submitted in an Adobe.pdf format. Exhibits must be submitted in Microsoft Excel format.

Any and/or all appendices, attachments, and/or supplemental materials must be clearly labeled and identified in the table of contents. Any references to such appendices, attachments, and/or supplemental materials must be clearly cited and/or referenced in the Technical proposal(s). **It is the responsibility of the vendor to proof any and/or all submissions. PEIA will not assume any responsibility to convert, collate, sort, or otherwise edit and/or amend any vendor submission(s).**

**The submission must be labeled as ATTACHMENT D and submitted in a sealed envelope or package, separate from the Technical Proposal submission and labeled as below:**

SEALED BID - CONFIDENTIAL  
PEIA WELLNESS PILOT PROGRAM  
COST PROPOSAL

Any bid not meeting these submission requirements may be rejected.

## **5.5 ACCEPTANCE OF PROPOSALS**

PEIA will accept all proposals submitted according to the requirements and deadlines specified in this RFP. Each bidder may submit only one proposal. PEIA reserves the right to reject any and all proposals received. It is understood that all proposals, whether rejected or not, will become the property of PEIA. After receipt of the proposals, PEIA reserves the right to sign a contract, without negotiation, based on the terms, conditions, and premises of this RFP and the proposal of the selected bidders or to negotiate with a finalist or finalists.

### **5.5.1 RESPONSIVENESS**

All proposals must be responsive to all requirements in the RFP in order to be considered for contract award.

### **5.5.2 READABILITY**

Vendor must ensure that its submission to PEIA can be accessed and viewed by PEIA staff immediately upon bid opening. PEIA will consider any file that cannot be immediately accessed and viewed at the time of the bid

opening (such as, encrypted files, password protected files, or incompatible files) to be blank or incomplete as context requires, and are therefore unacceptable. A vendor will not be permitted to unencrypt files, remove password protections, or resubmit documents after bid opening to make a file viewable if those documents are required with the bid. A Vendor may be required to provide document passwords or remove access restrictions to allow PEIA to print or electronically save documents provided that those documents are viewable by PEIA prior to obtaining the password or removing the access restriction.

### **5.5.3 RIGHT TO REQUEST CLARIFICATION:**

After opening the proposals, PEIA may ask any bidder for written clarification of their proposal. In the event this clarification is requested, submission of the clarification shall be considered part of the original proposal. PEIA reserves the right to waive any and all minor irregularities in proposals, providing such action is in the best interest of PEIA. Where PEIA may waive minor irregularities, such waiver shall in no way modify the RFP requirements or excuse the bidder from full compliance with RFP specifications and other contract requirements if the bidder is awarded the contract. PEIA also reserves the right to reject any and all proposals received, or cancel this RFP according to the best interest of PEIA.

### **5.5.4 VALIDITY OF SUBMISSIONS**

Proposals must be valid for 180 days following the close date of this RFP. This period may be extended by written mutual agreement between the bidder and PEIA.

## **5.5 TECHNICAL BID OPENING**

After the bid opening deadline, PEIA will open only the technical proposals received prior to the date and time specified in the Request for Proposal. The technical proposals shall then be provided to the evaluation committee.

## **5.6 COST BID OPENING**

PEIA shall schedule a date and time to open the cost proposals when the Director has approved the technical recommendation of the evaluation committee. All cost bids for qualifying proposals will be opened. Cost bids for non-qualifying proposals will also be opened but shall not be considered. A proposal may be deemed non-qualifying for a number of reasons including, but not limited to, the bidder's technical proposal failing to meet the minimum acceptable score and the bidder's technical proposal failing to meet a mandatory requirement of the contract. Certain information, such as technical scores and

reasons for disqualification, will not be available until after the contract award, pursuant to *West Virginia Code* §5A-3-11(h) and *West Virginia Code of State Rules* §148-1-6.2.5..

## **SECTION SIX: EVALUATION AND AWARD**

### **6.1 EVALUATION PROCESS**

Proposals will be evaluated by a committee of three (3) or more individuals against the established criteria with points deducted for deficiencies. The Vendor who demonstrates that they meet all of the mandatory specifications required; and has appropriately presented within their written response and/or during the oral demonstration (if applicable) their understanding in meeting the goals and objectives of the project; and attains the highest overall point score of all Vendors shall be awarded the contract. The selection of the successful Vendor will be made by a consensus of the evaluation committee.

### **6.2 EVALUATION CRITERIA:**

All evaluation criteria are defined in the specifications section and based on a 100 point total score. Cost shall represent a minimum of 50 of the 100 total points.

The following are the evaluation factors and maximum points possible for technical and cost point scores:

- |   |                           |
|---|---------------------------|
| • Qualifications and experience; Approach and methodology; References | 50 Points Possible        |
| • Cost  | <u>50 Points Possible</u> |
| <b>Total</b>  | 100 Points Possible       |

Each cost proposal cost will be scored by use of the following formula for all Vendors who attained the minimum acceptable score:

$$\frac{\text{Lowest price of all proposal}}{\text{Price of Proposal being evaluated}} \times 50 = \text{Price Score}$$

6.2.1 Technical Evaluation: The Agency evaluation committee will review the technical proposals, deduct points where appropriate, and make a final written recommendation to the Director.

6.2.2 Minimum Acceptable Score: Vendors must score a minimum of 35 out of 50 of the total technical points possible. All Vendors not attaining the minimum acceptable score (MAS) shall be considered as non-qualifying. A proposal may be deemed non-qualifying for a number of reasons including, but not limited to, the bidder's

technical proposal failing to meet the minimum acceptable score and the bidder's technical proposal failing to meet a mandatory requirement of the contract. Cost bids for non-qualifying proposals will also be opened but shall not be considered. Certain information, such as technical scores and reasons for disqualification, will not be available until after the contract award, pursuant to *West Virginia Code* §5A-3-11(h) and *West Virginia Code of State Rules* §148-1-6.2.5.

6.2.3 Cost Evaluation: The Agency evaluation committee will review the cost proposals, assign appropriate points, and make a final recommendation to the Purchasing Division.

**CERTIFICATION AND SIGNATURE**

By signing below, I certify that I have reviewed this Solicitation in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Authorized Signature) (Representative Name, Title)

\_\_\_\_\_  
(Printed Name and Title of Authorized Representative)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Phone Number) (Fax Number)

\_\_\_\_\_  
(E-mail)



**ATTACHMENT A:**



State of West Virginia  
Public Employees Insurance Agency  
601 57th Street, Suite 2  
Charleston, West Virginia 25304

Request for Proposals for PEIA Wellness Program Pilot

Signature Page

By signing below, I, \_\_\_\_\_, the authorized representative of and/or agent for, \_\_\_\_\_, do hereby attest that the enclosed submission represents a true and correct proffer in response to the RFP solicitation for the provision of a PEIA Wellness Program Pilot. I acknowledge and understand that I have read the terms and conditions of this solicitation and agree to obey and abide by same. My signature below is a commitment and affirmation of the Technical and Cost proposals submitted in response to this RFP.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Individual/Institution/Firm

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## ATTACHMENT B:

### PEIA Wellness Program Pilot Performance Guarantee Grid

| Performance Standard       | Evaluation Metric  | Vendor Proposed Fees at Risk |
|----------------------------|--|------------------------------|
| HIPAA Compliance           | Unauthorized disclosure and/or breach – each member record or instance |                              |
| Reporting                  | Delivery of required program reporting – Each day late                 |                              |
| Engagement                 | TBD  |                              |
| Return on Investment (ROI) | TBD  |                              |
|                            |  |                              |
|                            |  |                              |

**ATTACHMENT C:  
PEIA Wellness Program Pilot  
SUBCONTRACTOR LIST:**

Check this box if the vendor will not be using any subcontractors to perform the scope of work on this contract

Check this box if the vendor will be using any subcontractors to perform the scope of work on this contract

| <b>Subcontractor Name:</b> | <b>Contact Person, Phone, E-mail</b> | <b>Scope of Work to be performed</b> |
|----------------------------|--------------------------------------|--------------------------------------|
|                            |                                      |                                      |
|                            |                                      |                                      |
|                            |                                      |                                      |
|                            |                                      |                                      |
|                            |                                      |                                      |
|                            |                                      |                                      |
|                            |                                      |                                      |

**ATTACHMENT D:  
PRICING PAGE**

The vendor must submit a clearly defined pricing model for the scope of services to be bid. PEIA is looking for a detailed, all-inclusive pricing summary. Any and/or all pricing model(s) submitted must meet the requirements as set for in Section 5.4.2 of this solicitation. Given that this solicitation is for pilot programs, with an expected potential use population of 4,000 to 10,000 eligible policyholders, vendors are encouraged to propose both a fixed price and per policyholder per month charge for this solicitation. If the bidder is proposing an array of products within their proposal (for example a fitness benefit AND access to a wellness platform) each product may be priced separately with the understanding that PEIA may choose one element and not the entire package. Otherwise, the bidder must indicate if the offerings are a combined package and priced with that understanding.

**ATTACHMENT E:**  
**Vendor Qualifications and Experience**

In this Attachment, the vendor shall provide information regarding their firm, company, or business, such as specific staff qualifications and experience in completing similar projects; copies of any staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and what the project goals and objectives were and how they were met. The response to this section should be clear and concise. Any and/or all cited materials submitted in support of this Attachment must be clearly labeled and their purpose and/or intent clearly stated.

**ATTACHMENT F:  
Vendor References**

**Current Client References**

| <b>Client Name</b> | <b>Client contact name,<br/>telephone number, and e-<br/>mail</b> | <b>Description of services<br/>provided including start<br/>date(s); # of covered lives;<br/>etc.</b> |
|--------------------|---|---|
| <b>1.</b>          |   |   |
| <b>2.</b>          |   |   |
| <b>3.</b>          |   |   |
| <b>4.</b>          |   |   |
| <b>5.</b>          |   |   |

**Former Client References**

| <b>Client Name</b> | <b>Client contact name,<br/>telephone number, and e-<br/>mail</b> | <b>Description of services<br/>provided including start<br/>date(s); # of covered lives;<br/>etc.</b> |
|--------------------|---|---|
| <b>1.</b>          |   |   |
| <b>2.</b>          |   |   |
| <b>3.</b>          |   |   |

**ATTACHMENT G:**

**PEIA WELLNESS PROGRAM PILOT  
MANDATORY REQUIREMENTS ACKNOWLEDGEMENT  
AFFIRMATION**

By signing below, the vendor does hereby swear and affirm that they agree without exception to the mandatory terms and conditions as set forth in the following Section(s) of this solicitation:

- 4.4.1 MINIMUM REQUIREMENTS including items a through k
- 4.4.2 PARTICIPATION STANDARDS AND/OR SCOPE including items a through t
- 4.5 QUALIFICATIONS AND EXPERIENCE
- 4.6 MANDATORY REQUIREMENTS, including 4.6.1 through 4.6.9

\_\_\_\_\_  
Company

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date



**APPENDIX A  
ADDENDUM ACKNOWLEDGEMENT FORM  
SOLICITATION NO.:**

Instructions: Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

Addendum Numbers Received: *(Check the box next to each addendum received)*

- |   |  |
|---|--|
| <input type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Addendum No. 6  |
| <input type="checkbox"/> Addendum No. 2 | <input type="checkbox"/> Addendum No. 7  |
| <input type="checkbox"/> Addendum No. 3 | <input type="checkbox"/> Addendum No. 8  |
| <input type="checkbox"/> Addendum No. 4 | <input type="checkbox"/> Addendum No. 9  |
| <input type="checkbox"/> Addendum No. 5 | <input type="checkbox"/> Addendum No. 10 |

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

\_\_\_\_\_  
Company

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

NOTE: This addendum acknowledgment should be submitted with the bid to expedite document processing.



**APPENDIX B**



State of West Virginia  
Public Employees Insurance Agency  
601 57<sup>th</sup> Street, Suite 2  
Charleston, West Virginia 25304

**NOTICE OF INTENT TO BID**

On behalf of myself/my institution/firm, I hereby certify that I/we intend to submit a response for the solicitation for Request for Proposals for a PEIA Wellness Program Pilot, through a contract. I have read the terms and conditions of the solicitation and understand the requirements as set for in the RFP for these services and accept the conditions set forth therein.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Individual/Institution/Firm

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

We are submitting the attached written questions regarding this procurement.

YES

NO

This form shall be e-mailed to [thomas.d.miller@wv.gov](mailto:thomas.d.miller@wv.gov) no later than \_\_\_\_\_p.m. on \_\_\_\_\_/\_\_\_\_\_/2017 in order for a vendor to be allowed to submit a response to this RFP.

**APPENDIX C:**

**STATE OF WEST VIRGINIA EXECUTIVE BRANCH BUSINESS ASSOCIATE  
AGREEMENT AND CORRESPONDING APPENDIX A**

**WV STATE GOVERNMENT**

**HIPAA BUSINESS ASSOCIATE ADDENDUM**

This Health Insurance Portability and Accountability Act of 1996 (hereafter, HIPAA) Business Associate Addendum ("Addendum") is made a part of the Agreement ("Agreement") by and between the State of West Virginia ("Agency"), and Business Associate ("Associate"), and is effective as of the date of execution of the Addendum.

The Associate performs certain services on behalf of or for the Agency pursuant to the underlying Agreement that requires the exchange of information including protected health information protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (the "HITECH Act"), any associated regulations and the federal regulations published at 45 CFR parts 160 and 164 (sometimes collectively referred to as "HIPAA"). The Agency is a "Covered Entity" as that term is defined in HIPAA, and the parties to the underlying Agreement are entering into this Addendum to establish the responsibilities of both parties regarding HIPAA-covered information and to bring the underlying Agreement into compliance with HIPAA.

Whereas it is desirable, in order to further the continued efficient operations of Agency to disclose to its Associate certain information which may contain confidential individually identifiable health information (hereafter, Protected Health Information or PHI); and

Whereas, it is the desire of both parties that the confidentiality of the PHI disclosed hereunder be maintained and treated in accordance with all applicable laws relating to confidentiality, including the Privacy and Security Rules, the HITECH Act and its associated regulations, and the parties do agree to at all times treat the PHI and interpret this Addendum consistent with that desire.

NOW THEREFORE: the parties agree that in consideration of the mutual promises herein, in the Agreement, and of the exchange of PHI hereunder that:

**1. Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

- a. **Agency Procurement Officer** shall mean the appropriate Agency individual listed at: <http://www.state.wv.us/admin/purchase/vrc/agencyli.html>.
- b. **Agent** shall mean those person(s) who are agent(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).
- c. **Breach** shall mean the acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information, except as excluded in the definition of Breach in 45 CFR § 164.402.
- d. **Business Associate** shall have the meaning given to such term in 45 CFR § 160.103.
- e. **HITECH Act** shall mean the Health Information Technology for Economic and Clinical Health Act. Public Law No. 111-05. 111<sup>th</sup> Congress (2009).

- f. **Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR Parts 160 and 164.
- g. **Protected Health Information or PHI** shall have the meaning given to such term in 45 CFR § 160.103, limited to the information created or received by Associate from or on behalf of Agency.
- h. **Security Incident** means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.
- i. **Security Rule** means the Security Standards for the Protection of Electronic Protected Health Information found at 45 CFR Parts 160 and 164.
- j. **Subcontractor** means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.

## 2. Permitted Uses and Disclosures.

- a. **PHI Described.** This means PHI created, received, maintained or transmitted on behalf of the Agency by the Associate. This PHI is governed by this Addendum and is limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the original Agreement, and is described in Appendix A.
- b. **Purposes.** Except as otherwise limited in this Addendum, Associate may use or disclose the PHI on behalf of, or to provide services to, Agency for the purposes necessary to complete the tasks, or provide the services, associated with, and required by the terms of the original Agreement, or as required by law, if such use or disclosure of the PHI would not violate the Privacy or Security Rules or applicable state law if done by Agency or Associate, or violate the minimum necessary and related Privacy and Security policies and procedures of the Agency. The Associate is directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Agency.
- c. **Further Uses and Disclosures.** Except as otherwise limited in this Addendum, the Associate may disclose PHI to third parties for the purpose of its own proper management and administration, or as required by law, provided that (i) the disclosure is required by law, or (ii) the Associate has obtained from the third party reasonable assurances that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party by the Associate; and, (iii) an agreement to notify the Associate and Agency of any instances of which it (the third party) is aware in which the confidentiality of the information has been breached. To the extent practical, the information should be in a limited data set or the minimum necessary information pursuant to 45 CFR § 164.502, or take other measures as necessary to satisfy the Agency's obligations under 45 CFR § 164.502.

### 3. Obligations of Associate.

- a. **Stated Purposes Only.** The PHI may not be used by the Associate for any purpose other than as stated in this Addendum or as required or permitted by law.
- b. **Limited Disclosure.** The PHI is confidential and will not be disclosed by the Associate other than as stated in this Addendum or as required or permitted by law. Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI unless Agency gives written approval and the individual provides a valid authorization. Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Associate will report to Agency any use or disclosure of the PHI, including any Security Incident not provided for by this Agreement of which it becomes aware.
- c. **Safeguards.** The Associate will use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the PHI, except as provided for in this Addendum. This shall include, but not be limited to:
  - i. Limitation of the groups of its workforce and agents, to whom the PHI is disclosed to those reasonably required to accomplish the purposes stated in this Addendum, and the use and disclosure of the minimum PHI necessary or a Limited Data Set;
  - ii. Appropriate notification and training of its workforce and agents in order to protect the PHI from unauthorized use and disclosure;
  - iii. Maintenance of a comprehensive, reasonable and appropriate written PHI privacy and security program that includes administrative, technical and physical safeguards appropriate to the size, nature, scope and complexity of the Associate's operations, in compliance with the Security Rule;
  - iv. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.
- d. **Compliance With Law.** The Associate will not use or disclose the PHI in a manner in violation of existing law and specifically not in violation of laws relating to confidentiality of PHI, including but not limited to, the Privacy and Security Rules.
- e. **Mitigation.** Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the PHI by Associate in violation of the requirements of this Addendum, and report its mitigation activity back to the Agency.

f. **Support of Individual Rights.**

- i. **Access to PHI.** Associate shall make the PHI maintained by Associate or its agents or subcontractors in Designated Record Sets available to Agency for inspection and copying, and in electronic format, if requested, within ten (10) days of a request by Agency to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524 and consistent with Section 13405 of the HITECH Act.
- ii. **Amendment of PHI.** Within ten (10) days of receipt of a request from Agency for an amendment of the PHI or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such PHI available to Agency for amendment and incorporate any such amendment to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.526.
- iii. **Accounting Rights.** Within ten (10) days of notice of a request for an accounting of disclosures of the PHI, Associate and its agents or subcontractors shall make available to Agency the documentation required to provide an accounting of disclosures to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR §164.528 and consistent with Section 13405 of the HITECH Act. Associate agrees to document disclosures of the PHI and information related to such disclosures as would be required for Agency to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. This should include a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years from the date of disclosure, or longer if required by state law. At a minimum, such documentation shall include:
  - the date of disclosure;
  - the name of the entity or person who received the PHI, and if known, the address of the entity or person;
  - a brief description of the PHI disclosed; and
  - a brief statement of purposes of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
- iv. **Request for Restriction.** Under the direction of the Agency, abide by any individual's request to restrict the disclosure of PHI, consistent with the requirements of Section 13405 of the HITECH Act and 45 CFR § 164.522, when the Agency determines to do so (except as required by law) and if the disclosure is to a health plan for payment or health care operations and it pertains to a health care item or service for which the health care provider was paid in full "out-of-pocket."
- v. **Immediate Discontinuance of Use or Disclosure.** The Associate will immediately discontinue use or disclosure of Agency PHI pertaining to any individual when so requested by Agency. This includes, but is not limited to, cases in which an individual has withdrawn or modified an authorization to use or disclose PHI.

- g. Retention of PHI.** Notwithstanding section 4.a. of this Addendum, Associate and its subcontractors or agents shall retain all PHI pursuant to state and federal law and shall continue to maintain the PHI required under Section 3.f. of this Addendum for a period of six (6) years after termination of the Agreement, or longer if required under state law.
- h. Agent's, Subcontractor's Compliance.** The Associate shall notify the Agency of all subcontracts and agreements relating to the Agreement, where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum. Such notification shall occur within 30 (thirty) calendar days of the execution of the subcontract and shall be delivered to the Agency Procurement Officer. The Associate will ensure that any of its subcontractors, to whom it provides any of the PHI it receives hereunder, or to whom it provides any PHI which the Associate creates or receives on behalf of the Agency, agree to the restrictions and conditions which apply to the Associate hereunder. The Agency may request copies of downstream subcontracts and agreements to determine whether all restrictions, terms and conditions have been flowed down. Failure to ensure that downstream contracts, subcontracts and agreements contain the required restrictions, terms and conditions may result in termination of the Agreement.
- j. Federal and Agency Access.** The Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI, as well as the PHI, received from, or created or received by the Associate on behalf of the Agency available to the U.S. Secretary of Health and Human Services consistent with 45 CFR § 164.504. The Associate shall also make these records available to Agency, or Agency's contractor, for periodic audit of Associate's compliance with the Privacy and Security Rules. Upon Agency's request, the Associate shall provide proof of compliance with HIPAA and HITECH data privacy/protection guidelines, certification of a secure network and other assurance relative to compliance with the Privacy and Security Rules. This section shall also apply to Associate's subcontractors, if any.
- k. Security.** The Associate shall take all steps necessary to ensure the continuous security of all PHI and data systems containing PHI. In addition, compliance with 74 FR 19006 Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under Section 13402 of Title XIII is required, to the extent practicable. If Associate chooses not to adopt such methodologies as defined in 74 FR 19006 to secure the PHI governed by this Addendum, it must submit such written rationale, including its Security Risk Analysis, to the Agency Procurement Officer for review prior to the execution of the Addendum. This review may take up to ten (10) days.
- l. Notification of Breach.** During the term of this Addendum, the Associate shall notify the Agency and, unless otherwise directed by the Agency in writing, the WV Office of Technology immediately by e-mail or web form upon the discovery of any Breach of unsecured PHI; or within 24 hours by e-mail or web form of any suspected Security Incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the Agency Procurement Officer at [www.state.wv.us/admin/purchase/vrc/agencyli.htm](http://www.state.wv.us/admin/purchase/vrc/agencyli.htm) and,

unless otherwise directed by the Agency in writing, the Office of Technology at [incident@wv.gov](mailto:incident@wv.gov) or <https://apps.wv.gov/ot/ir/Default.aspx>.

The Associate shall immediately investigate such Security Incident, Breach, or unauthorized use or disclosure of PHI or confidential data. Within 72 hours of the discovery, the Associate shall notify the Agency Procurement Officer, and, unless otherwise directed by the Agency in writing, the Office of Technology of: (a) Date of discovery; (b) What data elements were involved and the extent of the data involved in the Breach; (c) A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data; (d) A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized; (e) A description of the probable causes of the improper use or disclosure; and (f) Whether any federal or state laws requiring individual notifications of Breaches are triggered.

Agency will coordinate with Associate to determine additional specific actions that will be required of the Associate for mitigation of the Breach, which may include notification to the individual or other authorities.

All associated costs shall be borne by the Associate. This may include, but not be limited to costs associated with notifying affected individuals.

If the Associate enters into a subcontract relating to the Agreement where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum, all such subcontracts or downstream agreements shall contain the same incident notification requirements as contained herein, with reporting directly to the Agency Procurement Officer. Failure to include such requirement in any subcontract or agreement may result in the Agency's termination of the Agreement.

- m. **Assistance in Litigation or Administrative Proceedings.** The Associate shall make itself and any subcontractors, workforce or agents assisting Associate in the performance of its obligations under this Agreement, available to the Agency at no cost to the Agency to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Agency, its officers or employees based upon claimed violations of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inaction or actions by the Associate, except where Associate or its subcontractor, workforce or agent is a named as an adverse party.

#### 4. Addendum Administration.

- a. **Term.** This Addendum shall terminate on termination of the underlying Agreement or on the date the Agency terminates for cause as authorized in paragraph (c) of this Section, whichever is sooner.
- b. **Duties at Termination.** Upon any termination of the underlying Agreement, the Associate shall return or destroy, at the Agency's option, all PHI received from, or created or received by the Associate on behalf of the Agency that the Associate still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, the Associate shall extend the protections of this Addendum to the PHI and limit further uses and disclosures to the purposes that make the return or destruction of the PHI infeasible. This shall also apply to all agents and subcontractors of Associate. The duty of the Associate and its agents



and subcontractors to assist the Agency with any HIPAA required accounting of disclosures survives the termination of the underlying Agreement.

- c. **Termination for Cause.** Associate authorizes termination of this Agreement by Agency, if Agency determines Associate has violated a material term of the Agreement. Agency may, at its sole discretion, allow Associate a reasonable period of time to cure the material breach before termination.
- d. **Judicial or Administrative Proceedings.** The Agency may terminate this Agreement if the Associate is found guilty of a criminal violation of HIPAA. The Agency may terminate this Agreement if a finding or stipulation that the Associate has violated any standard or requirement of HIPAA/HITECH, or other security or privacy laws is made in any administrative or civil proceeding in which the Associate is a party or has been joined. Associate shall be subject to prosecution by the Department of Justice for violations of HIPAA/HITECH and shall be responsible for any and all costs associated with prosecution.
- e. **Survival.** The respective rights and obligations of Associate under this Addendum shall survive the termination of the underlying Agreement.

#### 5. General Provisions/Ownership of PHI.

- a. **Retention of Ownership.** Ownership of the PHI resides with the Agency and is to be returned on demand or destroyed at the Agency's option, at any time, and subject to the restrictions found within section 4.b. above.
- b. **Secondary PHI.** Any data or PHI generated from the PHI disclosed hereunder which would permit identification of an individual must be held confidential and is also the property of Agency.
- c. **Electronic Transmission.** Except as permitted by law or this Addendum, the PHI or any data generated from the PHI which would permit identification of an individual must not be transmitted to another party by electronic or other means for additional uses or disclosures not authorized by this Addendum or to another contractor, or allied agency, or affiliate without prior written approval of Agency.
- d. **No Sales.** Reports or data containing the PHI may not be sold without Agency's or the affected individual's written consent.
- e. **No Third-Party Beneficiaries.** Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Agency, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provisions in this Addendum. The interpretation of this Addendum shall be made under the laws of the state of West Virginia.
- g. **Amendment.** The parties agree that to the extent necessary to comply with applicable law they will agree to further amend this Addendum.
- h. **Additional Terms and Conditions.** Additional discretionary terms may be included in the release order or change order process.

AGREED:

Name of Agency: \_\_\_\_\_

Name of Associate: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

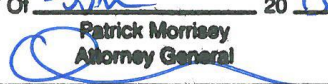
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Date: \_\_\_\_\_

Form - WVBA-012004  
Amended 06.26.2013

APPROVED AS TO FORM THIS 26<sup>th</sup>  
DAY OF Jan 20 13  
BY   
Patrick Morrissey  
Attorney General

**STATE OF WEST VIRGINIA EXECUTIVE BRANCH**

**BUSINESS ASSOCIATE AGREEMENT**

**Appendix A**

Name of Associate: \_\_\_\_\_

Name of Agency: **The West Virginia Public Employees Insurance Agency**

Describe the PHI. If not applicable please indicate the same.

Per 45 CFR, Part 160.103

Health information means any information, whether oral or recorded in any form or medium, that:

- (1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
- (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

Individually identifiable health information is information that is a subset of health information, including demographic information collected from an individual, and:

- (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
  - (i) That identifies the individual; or
  - (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Protected health information means individually identifiable health information:

- (1) Except as provided in paragraph (2) of this definition, that is:
  - (i) Transmitted by electronic media;
  - (ii) Maintained in electronic media; or
  - (iii) Transmitted or maintained in any other form or medium.

