

2

**PHARMACY BENEFITS PURCHASING POOL MANAGEMENT AND PHARMACY  
BENEFITS ADMINISTRATION SERVICES CONTRACT**

7 JET WED

THIS CONTRACT is made this 4th day of April, 2008 by and between Catalyst Rx, Inc. and the State of Maryland, acting through the Department of Budget and Management.

IN CONSIDERATION of the promises and the covenants herein contained, the parties agree as follows:

**1. Definitions**

In this Contract, the following words have the meanings indicated:

- 1.1 "Contract" means this Contract for Pharmacy Benefits Purchasing Pool Management and Pharmacy Benefits Administration Services.
- 1.2 "Contractor" means Catalyst Rx, Inc., a Nevada corporation whose principal business address within the State of Maryland is 800 King Farm Boulevard, Rockville, MD 20850.
- 1.3 "Department" means the Maryland Department of Budget and Management.
- 1.4 "Financial Proposal" means the Contractor's Financial Proposal dated February 2, 2006.
- 1.5 "Procurement Officer" is the individual identified in section 1.6 of the RFP or a successor designated by the Department.
- 1.6 "RFP" means the Request for Proposals for Pharmacy Benefits Purchasing Pool Management and Pharmacy Benefits Administration Services, No. F10R6200071, dated October 4, 2005, including all addendums and attachments issued by the Procurement Officer through November 17, 2005.
- 1.7 "State" means the State of Maryland.
- 1.8 "Technical Proposal" means the Contractor's Technical Proposal, dated November 29, 2005, including all attachments, addendums, clarifications, and subsequent correspondence submitted by the Contractor through February 27, 2006.

**2. Scope of Work**

- 2.1 The Contractor shall provide administration services for the pharmacy benefits plan offered by the State and pharmacy benefits purchasing pool members, including claims processing, network administration, and other plan administration services, for State employees, State retirees, satellite account employees, and their respective dependents, and for the enrolled and eligible participants in the pharmacy benefits plans that are members of the purchasing pool, all as more fully described in the RFP. The services shall be provided in accordance with this Contract and the following exhibits, which are attached and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict

among the Exhibits, the following order of precedence shall determine the prevailing provision.

Exhibit A - The RFP, including attachments and Excel worksheets.

Exhibit B - The Technical Proposal.

Exhibit C - The Financial Proposal.

Exhibit D - State Contract Affidavit Addendum.

- 2.2 If there are any inconsistencies between this Contract and Exhibits A, B, and C, the terms of this Contract shall control. If there is any conflict among the Exhibits, Exhibit A shall control.
- 2.3 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under Article 10, Disputes. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

### 3. Time for Performance

The Contractor shall begin providing services under this Contract upon the earlier of execution by the Department or July 1, 2006.<sup>7</sup> Unless terminated earlier as provided in this Contract, the Contractor shall provide pharmacy benefits purchasing pool and pharmacy benefits plan administration services from July 1, 2006 through June 30, 2011. The Contractor shall provide run-out administration for claims for the twelve-month period immediately following the termination of the Contract.

*Handwritten initials: JEF*

### 4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of the RFP and the Contractor's Financial Proposal.
- 4.2 Each invoice from the Contractor for services rendered shall include the Contractor's federal tax identification number, which is [REDACTED]. The Contractor's e-MarylandMarketplace identification number is 214661. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor, consistent with the schedule identified in the RFP.

Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, are prohibited. Invoices for the payment of services shall be submitted to the Department on the schedule provided in the RFP. The final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

- 4.3 Electronic funds transfer will be used by the State to pay the Contractor for this Contract and any other State payments due Contractor unless the State's Comptroller's Office grants the Contractor an exemption.
- 4.4 In addition to any other available remedies if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer pursuant to this Contract.

## 5. Personnel

Contractor agrees that all personnel identified in its proposal shall be assigned to the State account for the term of the Contract, including any extension, unless such personnel are no longer employed by the Contractor.

## 6. Rights to Records

- 6.1 The Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor for purposes of this Contract shall be the sole property of the Department and shall be available to the Department at any time. The Department shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 6.2 The Contractor agrees that at all times during the term of this Contract and thereafter, the works created and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created under this Contract are not works for hire for the Department, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 6.3 Upon termination of this Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

## **7. Audit Rights**

**7.1** The Contractor shall provide the State at least the following audit rights and any audit rights specified in the RFP, the Technical Proposal and the Financial Proposal:

- (a) to audit any data necessary to ensure the Contractor is complying with all contract terms, such audit rights to include but not be limited to: 100% of pharmacy claims data, which includes at least all NCPDP fields from the most current version and release; retail pharmacy contracts; data management, pharmaceutical manufacturer and wholesaler agreements; mail and specialty pharmacy contracts to the extent they exist with other vendor(s); approved and denied utilization management reviews; clinical program outcomes; appeals; and information related to the reporting and measurement of performance guarantees;
- (b) to audit post termination;
- (c) to audit more than once per year if the audits are different in scope or for different services; and
- (d) to perform additional audits during the year of similar scope if requested as a follow-up to ensure significant or material errors found in an audit have been corrected and are not recurring, or if additional information becomes available to warrant further investigation.

**7.2** The Contractor shall provide reasonable cooperation with requests for information, which includes but is not limited to the timing of the audit, deliverables, data/information requests and your response time to our questions during and after the process. The Contractor shall also provide a response to all "findings" that the Contractor receives within 30 days, or at a later date if mutually determined to be more reasonable based on the number and type of findings.

**7.3** The Contractor shall pay to the State 100% of any overpayment(s) made as determined from an audit ("Recoveries") no later than 30 days after both parties have agreed to the Recoveries.

## **8. Confidentiality**

Subject to the Maryland Public Information Act and any other applicable laws, including HIPAA and the Maryland Confidentiality of Medical Records Act, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third

party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

**9. Non-Hiring of Employees**

No official or employee of the State of Maryland as defined under State Government Article section 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract shall, during the pendency and term of this Contract and while serving as an official or employee of the State become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

**10. Disputes**

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies), both as from time to time amended. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

**11. Maryland Law**

This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

**12. Nondiscrimination in Employment**

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

**13. Contingent Fee Prohibition**

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the Contractor to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee, bona fide salesperson or commercial selling agency, any fee or other consideration contingent on the making of this Contract.

**14. Non-availability of Funding**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

**15. Termination for Cause**

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State of Maryland shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

**16. Termination for Convenience**

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12 (A)(2).

**17. Delays and Extensions of Time**

The Contractor agrees to perform the work under this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or

negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

**18. Suspension of Work**

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

**19. Pre-Existing Regulations**

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

**20. Financial Disclosure**

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, as from time to time amended, which requires that every business that enters into contracts, leases, or other agreement with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

**21. Political Contribution Disclosure**

The Contractor shall comply with the Election Law Article, Sections 14-101 through 14-108, of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county or an incorporated municipality or their agencies, during a calendar year under which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

**22. Retention of Records**

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for at least three years after final payment by the State of Maryland under this Contract or any applicable statute of limitations or other period of record retention required in the RFP, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section.

**23. Compliance with Laws**

The Contractor hereby represents and warrants that:

1. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified.
2. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract.
3. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract.
4. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

**24. Cost and Price Certification**

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon by the parties, was inaccurate, incomplete, or not current.

**25. Subcontracting; Assignment**

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the State of Maryland, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the State. Any such subcontract or assignment shall include the terms of sections 8, 9, and 11 through 24 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.



**26. Indemnification**

**26.1** The Contractor shall indemnify and hold harmless the State, its officers, employees acting within the scope of their employment, and agents against liability for any and all costs, expenses, loss, suits, actions, or claims of any character arising from or relating to the performance of the Contractor or its subcontractors under this Contract.

**26.2** The State of Maryland has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

**26.3** The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

**26.4** The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Contractor's performance under this Contract.

**26.5** This Section 26 survives the termination of this Contract for any liability arising within the period of the statute of limitations associated with such liability.

**27. Administrative**

**27.1 Procurement Officer.** The work to be accomplished under this Contract shall be performed under the direction of the Procurement Officer. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

**27.2 Notices.** All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:


If to the State:            Director, Employee Benefits Division  
                                     State of Maryland  
                                     301 W. Preston St.  
                                     Room 509  
                                     Baltimore, MD 21201


If to the Contractor: General Counsel  
                                     Catalyst Rx, Inc.  
                                     800 King Farm Boulevard  
                                     Suite 400  
                                     Rockville, MD 20850

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

CONTRACTOR

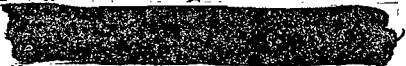
STATE OF MARYLAND  
By: DEPARTMENT OF BUDGET AND  
MANAGEMENT


  
By: Michael P. Donovan  
Chief Financial Officer

  
By: Cecilia Januszkiewicz, Secretary  
T. Eloise Foster


March 16, 2006  
Date

April 4, 2007  
Date

  
Witness: Sally A. Karton  
Executive Assistant

  
Witness

Approved for form and legal  
sufficiency this 4th day  
of April 2006.7

  
Assistant Attorney General

APPROVED BY BPW: 4/4/07  
(Date)

4-5  
(BPW Item #)