

*State of West Virginia
Public Employees Insurance Agency*

**REQUEST FOR PROPOSAL
FOR
FRINGE BENEFITS MANAGEMENT
AND
ADMINISTRATIVE SERVICES**

IHPEI180003



August 21, 2017

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WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE AGENCY

REQUEST FOR PROPOSAL FOR
FRINGE BENEFITS MANAGEMENT AND ADMINISTRATIVE SERVICES

1. GENERAL INFORMATION

1.1 Purpose

The West Virginia Public Employees Insurance Agency (Agency) is soliciting proposals to provide administrative services for its IRS Section 125-qualified cafeteria plan known as Mountaineer Flexible Benefits.

1.2 Overview

The Agency provides optional additional benefits to certain employees through the Mountaineer Flexible Benefits plan, an IRS Section 125 cafeteria plan. The optional benefits currently include four dental benefit options; two vision benefit options; long-term and short-term disability insurance; a legal services plan; a hearing plan; a Health Savings Account; a limited use FSA and medical and dependent day care flexible spending accounts. The legal services plan is a post-tax benefit. Contracts for these products are between PEIA and the individual product vendors.

The Agency is seeking a vendor to administer the plan. The Vendor will be responsible for all aspects of the plan, including producing and distributing all communication materials associated with the plan; conducting annual open enrollments; assisting with the procurement of benefits available under this contract; processing all payroll information; collecting and distributing premiums and eligibility information to the benefit vendors, providing periodic reports on plan status; recommending changes to the plan; updating and filing the plan document; and preparing all paperwork required by the IRS.

All costs of this plan are borne by participating employees in the form of premiums and administrative fees. By State statute, no State dollars may be expended in the administration of this program.

1.3 General

These and other professional service contract awards are not subject to the provisions or rules of the Purchasing Division of the West Virginia Department of Administration. (Refer to W. Va. Code 5-16- 9(e) Agreements and contracts entered into under this RFP are not subject to the provisions or rules of the Purchasing Division of the State of West Virginia.

1.4. RFP Format

This RFP has five sections. "Section 1" contains general procurement information and procedures; "Section 2" describes the background and work environment; "Section 3" describes the work to be performed and establishes the contractual terms and conditions; "Section 4" describes information required from bidders; and "Section 5" contains the evaluation methodology.

1.5. Inquiries

Requests for additional information regarding specifications of this RFP must be submitted in writing to the Referenced person below. The deadline for written inquiries is **September 1, 2017** identified in the *Schedule of Events*, Section 1.19.

Inquiries must be addressed to:

Thomas J. Marchio, Policy Specialist
West Virginia Public Employees Insurance Agency
601 - 57th Street, SE, Suite 2
Charleston WV 25304
thomas.j.marchio@wv.gov

Absolutely NO contact shall be made by the Vendor with any member of the evaluation committee. Violation will result in rejection of the bid. The individual named above is the sole contact for any and all inquiries after this RFP has been released.

1.6. Vendor Registration

Vendors participating in this process should complete and file a *Vendor Registration and Disclosure Statement* (Form WV-1) and remit the registration fee to the West Virginia Purchasing Division. Vendor is not required to be a registered vendor in order to submit a proposal, but the successful bidder must register and pay the fee prior to the award of the contract.

The *Vendor Registration and Disclosure Statement* (Form WV-1), and fee requirement can be located on West Virginia Purchasing Divisions website at www.state.wv.us/admin/purchase under "Vendor Resource Center."

1.7. Oral Statements and Commitments

Vendor must clearly understand that any verbal representations made or assumed to be made during any oral discussions held between Vendor's representatives and any State personnel are not binding. Only the information issued in writing and added to the Request for Proposal by an official written addendum is binding.

1.8. Economy of Preparation

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

1.9. Mandatory Requirements to Bid

In order to submit bids for this RFP to serve as the Mountaineer Flexible Benefits administrator for the Agency, the organization must currently have one client with a total active employee count in excess of **30,000** with an actual enrollment in the Section 125 cafeteria plan in excess of **3,500**.

1.10. Labeling of RFP Sections

The sections within this RFP contain instructions governing how the Vendor's proposal is to be arranged and submitted, and to identify the material to be included therein.

1.10.1. Mandatory Requirements

The mandatory segments included in Sections 3 and 4 require a response, and they describe the minimum requirements requested in this RFP. Any specification or statement containing the word "must", "shall, or "will" is mandatory. The vendor is required to meet the intent of the mandatory specifications to be eligible for consideration and to continue in the evaluation process. A simple "yes" or "no" response to these sections is not adequate. Failure to meet mandatory items shall result in disqualification of the Vendor's proposal and termination of the evaluation process for that Vendor. Decisions regarding compliance with the intent of any mandatory specification shall be at the sole discretion of the State.

1.10.2. Contract Terms and Conditions

Section 3 details the terms and conditions under which the State of West Virginia will enter into a contract.

1.10.3. Informational Sections

All information specifications do not require a response from the Vendor. They are intended to aid the Vendor in structuring an effective proposal capable of meeting the needs of the issuing agency.

1.11. Proposal Format and Submission

1.11.1. Vendors must complete a response to all mandatory specifications in order to be considered. Each proposal must be formatted according to the outline in Section 4 of this RFP. No other arrangement or distribution of the proposal information may be made by the bidder. Failure to respond to specific requirements detailed in the RFP may be basis for disqualification of the proposal. The State reserves the right to waive any informality in the proposal format and minor irregularities.

1.11.2. Submission of Technical and Cost Proposals

One original technical and cost proposal must be submitted in separate and clearly marked envelopes or packages (see 1.11.3. and 1.12.1. below). Failure to do so will result in disqualification.

Submit separate originals to:

Thomas J. Marchio, Policy Specialist
West Virginia Public Employees Insurance Agency
601 - 57th Street, SE, Suite 2
Charleston WV 25304
thomas.j.marchio@wv.gov

In addition to the original technical and cost proposals, please submit in ~~separate~~ clearly marked envelopes or packages six (6) Agency convenience copies of the technical and cost proposals along with a complete copy in electronic format, e.g. PDF, MS Word or Excel format on a CD Rom or flash drive. (All copies must be submitted **prior** to the date and time stipulated in the RFP *Schedule of Events* on page 7. All bids will be date and time stamped to verify official time and date of receipt.

Vendors mailing proposals should allow sufficient time for mail delivery to ensure timely arrival. PEIA cannot waive or excuse late receipt of proposals that are delayed or late for any reason. Any proposals received after 4:00 PM EST on the proposal due date (October 3, 2017) will be immediately disqualified.

- 1.11.3. The outside of the envelopes or packages should be clearly marked "**Mountaineer Flexible Benefits Proposal Technical**" and "**Mountaineer Flexible Benefits Proposal - Cost**".

1.12. Best Value Purchasing Standard Format

- 1.12.1. Proposal Format and Content: Proposals shall be received in two distinct parts: technical and cost. The cost portion shall be sealed in a separate envelope and will not be opened initially. The proposal submitted in electronic form shall be received on two (2) distinct discs: Technical Proposal on one and Cost Proposal on the second.
- 1.12.2. Technical Bid Opening: PEIA will open only the technical proposals on the date and time (October 4, 2017) specified in the *Schedule of Events* in Section 1.19 on Page 7.
- 1.12.3. Technical Evaluation: An evaluation committee will review the technical proposals, assign appropriate points and make a final written consensus recommendation to the PEIA Director.
- 1.12.4. Cost Bid Opening: Upon approval of the technical evaluation, the PEIA Director or his designee shall open cost proposals.
- 1.12.5. Cost Evaluation: The evaluation committee or other designee of the PEIA Director will review the cost proposals, assign appropriate points

and make final consensus recommendation to the PEIA Director.

1.12.6. Contract Approval and Award: After the cost proposal has been opened, the evaluation committee performs its review and makes its recommendation to the PEIA Director based on the highest scoring vendor. The PEIA Director will review the scoring, justification, and recommendation of the committee. If it is the opinion of the PEIA Director that the analysis of the committee has been performed correctly and he or she is confident that the correct procedures have been followed, the PEIA Director will then make the award to the apparent successful vendor.

The PEIA Director will ensure that all vendors who submitted proposals are informed of the award to the apparent successful vendor.

The PEIA Director will negotiate the contract directly with the Vendor as set forth in W.Va. Code 5-16-9. Upon approval, the contract may be signed.

1.13. Rejection of Proposals

The State shall select the best value solution according to the evaluation criteria. However, the State reserves the right to accept or reject any or all proposals, in whole or in part at its discretion. The State reserves the right to withdraw this RFP at any time and for any reason. Submission of, or receipt by the State of proposals confers no rights upon the bidder nor does it obligate the State in any manner.

A contract based on this RFP and the Vendor's proposal, may or may not be awarded. Any contract resulting in an award from this RFP is not valid until properly executed by the Agency.

1.14. Incurring Costs

The State and any of its employees or officers shall not be held liable for any expenses incurred by any bidder responding to this RFP for expenses to prepare or deliver the proposal, or to attend any meeting for oral presentations.

1.15. Addenda

If it becomes necessary to revise any part of this RFP, an official written addendum will be issued by the State to all bidders of record.

1.16. Independent Price Determination

A proposal will not be considered for award if the price in the proposal was not arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to prices with any competitor unless the proposal is submitted as a joint venture.

1.17. Price Quotations

The price(s) quoted in the bidder's proposal will not be subject to any increase and will be considered firm for the life of the contract unless specific provisions have been provided for adjustment in the original contract as negotiated by the PEIA Director.

1.18. Public Record

1.18.1. Submissions are Public Record. All documents submitted which are related to purchase orders or contracts are considered public records. All bids, proposals, or offers submitted by bidders shall become public information and are available by appointment for inspection during normal official business hours in the PEIA offices.

1.18.2. Written Release of Information. All public information may be released with or without a Freedom of Information Act request; however, only a written request will be acted upon with duplication fees paid in advance. Duplication fees shall apply to all requests for copies of any document. Currently the fees are \$2.50/page, or a minimum of \$10.00 per request, whichever is greater.

1.18.3. Risk of Disclosure. The only exemptions from disclosure of information are listed in West Virginia Code §298-1-4. Primarily, trade secrets as submitted by a bidder are the only exemption from public disclosure. The submission of any information to the State by a vendor puts the risk of disclosure on the vendor. The State will make a reasonable effort not to disclose information that is legitimately within the guidelines of §298-1-4 and is properly and in good faith labeled "proprietary information not for public disclosure." The State does not guarantee non-disclosure of any information to the public. Designation of an entire proposal or excessive portions of the proposal as "proprietary" is not considered to be in good faith and will be disregarded.

1.19. Schedule of Events

The following is the tentative schedule of events for this procurement. Adjustments may be made if they become necessary.

Release of the RFP..... August 21, 2017
Intent to Bid Letter August 28, 2017
Vendor’s Written Questions

Submission Deadline	September 1, 2017
PEIA Response to Questions	September 12, 2017
Proposals Due (By 4:00 pm EST)	October 3, 2017
Technical Proposals to be Opened	October 4, 2017
Oral Presentation (If necessary)	October 18, 2017
Contract Award (Anticipated)	October 31, 2017
Open Enrollment Commences	April 2, 2018
Open Enrollment Ends	May 15, 2018
New Plan Year Begins	July 1, 2018

1.20. Letter of Intent to Bid

A letter of intent to bid (**Exhibit A**) must be submitted to PEIA on or before 4:00 pm on August 28, 2017. Paper of electronic format is acceptable. To email the letter of intent, send it to thomas.j.marchio@wv.gov.

1.21. Bond Requirement

Vendors will be required to submit a litigation bond. (The litigation bond may be waived by completion and submission of the *Total Waiver of Legal Challenge*. The bond requirement is described in detail in Section 3 of this RFP.

1.22. No Debt Affidavit

West Virginia State Code §5A-3-10a requires that all proposers submit an affidavit of debt which certifies that there are no outstanding obligations or debts owed the State of West Virginia. The No Debt Affidavit is attached to this RFP as (**Exhibit B**) and **Must** be completed, signed and returned with your proposal.

1.23 Vendor Preference Certificate

Vendors will be required to submit a Vendor Preference Certificate. The Vendor Preference Certificate form location is attached to this RFP as (**Exhibit C**)

2. OPERATING ENVIRONMENT

2.1. Location

The Agency is located at 601 - 57th Street, SE, Suite 2, Charleston WV 25304.

2.2. Background

PEIA is the agency of the State of West Virginia that is charged with providing optional additional benefits through the Mountaineer Flexible Benefits plan to approximately 218,000 members (total lives). These members include active employees, non-Medicare eligible retirees, Medicare eligible retirees, Managed care members, and covered dependents. Employees of State agencies, colleges, universities, county boards of education and those local government agencies that choose to participate in the plan. However, not all county boards of education, or Local governments, currently participate in the Mountaineer Flexible Benefits plan. Current enrollment in the Mountaineer Flexible Benefit plan is approximately **31,911 active employees and 17,030 retired employees.**

PEIA implemented the Mountaineer Flexible Benefits plan in March 1992 to provide optional additional benefits to eligible employees. All benefits available under the plan are 100% employee-paid. The current enrollment summary is illustrated in (Exhibit D).

The plan currently offers four indemnity dental benefit plans from Delta Dental, two vision benefit options from MetLife, long and short-term disability insurance from Standard Insurance Company, a group legal services plan from Hyatt Legal Plans, a hearing plan from EPIC, and a Medical FSA, a Dependent Care FSA, a Health Savings Account, and a Limited-use FSA from PayFlex. Existing contracts are between these companies and the Agency, and will not be re-bid until an administrator is chosen through this RFP. They will continue through Plan Year 2018 (June 30, 2018). Current enrollment information is included in this RFP (Exhibit C).

The Agency desires to continue the growth of the program and to expand the availability of the program to include local government agencies. The local government agencies range in size from public libraries with one or two employees to cities and counties with hundreds of employees.

Each participating agency has an employee designated as the benefit coordinator. This person is responsible for all enrollments and changes for employees of his/her agency. Although their work involves PEIA, they are not employed by or responsible to the PEIA. Levels of benefit coordinator training and cooperation vary widely.

Payroll for employees of State agencies and colleges and universities are handled through the State of West Virginia OASIS, West Virginia University, West Virginia University Parkersburg, and Marshall University payroll system. However, payroll for county boards of education, other colleges and universities and local government agencies are handled through various means, depending on the size of the agency. Some agencies have sophisticated payroll systems, while others are still handling payroll manually. **The Vendor will be required to interface with all of these systems.**

3. PROCUREMENT SPECIFICATIONS

3.1. General Requirements

The Vendor will be responsible, at a minimum, for the following:

- a. Receipt of policyholder funds from participating agencies, including the State of West Virginia, universities and colleges, county boards of education and local government agencies.
- b. Maintenance of all funds in accounts that are open to inspection at all times by the Agency. These funds will be deposited into a bank account which is acceptable to the Agency.
- c. Disbursement and payment of funds to insurance providers, third party providers, or participants.
- d. Implementation, including a written Master Plan.
- e. Plan Design, in subsequent years.
- f. Marketing, education, and enrollment which will include a toll-free telephone number available to all covered participants within the State of West Virginia.
- g. Administration and plan account management.
- h. Customer service.
- i. Review and evaluation of the plan and its attendant benefits.
- j. Financial recordkeeping and reporting.
- k. Statutory and regulatory compliance.
- l. Solicitation and review of benefit proposals for the benefits available under this plan. The Vendor will make recommendations to the Agency regarding best proposal and final benefit vendor selection. The solicitation document, prospective benefit vendor list, and **all** other aspects of benefit procurement will require the Agency's approval.
- m. Administer COBRA services for the dental plans, the vision plans, the hearing plan, and FSA's.
- n. Provide eligibility verification for claims to necessary insurance providers.

3.2. Scope of Work

The successful vendor shall perform the following functions:

3.2.1. Eligibility and Enrollment

- a. Successful vendor **must** offer on-line enrollment in addition to hard copy form enrollment.
- b. Construct appropriate master files for each individual participant by means of enrollment information generated by the vendor from enrollment forms from computer files supplied by the incumbent vendor.
- c. After enrollment, provide participants with notice of their benefit

elections as part of the enrollment confirmation letter.

- d.** Transmit eligibility data to the benefit vendors at an agreed time and in a format agreeable to both the administrator and the benefit vendor.
- e.** Reconcile eligibility errors with the benefit vendors on a timely basis to assure smooth operation of the plan for participants.

3.2.2. Customer Service

- a.** Provide a toll-free telephone number and an interactive website for participants' use to obtain general information about their FSAs and other benefits under this plan. Available information must include specific details of account balances and transactions related to FSAs. If the telephone system is automated, participants should have the option to speak to a dedicated customer service representative.
- b.** Telephone service shall be available, at a minimum, from 8:00 a.m. to 7:00 p.m. ET, Monday through Friday.
- c.** Adequate personnel shall be available to respond to incoming calls within 60 seconds or less at all times.
- d.** A dedicated telephone number and e-mail address of a contact person who has expertise in the Mountaineer Flexible Benefits plan and can respond to questions from PEIA staff and the various agency benefit coordinators shall be provided. This should be available from 8:00 a.m. to 7:00 p.m. ET, Monday through Friday. A 24-hour response time shall be deemed acceptable for providing answers to questions.
- e.** Assistance shall be provided to eligible participants during the annual open enrollment period by means of the telephone and/or face to face "walk-ins", at a minimum, from 8:00 a.m. to 5:00 p.m. ET, Monday through Friday.
- f.** Personal and confidential telephone counseling should be provided to help individuals understand the benefits available to them, including the insurance coverages, the concept of salary reduction arrangements and reimbursement accounts, as well as the completion of the enrollment application.
- g.** Operate an automatic call distribution system which allows for the measurement of the number of abandoned calls, call waiting times, etc. All calls shall be documented, which shall include the time and date of the call, the wait time, the name of the telephone counselor, the nature of the call, and the disposition of the call.
- g.** Advise PEIA's representative immediately whenever there are problems in the claims system which may create public inquiries, such as system breakdowns, missed payment cycles, or egregious errors.
- h.** Receive, evaluate, and respond to participants' questions by telephone, mail, fax, or electronically (e-mail) in an accurate, polite, timely, and confidential manner.
- i.** Provide referral service to employees inquiring about benefits provided by the insurance providers.

3.2.3. Educational Materials and Training

- a.** Provide and pay for educational materials for prospective and current participants for each open enrollment during the life of the contract. No additional costs shall be billed outside of the contract.
 - PEIA will have final approval of **all** copy to be included in the materials. The Vendor will be responsible for all printing, overprinting, and distribution costs.
 - PEIA will pay postage for mailing enrollment materials to home addresses of eligible active employees and retirees. These funds will be derived from forfeitures from the flexible spending accounts.
 - A plain text (non-graphic) copy must be provided to PEIA for printing of alternate formats no later than 30 days prior to open enrollment.
 - Prepare a one page flyer for PEIA's Shopper's Guide promoting Mountaineer Flexible Benefit plans and a one page flyer to be included in PEIA's retirement packets.
- b.** Prepare a Mountaineer Flexible Benefits group-specific administrative plan manual, with provision for updates, for use by the Vendor's claims processors and customer service representatives to include, but not be limited to, reporting requirements, standards, and processing procedures and policies for the administration of the fringe benefits plan. Provide a draft of this manual to the Agency for approval at least 30 days prior to start of the plan year.
- c.** Prepare a Mountaineer Flexible Benefits group-specific reference manual, with provision for updates, for use by agency benefit coordinators to include, but not be limited to, eligibility and enrollment information, instructions for processing enrollments, instructions for processing refunds and overpayments, information on member appeal rights and general information about the enrollment and dis-enrollment rules required by Section 125.
- d.** Participate in **all** PEIA sponsored benefit fairs during Open Enrollment (approximately 12-15 per year). Providing members with details of benefits available and instructions for completing enrollment forms.
- e.** Pursue opportunities to meet with employees at their work locations during open enrollment either on a one-to-one basis or in group benefit presentations.
- f.** Have a visible presence in the field throughout the open enrollment period.
- g.** Participate in PEIA's regional benefit coordinator training sessions (approximately 10 per year) prior to open enrollment.
- h.** Participate in PEIA benefit coordinator training sessions throughout the plan year.

3.2.4. Flexible Spending Account Requirements

The selected Vendor shall provide a responsive, efficient, auditory, service-oriented system for the administration of the State of West Virginia's existing health care and dependent care reimbursement accounts, to include the following:

a. Account Creation and Maintenance

- Successful vendor **must** offer on-line account access.
- Establish separate health care and dependent care
- Reimbursement accounts for eligible employees.
- Record and update changes in participants' contribution information as they are received from each agency's benefit coordinator. Allow corrections to a participant's account(s) in the event that erroneous transactions are posted to it. Payrolls are processed according to the agency's payroll schedule and updates to participants' accounts by the Vendor are expected in the same time frame. If a scheduled contribution is not received for an individual account, suspend that account's activity, as appropriate, and request clarification from the benefit coordinator.

b. Flexible Benefit Reimbursement Processing

- Successful vendor **must** offer on-line claim submissions.
- Accept claims from participants by means of mail, facsimile, or electronically. Confirm eligibility of claimants and the availability of funds.
- Verify claims documentation and determine compliance of the claims, in accordance with the State of West Virginia's flexible benefits plan document
- Determine that the claim is valid with respect to the item of expense, the date of service, and the eligibility of the claimant, pursuant to Prop. Treas. Reg. § 1.125- 2
- Record and code claims in sufficient detail to permit required reporting and to avoid duplicate payments.
- Screen claims prior to payment to uncover potential duplicate claims. Checking for duplicate claims must be an automated feature of the payment system. Investigate and resolve potential duplicate filings.
- Approve reimbursement payment requests. Determine amounts available for reimbursement payments. Generate payment checks

or direct deposit. Ensure that the FSA Administrator's web-site clearly explains the basis for denial, if applicable, and advise the claimant of how the claim may be perfected or to whom the denial may be appealed. Reissue payment checks when necessary, at no charge.

- Provide reimbursement forms and the payment check stock.
- Develop a claims payment schedule that conforms to, or exceeds, a seven (7) business day cycle.
- Produce demand letters for collecting any amounts due from participants and process refunds for participants, as required.
- The FSA Administrator's web-site will disclose the status of his/her accounts.
- The FSA Administrator's web-site will advise participants to possible forfeitures (including information on the two months and 15 day grace period and 120 day run-out).
- Processed claims incurred during the plan year and September 15th grace period that are received on or before October 31st run-out of the next plan year. Except during the first year of the contract, process claims simultaneously for more than on (1) plan year (that is, claims for the current plan year and claims for the 75-day grace period of the previous plan year). Monitor and report claims payments by plan year.
- During the 75-day grace period, the FSA Administrator's web-site will provide account balances. These provisions shall apply equally in the event of the cancellation or termination of the contract resulting from this RFP for any of reason to the extent that the Vendor shall be responsible for processing eligible claims submitted by participants for a 75-day run-out period subsequent to the effective date of cancellation or termination of the contract.
- The choice of alternative methods of reimbursement must be available to offer to participants, i.e., direct electronic deposit, debit card, etc. at no cost to the participant.

3.2.5. Banking Arrangements

- a.** The Vendor shall establish appropriate bank accounts at a financial institution **approved** by PEIA, which account shall be used solely for the operations of the plans covered by this RFP. Ownership of all funds shall reside with the State of West Virginia. The Vendor, however, shall have authority to disburse funds under its own signature.
- b.** Write checks from the special bank account to pay premiums to the providers of benefits under this plan and to reimburse participants for flexible spending account claims.
- c.** Process deposits and other monies, as received, into the special bank account and post all individual sub-accounts. The Vendor must post actual amounts withheld to the appropriate individual accounts.
- d.** Reconcile the special bank account on a monthly basis within 45

- days of the monthly closing date of the account.
- e. Provide the Agency with an audited reconciliation of the fund within 45 days of the end of the 120-run out period following each plan year, providing balances and listing all outstanding checks.
 - f. Safeguard check stock and control signature authority according to best GAAP procedures or equivalent business practices. Account for all wasted, voided, and manual checks
 - g. Secure appropriate errors and omissions insurance so as to indemnify the State of West Virginia in case of fraud or embezzlement.
 - h. All stale dated checks must be turned over to the West Virginia Treasurer's Office - Unclaimed Property Division in the proper time frame.

3.2.6. Auditing

- a. Have an audit conducted of the plan year's activity by an outside auditing firm following the end of the run- out period, and provide the Agency with the results.
- b. The entity must provide copies of its independently audited financial statements and accompanying independent auditors' report annually.
- c. Produce and maintain payment registers and associated documents that provide a clear and complete audit trail of the entire administrative process.
- d. Provide a **SOC 1** audit report performed by an independent firm encompassing at least 6 months of the Agency's fiscal/plan year, annually.

3.2.7. Management Reports

- a. Provide, at a minimum, the management reports listed in (**Exhibit E**) at no additional cost to the Agency. The reports must be submitted as specified in by the 20th day of the month following the reporting date.

3.2.8. Administrative Duties

- a. Prepare and distribute the required certificates of prior creditable coverage pursuant to the Health Insurance Portability and Accountability Act (HIPAA) to individuals terminating participation under any applicable benefit.
- b. Prepare and file the appropriate Form 5500 annual reports with the Internal Revenue Service.
- c. Perform the applicable non-discrimination tests for cafeteria plans in accordance with Section 125 of the Code.
- d. Provide General contract administration of benefit vendors

offering under this plan.

3.2.9. Account Management

- a. **An on-site staff must be housed at the PEIA offices to provide customer service, work with benefit coordinators, plan open enrollment in cooperation with PEIA staff, and maintain contact with benefit vendors.**
- b. Interlace with benefit vendors to resolve customer service problems and clarify benefit issues.
- c. Negotiate annual renewals and premiums with benefit vendors.
- d. Have the financial stability and capability to handle the additional volume that the State of West Virginia's program will generate with the appropriate start-up costs, etc., as indicated by its most recent annual report and audited financial statement.

3.3. Special Terms and Conditions

- 3.3.1. Insurance Requirements: The vendor must possess and maintain Professional Liability Insurance in a form acceptable to the Agency, which shall cover the Vendor, its officers, employees, and agents for any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, or omission committed by the Vendor in the performance of its duties and responsibilities as the administrator under this contract, including any hold harmless and/or indemnification agreement. The Professional Liability Insurance shall be maintained from the inception of the Vendor's service under the contract until at least three (3) years after completion of all services required under the contract. The required Professional Liability Insurance shall have a limit of liability of at least \$1,000,000 foreachoccurrence.
- 3.3.2. License Requirements: The vendor must employ an account manager who is a licensed health and life insurance agent in the State of West Virginia.
- 3.3.3. Litigation Bond: Each bidder responding to this request for proposal is **required** to submit a litigation bond in the amount of \$30,000 made payable to the West Virginia Public Employees Insurance Agency. This bond must be issued by a surety company licensed to do business in the State of West Virginia with the West Virginia Insurance Commission, on a form acceptable to the State, and countersigned by a West Virginia Resident Agent. The only acceptable alternate forms of the bond are (1) a company certified check (not an individual) or (2) a cashier's check.

The purpose of the litigation bond is to discourage unwarranted or frivolous law suits pertaining to the award of a contract from this RFP. Secondly, the bond provides a mechanism for the State of West Virginia, the Agency, it's officers, employees, or agents thereof to recover damages, including, but not limited to, attorney fees, loss of revenue, loss of grants or portions thereof, penalties imposed by the

federal government and travel expenses which may result from any such litigation. A claim against the bond will be made if the Vendor contests the award in a court of competent jurisdiction and the grounds are found to be unwarranted or frivolous based on the facts of the award or applicable law as determined by the court.

The bond or alternate form must remain in effect for two years from the proposal submission date. After six (6) months, each vendor may request, and the State anticipates granting, a release of the litigation bond. However, the Vendor will be required to provide a release, signed and notarized in a form that is acceptable to the State, prior to release of the bond that states that the Vendor will not sue.

The Agency **will** waive the litigation bond if the bidder submits in writing on a form acceptable to the Agency a complete waiver of any rights to challenge this RFP/award in any jurisdiction or venue. The only acceptable alternative to the litigation bond is the submission of this signed "Bidder's Total Waiver of Legal Challenge" form included with the vendor's bid. **(Exhibit F).**

Failure to submit an appropriate bond, alternate bond, or signed waiver form with the proposal at the time of bid opening will result in automatic disqualification of the vendor's proposal and the proposal will be considered non-responsive.

3.4. General Terms and Conditions

By signing and submitting their proposal, the successful Vendor agrees to be bound by all the terms contained in Section 3 of this RFP.

3.4.1. 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.

3.4.2. Prohibition Against Gratuities. Vendor warrants that it has not employed any company or person other than a bona fide employee working solely for the Vendor or a company regularly employed as its marketing agent to solicit or secure the contract and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts or any other consideration directly contingent upon, or directly resulting from, the award of the contract.

For breach or violation of this warranty, the State shall have the right to annul this contract without liability at its discretion, and/or to pursue any other remedies available under this contract or by law.

3.4.3. Certifications Related to Lobbying. Vendor certifies that no federal

appropriated funds have been paid or will be paid by, or on behalf of, the company or an employee thereof, to any person for purposes of influencing or attempting to influence an officer or employee of any federal entity, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Vendor shall complete and submit a disclosure form to report the lobbying.

Vendor agrees that this language of certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this contract was made and entered into.

- 3.4.4. Vendor Relationship.** The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by the parties to 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 RFP and resulting contract. Neither the Vendor nor any employees or contractors of the Vendor shall be deemed to be employees of the State for any purposes 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, and licensing fees, etc. and the filing of all necessary documents, forms and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and 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.

The Vendor shall not assign, convey, transfer or delegate any of its responsibilities and obligations under this contract to any person, corporation, partnership, association or entity without expressed written consent of the Agency.

- 3.4.5. Indemnification.** The Vendor agrees to indemnify, defend and hold harmless the State and the Agency, their officers, and employees from and against any and all claims relating to the failure to perform or the performance of its services, including but not limited to: (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 from 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 laws.

The PEIA and or the State of West Virginia will not indemnify the Vendor.

- 3.4.6. Contract Provisions.** After the successful Vendor is selected, a formal contract document will be executed between the State and the Vendor. In addition, the RFP and the Vendor's response will be included as part of the contract by reference. The order of precedence is the contract, the RFP, and the Vendor's proposal in response to the RFP.
- 3.4.7 Governing 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:

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>). SEE ATTACHMENT G.

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.

- 3.4.7.1** The vendor will be required to sign (Attachment I) and the corresponding (Attachment II) in Exhibit G of this solicitation.
- 3.4.7.2** 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).
- 3.4.7.3** 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.
- 3.4.7.4** 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.
- 3.4.7.5** 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.
- 3.4.7.6** 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).

3.4.8 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.

3.4.9 Compliance with Laws and Regulations. The Vendor shall procure all necessary permits and licenses to comply with all applicable laws (federal, state or municipal), along with all regulations, and ordinances of any regulating body.

The Vendor shall pay any applicable sales, use, or personal property taxes arising out of this contract and the transactions contemplated thereby. Any other taxes levied upon this contract, the transaction, or the equipment, or services delivered pursuant hereto shall be borne by the Vendor. It is clearly understood that the State of West Virginia is exempt from any taxes regarding performance of the scope of work of this contract.

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.

3.4.10 Subcontracts/Joint Ventures. The Vendor is solely responsible for all work performed under the contract and shall assume prime contractor responsibility for all services offered and products to be delivered under the terms of this contract. The State will consider the Vendor to be the sole point of contact with regard to all contractual matters. The Vendor may, with the prior written consent of the State, enter into written subcontracts for performance of work under this contract; however, the Vendor is totally responsible for payment of

all subcontractors. Subcontractors shall have no standing to challenge a contract award under the RFP.

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. 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.

3.4.11 Term of Contract and Renewals. This contract will be effective July 1, 2018, and shall extend for a period of (3) years, at which time the contract may, upon mutual consent, be renewed. Such renewals are for a period of up to one (1) year. Notice by the Vendor of intent to terminate will not relieve the Vendor of the obligation to continue to provide services pursuant to the terms of the contract.

Any change in federal or state law, or court actions which constitute binding precedent in West Virginia, and which significantly alters the Vendor's required activities or any change in the availability of funds, shall be viewed as binding and shall warrant good faith renegotiation of the compensation paid to the Vendor by the Agency and of such other provisions of the contract that are affected. If such renegotiation proves unsuccessful, the contract may be terminated by the State upon written notice to the Vendor at least thirty (30) days prior to termination of this contract.

- i. Non-Appropriation of Funds. If the Agency is not allotted funds in any succeeding fiscal year for the continued use of the service covered by this contract by the West Virginia Legislature, the Agency may terminate the contract at the end of the affected current fiscal period without further charge or penalty. The Agency shall give the Vendor written notice of such non-allocation of funds as soon as possible after the Agency receives notice. No penalty shall accrue to the Agency in the event this provision is exercised.
- ii. Contract Termination. The State may terminate any contract resulting from this RFP immediately at any time the Vendor fails to carry out its responsibilities or to make substantial progress under the terms of this RFP and resulting contract. The State shall provide the Vendor with advance notice of performance conditions which are endangering the contract's continuation. If, after such notice, the Vendor fails to remedy the conditions contained in the notice within the time period also contained in the notice, the State shall issue the Vendor an order to cease and desist any and all work immediately. The State shall be obligated only for services rendered and accepted prior to the date of the notice of termination. The contract may also be terminated without cause by the Agency with thirty (30) days prior notice.
- iii. Changes. If changes to the original contract become necessary, a formal contract change order will be negotiated by the Agency and the Vendor,

to address changes to the terms and conditions, costs of work included under the contract. Any contract change order must be approved by the PEIA Director prior to the effective date of such amendment. An approved contract change order is required whenever the change affects the payment provision and/or the scope of the work. Such changes may be necessitated by new and amended federal and state regulations and requirements. (No changes are to be implemented except as described above and shall be limited to 10% of the original contract award amount.)

As soon as possible after receipt of a written change request from the Agency, but in no event more than thirty (30) days thereafter, the Vendor shall determine if there is an impact on price with the change requested and provide the Agency a written statement identifying any price impact on the contract or stating that there is no impact. In the event that price will be affected by the change, the Vendor shall provide a description of the price increase or decrease involved in implementing the requested change.

NO CHANGE SHALL BE IMPLEMENTED BY THE VENDOR UNTIL SUCH TIME AS THE VENDOR RECEIVES AN APPROVED WRITTEN CHANGE ORDER. To proceed on verbal approval only is to do so at the VENDOR'S own risk

3.4.12 Liquidated Damages. The Agency may impose liquidated damages on the vendor for failure to perform. To avoid liquidated damages, the vendor must:

- a. Adhere to the Standards of Performance, with the liquidated damages set forth below applied for failure to satisfy the standards, as follows:
 - Strict adherence to any applicable sections of the West Virginia Code and the requirements of the plan document of the Mountaineer Flexible Benefit plan is required.
 - Strict adherence to the Vendor's payment schedule, as agreed to by the Agency, is required.
 - Mailing of the year-end notice on or before 60 days prior to the end of the plan year is required.
 - 100% of clean claims for the flexible spending account reimbursements shall be processed, paid or denied, and mailed within a maximum of ten (10) business days of receipt.
 - Correspondence involving incomplete claims for flexible spending account reimbursements shall be made to claimants within five (5) business days of receipt of claim.
 - 100% of incomplete claims for flexible spending account reimbursements shall be paid, pending, or processed within five (5) business days of receipt of the additional/ corrected information.
 - Vendor shall maintain a claims payment accuracy exceeding 95% for financial accuracy and 95% for non-financial processing accuracy of

all claims for flexible spending account reimbursements processed in each measured period of the contract.

- Correspondence, other than claims, from participants shall be date stamped on the day it is received and responded to within ten (10) calendar days. Telephone inquiries shall be logged and dated on the date received and return calls made within 24 hours.
- The abandonment rate for telephone calls shall not exceed 5% in any given month.
- Vendor shall provide the required reports and strictly adhere to the agreed upon reporting time frames.
- Vendor shall strictly adhere to the agreed upon implementation schedule.

b. Reporting Standards of Performance/Liquidated Damages

Vendor must agree that liquidated damages shall be imposed at the rates described in the chart below. This clause shall in no way be considered exclusive and shall not limit the State's or the Agency's right to pursue any other additional remedy to which the State or Agency may have legal cause for action including further damages against the Vendor. Failure to meet the above Standards of Performance shall be assessed on a quarterly basis, as follows:

Performance Category	Performance Criteria	How Measured	Penalty if Standard Not Met
Claims	<i>Claims Processing:</i> 100% of complete claims for flexible spending account reimbursements should be processed & mailed or direct deposited within ten (10) business days of receipt	Self-reported monthly	\$0.25 per participant
	<i>Claims Processing:</i> 100 % of incomplete claims for flexible spending account reimbursements should be processed within five (5) business days of receipt of the additional/ corrected information	Self-reported monthly	\$0.25 per participant
	<i>Claims Accuracy:</i> 99% Financial	Self-reported monthly	\$0.25 per participant
	<i>Claims Accuracy:</i> 95% Claims payment	Self-reported monthly	\$.025 per participant
Correspondence	Written response mailed within ten (10) days of receipt	Self-reported monthly	\$0.10 per participant

Performance Category	Performance Criteria	How Measured	Penalty if Standard Not Met
	Mailing of year end notices on or before 60 days prior to end of year	Self-reported 30 days after notice is mailed	\$0.15 per participant
Telephone Standards	Telephone inquiries not answered within 24 hours	Self-reported monthly	\$0.10 per participant
	Telephone abandonment rate >5%	Self-reported monthly	\$0.10 per participant
Reports	Reports should be delivered within five (5) business days of designated time frames	Self-reported last day of month following close of quarter	\$0.25 per participant

3.4.13. Record Retention (Access & Confidentiality). Vendor shall comply with all applicable federal and state rules and regulations, and requirements governing the maintenance of documentation to verify any cost of services or commodities rendered under this contract by Vendor. The Vendor shall maintain such records a minimum of six (6) years and make available all records to Agency personnel at Vendor's location during normal business hours upon written request by the Agency within 10 days after receipt of the request.

Vendor shall have access to private and confidential data maintained by the Agency to the extent required for the Vendor to carry out the duties and responsibilities defined in this contract, including the receipt of monthly eligibility files. Vendor agrees to maintain confidentiality and security of the data made available, shall comply with all applicable confidentiality laws or regulations, including HIPAA, and shall indemnify and hold harmless the State and the Agency against any and all claims brought by any party attributed to actions of breach of confidentiality by the Vendor, subcontractors, or individuals permitted access by the Vendor.

3.4.14 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 provision and to employ such provisions as to adequately ensure compliance by their workforce.

3.4.15 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 of the 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.

3.4.16. Acceptance of Terms and Conditions

By submitting a proposal in response to this RFP, Vendor agrees to the terms and conditions set forth therein.

4. PROPOSAL FORMAT

4.1. Vendor's Proposal Format

The proposal must be formatted in the same order, providing the information listed below:

4.1.1. Title Page

Title page should state the RFP subject and number (IHPEI180003), the name of the Vendor and Vendor's business address. The name, title, telephone number, and e-mail address of the authorized contact person to speak on behalf of the Vendor. This page must be dated and signed.

4.1.2. Table of Contents

Clearly identify the material by section and page number.

4.1.3. Section I - Bidder Understanding

A thorough understanding of the Agency's desire to provide an efficient Section 125 cafeteria plan with perpetually growing enrollment and quality benefit choices will be critical. All bidders must provide this in narrative form along with a brief explanation as to why their organization is the right one to serve the Agency as its Section 125 cafeteria plan administrator.

4.1.4. Section II-Vendor Capability Administering Section 125 cafeteria plans

The bidder must demonstrate that they are experienced in administering plans similar in size and nature to the Agency. The evaluation committee reserves the right to determine whether the bidder has met this requirement based on information submitted. However, consideration will be given to bidders who establish they have extensive experience with:

- a. State government entities.
- b. Industry experience in excess of 7 years.
- c. Experienced, qualified staff assigned to the Agency's account.

In order for the bidder to lend credence to their assertions, the following must be provided:

- a. Willing, unconditional references of all entities listed with applicable contact data.
- b. Documentation of corporate charter or other documentation that substantiates the organization's creation and mission.
- c. Resumes detailing professional biographies of proposed PEIA account representatives who will be involved in the development, implementation, and administration of the plan.

4.1.5. Section III - Financial Stability

The bidder must demonstrate that their organization is financially stable. The bidder is required to provide audited financial statements encompassing 4 consecutive fiscal periods with the latest period ending within a minimum of 16 months previous to the proposal's submission date. Any additional independent financial measures pertinent to determining the organizations financial condition will be accepted.

4.1.6. Section IV - Implementation Methodology and Timeline, Ongoing Plan Administration Methodology

All bidders must provide a detailed explanation of their implementation methodology. The explanation should allow the evaluation team to develop a thorough understanding of the organizations implementation plan from beginning to end. All bidders should include a detailed time line that coincides with the implementation plan.

Additionally, an explanation of the bidder's methodology for ongoing administration of the plan subsequent to implementation will also be required. This explanation should address how the bidder plans to perform the scope of work outlined in this RFP and any other significant issues known to the bidder not addressed in the RFP. The explanation should provide information regarding any expectations of PEIA staff or participating employers within the plan.

4.1.7. Cost

The bidder must provide full transparency and disclosure in the cost proposal regarding the pricing of each product.

To this end, we request the costs that will be charged our members and the disclosure of other revenues your company will earn. The information must be provided in the following two formats:

Format 1 - Member Costs:

Premium To Members	Member Administration Costs
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Fees must be inclusive of all costs.

Format 2 – Other Revenue Disclosure:

Commissions	Brokerage Fees	Other
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Respective other revenues will be earnings in addition to the fees paid by the Public Employees Insurance Agency (PEIA) membership. If applicable, sign and submit the attached Resident Vendor Preference Certificate with the proposal.

5. EVALUATION PROCESS

Proposals will be evaluated by a committee of three (3) or more individuals in accordance with the criteria stated. The Vendor who meets all of the mandatory specifications, attains the final highest point score of all vendors (possible one-hundred 100 points maximum) shall be awarded the contract.

The selection of the successful vendor will be made by a consensus of the evaluation committee. The criteria and the assigned weight factors are as follows:

5.1 Evaluation Criteria

The following are the factors and point values:

Bidder Understanding -5Points Possible

Vendor Capability Administering Section 125 Cafeteria Plans - 35 Points Possible

Financial Stability - 15 Points Possible

Implementation Methodology, Time-line, and Ongoing Plan Administration Methodology - 15Points Possible

Cost - 30 Points Possible

Total-100PointsPossible

Each cost proposal cost will be evaluated by use of the following formula:

Lowest price of all proposals

----- $x 30 = Price Score$

Price of Proposal being evaluated

5.2 Minimum Acceptable Score

Vendors must score a minimum of 70% of the total technical points possible. The minimum qualifying score would be 70% of 70 points or a technical score of 49 points or greater to be eligible for further consideration and to continue in the evaluation process. All vendors not attaining the minimum acceptable score (MAS) shall be disqualified and removed from further consideration.

The State will select the successful vendor's proposal based on best value purchasing which is not necessarily the low bidder. Cost is considered, but is not the sole determining factor, for award. The State does reserve the right to accept or reject any or all of the proposals, in whole or in part, without prejudice if to do so is felt to be in the best interests of the State.

Vendor's failure to provide complete and accurate information may be considered grounds for disqualification. The State reserves the right if necessary to ask vendors for additional information to clarify their proposals. Nothing may be added to alter the written solution or method contained in the original proposal after the bid opening.

5.3 Protest of Award

Protest based on the contract award must be submitted in writing to the PEIA Director within five (5) working days from the date of the award announcement. Protest should be sent to:

Ted Cheatham, Director
West Virginia Public Employees Insurance Agency 601 57th Street SE, Suite 2
Charleston, WV 25304

Protest may be submitted by FAX at: (877) 233-4295

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.

5.3.1. Protest Contents

All protests shall contain:

- a.** The name and address of the protesting Bidder.
- b.** A statement of the grounds of the protest.
- c.** Supporting documentation (if available).
- d.** The resolution or relief sought.

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

The Agency 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 PEIA Director. Subcontractors under a vendor's proposal do not have standing to file a protest.

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

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

John A. Myers, Cabinet Secretary
West Virginia Department of Administration
State Capitol Complex, Building 1, Room E-119
1900 Kanawha Boulevard, East
Charleston, WV 25305

If the protesting company 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 PEIA Director. If the PEIA Director is in agreement with the reasons for the expedited request, the PEIA Director will forward the protest to the Department of Administration Cabinet Secretary and inform the requesting vendor of his/her 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 to the Circuit Court of Kanawha County, Charleston, West Virginia.

5.4 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.

5.5 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.

EXHIBITS

EXHIBIT A

State of West Virginia
Public Employees Insurance Agency 601
57th 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 the Request for Proposal dated August 20, 2017 for the State of West Virginia Public Employees Insurance Agency's Fringe Benefits Management and Administrative Services 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

This form shall be e-mailed to thomas.j.marchio@wv.gov no later than 4:00 p.m. EST on August 28, 2017 in order for a vendor to be allowed to submit a response to this RFP.

EXHIBIT B

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

NO DEBT AFFIDAVIT

W.Va. Code §5A3-10a states:

No contract or renewal of any contract may be awarded under this article to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor as defined in this section and the debt owed is an amount greater than five thousand dollars in the aggregate.

Definitions:

"Debt" means any assessment, penalty, fine, tax, or other amount of money owed to the state because of a judgment, fine, permit violation, license assessment, penalty or other assessment presently due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon;

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or its political subdivisions;

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever related to any vendor by blood, marriage, ownership or contract through which the party has a relationship or ownership or other interest with the vendor, so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving the amount that meets or exceeds five percent of the total contract amount.

Exception:

The prohibition does not apply where a vendor has contested any tax administered pursuant to chapter eleven of W.Va. Code, workers' compensation premium, permit fee or environmental fee or assessment, and the matter has not become final, or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

Under penalty of law for false swearing (W.Va. Code § 61,5J), it is hereby certified that the bidder and all related parties do not owe any debts or, if a debt is owed, that the provisions of the exception clause (above) apply.

Vendor's Name: _____

Authorizes Signature: _____

Date: _____

EXHIBIT C

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

Vendor Preference Certificate

Form can be found on The State of West Virginia's web-site under Forms #8

<http://www.state.us/admin/purchase>

EXHIBIT D

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

Current Enrollment Summary

BENEFITS	TYPE	PARTICIPANTS		
		ACTIVE	RETIREES	COBRA
DENTAL		25,102	13,967	85
DISABILITY	LONG-TERM	4,426	N/A	N/A
	SHORT-TERM	3,283	N/A	N/A
HEARING		1,983	2,822	7
VISION PLAN		24,143	12,961	76
FLEXIBLE SPENDING ACCOUNTS	DEPENDENT	433	N/A	0
	MEDICAL	4,673	N/A	3
	LIMITED-USE	52	N/A	0
HEALTH SAVING ACCOUNT		251	N/A	N/A
LEGAL PLAN		1,345	363	N/A

EXHIBIT E

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

Management Reports

Management Reports

Availability Requirements:

All reports shall be available electronically via internet or other acceptable medium. Hard copy reports shall be provided upon request.

Quarterly Reporting:

1. Statement of Forfeiture, Interest Earnings and Net Available Surplus.
2. Performance Categories referenced in section 3.4.14b

Annual Reporting:

3. Annual Statement of Forfeiture, Interest Earnings and Net Available Surplus.
4. Loss Ratio Reports for all Insurance Products.
5. Premium Stabilization Fund Reporting for all insured products.
6. Annual Audit Report
7. SOC 1

EXHIBIT F

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

Proposer's Total Waiver of Legal Challenge

_____ hereinafter "Proposer," wishes to submit a proposal in response to the Request for Proposal for the Fringe Benefits Management and Administrative Services issued August 20, 2017 by The Public Employees Insurance Agency (PEIA) for the state of West Virginia.

The Proposer acknowledges that a mandatory requirement of the RFP is that the Proposer submit a litigation bond with its proposal.

In consideration of the waiver of said litigation bond requirement by the PEIA, and in lieu of such bond, the Proposer agrees:

The Proposer completely waives and foregoes any and all legal right or ability it may now have, or in the future acquire, to initiate any sort of challenge to or against the selection of a proposer and/or the ultimate award of a contract or contracts pursuant to the RFP. This Waiver is entered voluntarily by a representative authorized to legally bind the Proposer and shall be binding on the Proposer, its successors, assigns, heirs and any others claiming under the legal rights of the Proposer. This Waiver shall apply to any, and all types of action, in challenge to or seeking to attack, in any way, the RFP selection process, or the subsequent award of contract(s) to the successful proposer, including but limited to, administrative, judicial, or collateral actions.

Legal Name of the Proposer

By: _____
Authorized Signature

Title: _____
Title of Authorized Signature

Approved:
Public Employees Insurance Agency for the State of West Virginia

By: _____
Authorized Signature

Exhibit G

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

**State of West Virginia Executive Branch Business
Associate Agreement**

And

**State of West Virginia HIPAA Business Associate
Agreement**

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. 111th 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.

- i. 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 and, unless otherwise directed by the Agency in writing, the Office of Technology at 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: _____

Title: _____ Title: _____

Date: _____ Date: _____

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

Appendix A

Name of Associate: _____

Name of Covered Entity Agency(ies): The West Virginia Public Employees Insurance Agency (PEIA)

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.

The information provided to the Associate, pursuant to the Agreement for the purpose(s) of providing fringe benefit services, e.g. dental insurance, vision insurance, FSA, long-term disability, short-term disability, etc. will include the minimum necessary to perform the services thereunder and will specifically include, but may not be limited to the following definitions, terms, and/or conditions:

- a) PEIA member individually identifiable health information or protected health information, including but not necessarily limited to, name(s), names of dependent(s), specific identifying information, e.g. address(es), date(s) of birth, social security number(s), policy number(s), and/or other eligibility information for use in enrolling members in the supplemental insurance service(s).
- b) In any and/or all case(s), only the minimum PHI necessary to perform the Scope of Work under the Agreement will be provided to the Vendor for the meaningful use of allowing PEIA members to enroll in the specific service(s) to which they are entitled.
- c) The Associate may have access to the Covered Entity’s member/dependent PII/PHI via access to information used, stored, and/or maintained by other Business Associates of the Covered Entity, including but not limited to: the Third Party Claims Administrator, the Specialty Pharmacy Benefits Manager, The Data “Warehouse” or repository, the Covered Entity’s Subrogation services provider, etc.
- d) The Associate shall comply with any and/or all provisions of Titles I & II of the Health Insurance Portability and Accountability Act of 1996, Pub.L. 104–191, 110 Stat. 1936, as amended, and the Health Information Technology for Economic and Clinical Health Act (HITECH) enacted as part of the American Reinvestment and Reauthorization Act of 2009 (ARRA), including the Final Omnibus Rule.
- e) Nothing in this document shall relieve the Associate of the liability for the action(s), error(s) and/or omission(s) of its agents, employees, and/or contract employees.

(To be completed by the Agency's Procurement Officer prior to the execution of the Addendum, and shall be made a part of the Addendum. PHI not identified prior to execution of the Addendum may only be added by amending Appendix A and the Addendum, via Change Order).

Name of Associate: _____

Name of Agency: _____

Describe the PHI (do not include any actual PHI). If not applicable, please indicate the same.

ATTACHMENT H

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

Vendor References

Current Client References

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

Former Client References

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

EXHIBIT I

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

Agreement Addendum

Form can be found on The State of West Virginia's web-site under Forms #3

<http://www.state.us/admin/purchase>

EXHIBIT J

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

Active and Retiree Benefit Booklets

Active and Retiree Benefit Booklets can be referenced on PEIA's website

at

www.wvpeia.com