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|  | State of South Carolina South Carolina Public Employee Benefit Authority Request For Proposal Amendment 1 | Solicitation Number: | PEBA0352022 |
| | | Date Issued: | 11/14/2022 |
| | | Procurement Officer: | Georgia Gillens, CPPO, CPPB, NIGP-CPP |
| | | Phone: | 803.734.0010 |
| | | Email Address: | ggillens@peba.sc.gov |

DESCRIPTION: **Third Party Administration of the State Flexible Benefits Plan**

SUBMIT OFFER BY (Opening Date/Time): **11/30/2022 3:00 PM**

The Term "Offer" Means Your "Proposal". Your offer must be submitted in a sealed package. The Solicitation Number & Opening Date should appear on the package exterior. See the clause entitled "Submitting Your Offer or Modification."

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:

| | |
|--|--|
| MAILING ADDRESS: S.C. Public Employee Benefit Authority P.O. Box 11960 Columbia, SC 29211-1960 Attention: Georgia Gillens | PHYSICAL ADDRESS: S.C. Public Employee Benefit Authority 202 Arbor Lake Drive Columbia, SC 29223 Attention: Georgia Gillens |
|--|--|

| | |
|-----------------------------------|---|
| AWARD & AMENDMENTS | Award will be posted on 01/06/2023 . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: www.procurement.sc.gov/doing-biz/bid-ops/peba . |
|-----------------------------------|---|

You must submit a signed copy of this form with your Offer. By submitting a proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of one hundred twenty (120) calendar days after the Opening Date. See the clause entitled "Signing Your Offer."

| | | |
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| NAME OF OFFEROR <small>(Full legal name of business submitting the offer)</small> | | Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc. |
| AUTHORIZED SIGNATURE <small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small> | | |
| TITLE <small>(Business title of person signing above)</small> | | STATE VENDOR NO. <small>(Register to obtain S.C. Vendor No. at www.procurement.sc.gov)</small> |
| PRINTED NAME <small>(Printed name of person signing above)</small> | DATE SIGNED | STATE OF INCORPORATION <small>(If you are a corporation, identify the state of incorporation.)</small> |

OFFEROR'S TYPE OF ENTITY: (Check one)

(See "Signing Your Offer" provision.)

☐ Sole Proprietorship ☐ Partnership ☐ Other _____

☐ Corporate entity (not tax-exempt) ☐ Corporation (tax-exempt) ☐ Government entity (federal, state, or local)

PAGE TWO
(Return Page Two with your Offer)

| | |
|---|--|
| HOME OFFICE ADDRESS (Address for offeror's home office / principal place of business) | NOTICE ADDRESS (Address to which all procurement and contract related notices should be sent.) |
| | <div style="display: flex; justify-content: space-between;"> Area Code, Number, Extension Facsimile </div> |
| | Email address |

| | |
|---|---|
| PAYMENT ADDRESS (Address to which payments will be sent.) | ORDER ADDRESS (Address to which purchase orders will be sent) |
| ___ Payment Address same as Home Office Address ___ Payment Address same as Notice Address (check only one) | ___ Order Address same as Home Office Address ___ Order Address same as Notice Address (check only one) |

| | | | | | | | |
|--|-------------------------|------------------|-------------------------|------------------|-------------------------|------------------|-------------------------|
| ACKNOWLEDGMENT OF AMENDMENTS Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See the clause entitled "Amendments to Solicitation.") | | | | | | | |
| Amendment No. | Amendment Issue Date | Amendment No. | Amendment Issue Date | Amendment No. | Amendment Issue Date | Amendment No. | Amendment Issue Date |
| | | | | | | | |
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| DISCOUNT FOR PROMPT PAYMENT (See the clause entitled "Discount for Prompt Payment") | 10 Calendar Days (%) | 20 Calendar Days (%) | 30 Calendar Days (%) | ___ Calendar Days (%) |
|---|----------------------|----------------------|----------------------|-----------------------|

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AMENDMENT #1
REQUEST FOR PROPOSAL – PEBA0352022
Third Party Administration of the State Flexible Benefits Plan

PLEASE NOTE: The original Request for Proposal document is superseded and is being replaced in its entirety by Amendment 1. It is recommended that Offerors, discard all superseded documents as described above and refer and respond only to the solicitation as described in Amendment 1. Attachment 16 includes responses to questions submitted in writing by the deadline. Any changes agreed to as a result of Attachment 16, Q&A have been incorporated into Amendment 1. Changes are highlighted in yellow. However, Offerors are responsible for reading the entire document in the event the State inadvertently failed to highlight a change. The questions and answers submitted in writing by the deadline are included as an attachment for information only. Only the changes incorporated in Amendment 1 are relevant.

All other terms and conditions remain unchanged.

REQUEST FOR PROPOSAL (RFP)
SOLICITATION NUMBER PEBA0352022

THIRD PARTY ADMINISTRATION OF THE STATE FLEXIBLE BENEFITS PLAN

SCHEDULE OF KEY DATES IN THE PROPOSAL PROCESS

All dates subject to change

| | |
|---|-------------|
| Distribution of the Request for Proposal | 10/13/2022 |
| Questions on the RFP | 10/20//2022 |
| Pre-proposal Conference and Final Deadline for Submission of All Questions | 10/25/2022 |
| PEBA's Written Responses to Questions (tentative) | 11/11/2022 |
| Submission and Opening of Proposals (3 p.m.) | 11/30/2022 |
| Notice of Intent to Award Posting Date (tentative) | 01/06/2023 |
| Notice of Intent to Award Becomes Official/Final Statement of Award (tentative) | 01/19/2023 |
| Security Due | 7/1/2023 |
| Contract Performance | 1/1/2024 |

PART 1

INSTRUCTIONS TO OFFERORS – A. GENERAL INSTRUCTIONS

1.1 DEFINITIONS, CAPITALIZATION, AND HEADINGS: Clause headings used in this solicitation are for convenience only and shall not be used to construe meaning or intent. Even if not capitalized, the following definitions are applicable to all parts of the solicitation, unless expressly provided otherwise.

Amendment means a document issued to supplement the original solicitation document.

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity. [11-35-310(3)]

Change Order means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract. [11-35-310(4)]

Contract See the clause entitled “Contract Documents & Order of Precedence.”

Contract Modification means a written order signed by the Procurement Officer directing the Contractor to make changes which the clause of the contract titled “Changes,” authorizes the Procurement Officer to order without the consent of the Contractor. [11-35-310(9)]

Contractor means the Offeror receiving an award as a result of this solicitation.

Cover Page means the top page of the original solicitation on which the solicitation is identified by number.

Offerors are cautioned that Amendments may modify information provided on the Cover Page.

Offer means the proposal submitted in response to this solicitation. The term Proposal is used interchangeably with the term Offer.

Offeror means the single legal entity submitting the offer. See the clause entitled “Signing Your Offer.”

Participant means any individual who participates in the State Flexible Benefits Plan based on his status as an active employee. Participant includes former employees for the limited purpose of allowing continued eligibility for benefits for the remainder of the plan year in which an employee ceases to be employed, but only to the extent provided in the State Flexible Benefits Plan.

Procurement Officer means the person, or his successor, identified as such on either the Cover Page, an amendment, or an award notice.

Solicitation means this document, including all its parts, attachments, and any Amendments.

State means the South Carolina Public Employee Benefit Authority.

State Flexible Benefits Plan means the Flexible Benefits Plan for Employees of the State of South Carolina and Optional Employers, as amended and restated annually.

Subcontractor means any person you contract with to perform or provide any part of the work.

Work means all labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

1.2 AMENDMENTS TO SOLICITATION: (a) The solicitation may be amended at any time prior to opening. All amendments to this solicitation shall be in writing from the State. The State shall not be legally bound by any amendment which is not in writing. All actual and prospective Offerors should monitor the following website for the issuance of amendments: <https://www.procurement.sc.gov/doing-biz/bid-ops/peba>.

(b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by acknowledging receipt in the Offeror's Executive Summary, (4) by letter, or (5) by submitting a proposal that indicates in some way that the Offeror received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified by the amendment(s) remain unchanged.

1.3 AUTHORIZED AGENT (FEB 2015): All authority regarding this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement or the resulting contract.

1.4 AWARD NOTIFICATION: Notice regarding any award, cancellation of award, or extension of award will be posted at the location and on the date specified on the Cover Page or, if applicable, any notice of extension of award. Should the contract resulting from this Solicitation have a total or potential value in excess of one hundred thousand dollars, such notice will be sent electronically to all Offerors responding to the Solicitation and any award will not be effective until the calendar day (including weekends and holidays) immediately following the seventh business day after such notice is given.

1.5 PROPOSAL AS OFFER TO CONTRACT: By submitting Your proposal, You are offering to enter into a contract with the South Carolina Public Employee Benefit Authority. Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An offer may be submitted by only one legal entity; "joint bids" are not allowed.

1.6 PROPOSAL ACCEPTANCE PERIOD: In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing. Otherwise, Your Offer remains valid until final award including through any periods consumed by protests.

1.7 BID IN ENGLISH & DOLLARS: Offers submitted in response to this solicitation shall be in the English language and in US dollars.

1.8 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008): Giving false, misleading, or incomplete information on this certification may render you subject to prosecution under Section 16-9-10 of the South Carolina Code of Laws and other applicable laws.

(a) By submitting an Offer, the Offeror certifies that:

(1) The prices in this Offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Offeror or competitor relating to-

(i) Those prices;

(ii) The intention to submit an offer; or

(iii) The methods or factors used to calculate the prices offered.

(2) The prices in this Offer have not been and will not be knowingly disclosed by the Offeror, directly or indirectly, to any other Offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the Offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the Offer is considered to be a certification by the signatory that the signatory-

- (1) Is the person in the Offeror's organization responsible for determining the prices being offered in this proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; or
- (2)(i) Has been authorized, in writing, to act as agent for the Offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification [As used in this subdivision (b)(2)(i), the term "principals" means the person(s) in the Offeror's organization responsible for determining the prices offered in this proposal];
- (ii) As an authorized agent, does certify that the principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; and
- (iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification.
- (c) If the Offeror deletes or modifies paragraph (a)(2) of this certification, the Offeror must furnish with its Offer a signed statement setting forth in detail the circumstances of the disclosure.

1.9 CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS:

- (a)(1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-
- (i) Offeror and/or any of its Principals-
- (A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;
- (B) Have not, within a three-year period preceding this Offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;
- (C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision; and
- (D) Are not currently excluded from participation in any federal health care programs.
- (ii) Offeror has not, within a three-year period preceding this Offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity.
- (2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).
- (b) Offeror shall provide immediate written notice to the Procurement Officer, or his designee, if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) If Offeror is unable to certify the representations stated in paragraphs (a)(1), Offeror must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer, or his designee, may render the Offeror nonresponsible.
- (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer, or his designee, may terminate the contract resulting from this solicitation for default without cost to the South Carolina Public Employee Benefit Authority or the State and the Contractor will be charged for the cost of replacement goods and services.

1.10 SCREENING FOR EXCLUSION FROM FEDERAL HEALTH CARE PROGRAMS: Prior to the start date of the contract and routinely during the term of the contract, Contractor will screen its employees, contractors, providers,

and other appropriate persons and entities for exclusion from health care programs under Section 1128 of the Social Security Act. Contractor will ensure its compliance with all requirements under Section 1128 of the Social Security Act.

1.11 CODE OF LAWS AVAILABLE (JAN 2006): The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at: <http://www.scstatehouse.gov/code/statmast.php> The South Carolina Regulations are available at: <http://www.scstatehouse.gov/coderegs/statmast.php>

1.12 COMPLETION OF FORMS/CORRECTION OF ERRORS: All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the proposal. Do not modify the solicitation document itself (including the Business Proposal).

1.13 DEADLINE FOR SUBMISSION OF OFFER: The South Carolina Public Employee Benefit Authority will receive sealed proposals until 3:00 p.m. local time on the opening date shown. To be timely filed, proposals and amendments thereto should be received by the time advertised for opening. It is the vendor's sole responsibility to ensure the South Carolina Public Employee Benefit Authority receives these documents. Offerors mailing proposals should allow a sufficient mail delivery period to ensure timely receipt of their proposal by the South Carolina Public Employee Benefit Authority. Any offer received after the Procurement Officer or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or South Carolina Public Employee Benefit Authority's mail room prior to the opening. [R. 19-445.2070(G)]

1.14 DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (FEB 2015): You warrant and represent that your Offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. The two underlying principles are (a) preventing the existence of conflicting roles that might bias a contractor's judgment, and (b) preventing an unfair competitive advantage. If you have an unfair competitive advantage or a conflict of interest, the State may withhold award. Before withholding award on these grounds, an Offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered. Without limiting the foregoing, you represent that your Offer identifies any services that relate to either this solicitation or the work that has already been performed by you, a proposed subcontractor, or an affiliated business of either.

1.15 DRUG FREE WORK PLACE CERTIFICATION (JAN 2004): By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

1.16 DUTY TO INSPECT AND INQUIRE: Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation and will be implemented on time and performed satisfactorily over the entire term of the contract. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation in accordance with clause 1.23 below. Failure to do so will be at the Offeror's risk. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require the better quality or greater quantity of work and/or materials, unless otherwise directed by amendment. Offeror assumes responsibility for any patent ambiguity in the Solicitation, or assumption it makes concerning the Solicitation, which Offeror does not bring to the State's attention pursuant to clause 1.23 below. By submission of a proposal, Offeror also certifies that its Offer has been reviewed by the appropriate individuals within the Offeror's organization and that the goods and services herein, if an award is made to that Offeror, can and will be provided on time and for the compensation proposed, subject to any negotiations that may affect the amount of compensation.

1.17 ETHICS CERTIFICATE (MAY 2008): By submitting an offer, the Offeror certifies that the Offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment of a former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by

consultants; and Section 8-13-1342, regarding restrictions on contributions by Contractor to candidate who participated in awarding of contract. The State may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If Contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, Contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the Procurement Officer at the same time the law requires the statement to be filed.

1.18 OMIT TAXES FROM PRICE (JAN 2004): Do not include any sales or use taxes in your price that the State may be required to pay.

1.19 OPEN TRADE REPRESENTATION (JUN 2015): By submitting an Offer, Offeror represents that Offeror is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300.

1.20 PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015): Violation of these restrictions may result in disqualification of your Offer, suspension or debarment, and may constitute a violation of law. (a) During the period between publication of the solicitation and final award, you must not communicate, directly or indirectly, with the South Carolina Public Employee Benefit Authority or its employees, agents or officials regarding any aspect of this procurement activity, unless otherwise approved in writing by the Procurement Officer. All communications must be solely with the Procurement Officer. [R. 19-445.2010] (b) You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek to have a contract. You represent that your Offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the South Carolina Public Employee Benefit Authority during the period beginning eighteen months prior to the Opening Date. [R. 19-445.2165]

1.21 PROTESTS (MAY 2019): If you are aggrieved in connection with the solicitation or award of the contract, you may be entitled to protest, but only as provided in Section 11-35-4210. To protest a solicitation, you must submit a protest within fifteen days of the date the applicable solicitation document is issued. To protest an award, you must (i) submit notice of your intent to protest within seven business days of the date the award notice is posted, and (ii) submit your actual protest within fifteen days of the date the award notice is posted. Days are calculated as provided in Section 11-35-310(13). Both protests and notices of intent to protest must be in writing and must be received by the appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". The grounds of the protest and the relief requested must be set forth with enough particularity to give notice of the issues to be decided.

1.22 PUBLIC OPENING (JAN 2004): Offers will be publicly opened at the date/time and at the location identified on the Cover Page, or last Amendment, whichever is applicable.

1.23 QUESTIONS FROM OFFERORS: (a) Any prospective Offeror desiring an explanation or interpretation of the solicitation, specifications, etc. (see clause 1.16 above "Duty to Inspect and Inquire"), must request it in writing. Oral explanations or instructions will not be binding. Any information given a prospective Offeror concerning a solicitation will be furnished promptly to all other prospective Offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective Offerors. We will not identify you in our response to your question. (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer as soon as possible regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. Offerors should advise the South Carolina Public Employee Benefit Authority of any problems they perceive as a result of reviewing this solicitation document, which may bear upon their ability to comply, or submit any other questions, which might ultimately bear upon the State's ability to enter into the relationship described herein with a selected vendor.

1.24 REJECTION/CANCELLATION (JAN 2004): The State may cancel this Solicitation in whole or in part and may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065]

1.25 RESPONSIVENESS/IMPROPER OFFERS:

(a) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.

(b) Responsiveness. Any proposal deemed unacceptable pursuant to S.C. Regulation 19-445.2095 (I)(1)(c) and (J) will be rejected, such determinations to be discretionary and not disturbed unless arbitrary and capricious. The South Carolina Public Employee Benefit Authority may elect to conduct discussions, including the possibility of proposal revisions, but only for those proposals determined to be either acceptable or potentially acceptable pursuant to S.C. Regulation 19-445.2095 (I)(1)(a) and (b). Any such discussions shall be conducted in accordance with S.C. Regulation 19-445.2095 (I)(2), (3), and (4).

(c) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price.

(d) Unbalanced Bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid.

1.26 SIGNING YOUR OFFER (JAN 2004): Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words "by its Partner," and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venture involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the joint venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal.

1.27 STATE OFFICE CLOSINGS (JAN 2004): If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the South Carolina Public Employee Benefit Authority office by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule the proposal opening. If state offices are closed at the time a pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at <https://www.scemd.org/closings/>.

1.28 DISCLOSURE OF YOUR BID / PROPOSAL and SUBMITTING CONFIDENTIAL DATA (FEB 2021)

(a) According to Section 11-35-410, any person submitting a document in response or with regard to any solicitation or other request must "comply with instructions provided in the solicitation for marking information exempt from public disclosure. Information not marked as required by the applicable instructions may be disclosed to the public." **IF YOU IDENTIFY YOUR ENTIRE RESPONSE AS EXEMPT FROM PUBLIC DISCLOSURE, OR IF YOU DO NOT SUBMIT A REDACTED COPY AS REQUIRED, THE STATE MAY, IN ITS SOLE DISCRETION, DETERMINE YOUR BID OR PROPOSAL NONRESPONSIVE AND INELIGIBLE FOR AWARD.** (b) By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page, or portion thereof, of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page, or portion thereof, was redacted and conspicuously marked "Trade Secret" or "Confidential" or "Protected", (2) agrees that any information not redacted and marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. (c) If your offer includes any information that you claim is

exempt from public disclosure, you must submit one complete copy of your offer from which you have removed or concealed such information (the redacted copy). Except for the information removed or concealed, the redacted copy must be identical to your original offer. (d) Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If only portions of a page are subject to some protection, do not redact the entire page. The redacted copy must reflect the same pagination as the original and show the empty space from which information was redacted. The Procurement Officer must be able to view, search, copy and print the redacted copy without a password. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. (e) On the redacted copy, you must identify the basis of your claim by marking each redaction as follows: You must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that you redacted and claim as exempt from public disclosure because it is either (1) a trade secret as defined in Section 30-4-40(a)(1) of the Freedom of Information Act, or (2) privileged and confidential, as that phrase is used in Section 11-35-410. You must separately mark with the words "TRADE SECRET" every page, or portion thereof, that you redacted and claim as exempt from public disclosure as a trade secret pursuant to Section 39-8-20 of the Trade Secrets Act. You must separately mark with the word "PROTECTED" every page, or portion thereof, that you redacted and claim as exempt from public disclosure pursuant to Section 11-35- 1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. (f) In determining whether to release documents, the State will detrimentally rely on your redaction and marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "Protected". By submitting a response, you agree to defend, indemnify and hold harmless the State of South Carolina, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from withholding information by the State of South Carolina or any of its agencies, that you have redacted or marked as "Confidential" or "Trade Secret" or "Protected". (All references to S.C. Code of Laws.) [02-2A125-3

1.29 SUBMITTING YOUR OFFER OR MODIFICATION: (a) All copies of the offer or modification, and any other documents required to be submitted with the offer should be enclosed in a sealed, opaque envelope or package – (1) Addressed to the office specified on the Cover Page; and (2) Showing the time and date specified for opening, the solicitation number, and the name and address of the Offeror. (b) Offerors using commercial carrier services shall ensure that the Offer is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs (a)(1) and (2) of this provision when delivered to the office specified on the Cover Page. (c) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered.

1.30 TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008): Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the Contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498.

1.31 VENDOR REGISTRATION MANDATORY (JAN 2006): You must have a state vendor number to be eligible to submit an offer. To obtain a state vendor number, visit www.procurement.sc.gov and select New Vendor Registration. (To determine if your business is already registered, go to "Vendor Search"). Upon registration, you will be assigned a state vendor number. Vendors must keep their vendor information current. If you are already registered, you can update your information by selecting Change Vendor Registration. (Please note that vendor registration does not substitute for any obligation to register with the S.C. Secretary of State or S.C. Department of Revenue. You can register with the agencies at <http://scbos.sc.gov>)

1.32 WITHDRAWAL OR CORRECTION OF OFFER: Offers may be withdrawn by written notice received at any time before the exact time set for opening. A proposal may be withdrawn in person by an Offeror or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085.

PART 1

INSTRUCTIONS TO OFFERORS – B. SPECIAL INSTRUCTIONS

1.33 PRE-PROPOSAL CONFERENCE/SUBMISSION OF QUESTIONS: There will be a Pre-Proposal Conference at **10 a.m. ET on Tuesday, October 25, 2022**, at the South Carolina Public Employee Benefit Authority, 202 Arbor Lake Drive, Board Room, Columbia, South Carolina.

NOTE: Due to the importance of all Offerors having a clear understanding of the specifications and requirements of this RFP, attendance at the pre-proposal conference is strongly encouraged. Please bring a copy of the RFP with you. Any changes resulting from this conference will be noted in a written amendment to the solicitation. Your failure to attend will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the State.

Any questions, comments, requests for information or clarifications regarding the RFP must be submitted in writing prior to the adjournment of the pre-proposal conference. Do not wait to assert deviations, exceptions, etc. to anything in this RFP until (or in) the submission of your proposal. Anything that any Offeror would like to modify, seek clarifications on, or any other deviation however modest, must be presented during the question-and-answer phase, considered and determined by the South Carolina Public Employee Benefit Authority before the submission date for all proposals, so that all prospective Offerors will have a common and uniform basis upon which to submit its proposals. Potential Offerors are strongly encouraged to mail or email their questions on the RFP prior to the pre-proposal conference. The South Carolina Public Employee Authority will attempt to provide answers to those questions submitted during the pre-proposal conference by **November 14, 2022**. Any written questions, requests for information or request for clarifications received prior to the conference or during the conference will be responded to in the form of a written amendment to the RFP and emailed to all prospective Offerors. The amendment will also be posted at the following web address: <https://www.procurement.sc.gov/doing-biz/bid-ops/peba>. Once the pre-proposal conference is adjourned, no further questions will be accepted.

SUBMISSION OF QUESTIONS

All questions, comments, requests for information or clarifications regarding this RFP must be submitted as indicated below. All questions, comments, requests for information or clarifications should, to the highest degree possible, cite the specific RFP section and paragraph number(s) to which the question refers. All questions, comments, requests for information or clarifications regarding this RFP should include the identity of the sender, firm name, mailing address, telephone number and email address. Email is the preferred method for submitting questions with “Questions: 2023 Flexible Benefits Plan RFP” as the subject of the email. Submit questions in an easily copied format such as Microsoft Word.

Mark envelopes on questions mailed:

Questions: 2023 Flexible Benefits Plan RFP
Attn: Georgia Gillens, CPPO, CPPB, NIGP-CPP

SEND QUESTIONS TO:

Mail to:

S.C. Public Employee Benefit Authority
Attn: Georgia Gillens, CPPO, CPPB
P.O. Box 11960
Columbia, SC 29211-1960

Hand deliver/Express mail:

S.C. Public Employee Benefit Authority
Attn: Georgia Gillens, CPPO, CPPB
202 Arbor Lake Drive
Columbia, SC 29223

Email address:

ggillens@peba.sc.gov

1.34 CONTENTS OF OFFER (FEB 2015): (a) Offers should be complete and carefully worded and should convey all of the information requested. (b) Offers should be prepared simply and economically, providing a straightforward, concise description of Offeror's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. (c) The contents of your offer should be divided into two parts, the technical proposal and the business proposal. Each part should be bound in a single volume. (d) If your offer includes any comment over and above the specific information requested in the solicitation, you should include this information as a separate appendix to your Offer. Offers which include either modifications to any of the solicitation's contractual requirements or an Offeror's standard terms and conditions may be deemed non-responsive and not considered for award.

1.35 OPENING PROPOSALS – INFORMATION NOT DIVULGED (FEB 2015): Offers will be publicly opened at the date/time and at the location identified on the Cover Page, or last Amendment, whichever is applicable. In competitive sealed proposals, neither the number, identity of Offerors nor prices will be divulged at opening. [Section 11-35-1530 & R. 19-445.2095(C)(1)]

1.36 PROTEST - CPO - MMO ADDRESS (MODIFIED): Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing (a) by email to: protest-mmo@mmo.state.sc.us, (b) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

1.37 UNSUCCESSFUL OFFERORS: Offerors not awarded a contract under this solicitation may request return of their proposals within thirty (30) calendar days after the notice of intent to award becomes the final statement of award. All cost of returns will be paid by the Offeror. Thirty (30) calendar days after the notice of intent to award becomes the final statement of award all materials submitted by firms not awarded a contract may be destroyed.

1.38 RELEASE OF CLAIMS: With the submission of a proposal, each Offeror agrees that it will not bring any claim or have any cause of action against the South Carolina Public Employee Benefit Authority based on any misunderstanding, failure by the South Carolina Public Employee Benefit Authority to properly convey the information, or failure by the South Carolina Public Employee Benefit Authority to provide the Offeror with pertinent information as intended by the RFP. Additionally, the Offeror, its officers, agents, or representatives waive and release the South Carolina Public Employee Benefit Authority and each and any entity, person, or other source providing any information concerning the Offeror, of any and all claims of any sort or variety whether in tort, contract or otherwise, whether known or unknown, regarding the Offeror's or subcontractor's past performance, products, services, personnel, reputation or its Subcontractors or any other information sought or obtained by the South Carolina Public Employee Benefit Authority, whether or not the information is relied on by the South Carolina Public Employee Benefit Authority. The Offeror agrees that it will assert no claims for proposal preparation costs arising from a protest, action or claim arising from the solicitation or award.

1.39 DISCUSSIONS AND NEGOTIATIONS OPTIONAL (FEB 2015): Submit your best terms from both a price and a technical standpoint. Your proposal may be evaluated and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright without prior notice. Nevertheless, the South Carolina Public Employee Benefit Authority may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award [11-35-1530(6); R.19-445.2095(I)]. If improper revisions are submitted during discussions, the South Carolina Public Employee Benefit Authority may elect to consider only your unrevised initial proposal, provided your initial offer is responsive. . The State may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers, as provided in Section 11-35-1530(8). Negotiations may involve both price and matters affecting the scope of the contract, so long as changes are within the general scope of the request for proposals. If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal. [066058-1]

The South Carolina Public Employee Benefit Authority may also elect to conduct negotiations as provided in Section 11-35-1530.

PART 2

SCOPE OF PROPOSAL

It is the intent of the South Carolina Public Employee Benefit Authority (hereinafter “PEBA”), in accordance with all requirements stated herein or attached hereto, to solicit proposals to provide third party administration of the State Flexible Benefits Plan, also known and referred to herein at times as “MoneyPlus.”

2.1 INTRODUCTION

PEBA is a state agency responsible for the administration and management of the state’s cafeteria plan, employee insurance programs and retirement systems.

Entities that participate in the employee insurance programs (all state agencies, public school districts, public higher education institutions and those eligible optional employers who have chosen to participate) must offer to all their eligible employees the entire package of available state insurance benefits and allow individual employees to refuse all or any part of the state insurance benefits package. The group health, Basic Dental, Basic Life insurance and Basic Long Term Disability plans are the core benefits that participating entities must provide for each employee by paying a minimum contribution for each plan. Employees may also participate in Dental Plus, the State Vision Plan, Optional Life and Dependent Life insurance, and Supplemental Long Term Disability, but they pay the full premium for these benefits. Health, dental and vision benefits are available to retirees and survivors. Active employees may elect to participate in the state’s cafeteria plan, called MoneyPlus, which includes flexible spending accounts.

2.2 BACKGROUND

The state of South Carolina has sponsored a cafeteria plan, called MoneyPlus, since 1987. MoneyPlus is available to active employees of the state, public school districts, public higher education institutions and optional employers that participate in the state insurance benefits program. MoneyPlus allows employees to pay premiums pretax and enroll in flexible spending accounts. Employees can set aside money pretax to pay for eligible medical and dependent care expenses.

PEBA delegates the cafeteria plan administration to a third-party administrator, which is currently ASIFlex. The current contract with ASIFlex expires December 31, 2023. MoneyPlus offers IRS-approved tax-favored accounts pursuant to Sections 105, 125 and 129 of the Internal Revenue Service (IRS) code. Eligibility for enrollment in flexible spending accounts is governed by the *Flexible Benefits Plan* document and IRS rules and regulations. The current *Flexible Benefits Plan* document is available at <https://www.peba.sc.gov/publications> under MoneyPlus. Eligibility for PEBA’s sponsored Health Savings Accounts (HSAs) are governed by the *Flexible Benefits Plan* document, too; however, the administration of HSAs is not included in this RFP.

The MoneyPlus program that PEBA administers is a multi-employer plan. Employers have varying payroll cycles, and each has a different benefit administrator and payroll staff, with whom the Contractor must work. The Contractor must develop relationships with all participating payroll centers and work with those payroll centers directly. As of October 2022, there are six hundred ninety-five (695) payroll centers for the seven hundred eighty-one (781) employers that are required to offer MoneyPlus to their eligible employees. Of this number, eighty-six (86) payroll centers are processed under one submitted payroll file through the State Comptroller General’s office, which serves as the master state agency payroll center. While all participating entities must offer MoneyPlus to their eligible employees, only five hundred fifty-four (554) employers currently have participants enrolled.

Currently PEBA allows Medical Spending Account (MSA) Participants to carry over up to five hundred seventy dollars (\$570) of unused funds into the following plan year. There is no grace period for MSAs. PEBA offers a 2½ month grace period after the end of the plan year for Dependent Care Spending Account (DCSA) participants during which DCSA Participants can incur eligible expenses and be reimbursed from unused prior year contributions.

Medical Spending Accounts (IRC §105)

Medical Spending Account (MSA) and Limited-use Medical Spending Account (Limited-use MSA) Participants authorize payroll deductions that are deposited into their spending account every pay period. The Limited-use MSA is available to those enrolled in a Health Savings Account (HSA). The entire annual contribution amount is available to participants on their coverage effective date. A Stored Value Card, currently the ASIFlex Card®, is issued at no charge to all MSA and Limited-use MSA Participants for use at IIAS merchants for qualified expenses. Participants must activate the card before using it for the first time. If a Participant enrolls in an MSA from year to year, the Participant continues to use the same card until its expiration date. As Participants incur eligible expenses, they can use their spending account debit card or pay for expenses out of pocket. If Participants pay for expenses out of pocket, they must submit a claim for reimbursement. MSA Participants may set aside up to two-thousand eight-hundred fifty dollars (\$2,850) per calendar year for eligible medical expenses. More details about MSAs are available at <https://www.peba.sc.gov/publications> under MoneyPlus.

Dependent Care Spending Accounts (IRC §129)

Dependent Care Spending Account (DCSA) participants authorize payroll deductions that are deposited into their spending account every pay period. Funds are available as participants contribute through the year. As Participants incur eligible expenses, they will pay for expenses out of pocket and submit a claim for reimbursement. DCSA Participants may set aside up to five thousand dollars (\$5,000) annually (if married, filing jointly) to pay for eligible dependent care expenses. However, if the Participant is a Highly Compensated Participant, the Participant may currently set aside up to one thousand seven hundred dollars (\$1,700) annually. More details about DCSAs are available at [peba.sc.gov/publications](https://www.peba.sc.gov/publications) under MoneyPlus.

Participation, annual enrollment and fees

Employee participation in MSAs and DCSAs is voluntary, and the employee elects one or more of the accounts and the contribution amount within the limits set by the IRS. In addition to the contribution the Participant elects, an administrative fee per account is deducted pretax from the Participant's paycheck and paid to ASIFlex. The current fees are below.

| Account | Monthly administrative fee |
|--------------------------------------|----------------------------|
| Medical Spending Account | \$2.32 |
| Limited-use Medical Spending Account | \$2.32 |
| Dependent Care Spending Account | \$2.32 |

As of October 2022, there were 26,988 Participants enrolled in the Medical Spending Account; 181 Participants enrolled in a Limited-use Medical Spending Account; and 1,862 Participants enrolled in the Dependent Care Spending Account. Below is a four-year history of enrollment in each of the accounts.

| Account | 2019 | 2020 | 2021 | 2022 |
|--------------------------------------|--------|--------|--------|--------|
| Medical Spending Account | 24,659 | 25,979 | 25,816 | 26,797 |
| Limited-use Medical Spending Account | 115 | 152 | 157 | 168 |
| Dependent Care Spending Account | 1,913 | 1,835 | 1,624 | 1,814 |

Statistics:

- As of October 2022, there are 1,253 Participants who have both an MSA and DCSA account.
- As of October 2022, the average MSA Participant contribution amount was \$1,493.00. The average DCSA Participant contribution amount was \$3,336.00 as of the same date.
- According to the current Contractor, as of October 2022, the total number of active ASIFlex Cards is 27,102. MSA Participants can request a debit card for dependents.

PART 3

SCOPE OF WORK

The Contractor shall provide all personnel, goods and services necessary to provide third party administration of the State Flexible Benefits Plan. The Contractor shall provide administration of the State Flexible Benefits Plan in full compliance with all applicable sections of the Internal Revenue Code and regulations, other applicable federal and state laws and regulations, and in accordance with the *Flexible Benefits Plan*, all of the requirements, terms and conditions outlined in this Request for Proposal (including all attachments) and the Offeror's response thereto.

PEBA is seeking proposals which comply with each of the material and essential requirements described in Part 3, Scope of Work, below. In addition, the requirements in Part 3, Scope of Work, shall be met fully and performed in their entirety in a first-class manner for the fixed administrative fees quoted for each Participant. PEBA considers any proposal that provides any deviations from, or caveats to, Part 3, Scope of Work, as unacceptable. Anything that any Offeror would like to modify, seek clarifications on, or any other deviation, however modest, must be presented during the question-and-answer phase, and considered and determined by PEBA before the submission date for all proposals so that all prospective Offerors will have a common and uniform basis upon which to submit proposals. PEBA will award a contract to a single contractor to perform all of the functions described in this RFP and will not award separate contracts.

The Contractor shall provide, at a minimum, the following material and essential requirements, without deviation or modification, subject to any modifications that may be issued in an Amendment to the RFP by PEBA resulting from the question-and-answer phase.

3.1 STATE FLEXIBLE BENEFITS PLAN ADMINISTRATION

The Contractor shall:

3.1.1 Provide complete third-party administration of the State Flexible Benefits Plan so that eligible employees may participate in one or more of the following features:

- Medical Spending Account;
- Limited-use Medical Spending Account for Health Savings Account Participants; and
- Dependent Care Spending Account.

3.1.2 Develop and implement all operational policies and procedures necessary for the effective and efficient third-party administration of the State Flexible Benefits Plan. Advise PEBA when operational changes are necessary to comply with federal laws relating to flexible benefit or cafeteria plans or flexible spending accounts, and develop policies and procedures to implement any necessary operational changes.

3.1.3 Advise PEBA promptly of any changes in the Internal Revenue Code (IRC) or regulations which affect flexible benefits plans and flexible spending accounts, and develop after coordinating with PEBA any additional flexible benefits plan documents and/or amendments necessary to meet the requirements of this contract, and the requirements of the IRC.

3.1.4 Conduct appropriate nondiscrimination testing on a benefit-by-benefit basis to ensure that the State Flexible Benefits Plan is in compliance with federal nondiscrimination rules. Perform bi-annually at a minimum in April and October, or as needed, all nondiscrimination testing of the State Flexible Benefits Plan on a benefit-by-benefit basis or any other tests that may be mandated or required by state and federal law, including the IRC and regulations, to determine and establish that the State Flexible Benefits Plan complies with all applicable federal and state laws and regulations. Use data PEBA provides for testing to identify any DCSA Participant who is a highly compensated employee and who is contributing more than \$1,700. Provide a list of identified Participants to PEBA so PEBA can administratively reduce the annual election amount. Provide instructions to the impacted payroll center about adjusting payroll deductions and refunding contributions if necessary.

3.2 ENROLLMENT/ELIGIBILITY

The Contractor shall:

3.2.1 Receive enrollment data and any changes in enrollment data from PEBA. PEBA will conduct enrollment using its enrollment platform and shall transmit files daily to the Contractor in a mutually agreeable electronic format throughout the plan year. The Contractor shall process enrollment files daily and maintain eligibility from the enrollment data provided by PEBA and refer to PEBA for consideration and PEBA's final decision any questions with respect to a Participant's eligibility.

3.2.2 Provide PEBA with a monthly Participant file, in a mutually agreeable format, that contains current Participants only for the purpose of comparison with PEBA's database. PEBA's eligibility database will be considered the system of record and eligibility data stored on the Contractor's systems shall mirror the eligibility data maintained by PEBA.

3.2.3 Use PEBA's enrollment platform to respond to any enrollment questions from Participants and/or employers. PEBA shall provide the Contractor the ability to inquire into PEBA's enrollment eligibility through the platform. The Contractor shall notify PEBA's Operations Manager when one of its employees who have previously been granted access to the enrollment platform leaves employment so that the employee's user rights can be deleted.

3.2.4 Provide its personnel to train PEBA staff on IRS eligibility and enrollment guidelines and changes that can be made during the year. Training shall be conducted initially during the implementation phase of the contract, and at least annually thereafter and shall include all updates and changes to IRS guidelines. The training shall take place at PEBA's offices in Columbia, South Carolina.

3.3 CLAIMS PROCESSING

The Contractor shall:

3.3.1 Receive, authorize and process all reimbursement claims for disbursement of funds from the flexible spending account(s) for qualified benefits as allowed by the State Flexible Benefits Plan. Ensure that all claims authorized for reimbursement comply with all applicable IRS Codes and regulations.

3.3.2 Disburse amounts, which are payable for one of the benefits provided, or any additional benefits provided in the future, to the Participant within three (3) business days following receipt of a valid and complete reimbursement claim even if this requires a daily financial disbursement. Provide the option of electronic fund transfers (direct deposit) to a Participant's designated financial institution for all claims reimbursement. If a claim is rejected, provide Participant with the specific reason for the rejection in the notification (e.g., documentation is missing date of service).

3.3.3 Provide online access to a claims system that allows a Participant to submit and track claim status, whether the claim is submitted via paper or other electronic method (See Section 3.9.7).

3.4 PAYROLL PROCESSING

The Contractor shall:

3.4.1 Receive payroll data from multiple payroll centers (see 2.2 BACKGROUND). Implement a common mode (electronic data exchange file format) for processing and reporting payroll data.

3.4.2 If payroll contributions and data provided electronically by a payroll center match, post to a Participant's account within one (1) business day following submission from the payroll center. If payroll contributions and data provided electronically by a payroll center does not match, contact the payroll center within one (1) business day following submission from the payroll center and follow the appropriate resolution protocol to ensure timely posting of contributions to Participants' accounts.

3.4.3 Develop, working with PEBA and the payroll centers, necessary policies and procedures for withholding and reporting of applicable payroll deductions for Participants. Compare payroll deductions received with deductions expected and notify the payroll center of any discrepancy. A payroll discrepancy is any situation in which the amount the Contractor receives, or doesn't receive, does not match the amount expected. Handle the resolution of any discrepancy with the payroll center in an expedited manner. The Contractor is expected to take necessary and persistent action to resolve discrepancies, including but not limited to: providing reports for employers to review and emailing or calling employers. If the Contractor is not able to resolve issues with payroll centers within two payroll cycles and has attempted resolution through email and phone contact, the Contractor should notify PEBA of the issue and PEBA will assist in the resolution of the discrepancy.

3.4.4 Receive administrative fees and flexible spending account contributions deducted from each Participant's compensation on a pretax basis from each payroll center. The quoted administrative fee per account per Participant per month (year) multiplied by the number of Participants enrolled for each month shall be full payment for all services rendered by the Contractor under this contract. The total monthly administrative fee received is the sum of the administrative fees for each account type. Each payroll center shall remit administrative fees and flexible spending account contributions to the Contractor according to each payroll center's pay cycle, but no less than monthly during the term of the contract.

For purposes of calculating the administrative fee, Participant includes and is limited to all active employees, excluding any dependents thereof, who elected to participate in a flexible account.

3.5 CARRIER FILES

The Contractor shall:

3.5.1 Coordinate and establish carrier file data feeds from PEBA's insurance carriers (health, dental and vision) for automatic claims processing. Accept files from PEBA's insurance carriers and use the data to either substantiate stored value card (debit card) transactions or substantiate other claims submitted by the Participant for reimbursement. Unused claims from PEBA's insurance carriers should be made available for a Participant to use to substantiate outstanding card transactions in a user-friendly format. PEBA's health and dental plans are currently administered by BlueCross BlueShield of South Carolina. PEBA's vision plan is currently administered by EyeMed Vision Care®.

3.6 STORED VALUE CARD

The Contractor shall:

3.6.1 Provide Participants enrolled in the Medical Spending Account and the Limited-use Medical Spending Account with a Stored Value Card that allows Participants to access the funds available in their Medical Spending Account or Limited-use Medical Spending Account. The card is to be made available to eligible Participants at no cost.

3.6.2 Be responsible for performing all programming and testing to establish necessary data exchanges in relation to operation of the Stored Value Card.

3.6.3 Communicate with Participants who have outstanding transactions during the plan year and inform them clearly of the eventual tax consequences for not providing documentation. PEBA expects the Contractor to actively manage these situations during the plan year to avoid adverse tax consequences to Participants.

3.6.4 Allow Participants who have outstanding Stored Value Card transactions from the previous plan year the opportunity to submit documentation by October 1 before reclassification of contributions. Communicate to these Participants by September 1 of the opportunity to provide documentation and explain outstanding transactions will be reclassified as taxable income.

3.6.5 Provide by November 1 each year a report that lists any Participants with outstanding Stored Value Card transactions from the previous plan year. This report should include at a minimum the total amount due and each individual transaction by Social Security number and name. The unsubstantiated amounts must be reclassified as taxable income and that Participant's Form W-2 must be amended to reflect that amount. The Contractor shall coordinate this reporting with

the Comptroller General for state agencies and individually for all other payroll centers. For state agencies, the Contractor shall send a file, in a mutually agreeable format, to the Comptroller General's Office.

3.7 ACCOUNT MANAGEMENT

The Contractor shall:

3.7.1 Assign an account manager to PEBA. The assigned account manager shall be knowledgeable about all aspects of the contract, the State Flexible Benefits Plan, all applicable sections of the IRC and regulations, as well as other applicable federal and state laws and regulations. The account manager shall be readily available by phone or cell phone during PEBA's regular working hours (8:30 a.m. to 5 p.m. local time, Monday through Friday) to address any issues posed by PEBA. The account manager shall have the authority to make decisions and resolve problems and shall serve as the primary contact to respond to PEBA's needs, questions and/or issues.

3.7.2 Provide the account manager designated in its proposal. No diversion should be made by the Contractor without the written consent of PEBA. Provide PEBA with immediate notice of the termination or transfer of the account manager, and an action plan for replacing the terminated or transferred account manager. The account manager should be replaced with someone of substantially equal ability, knowledge and qualifications as evidenced by PEBA's written approval.

3.7.3 Provide PEBA prior to replacing the account manager with the name and credentials of the proposed replacement(s). Replacement of the account manager designated in the Contractor's proposal should be approved in writing by PEBA prior to the proposed replacement(s) being assigned to this contract.

3.7.4 Remove or reassign any Contractor personnel (or subcontractor personnel) assigned to this contract found unacceptable by PEBA. Such request for removal or reassignment shall be based on grounds which are specified in writing to the Contractor, and which are not discriminatory.

3.7.5 Meet with PEBA as necessary, but not less than monthly, to review the Contractor's performance, State Flexible Benefits Plan performance and any contract service issues. All meetings shall take place virtually, unless otherwise specified by PEBA in advance. During these meetings the Contractor shall, at a minimum, advise PEBA of any problems identified by the Contractor in any aspect of the State Flexible Benefits Plan, the Contractor's potential solutions to those identified problems, and report to PEBA on the achievement of performance standards and identify all performance standards that were not met and the related liquidated damages. One of the scheduled meetings should include an annual review at PEBA's office in Columbia, S.C., to review and summarize the Contractor's performance during the previous plan year and other relevant topics.

3.8 CUSTOMER SERVICE

The Contractor shall:

3.8.1 Provide toll-free customer service phone lines and appropriate customer service staff to communicate with Participants, employers (payroll centers) and PEBA. The customer service staff shall respond to Participant's inquiries regarding account balances, claims, program information and complaints. Maintain hours of customer service lines, at a minimum, from 8:30 a.m. to 5 p.m. local time, Monday through Friday, except for state holidays.

3.8.2 Respond to inquiries from Participants and employers within twenty-four (24) hours.

3.8.3 Conduct an annual Participant Satisfaction Survey and submit the results to PEBA by January 31 of each year to gauge satisfaction with the Contractor during the previous year. The Participant Satisfaction Survey shall be prior approved by PEBA.

3.8.4 Conduct an annual Employer Satisfaction Survey and submit the results to PEBA by January 31 of each year to gauge satisfaction with the Contractor during the previous year. The Employer Satisfaction Survey shall be prior approved by PEBA.

3.8.5 Provide Participants with an internal appeals process in accordance with the State Flexible Benefits Plan provisions, and cooperate with PEBA in its review process for appeals under the State Flexible Benefits Plan.

3.9 COMMUNICATIONS AND TRAINING

The Contractor shall:

3.9.1 Furnish communication information on the State Flexible Benefits Plan to Participants and employers. Provide communication information between the Contractor and State Flexible Benefits Plan Participants, employers and PEBA that describes the features, operations and any changes of the State Flexible Benefits Plan and increases awareness of the Plan benefits and changes. Communications with PEBA, State Flexible Benefits Plan Participants and employers will be undertaken to ensure that electronic data transfer, fax, telephone and hard copy transfer of information are accurate as determined by PEBA.

3.9.2 Work collaboratively with PEBA's Communications Department staff to develop an annual marketing plan to increase participation in flexible spending accounts. Contractor should provide recommendations to meet the long-term and short-term goals for increasing participation in the State Flexible Benefits Plan. PEBA will produce the final marketing plans with input from the Contractor. All collateral the Contractor produces is subject to approval by PEBA's Communications Department prior to actual use. Materials to Participants and employers, include, but are not limited to content for multiple, targeted, digital campaigns to promote MoneyPlus benefits, services and initiatives; and reimbursement claim forms for situations where a manual/paper form is needed to file for benefits. The Contractor should develop, store and distribute electronically such a form as necessary and provide upon request. Both PEBA and the Contractor will house the form in interactive, fillable format online in a PDF or similar format.

3.9.3 Provide at least one staff member with experience in marketing and communications. Provide personnel for a quarterly communications conference call in which initiatives, campaigns and progress will be discussed. Recommend specific communications plans and goals in accordance with the overall management of the State Flexible Benefits Plan during these calls. Reporting of general and targeted metrics and status updates, as well as operational updates, will be required. Other calls may be scheduled in addition to quarterly calls to meet deadlines for campaigns.

3.9.4 Ensure that all informational materials, letters, notices and collateral are cobranded with PEBA's logo and the Contractor's logo according to PEBA's brand guidelines for vendors. The Contractor's logo should be labeled as "Administered by:" to reflect the relationship between PEBA and the Contractor. The Contractor should follow other guidelines including size of logo, colors, typography and other styles as identified in the identity guidelines and will also adhere to Associated Press style guidelines. All materials must be reviewed and approved by PEBA's Communications Department prior to use.

3.9.5 Develop and distribute approved State Flexible Benefits Plan communications materials and items.

3.9.6 Develop and distribute approved Participant account-specific communications materials and items. These include but are not limited to: notification of benefits elections and changes to Participants; and, welcome packets and confirmation notices for all new Participants of the State Flexible Benefits Plan. Notices and materials must be reviewed and approved by PEBA's Communications Department prior to use.

3.9.7 Maintain, at a minimum, a secure, password-protected, transaction-enabled website specific to the State Flexible Benefits Plan's programs that includes online account balance information updated daily.

3.9.8 Provide a secure, password-protected, transaction-enabled mobile app that allows Participants at a minimum to access account balance information and submit claims.

3.9.9 Provide a customized website that is accessible without entering a password that includes information specific to the State Flexible Benefits Plan's benefits and features. The website, and any software programs residing on the website, shall be updated as needed to conform to applicable changes in federal tax laws and regulations. The website shall explain the benefits and value of enrolling in the State Flexible Benefits Plan's features, in accordance with applicable rules and information that allows a potential Participant to calculate his possible savings through participation in the State Flexible

Benefits Plan (based on salary; federal, state and FICA tax impact; and contributions paid pretax). Website content must be reviewed and approved by PEBA's Communications Department prior to use.

3.9.10 Provide individual account balance statements that shall be furnished to Participants at least quarterly. The balance statements shall include the balance available in the account available for each account in which a Participant is enrolled, the amount contributed for the plan year and the claims paid during the plan year. Provide other statements/reports to individual Participants as are required by law, in connection with the State Flexible Benefits Plan. All statements and reports must be cobranded and approved by PEBA's Communications Department.

3.9.11 Not conduct any mass paper or electronic mailings to enrolled Participants, eligible employees or employers without the prior express permission of PEBA.

3.9.12 Provide materials and an adequate number of its personnel as needed to train state benefits administrators and PEBA personnel about the State Flexible Benefits Plan and operational procedures of the Contractor. Provide training and education sessions upon PEBA or employer request via webinars. In the event a new entity joins the State Insurance Benefits Program, the Contractor shall supply its personnel and materials to assist in the entity's setup on the Contractor's platform, including payroll processing, upon the request of PEBA or the new entity. All materials and training items distributed to benefits administrators by the Contractor are subject to prior approval by PEBA's Communications Department.

3.9.13 Research and compile data requested by PEBA's Communications Department for the creation of PEBA developed communication materials.

3.9.14 If requested, provide personnel at PEBA's Benefits at Work conference should the agency host a conference.

3.10 PERFORMANCE MEASUREMENTS, STANDARDS AND LIQUIDATED DAMAGES

The Contractor shall:

3.10.1 Adhere to their PEBA specific (not book of business) performance standards and related liquidated damages for deviation from those performance standards as agreed to between PEBA and the Contractor. Within 30 days of the close of each quarter, report to PEBA on the achievement of performance standards for the previous quarter and identify all performance standards that were not met and the related liquidated damages. Payment of liquidated damages shall be made to PEBA by check on a quarterly basis, within 30 days of the close of each quarter. PEBA cannot accept liquidated damages as an invoice credit in the month following the quarterly measurement. Achievement of Performance Guarantees is subject to independent verification by PEBA.

3.11 REPORTING

The Contractor shall:

3.11.1 Provide reports to PEBA concerning participation in and administration of the State Flexible Benefits Plan. All data shall be reported on a calendar month basis and provided to PEBA at a minimum with the frequency specified below. Reports should include at a minimum the information listed in each applicable attachment.

- A monthly discrepancy report. See Attachment 7.
- A monthly activity report by account type. See Attachment 8.
- A monthly fee report that reflects administrative fees received from each payroll center, including month to date and year to date data.
- A monthly claims performance report. See Attachment 9.
- A monthly debit card statistics performance report. See Attachment 10.

- A monthly call center statistics report. See Attachment 11.
- A monthly reconciliation report of the bank account. See Attachment 12.
- A monthly outstanding check maintenance report. See Attachment 13.
- An annual report, submitted by October 15 of each year that:
 - Provides the total amount of all funds forfeited by plan Participants;
 - Lists all outstanding checks for a 12-month period; and
 - Includes a Statement of Interest Income report (See Attachment 14 and Attachment 15).

3.11.2 Prepare and file, after coordinating with PEBA, all necessary reports and forms to comply with federal and state law relating to the operation of the Medical Spending Account, Limited-use Medical Spending Account and Dependent Care Spending Account. PEBA expects the Contractor to be familiar with all necessary reports and forms to comply with federal and state law relating to the operation of the Medical Spending Account, Limited-use Medical Spending Account and Dependent Care Spending Account. According to the current Contractor, the non-discrimination testing and test results report is prepared and/or filed annually under federal and state law.

3.11.3 Provide a SOC1 report to PEBA by August 15 each year. A SOC1 report must be submitted, and a SOC2 report should be submitted if one is available. The report should cover no less than 50% of the period in which the Contractor provided services to PEBA through June 30 of the same year.

3.11.4 Provide a thorough and complete Service Provider Security Assessment Questionnaire (See Attachment 3) to PEBA's Risk Management and Compliance Director by August 15 each year.

3.11.5 Provide, periodically, additional reports reasonably consistent with available data that is necessary to properly evaluate the program. No additional charges will be paid by PEBA for these reports or any other reports requested concerning the performance of the contract.

3.12 FINANCIAL ARRANGEMENTS

The Contractor shall:

3.12.1 Maintain a separate account in PEBA's name for the purpose of maintaining Participant contributions and for the funding of claim disbursements under the State Flexible Benefits Plan and this contract. The Contractor shall perform all administrative and recordkeeping functions necessary to ensure accurate disbursement of the Participants' contributions and accurate accounting of the Participants' accounts. No other funds shall be combined in this separate bank account with state funds. The Contractor will send a monthly bank statement and bank reconciliation to PEBA, reflecting all transactions in the account during the month (See Section 3.11.1). The expense of maintaining the bank account shall be borne by the Contractor. Accumulated funds in the separate bank account shall be invested in short-term interest-bearing investments that are FDIC insured. Any interest earned on the investments shall be credited to PEBA on an annual basis. The interest shall be held and accumulated by the Contractor and disbursed only at the express direction of PEBA.

3.12.2 Receive in December prior to the first year of the contract from PEBA 3% of the total annual contribution elections of all Medical Spending Accounts and Limited-use Medical Spending Accounts for pre-funding of the Medical Spending Accounts and the Limited-use Medical Spending Accounts for the first plan year. Receive from PEBA in subsequent years of the contract additional funds necessary to maintain a 3% balance for each subsequent year.

3.12.3 Return to PEBA, no more frequently than annually, forfeited spending account balances, and stale dated checks and interest. Accumulated forfeitures and interest shall be used to offset Medical Spending Account reimbursements in excess of contributions (See Attachment 7 and Attachment 8).

3.12.4 Credit the funds from all canceled claim reimbursement checks back to PEBA's account.

3.12.5 Identify and record all Medical Spending Account and Limited-use Medical Spending Account reimbursement overpayments as identified.

3.13 INFORMATION SECURITY REQUIREMENTS

The Contractor shall:

3.13.1 Comply with the following standards, laws and rules:

- All current NIST standards and guidelines related to the items listed below:
 - Data Encryption Standards (FIPS compliance);
 - Information Security Controls Standards;
 - Security Logging Standards;
 - Patch Management Standards;
 - Vulnerability Scanning Standards; and
 - Secure System Development Life Cycle Standards.

3.13.2 Comply fully with all current and future updates of the security requirements of PEBA, as well as with all applicable state and federal requirements, in performance of this contract.

3.13.3 Complete a due diligence process annually or as otherwise requested by PEBA or its designated third party. This process may include a written questionnaire and, in some cases, could require an onsite visit from PEBA or its designated third party. In addition, PEBA will follow up on exceptions and qualified opinions that are identified in SOC reports.

3.13.4 Have a criminal background check completed for staff prior to accessing systems and/or applications that contain PEBA data. The background check shall be nationwide and, at a minimum, include federal, state and county records where the Contractor's staff member has resided for the past seven years. PEBA maintains the right to request a third-party vendor or an individual who is involved with PEBA data and/or systems be removed from the further interaction with PEBA's data and/or systems.

3.13.5 Notify PEBA of data breaches in accordance with HIPAA requirements and in accordance with the S.C. Financial Identity Fraud and Identity Theft Protection Act.

3.13.6 Provide security and privacy training, at least annually, for all staff members who have access to systems and/or applications that contain PEBA data.

3.13.7 Not use PEBA production data in test or development environments without the prior written approval of PEBA.

3.13.8 Maintain database backups in a manner that will eliminate disruption of service or loss of data due to system or program failures. Maintain a disaster preparedness plan that will limit service interruption in case of emergency (force majeure) and will ensure compliance with all requirements under the Contract.

3.14 IMPLEMENTATION PLAN

The Contractor shall:

3.14.1 Prepare, implement and execute a Final Implementation Plan. The Final Implementation Plan shall be based upon the proposed implementation plan and shall outline, in detail, all the tasks necessary to begin full operations on January 1, 2024. The Final Implementation Plan shall specify expected dates of completion of all necessary tasks, how the tasks will be accomplished and the identity of the person(s) responsible for each task.

3.14.2 Submit the Final Implementation Plan to PEBA for review and approval within ten (10) business days after the notice of intent to award becomes the final statement of award (tentatively **December 28, 2022**). Implementation activities shall not commence prior to PEBA's approval of the Final Implementation Plan.

3.14.3 Submit a written report of progress to PEBA each week during the implementation phase. The progress report shall specify accomplishments during the report period in a task-by-task format, whether the implementation tasks are being performed on schedule and any administrative problems encountered. The report shall be due by the close of business each Friday.

3.14.4 Accomplish the Final Implementation Plan in a manner to minimize interference with normal operations and services for both PEBA and the current contractor.

3.14.5 Pay PEBA the amount of \$500 per business day in the event of any failure by the Contractor to adhere to the Final Implementation Plan, as agreed upon between the Contractor and PEBA (and without the express written waiver of PEBA before the date of the agreed upon time for completion). If, after 15 days' notice, the Contractor has failed to pay any amount due hereunder, the amount shall be withdrawn from the security (See Section 7.56 Security for Performance, Damages).

3.15 TRANSITION PLAN

The Contractor shall:

3.16.1 Provide full cooperation to PEBA and any subsequent contractor so that the transition to a subsequent contractor will be efficiently accomplished without any disruption in the administration of the State Flexible Benefits Plan or the reimbursement of claims to Participants, including providing all materials generated during the existence of the contract which would assist with the transition to another contractor.

1. Provide PEBA with a standard electronic file of all flexible benefits administration activities during the preceding twenty-four (24) months within ten (10) business days following notice of termination of the contract or not later than sixty (60) days before the end of the term of the contract.
2. Provide PEBA with a standard electronic file of all flexible benefits administration activities occurring after the notice of termination that are not contained in the electronic file provided in number 1 above within ten (10) business days following the termination of the contract.
3. Provide PEBA with a standard electronic file of all flexible benefits administration files that are still in process, pending additional information or pending litigation within ten (10) business days following the termination of the contract.
4. Provide PEBA with a standard electronic file of all flexible benefits administration activities under the State Flexible Benefits Plan in the possession of the Contractor within thirty (30) days following the termination of the contract.
5. Perform the following activities for no additional compensation in the year following termination of the Contract either by expiration of the Term of the Contract or as otherwise provided under this contract:
 - For the period January 1 to March 31 of the year following termination, continue to process reimbursements to eligible State Flexible Benefits Plan Participants in accordance with IRS guidelines for the prior year.
 - On or before October 15 of the year following termination, provide PEBA a final report listing individual Participants, amounts received and disbursed, and any forfeitures for the preceding plan year.
 - On or before November 1 of the year following termination, provide PEBA and employers a final report of unsubstantiated claims that have to be reclassified as income. The report should list individual Participants, the amounts to be reclassified, and any other information needed to report the reclassified amounts on the Participant's W-2 form.
 - File all required federal and state tax forms for the last plan year on behalf of the State Flexible Benefits Plan.

PART 4

MANDATORY MINIMUM QUALIFICATIONS

PEBA believes that a Contractor does not have the capability of successfully and fully performing the contract unless it meets the mandatory minimum qualifications outlined below. Thus, to be qualified to receive an award, offerors must meet the following mandatory minimum qualifications:

1. Has successfully implemented an IRC Section 125 Plan, or Plans, for multiple payroll centers (e.g., multi-employer plan) that includes medical and dependent care spending accounts.
2. Currently administers an IRC Section 125 Plan for at least one group of more than 20,000 participants that includes medical and dependent care spending accounts.
3. Has been in the business of providing IRC Section 125 administrative services for at least five (5) years as of January 1, 2022.
4. Currently has a SOC1 audit.

While PEBA believes that an Offeror who does not meet these minimum qualifications cannot successfully and fully perform the contract, Offerors are cautioned that the existence of these factors does not constitute a finding that an Offeror is responsible. In evaluating an Offeror's responsibility, the State Standards of Responsibility [R.19-445.2125] and information from any other source may be considered. An Offeror must, upon request of PEBA, furnish satisfactory evidence of its ability to meet all contractual requirements. Unreasonable failure to supply information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive an award. S.C. Code Section 11-35-1810.

PART 5

INFORMATION FOR OFFERORS TO SUBMIT

Proposals will be accepted only from the entity that will be providing the services hereunder. **Offerors shall submit a signed transmittal sheet indicating that it has submitted the following:**

- a. Include Offeror's name, the solicitation number, and the appropriate title on the label for hard copies and for USBs submitted in response to this RFP (i.e., Acme Corp., PEBA0352022, Technical Proposal Original; Acme Corporation, PEBA0352022, Technical Proposal Original -- Redacted; Acme Corporation, PEBA0352022, Copy 1 of 5, etc.). Each USB should be labeled as above with the Offeror's name clearly listed on each label.
- b. One (1) original marked and five (5) identical spiral bound copies of the Offeror's Technical Proposal. Proposals should be prepared on 8½"×11" paper, spiral bound length-wise (**no GBC comb binding and no three ring binders**), with tabs to separate. Please label copies 1 of 5, 2 of 5, etc.
- c. One (1) original marked and five (5) labeled USB flash drives containing a copy of the Offeror's Technical Proposal (in Microsoft Word, Microsoft Excel and/or PDF format where appropriate). Please label copies 1 of 5, 2 of 5, etc. **Do not password protect USBs.**
- d. One (1) USB flash drive containing a redacted version of the Offeror's Technical Proposal. **Do not password protect the USB.**
- e. One (1) USB flash drive containing a copy of the Offeror's Business Proposal.

Both the Technical Proposal and the Business Proposal should be submitted in one document with each section marked respectively with “Section 5.1: Technical Proposal” and “Section 5.2: Business Proposal/Offeror’s Proposed Fees.”

Offerors are required to mark the original copy of their offer to identify any information that is exempt from public disclosure. Offerors must do so in accordance with the clause entitled "Submitting Confidential Information." In addition, Offerors should also submit one USB flash drive of their offer from which they have removed any information that they marked as exempt (i.e., a redacted copy). The information redacted should mirror in every detail the information marked as exempt from public disclosure. The redacted copy should (i) reflect the same pagination as the original; (ii) show the empty space from which information was redacted; and (iii) be submitted on a USB flash drive. File format shall be Microsoft Word 2007 or later. Except for the redacted information, the USB flash drive must be identical to the original hard copy and accessible for reproduction by PEBA.

Offerors should submit the following information for purposes of evaluation. PEBA desires a detailed written submission so that it can make an accurate comparison of all proposals received. Please be specific in your answers. The Proposal shall include the following sections and shall be presented in the order listed.

5.1 TECHNICAL PROPOSAL

5.1.1 COVER PAGE

Offerors must submit a signed copy of the cover page (Page 1 and 2) with their offer. By submitting a proposal, Offeror agrees to be bound by all of the terms of the RFP. Offerors agree to hold their offer open for a minimum of one-hundred twenty (120) calendar days after the Opening Date.

5.1.2 EXECUTIVE SUMMARY

An Executive Summary should be provided with the Offeror’s Proposal. The Executive Summary should bear the name and address of the Offeror, the solicitation number of this RFP, and acknowledgement of the receipt of any amendments. The Executive Summary should include a brief description of the Offeror’s understanding of the scope of services and their ability to provide the required services.

Single Statement of Acceptance: Offerors should include a single statement of acceptance in their Executive Summary. The single statement of acceptance should declare that the Offeror fully understands, agrees to and will comply with Part 1 Instructions to Offerors-A. General Instruction; Part 1 Instructions to Offerors-B. Special Instructions; Part 2 Scope of Proposal; Part 3 Scope of Work; Part 7 Terms and Conditions-A. General; and Part 7 Terms and Conditions-B. Special. Please note that PEBA considers any proposal containing deviations, exceptions or caveats to the RFP that have not been submitted for consideration during the question-and-answer phase, and adopted by PEBA, as unacceptable.

Mandatory Minimum Qualification: Offerors should provide information to clearly establish that the Offeror meets the mandatory minimum qualifications outlined in Part 4 Mandatory Minimum Qualifications. Offerors should include this information in their Executive Summary. Any Offeror not meeting the mandatory minimum qualifications will not be considered for award, and therefore will not be evaluated.

Subcontracting: Offerors should identify any subcontractor(s) by name, define the relationship, the work which they are to perform on this contract and the years of experience. The Offeror’s contract with the subcontractor(s) shall require the subcontractor(s) to comply with all of the requirements contained in this RFP.

5.1.3 TABLE OF CONTENTS

The Proposal should include a Table of Contents that lists page number references. The Table of Contents should be in sufficient detail to facilitate easy reference to the sections of the Proposal and separate attachments, which shall be included in the main Table of Contents. If supplemental materials are included with the Proposal, each copy of the Proposal should include such supplemental materials. Supplemental information (i.e., information not required) and attachments included by the Offeror should be clearly identified in the Table of Contents and provided as a separate section.

5.1.4 OFFEROR'S APPROACH

Offerors should describe their approach to providing Third Party Administration of the State Flexible Benefits Plan under this contract. Offerors, in describing their approach, should at a minimum restate each of the items below and provide their response (approach) to that item immediately thereafter.

5.1.4.1 *Plan administration*

1. Describe how you will advise PEBA of any changes in the IRS Code or regulations that affect flexible benefit plans and flexible spending accounts.
2. Describe in detail how you will meet PEBA's stated requirements in Section 3.1.4 and describe your approach to conducting nondiscrimination testing and when PEBA should expect a completed report. How many years of experience do you have in conducting nondiscrimination testing?

5.1.4.2 *Enrollment and eligibility*

1. Describe in detail how you will meet PEBA's stated requirements in Section 3.2.1 and describe the policies and procedures you will use to receive and process enrollment files and changes to participant enrollment from PEBA during a plan year.
2. Describe how you will ensure that eligibility data stored on your systems will mirror the eligibility data maintained by PEBA. How many of your employees will need access to PEBA's enrollment platform to respond to any enrollment questions from Participants?
3. Describe in detail the training you will provide PEBA staff to ensure their understanding of IRS eligibility and enrollment guidelines and changes during a plan year, including whether such changes are consistent with changes in family status.

5.1.4.3 *Claims processing*

1. Describe in detail and provide a flow chart showing each step of your claims administration processes. Include, at a minimum, the following:
 - The Participant's claim filing process (by paper, fax or other methods);
 - Your claims adjudication process (include the approval process, denial process and steps taken if more information is needed from Participants);
 - Your claims reimbursement process for mailing checks; and
 - Your claim reimbursement process for electronic direct deposit (include the time frame for notifying Participants about direct deposits).
2. Describe in detail your online claims system that allows a Participant to submit and track claim status, whether the claim is submitted via paper or other electronic method. Provide details that focus on ease of use for Participants.
3. Provide in detail how you will meet PEBA's stated requirements in Section 3.3.2 and describe your process to ensure you receive appropriate documentation to substantiate claims. Describe how you will assist a Participant when a claim is denied multiple times to help them submit a valid claim.

5.1.4.4 *Payroll processing*

1. Confirm your ability to handle the volume and complexity of receiving payroll files from more than 700 unique payroll centers, reconciling those files, and doing so on the payroll centers' different payroll cycles.
2. Describe in detail the one common mode (electronic data exchange file format) for processing and reporting payroll

data you will use, how you will train multiple payroll centers in its use and the support you will provide in their transition to the proposed format.

3. Describe in detail how you will meet PEBA's stated requirements in Section 3.4.2 and describe your administrative process for correcting payroll data and performing edits on incomplete or missing data for multiple employer plans.
4. Confirm your ability to provide an administrative or procedures manual that includes employer's roles and responsibilities specific to the administration of the Flexible Benefits Plan.
5. Describe in detail your portal that payroll centers will use to upload payroll submissions and to resolve issues. Provide details that focus on ease of use for payroll centers.
6. Describe in detail how you will meet PEBA's stated requirements in Section 3.4.3 and describe how you will handle resolution of any discrepancy in payroll deductions received with deductions expected.

5.1.4.5 Carrier files

1. Describe in detail your ability to receive carrier file data feeds from multiple third-party administrators.
2. Describe in detail the logistics for automatically adjudicating claims and substantiating card transactions through electronic data sharing with PEBA's various carriers. Describe how you will accept and coordinate carrier file data feeds for automatic claim processing. Provide a flowchart to demonstrate the process and describe each step on the flowchart. Identify the health plan carriers with which you have coordinated in the past.
3. Describe in detail how Participants can apply unused claims data to outstanding card transactions that cannot be auto-adjudicated in an electronic, easy-to-use format.

5.1.4.6 Stored value card

1. Describe in detail your debit card/stored value card process, including a flowchart, with at a minimum the following information:
 - Measures taken to properly adjudicate eligible claims;
 - Information needed on receipts;
 - Methods and time frame for receiving necessary information from Participants;
 - Claims substantiation;
 - Auditing of claims reimbursements;
 - Accounting for payments made in error; and
 - Recoupment of payments made in error.
2. State there is no charge to Participants for a debit card/stored value card.
3. Describe how you will guarantee that only items eligible for reimbursement as set forth in IRS guidelines are charged to the debit card. Describe how you will identify, prevent and investigate any improper use of the debit card.
4. Describe in detail how you minimize the amount of documentation Participants are required to provide within IRS guidelines.

5.1.4.7 Account management

1. Describe in detail your approach to managing PEBA's account from an account management perspective. Provide a detailed staffing plan (organizational chart) that includes a list of all proposed account management staff, their roles and responsibilities, and where they will be located. Provide the name, qualifications and experience/background of the proposed account manager and where the account manager will be located.

2. Describe in detail your approach to managing PEBA's account from a customer service and operational perspective. Provide a detailed staffing plan, including how many customer service and operational staff will be on the account, their roles and responsibilities, and where they will be located.
3. Describe the facilities and location(s) of the facilities that you will use to deliver services and manage PEBA's account under this contract.
4. Provide the names and the qualifications of the principal staff who will be responsible for implementation and describe their background and experience.
5. Describe how any turnover of key personnel assigned to this account would be handled.

5.1.4.8 *Customer service*

1. Describe in detail your philosophy and approach to customer service. Include information about the number of customer service representatives and toll-free lines that will be assigned and/or dedicated to this contract? Where will customer service representatives be located? Describe your procedures to ensure a prompt response to all inquiries from Participants, employers and PEBA.
2. Describe in detail how you will increase Participant self-service and Participant customer service satisfaction. Describe at a minimum how you will communicate with the Participant, how you will interface with the payroll centers, and how you will coordinate with other vendors and PEBA to ensure ease of use for the Participant in interacting with you.
3. Describe in detail initial and ongoing training, systems support, and quality assurance offered to customer service staff. Describe how customer service representatives and others working on PEBA's account will be trained on the details of our Plan documents. Describe your organization's processes for monitoring the adequacy of claims service and Participant satisfaction. How are telephone calls documented?
4. Provide details of your experience in conducting annual satisfaction surveys. Provide a sample of your proposed annual Participant Satisfaction Survey and a sample of your proposed Employer Satisfaction Survey. Include samples of a survey that has been conducted for a client and the results of that survey.
5. Provide a detailed description of your organization's internal appeals process. Include the timeline for handling appeals and your response time to PEBA requests for information regarding appeals. How will your organization cooperate with the operation of PEBA's appeal process? Provide a flowchart to demonstrate your organization's process.

5.1.4.9 *Communications and training*

1. Describe the informational materials that may be used to ensure all eligible employees are aware of each account. Provide examples of materials for flexible spending accounts, such as flyers, forms, posters, websites, email messages, etc., that may be used to communicate program information to ensure that all eligible employees are aware of and understand the accounts.
2. Describe your ability to customize communications for PEBA. Provide examples that illustrate cobranding.
3. Describe your experience in creating and delivering a marketing plan with a large public employer, or multi-employer plan, including the outcomes. Provide an example.
4. Describe in detail how you will work collaboratively with PEBA staff to develop and implement a comprehensive marketing plan to increase participation in the State Flexible Benefits Plan each calendar year. Describe how you will play a collaborative role in managing the communications for the State Flexible Benefits Plan to increase participation.

5. Provide a sample individual account balance statement and describe in detail the information contained on the statement, as well as the capability for customization. Describe the methods and frequency used by your organization to distribute statements to Participants.
6. Provide a detailed description and screenshots of the secure, password-protected, transaction-enabled website you will use for the State Flexible Benefits Plan's programs. Detail the capability for customization.
7. Provide detailed description and screenshots of the secure, password-protected, transaction-enabled mobile app you will use for the State Flexible Benefits Plan's programs. Detail the capability for customization..
8. Provide a detailed description of the website you will use that will be accessible without entering a password that explains the features, benefits and value of enrolling in the State Flexible Benefits Plan. Detail the capability for customization.

5.1.4.10 Performance Measurements, Standards and Liquidated Damages

1. Provide your PEBA specific monthly performance standards and related liquidated damages for deviation from those performance standards in, at a minimum, the following PEBA performance measurement areas as outlined in the table below. Describe how performance standards will be measured and reported on a quarterly basis. You may propose additional performance standards and related liquidated damages above the minimum requirements below. These performance standards and liquidated damages will remain in effect during the twelve (12) months following the end of the contract period during which the Contractor has continuing obligations under Section 3.15.

| Performance measurements | Standards | Liquidated damages |
|---|--|--------------------|
| Respond to inquiries from Participants and employers within twenty-four (24) hours. | "Offeror Name" shall respond to _____% of any inquiries from Participants and employers within twenty-four (24) hours. | |
| Process reimbursement checks to State Flexible Benefit Plan Participants (disbursed, denied, pending) within three (3) business days following receipt. | "Offeror Name" shall disburse _____% of claims within three (3) business days following receipt of a claim. For purposes of assessing performance under this standard, stored value card claims adjudicated at the point-of-sale are not considered a claim. Offeror should propose the minimum amount for which it shall issue a check (except for the last check of the year) or direct deposit. | |
| Customer Service Call Response Time | "Offeror Name" shall answer _____% of calls within _____ seconds. | |
| Call Abandonment Rate | ≤ _____ % | |
| 1 st Call Resolution | ≥ _____ % | |

*Achievement of performance guarantees is subject to independent verification by PEBA.

5.1.4.11 Reporting

1. Describe in detail how you will meet PEBA's stated requirements in Section 3.11.1 and describe the standard customized and ad hoc reports that will be provided, the frequency of those reports and a detailed description of all the information that will be provided in each of these reports.

5.1.4.12 Financial arrangements

1. Describe your approach to maintaining a separate bank account in PEBA's name for the purpose of receiving Participant contributions from payroll centers, maintaining Participant contributions and for the funding of claim disbursements under the State Flexible Benefits Plan and this contract.
2. Describe your approach to handling forfeited spending account balances and stale dated checks. Describe how you will credit funds from all cancelled claim reimbursement checks back to PEBA's account.
3. Describe your approach to handling the monthly bank reconciliation process, including reconciling the bank account to your internal system, and how you follow industry standard practices for reconciliations.

5.1.4.13 Information security requirements

1. Describe your organization's data security system and processes including breach notification. Include your database backup procedures and schedule. Provide a complete Service Provider Security Assessment Questionnaire (Attachment 3) with your response.

5.1.4.14 Implementation plan (not an evaluated item)

1. Submit a proposed implementation plan. The proposed implementation plan should outline in detail all the tasks necessary to begin full operations and performance on January 1, 2024. At a minimum, the proposed implementation plan should specify expected dates of completion of all tasks, how the tasks will be accomplished, the identity of the person(s) responsible for each task and any personnel who will be onsite during the implementation process. Specific tasks and schedules that should be included in the Offeror's proposed implementation plan include:
 - Review content for the *Insurance Benefits Guide* (June 2023)
 - Open enrollment materials (forms/confirmation notices/flyers/guides) (August 31, 2023)
 - Review content for the *Benefits Administrator Manual* (October 2023)
 - Forms to be used beginning January 1, 2024 (December 1, 2023)
 - Letters to be used beginning January 1, 2024 (December 1, 2023)
 - Bank reconciliation beginning January 1, 2024 (December 1, 2023)
 - Reports to be used beginning February 1, 2024 (December 1, 2023)

The Final Implementation Plan shall be based upon the proposed implementation plan.

5.1.5 OFFEROR'S BACKGROUND AND EXPERIENCE

Offerors should describe in detail their background and experience in providing Third Party Administration of Flexible Benefits Plans. Offerors, in describing their background and experience, should restate each of the items below and provide their response to that item immediately thereafter.

1. Describe how many multi-employer plans your organization has implemented and how many payroll centers were included in each plan.
2. Provide a detailed description of your organization, including size; number of employees; number of offices providing flexible benefit administration and locations; which of these offices will be directly involved in providing flexible benefits administration for PEBA; primary business/main business activities; length of time you have been in the business of providing Third Party Administration of Flexible Benefits Plans; and any other descriptive material.
3. Complete the table below indicating the number of flexible benefits plans for which you provide Third Party Administration services, including medical and dependent care spending accounts.

| Number of participants* | Number of Medical Spending Account plans | | Number of Dependent Care Spending Account plans | |
|-------------------------|--|-----------------------|---|-----------------------|
| | As of January 1, 2021 | As of January 1, 2022 | As of January 1, 2021 | As of January 1, 2022 |
| More than 50,000 | | | | |
| 30,000 to 50,000 | | | | |
| 20,000 to 30,000 | | | | |
| 10,000 to 20,000 | | | | |
| 5,000 to 10,000 | | | | |
| Less than 5,000 | | | | |

***Participants means individuals who participate in the flexible benefits plans for which the Offeror provides third party administration services.**

4. Describe your experience in providing claims processing services pursuant to Sections 105 and 129 of the Internal Revenue Service (IRS) code. Indicate the total number of claims processed and paid each month for medical and dependent care accounts during calendar year 2021.
5. Complete the table below indicating the number of payroll centers from which you receive contributions for flexible spending accounts.

| Number of payroll centers* | As of January 1, 2021 | As of January 1, 2022 |
|----------------------------|-----------------------|-----------------------|
| More than 500 | | |
| 251-500 | | |
| 101-250 | | |
| 51-100 | | |
| Less than 50 | | |

6. State your average turn-around time to respond to a request for reimbursement from a flexible spending account.
7. Provide a list of the public sector and private sector programs for which you currently provide administrative services, including employer name, the programs for which services are provided, the number of participants for each program and the number of years you have been retained.
8. Identify your ten (10) largest flexible benefits administration contracts in the last three (3) years and state whether any have been terminated during that period and the reason for termination.
9. Provide not less than three (3) public employee reference accounts (excluding the State of South Carolina and/or PEBA) for which you have administered flexible benefits programs within the last five years. Include the name of a contact person, title, address, telephone number and email address. Include the type of flexible benefits services administered and the number of participants at each public employer. References will be contacted and sent a written reference survey. As such, Offerors submitted references should be agreeable to completing and returning PEBA's written reference survey.
10. Provide any additional information that indicates that you are capable of administering a flexible benefits program of the size and complexity of PEBA's program.

5.2 BUSINESS PROPOSAL

5.2.1 FIXED ADMINISTRATIVE FEES

Provide administrative services for the State Flexible Benefits Plan as described herein for the fixed administrative fees quoted below for each Participant. The quoted administrative fee per State Flexible Benefits Plan account per Participant per month (year) multiplied by the number of Participants enrolled for each month shall be full payment for all services rendered by the Contractor under this contract. Quoted administrative fees shall be fixed for the initial term of the contract (January 1, 2024, through December 31, 2026).

Please submit fixed administrative fees per Participant for each State Flexible Benefits Plan account as listed below in even amounts and provide a total fixed administrative fee for the initial contract term (three years).

Offerors should not modify this Business Proposal. Offerors should not include any assumptions or qualifications concerning any response on this Business Proposal.

| Column A | Column B | Column C | Column D | Column E |
|--|--------------------------------|------------------------------------|------------------------------|------------------------------|
| Account | Cost per Participant per month | Approximate number of Participants | Total monthly amount (B × C) | Total annual amount (D × 12) |
| Medical Spending Account | | 26,797 | | |
| Limited-use Medical Spending Account | | 168 | | |
| Dependent Care Spending Account | | 1,814 | | |
| Total fixed administrative fee for the initial contract term (total of Column E amounts × 3) <i>Evaluated amount</i> | | | | |

PART 6

AWARD CRITERIA

Award will be made to the highest ranked, responsive and responsible Offeror whose offer is determined to be the most advantageous to PEBA. Award will be made to one Offeror.

Offers will be evaluated using the three evaluation criteria below. Evaluation criteria is listed in the relative order of importance, with the first criteria being the most important. Once evaluation is complete, all responsive Offerors will be ranked from most advantageous to least advantageous.

1. **Approach:** Offeror's detailed approach and understanding of the services being solicited. The evaluation panel will use the information submitted in response to Part 5, Information for Offerors to Submit, Section 5.1.4 Offeror's Approach (5.1.4.1 through 5.1.4.14) to evaluate this criteria. Each evaluation panel member will assign points subjectively.
2. **Background and Experience:** Offeror's background and experience. The evaluation panel will use the information submitted in response to Part 5, Information for Offerors to Submit, Section 5.1.5 Offeror's Background and Experience (1 through 10) to evaluate this criteria. Each evaluation panel member will assign points subjectively.
3. **Business Proposal:** Offeror's total fixed administrative fee for the initial contract term. The Procurement Officer will provide points to the evaluation panel once the panel has finalized their scoring for award criteria 1 and 2. The method of determining the points assigned for the total fixed administrative fee for the initial contract term in the evaluation process will be as follows:
 - a. Determine the lowest total fixed administrative fee for the initial contract term. This offeror will receive the maximum number of points assigned to the factor.
 - b. Divide each of the other offeror's total fixed administrative fee for the initial contract term into the lowest total fixed administrative fee for the initial contract term to calculate the percentage the lowest offer is to each of the other offeror's total fixed administrative fee for the initial contract term.
 - c. Multiply these percentages by the number of points available for the assignment of points for the total fixed administrative fee for the initial contract term.

PART 7

TERMS AND CONDITIONS - A. GENERAL

7.1 ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE (FEB 2015): (a) Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the Procurement Officer. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g., bankruptcy; corporate reorganizations and consolidations, but not including partial asset sales). Notwithstanding the foregoing, Contractor may assign monies receivable under the contract provided that the state shall have no obligation to make payment to an assignee until thirty (30) days after Contractor (not the assignee) has provided the Procurement Officer with (i) proof of the assignment, (ii) the identity (by contract number) of the specific state contract to which the assignment applies, and (iii) the name of the assignee and the exact address or account information to which assigned payments should be made. (b) If Contractor amends, modifies, or otherwise changes its name, its identity (including its trade name), or its corporate, partnership or other structure, or its FEIN, Contractor shall provide the Procurement Officer prompt written notice of such change. (c) Any name change, transfer, assignment, or novation is subject to the conditions and approval required by Regulation 19-445.2180, which does not restrict transfers by operation of law.

7.2 BANKRUPTCY – GENERAL (FEB 2015): (a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to PEBA. This notification shall be furnished within two (2) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract. (b) Termination. This contract is voidable

and subject to immediate termination by the State upon the Contractor's insolvency, including the filing of proceedings in bankruptcy.

7.3 CHOICE-OF-LAW (JAN 2006): The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by this solicitation.

7.4 CONTRACT DOCUMENTS & ORDER OF PRECEDENCE (FEB 2015): (a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) the solicitation, as amended, (3) documentation of discussions [11-35-1530(6)] of an offer, if applicable, (4) your offer, (5) any statement reflecting the State's final acceptance (a/k/a "award"), and (6) purchase orders. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (5) above shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation, (i) a purchase order or other instrument submitted by the State, (ii) any invoice or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by PEBA. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

7.5 DISCOUNT FOR PROMPT PAYMENT (JAN 2006): (a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices. (b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the State annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

7.6 DISPUTES (JAN 2006): (1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United States' Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by this solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

7.7 EQUAL OPPORTUNITY (JAN 2006): Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference.

7.8 FALSE CLAIMS (JAN 2006): According to the S.C. Code of Laws Section 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.

7.9 FIXED PRICING REQUIRED (JAN 2006): Any pricing provided by Contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, Contractor's price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit Contractor from offering lower pricing after award.

7.10 NO INDEMNITY OR DEFENSE (FEB 2015): Any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney's fees to anyone for any reason.

7.11 NOTICE (JAN 2006): (A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to Contractor shall be to the address identified as the Notice Address on Page Two. Notice to the state shall be to the Procurement Officer's address on the Cover Page. Either party may designate a different address for notice by giving notice in accordance with this paragraph.

7.12 OPEN TRADE (JUN 2015): During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300.

7.13 PAYMENT & INTEREST: (a) PEBA shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by PEBA. (b) Unless otherwise provided herein, including the purchase order, payment will be made by check mailed to the payment address on "Page Two." (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, PEBA shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason. (d) Amounts due to PEBA shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 ("an amount not to exceed fifteen percent each year"), as amended, unless otherwise required by Section 29-6-30. (e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding. (f) PEBA shall have all of its common law, equitable, and statutory rights of set-off.

7.14 PUBLICITY (JAN 2006): Contractor shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Procurement Officer.

7.15 PURCHASE ORDERS (JAN 2006): Contractor shall not perform any work prior to the receipt of a purchase order from PEBA. Purchase orders may be used to elect options available under this contract, e.g., quantity, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order.

7.16 SURVIVAL OF OBLIGATIONS (JAN 2006): The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Indemnification - Intellectual Property, Contract Documents and Order of Precedence, HIPPA Compliance/Confidentiality and any provisions regarding warranty or audit.

7.17 TAXES (JAN 2006): Any tax the Contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the Contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely the State's obligation, after payment to Contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor

agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to Contractor by the taxing authority. In the event that the Contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the State to the Contractor, Contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on the Contractor's net income or assets shall be the sole responsibility of the Contractor.

7.18 TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006): Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, Contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term.

7.19 THIRD PARTY BENEFICIARY (JAN 2006): This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third party beneficiary or otherwise.

7.20 WAIVER (JAN 2006): The State does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the State's rights under this Contract. Any waiver must be in writing.

TERMS AND CONDITIONS - B. SPECIAL

7.21 ADVERTISING USE AND REPRESENTATION: CONTACT WITH STATE ENTITIES: The Contractor agrees not to refer to the award of this contract in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed or preferred by PEBA or the State of South Carolina or is considered by PEBA or the State of South Carolina to be superior to other products or services. PEBA reserves the right to review and approve any commercial advertising to which PEBA's use of Contractor's services and/or supplies under this Contract is referred. Such review shall be timely and approval shall not be unreasonably withheld. The Contractor shall not perform any mass mailings to participants without the permission of PEBA. At no time during the term of the Contract or otherwise, shall any employee of the Contractor use any data, name, address or other information received by the Contractor or Subcontractor pursuant to this Contract for any purpose other than performance of the contract. Any violation of this clause is a material breach of contract. The parties acknowledge the difficulties inherent in determining the damage from any breach of these restrictions. Contractor shall pay PEBA liquidated damages per of this Contract.

7.22 ATTORNEY'S FEES: In the event that PEBA brings suit or action to compel performance of or recover for any breach of any stipulation, covenant, term, or condition of this Contract, PEBA may seek attorneys' fees from the Contractor and the Contractor will pay to PEBA such attorneys' fees as the court may award. Contractor will, in all instances, bear its own attorneys' fees and expenses.

7.23 BANKRUPTCY – GOVERNMENT INFORMATION (FEB 2015): (a) All government information (as defined in the clause herein entitled "Information Security - Definitions") shall belong exclusively to the State, and Contractor has no legal or equitable interest in, or claim to, such information. Contractor acknowledges and agrees that in the event Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, government information in its possession and/or under its control will not be considered property of its bankruptcy estate. (b) Contractor agrees to notify the State within forty-eight (48) hours of any determination that it makes to file for bankruptcy protection, and Contractor further agrees to turn over to the State, before such filing, all government information that is in Contractor's possession in a format that can be readily utilized by the State. (c) In order to protect the integrity and availability of government information, Contractor shall take reasonable measures to evaluate and monitor the financial circumstances of any subcontractor that will process, store, transmit or access government information.

7.24 CHANGES (JAN 2006): (1) Contract Modification. By a written order, at any time, and without notice to any surety, the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

- (a) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the [State] in accordance therewith;
- (b) method of shipment or packing;
- (c) place of delivery;
- (d) description of services to be performed;
- (e) time of performance (i.e., hours of the day, days of the week, etc.); or,
- (f) place of performance of the services. Subparagraphs (a) to (c) apply only if supplies are furnished under this contract. Subparagraphs (d) to (f) apply only if services are performed under this contract.

(2) Adjustments of Price or Time for Performance. If any such change increases or decreases the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the contract as changed, provided that the State promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(3) Time Period for Claim. Within 30 days after receipt of a written contract modification under Paragraph (1) of this clause, unless such period is extended by the Procurement Officer in writing, the Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Contractor's claim unless the State is prejudiced by the delay in notification.

(4) Claim Barred After Final Payment. No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

7.25 COMPLIANCE WITH LAWS (JAN 2006): During the term of the contract, Contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.

7.26 CONFERENCE – PRE-PERFORMANCE (JAN 2006): Unless waived by the Procurement Officer, a pre-performance conference between the Contractor, PEBA and Procurement Officer shall be held at a location selected by PEBA within five (5) days after final award, and prior to commencement of work under the contract. The responsibilities of all parties involved will be discussed to assure a meeting of the minds of all concerned. The Contractor or his duly authorized representative shall be required to attend at Contractor's expense.

7.27 CONTRACT INTERPRETATION: In the event there are any disagreements between the parties with regards to the application of this contract or the requirements of PEBA arising from any interpretation of the Request for Proposal, this contract, or otherwise, Contractor agrees to defer to the reasonable interpretations of PEBA as from time to time may be made by PEBA. This provision applies to all matters including those arising from disputes concerning whether Contractor is required to provide some service or item including scope of work issues and whether particular items or services were included in the scope of work agreed to by the parties in this contract or otherwise. In summary, if both parties have a reasonable interpretation regarding application of the contract, Contractor agrees to defer to PEBA's interpretation.

7.28 CONTRACT LIMITATIONS (JAN 2006): No sales may be made pursuant to this Contract for any item or service that is not expressly listed. No sales may be made pursuant to this Contract after expiration of this Contract. Violation of this provision may result in termination of this Contract and may subject contractor to suspension or debarment.

7.29 CONTRACTOR PERSONNEL (JAN 2006): The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

7.30 CONTRACTOR'S LIABILITY INSURANCE-GENERAL (FEB 2015): (a) Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of A-VII or better, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by the Contractor, his agents, representatives, employees or subcontractors. (b) Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy.

(2) Worker's Compensation: As required by the State of South Carolina, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

(b) PEBA, its officers, officials, employees and volunteers, must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

(c) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, PEBA, and its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the State, PEBA, or its officers, officials, employees and volunteers, shall be excess of the Contractor's insurance and shall not contribute with it.

(d) Prior to commencement of the work, the Contractor shall furnish the State with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by the State before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, or sufficient proof of applicable coverage, as determined by the State, including endorsements required by this section, at any time.

(e) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State immediately upon receiving any information that any of the coverages required by this section are or will be changed, cancelled, or replaced.

(f) Contractor hereby grants to the State and PEBA a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or PEBA by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or PEBA has received a waiver of subrogation endorsement from the insurer.

(g) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(h) The State reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

7.31 CONTRACTOR'S LIABILITY INSURANCE-INFORMATION SECURITY AND PRIVACY (FEB 2015)

[ASK QUESTIONS NOW: For products providing the coverages required by this clause, the insurance market is evolving. Our research indicates that the requirements stated herein reflect commercially-available insurance products. Any offeror having concerns with any specific requirements of this clause should communicate those concerns to the Procurement Officer prior to the adjournment of the Pre-Proposal Conference.]

(a) Without limiting any other obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of A-VII or better, and maintain for the duration of the contract, a policy or policies of insurance against claims which may arise from or in connection with the performance of the work and the results of that work by the Contractor, his agents, representatives, employees, subcontractors or any other entity for which the Contractor is legally responsible.

(b) Coverage must include claims for:

(i) information security risks, including without limitation, failure to prevent unauthorized access to, tampering with or unauthorized use of a computer system; introduction of malicious codes, computer viruses, worms, logic bombs, etc., into data or systems; or theft, damage, unauthorized disclosure, destruction, or corruption of information in whatever form;

- (ii) privacy risks, including (A) failure to properly handle, manage, store, dispose of, destroy, or otherwise control non-public personally identifiable information in any format; (B) loss of, unauthorized access to, or disclosure of confidential information; and (C) any form of invasion, infringement or interference with rights of privacy, including breach of security/privacy laws or regulations;
- (iii) contractual liability for the Contractor's obligations described in the clauses titled "Indemnification - Third Party Claims – Disclosure Of Information" and "Information Use And Disclosure;" and
- (iv) errors, omissions, or negligent acts in the performance, by the Contractor or by any entity for which the Contractor is legally responsible, of professional services included in the work.
- (c) If the work includes content for internet web sites or any publications or media advertisements, coverage must also include claims for actual or alleged infringement of intellectual property rights, invasion of privacy, as well as advertising, media and content offenses.
- (d) If the work includes software, coverage must also include claims for intellectual property infringement arising out of software and/or content (with the exception of patent infringement and misappropriation of trade secrets)
- (e) Coverage shall have limits no less than four million (\$4,000,000.00) dollars per occurrence and six million (\$6,000,000.00) dollars aggregate.
- (f) If the insurance required by this clause is procured on a form affording "claims-made" coverage, then (i) all limits stated above as "per occurrence" shall be understood to mean "per claim" or "per occurrence," as is consistent with the terms of the "claims-made" policy; and (ii) such claims-made insurance shall provide for a retroactive date no later than the date the contract is awarded.
- (g) All terms of this clause shall survive termination of the contract and shall continue until thirty (30) days past the final completion of the work, including the performance of any warranty work. In addition, Contractor shall maintain in force and effect any "claims- made" coverage for a minimum of two (2) years after final completion of all work or services to be provided hereunder. Contractor shall purchase an extended reporting period, or "tail coverage," if necessary to comply with the latter requirement.
- (h) PEBA must be covered as additional insureds on the policy or policies of insurance required by this clause.
- (i) Prior to commencement of the work, the Contractor shall furnish the State with original certificates of insurance for every applicable policy effecting the coverage required by this clause. All certificates are to be received and approved by the Procurement Officer before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, or sufficient proof of applicable coverage, as determined by the State, including policy declarations and any endorsements required by this section, at any time.
- (j) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State immediately upon receiving any information that any of the coverages required by this clause are or will be changed, cancelled, or replaced.
- (k) Contractor hereby grants to the State and PEBA a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or PEBA by virtue of the payment of any loss under such insurance as is required by this clause. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or PEBA has received a waiver of subrogation endorsement from the insurer.
- (l) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

7.32 CONTRACTOR'S OBLIGATION - GENERAL (JAN 2006): The Contractor shall provide and pay for all materials, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the work. The Contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. The Contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements.

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7.33 DEFAULT (JAN 2006): (a) (1) The State may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or
- (iii) Perform any of the other material provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The State's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within ten (10) days (or more if authorized in writing by the Procurement Officer) after receipt of the notice from the Procurement Officer specifying the failure.

(b) If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Procurement Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the State in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the State may require the Contractor to transfer title and deliver to the State, as directed by the Procurement Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Procurement Officer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.

(f) The State shall pay contract price for completed supplies delivered and accepted. The Contractor and Procurement Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property; if the parties fail to agree, the Procurement Officer shall set an amount subject to the Contractor's rights under the Disputes clause. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the Procurement Officer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the termination had been issued for the convenience of the State. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under the Disputes clause.

(h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

7.34 DUTIES UPON TERMINATION: Upon expiration or termination of the Contract for any reason, the Contractor shall provide full cooperation to PEBA and any successor Contractor so that the transition to PEBA or a subsequent Contractor will be efficiently accomplished without any disruption in claims processing, claims payments, or services to participants and providers. Within ten (10) working days following notice of termination of the Contract, the Contractor shall deliver to PEBA a detailed transition plan, including all information regarding current operations requested by PEBA, that PEBA, in its sole discretion, feels is necessary to effectuate a smooth transition to a successor contractor. No later than sixty (60) days before the end of the term of the Contract, the Contractor shall provide any and all materials, data, records, databases, software, and all other things in the Contractor's possession to PEBA or the successor Contractor at no additional cost to PEBA, including: (1) all participants information received during the term of the contract, (2) claims processed during the preceding twenty-four (24) months; (3) sufficient information and technical assistance on current operations to assure that the transition can be achieved without disruption of ongoing operations. For a year following the termination of the Contract, the Contractor shall provide any continuing support and/or information to PEBA and the successor contractor necessary to complete the transition and resolve outstanding claims, accounting, and customer service issues. Performance

Guarantees will continue to apply during this period of transition. In the event that PEBA has not secured alternate sources for the supplies and/or services under this Contract at the expiration of, or following termination of the Contract for any reason, the Contractor agrees to continue to perform hereunder at the then-applicable prices and terms until such alternate source is obtained and any transition period required to maintain continuity has been successfully completed

7.35 HIPAA COMPLIANCE/CONFIDENTIALITY: The Contractor shall keep confidential all information and material which has or will come into its possession or knowledge in connection with the performance of services under this contract; and will not release, use or disclose any such information without prior written consent of PEBA. In addition, the Contractor shall comply with all State and federal laws and regulations concerning the confidentiality of medical records, including, but not limited to, the Privacy Act of 1974, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and any federal regulations concerning the confidentiality of alcohol and drug abuse patient records. Furthermore, the Contractor shall adhere to the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and sign PEBA's Business Associate Agreement (Attachment 5), prior to award of the contract, which has been constructed in accordance with the requirements of the HIPAA Privacy and Security Rules and the requirements of the HITECH Act.

7.36 ILLEGAL IMMIGRATION (NOV. 2008): (An overview is available at www.procurement.sc.gov) By signing your offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractors language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

7.37 INDEMNIFICATION - THIRD PARTY CLAIMS - GENERAL:

(a) Notwithstanding any limitation in this Contract, and to the fullest extent permitted by law, Contractor will indemnify PEBA for any and all costs, expenses, settlement payments, attorney's fees, losses, liabilities, and damages from all suits or claims of any character brought by a third party, when the third party's claims arise out of or are in connection with the goods or services acquired under this Contract, whether caused in whole or in part by any act or omission of Contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, and regardless of whether or not caused in part by PEBA. The Contractor shall be required to indemnify under this section regardless of its own fault, but if PEBA's negligence is determined by the appropriate court to be the sole proximate cause of the suit or claim, the Contractor will not be required to indemnify PEBA under this paragraph. PEBA will, at all times, retain the right to choose its own counsel and control its own defense.

(b) In the event Contractor's obligation to indemnify arises pursuant to 7.32(a) above, PEBA may, at its sole discretion, request Contractor to provide defense of the third party claim or suit. If PEBA elects defense, Contractor will bear full responsibility for any and all costs, expenses, settlement payments, attorney's fees, losses, liabilities, and damages resulting from the suit or claim. PEBA will give Contractor timely notice of the suit or claim. PEBA's failure to provide or delay in providing such notice will relieve Contractor of its obligations under this subparagraph only if and to the extent that such delay or failure materially prejudices Contractor's ability to defend such action. Contractor must provide counsel acceptable to PEBA. Contractor will keep PEBA apprised of all documents filed or sent to the third party in the claim or suit and allow PEBA the opportunity to review and provide input on the Contractor's draft documents before they are filed or sent. PEBA reserves the right to revoke its request for defense at any point and to undertake responsibility for its own defense, in which case Contractor will be required to indemnify PEBA under subparagraph (a) of this paragraph. Contractor may not, without PEBA's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened action, suit, or claim.

(c) Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause will not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist at law or in equity. The obligations of this paragraph will survive termination, cancelation, or expiration of this Contract. This provision will be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance.

7.38 INDEMNIFICATION - THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION:

(a) Notwithstanding any limitation in this Contract, and to the fullest extent permitted by law, Contractor will indemnify PEBA for any and all costs, expenses, settlement payments, attorney's fees, losses, liabilities, and damages from all suits or claims by a third party which arise out of or in connection with a disclosure of government information (as defined in the clause titled Information Security - Definitions) caused in whole or in part by any act or omission of Contractor, its subcontractors at any tier, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by PEBA. The Contractor shall be required to indemnify under this section regardless of its own fault, but if PEBA's negligence is determined by the appropriate court to be the sole proximate cause of the suit or claim, the Contractor will not be required to indemnify PEBA under this section. PEBA will, at all times, retain the right to choose its own counsel and control its own defense.

(b) In the event Contractor's obligation to indemnify arises pursuant to 7.33(a) above, PEBA may, at its sole discretion, request Contractor to provide defense of the third party claim or suit. If PEBA elects defense, Contractor will bear full responsibility for any and all costs, expenses, settlement payments, attorney's fees, losses, liabilities, and damages resulting from the suit or claim. PEBA will give Contractor timely notice of the suit or claim. PEBA's failure to provide or delay in providing such notice will relieve Contractor of its obligations under this subparagraph only if and to the extent that such delay or failure materially prejudices Contractor's ability to defend such action. Contractor must provide counsel acceptable to PEBA. The Contractor will keep PEBA apprised of all documents filed or sent to the third party in the claim or suit and, to the extent practicable, allow PEBA the opportunity to review and provide input on the Contractor's draft documents before they are filed or sent. Contractor may not, without PEBA's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened action unless such settlement, compromise, or consent (i) includes an unconditional release of PEBA from all liability related to such commenced or threatened action, and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability, or failure to act by or on behalf of PEBA or otherwise adversely affect PEBA. PEBA's consent is necessary for any settlement that requires PEBA to part with any right or make any payment or subjects PEBA to any injunction. PEBA reserves the right to revoke its request for defense at any point and to undertake responsibility for its own defense, in which case Contractor will be required to indemnify PEBA under subparagraph (a) of this paragraph.

(c) Notwithstanding any other provision, Contractor's obligations pursuant to this clause are without any limitation whatsoever. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of the contract. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance.

7.39 INDEMNIFICATION-INTELLECTUAL PROPERTY (JAN 2006): (a) Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the State, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. State shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. State shall allow Contractor to settle such claim so long as (i) all settlement payments are made by Contractor, and (ii) the settlement imposes no non-monetary obligation upon State. State shall reasonably cooperate with Contractor's defense of such claim. (b) In the event an injunction or order shall be obtained against State's use of any acquired item, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either: (1) procure for State the right to continue to use, or have used, the acquired item, or (2) replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by State. If neither (1) nor (2), above, is practical, State may require that Contractor remove the acquired item from State, refund to State any charges paid by State therefor, and take all steps necessary to have State released from any further liability. (c) Contractors obligations under this paragraph do not apply to a claim to the extent (i) that the claim is

caused by Contractor's compliance with specifications furnished by the State unless Contractor knew its compliance with the State's specifications would infringe an IP right, or (ii) that the claim is caused by Contractor's compliance with specifications furnished by the State if the State knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor. (d) As used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right. "Acquired item(s)" means the rights, goods, or services furnished under this agreement. "Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work. (e) Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement.

7.40 INFORMATION SECURITY - DEFINITIONS (FEB 2015): The following definitions are used in those clauses that cross reference this clause.

Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object may have occurred. Without limitation, the term "compromise" includes copying the data through covert network channels, or copying the data to unauthorized media, or disclosure of information in violation of any obligation imposed by this contract.

Data means a subset of information in an electronic format that allows it to be retrieved or transmitted.

Government information means information (i) provided to Contractor by, or generated by Contractor for, PEBA, or (ii) acquired or accessed by Contractor as a result of performing the Work. Without limiting the foregoing, government information includes any information that Contractor acquires or accesses by software or web-based services, which includes, without limitation, any metadata or location data. Government information excludes unrestricted information.

Information means any communication or representation of knowledge such as facts, statistics, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual.

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

Public information means any specific information, regardless of form or format, that the State has actively and intentionally disclosed, disseminated, or made available to the public. Information is not public information solely because it may be subject to inspection pursuant to an unfulfilled public records request.

Software means any computer program accessed or used by PEBA or a third party pursuant to or as a result of this contract.

Third party means any person or entity other than PEBA, the Contractor, or any subcontractors at any tier.

Unrestricted information means (1) public information acquired other than through performance of the work, (2) information acquired by Contractor prior to contract formation, (3) information incidental to your contract administration, such as financial, administrative, cost or pricing, or management information, and (4) any ideas, concepts, know-how, methodologies, processes, technologies, techniques which Contractor develops or learns in connection with Contractor's performance of the work.

Web-based service means a service accessed over the Internet and acquired, accessed, or used by the using governmental unit or a third party pursuant to or as a result of this contract, including without limitation, cloud services, software-as-a-service, and hosted computer services.

7.41 INFORMATION SECURITY - SAFEGUARDING REQUIREMENTS (FEB 2015)

(a) *Definitions.* The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions. In addition, as used in this clause—

Clearing means removal of data from an information system, its storage devices, and other peripheral devices with storage capacity, in such a way that the data may not be reconstructed using common system capabilities (i.e., through the keyboard); however, the data may be reconstructed using laboratory methods.

Intrusion means an unauthorized act of bypassing the security mechanisms of a system.

Media means physical devices or writing surfaces including but not limited to magnetic tapes, optical disks, magnetic disks, portable hard drives, "thumb" drives, large scale integration memory chips, and printouts (but not including display media, e.g., a computer monitor, cathode ray tube (CRT) or other (transient) visual output) onto which information is recorded, stored, or printed within an information system.

Safeguarding means measures or controls that are prescribed to protect information.

Voice means all oral information regardless of transmission protocol.

(b) *Safeguarding Information.* Without limiting any other legal or contractual obligations, Contractor shall implement and maintain reasonable and appropriate administrative, physical, and technical safeguards (including without limitation written policies and procedures) for protection of the security, confidentiality and integrity of the government information in its possession. In addition, Contractor shall apply security controls when the Contractor reasonably determines that

safeguarding requirements, in addition to those identified in paragraph (c) of this clause, may be required to provide adequate security, confidentiality and integrity in a dynamic environment based on an assessed risk or vulnerability.

(c) *Safeguarding requirements and procedures.* Contractor shall apply the following basic safeguarding requirements to protect government information from unauthorized access and disclosure:

(1) Protecting information on public computers or Web sites. Do not process government information on public computers (e.g., those available for use by the general public in kiosks, hotel business centers) or computers that do not have access control. Government information shall not be posted on Web sites that are publicly available or have access limited only by domain/Internet Protocol restriction. Such information may be posted to web pages that control access by user ID/password, user certificates, or other technical means, and that provide protection via use of security technologies. Access control may be provided by the intranet (versus the Web site itself or the application it hosts).

(2) Transmitting electronic information. Transmit email, text messages, blogs, and similar communications that contain government information using technology and processes that provide the best level of security and privacy available, given facilities, conditions, and environment.

(3) Transmitting voice and fax information. Transmit government information via voice and fax only when the sender has a reasonable assurance that access is limited to authorized recipients.

(4) Physical and electronic barriers. Protect government information by at least one physical and one electronic barrier (e.g., locked container or room, login and password) when not under direct individual control.

(5) Sanitization. At a minimum, clear information on media that have been used to process government information before external release or disposal. Overwriting is an acceptable means of clearing media in accordance with National Institute of Standards and Technology 800–88, Guidelines for Media Sanitization, at http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88_with-errata.pdf.

(6) Intrusion protection. Provide at a minimum the following protections against intrusions and compromise:

(i) Current and regularly updated malware protection services, e.g., anti-virus, antispyware.

(ii) Prompt application of security-relevant software upgrades, e.g., patches, service packs, and hot fixes.

(7) Transfer limitations. Transfer government information only to those subcontractors that both require the information for purposes of contract performance and provide at least the same level of security as specified in this clause.

(d) *Subcontracts.* Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement requirements at least as secure as those imposed by this clause on, any other person or entity that contractor authorizes to take action related to government information.

(e) *Other contractual requirements regarding the safeguarding of information.* This clause addresses basic requirements and is subordinate to any other contract clauses or requirements to the extent that it specifically provides for enhanced safeguarding of information or information systems.

7.42 INFORMATION SECURITY – DATA LOCATION (FEB 2015): Contractor is prohibited from accessing, processing, transmitting, or storing government information, as defined in the clause titled Information Security, outside the United States. This obligation is a material requirement of this contract.

7.43 INFORMATION USE AND DISCLOSURE (FEB 2015): Except to the extent necessary for performance of the work, citizens should not be required to share information with those engaged by the government in order to access services provided by the government and such information should be used by those engaged by the government only to the extent necessary to perform the work acquired; accordingly, this clause addresses basic requirements for the Contractor’s use and disclosure of government information, which expressly includes, but is not limited to, information provided by or obtained from the citizens. Anonymizing information does not resolve the foregoing concern. This clause should be broadly interpreted to effectuate this intent. Every obligation in this clause is material. Absent express reference to this clause, this clause supersedes any other clause to the extent of any inconsistency unless and to the extent the other clause provides greater protection for government information.

(a) *Definitions.* The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions.

(b) *Legal mandates.* Contractor shall be permitted to use, disclose, or retain government information to the limited extent necessary to comply with any requirement imposed on Contractor by law. If it is necessary for Contractor to use, disclose, or retain government information in order to comply with a law, Contractor shall provide using governmental unit with written notice, including a description of the circumstances and applicable law, in advance of such use, disclosure or retention except to the extent expressly prohibited by law.

(c) *Flow down.* Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement the requirements of this clause on, any other person or entity that contractor authorizes to take action related to government information.

(d) *Collecting Information.* Contractor must gather and maintain government information only to the minimum extent necessary to accomplish the work.

(e) *Rights, Disclosure and Use.* Except as otherwise expressly provided in this solicitation, Contractor agrees NOT to either (1) use or disclose government information, or (2) retain government information after termination or expiration of this contract. Contractor acquires no rights in any government information except the limited rights to use, disclose and retain the government information in accordance with the terms of this solicitation. To the extent reasonably necessary to perform the work, Contractor may: (i) use (including access, process, transmit, and store) and maintain the government information itself; and (ii) disclose government information to persons having a need-to-know (e.g., subcontractors). Before disclosing government information to a subcontractor or third party, Contractor shall give PEBA detailed written notice of both the reason for disclosure and the identity and location of the recipient. The notice shall be provided no later than fifteen (15) business days in advance of the disclosure.

(f) *Return.* Notwithstanding PEBA's failure to perform or the pendency of a dispute, eight years following the termination of this contract Contractor agrees to promptly deliver to PEBA (or destroy, at PEBA's option) all government information in its possession as and upon written request of PEBA.

(g) *Privacy Policy & Applicable Laws.* Without limiting any other legal or contractual obligations imposed by this contract or the law, Contractor shall (a) comply with its own privacy policies and written privacy statements relevant to the work, and (b) comply with (1) all laws applicable to Contractor regarding government information, and (2) all laws and standards identified in the clause, if included, entitled Information Use and Disclosure – Standards.

(h) *Actions Following Disclosure.* Immediately upon discovery of a compromise or improper use of government information, Contractor shall take such action as may be necessary to preserve forensic evidence and eliminate the cause of the compromise or improper use. As soon as practicable, but no later than twenty-four hours after discovery, Contractor shall notify PEBA of the compromise or improper use, including a description of the circumstances of the use or compromise. As soon as practicable after discovery, Contractor shall undertake a thorough forensic investigation of any compromise or improper use and provide PEBA all information necessary to enable PEBA to fully understand the nature and extent of the compromise or improper use. With regard to any compromise or improper use of government information, Contractor shall: (1) provide any notification to third parties legally required to be provided such notice by Contractor, and if not (e.g., if legally required of PEBA), Contractor shall reimburse PEBA for the cost of providing such notifications; (2) pay all costs and expenses for at least two years of identity theft monitoring services (including without limitation, credit monitoring) and identity theft restoration services for any such affected individuals receiving notice where such services are appropriate given the circumstances of the incident and the nature of the information compromised; (3) undertake any other measures that are customary and reasonable for an entity to take when experiencing a similar disclosure, (4) pay any related fines or penalties imposed on PEBA, and (5) reimburse PEBA all costs reasonably incurred for communications and public relations services involved in responding to the compromise or improper use. Notwithstanding any other provision, contractor's obligations pursuant to this item (h) are without limitation.

(i) *Survival & Remedy.* All the obligations imposed by this paragraph are material. The obligations of this section shall survive termination or expiration of the contract. Without limiting any rights PEBA may have, and notwithstanding any other term of this contract, Contractor agrees that PEBA may have no adequate remedy at law for a breach of Contractor's obligations under this clause and therefore PEBA shall be entitled to pursue equitable remedies in the event of a breach of this clause.

7.44 INFORMATION USE AND DISCLOSURE – STANDARDS (FEB 2015): To the extent applicable: (a) Breach of security of state agency data; notification; rights and remedies of injured parties; penalties; notification of Consumer Protection Division, S.C. Code Ann. § 1-11-490.

(b) South Carolina Financial Identity Fraud and Identity Theft Protection Act (FIFITPA), 2008 Act 190, as amended. Solely for purposes of Section 39-1-90 of the South Carolina Code of Laws, as amended, Contractor is deemed to be the owner of government information, as defined herein, and Contractor agrees that PEBA is not a licensee.

(c) The South Carolina Family Privacy Protection Act of 2002, S.C. Code Ann. §§ 30-2-10, *et seq.*

(d) Personal Identifying Information Privacy Protection, S.C. Code Ann. §§ 30-2-310 *et seq.*

(e) Data Breach Notification, Proviso 117.110 of the 2015-2016 Appropriations Act. H.R. 3701 § 117.110. 121st Cong. (S.C. 2015) (Act 91), as revised in any future annual appropriations act.

7.45 LAWSUIT NOTIFICATION AND COOPERATION. The Contractor shall notify PEBA of any lawsuit or legal claim asserted, brought, filed, or served against the Contractor arising out of or in connection with the goods or services acquired hereunder. Notification shall be made within two (2) business days after the date Contractor first learns, by any means, of the legal claim or lawsuit. The Contractor will keep PEBA apprised of all documents filed in the lawsuit, and, to the extent possible, allow PEBA the opportunity to review and provide input on the Contractor's draft documents before they are filed. PEBA will, at all times, retain the right to choose its own counsel and control its own defense. The Contractor also agrees to cooperate with PEBA and provide data, information, and documentation necessary to pursue litigation filed by or on behalf of PEBA against any party.

7.46 LICENSES AND PERMITS (JAN 2006): During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.

7.47 OWNERSHIP OF DATA & MATERIALS (JAN 2006): All data, material and documentation prepared for the state pursuant to this contract shall belong exclusively to the State.

7.48 PRICE ADJUSTMENT - LIMITED-AFTER INITIAL TERM ONLY (JAN 2006): Upon approval of the Procurement Officer, prices may be adjusted for any renewal term. Prices shall not be increased during the initial term. Any request for a price increase must be received by the Procurement Officer at least one (1) year prior to the expiration of the applicable term and must be accompanied by sufficient documentation to justify the increase. If approved, a price increase becomes effective starting with the term beginning after approval. A price increase must be executed as a change order. Contractor may terminate this contract at the end of the then current term if a price increase request is denied. Notice of termination pursuant to this paragraph must be received by the Procurement Officer no later than fifteen (15) days after the Procurement Officer sends contractor notice rejecting the requested price increase.

7.49 PRICE ADJUSTMENTS--LIMITED BY CPI "OTHER GOODS & SERVICES" (JAN 2006): Upon request and adequate justification, the Procurement Officer may grant a price increase up to, but not to exceed, the unadjusted percent change for the most recent 12 months for which data is available, that is not subject to revision, in the Consumer Price Index (CPI) for all urban consumers (CPI-U), "Other Goods & Services" for services, as determined by the Procurement Officer. The Bureau of Labor and Statistics publishes this information on the web at www.bls.gov

7.50 PRICING DATA -- AUDIT -- INSPECTION (JAN 2006)

[Clause Included Pursuant to Section 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. Section 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with Contractor which exceeds \$100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the State finds that such price was increased because you furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between parties. (b) Records Retention. You shall maintain your records for three years from the date of final payment, or longer if requested by the Chief Procurement Officer. The State may audit your records at reasonable times and places. As used in this subparagraph (b), the term "records" means any books or records that relate to cost or pricing data submitted pursuant to this clause. In addition to the obligation stated in this subparagraph (b), you shall retain all records and allow any audits provided for by 11-35-2220(2). (c) Inspection. At reasonable times, the State may inspect any part of your place of business which is related to performance of the work. (d) Instructions Certification. When you submit data pursuant to subparagraph (a), you shall (1) do so in accordance with the instructions appearing in Table 15-2 of 48 C.F.R. Section 15.408 (2004) (adapted as necessary for the state context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR Section 15.406-2(a) (adapted as necessary for the State context). (e) Subcontracts. You shall include the above text of this clause in all of your subcontracts. (f) Nothing in this clause limits any other rights of the state.

7.51 RELATIONSHIP OF THE PARTIES (JAN 2006): Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party.

7.52 RESTRICTIONS ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES:

(a) Citizens, as well as public employees (acting in their individual capacity), should not be unnecessarily required to agree to or provide consent to policies or contractual terms in order to access services acquired by the government pursuant to this contract (hereinafter “applicable services”) or, in the case of public employees, to perform their job duties; accordingly, in performing the work, contractor shall not require or invite any citizen or public employee to agree to or provide consent to any end user contract, privacy policy, or other terms of use (hereinafter “terms of use”) not previously approved in writing by the procurement officer. Contractor agrees that any terms of use regarding applicable services are void and of no effect.

(b) Unless expressly provided in the solicitation, public contracts are not intended to provide contractors an opportunity to market additional products and services; accordingly, in performing the work, contractor shall not – for itself or on behalf of any third party – offer citizens or public employees (other than the procurement officer) any additional products or services not required by the contract.

(c) Any reference to contractor in items (a) or (b) also includes any subcontractor at any tier. Contractor is responsible for compliance with these obligations by any person or entity that contractor authorizes to take any action related to the work.

(d) Any violation of this clause is a material breach of contract. The parties acknowledge the difficulties inherent in determining the damage from any breach of these restrictions. Contractor shall pay PEBA liquidated damages of \$1,000 for each contact with a citizen or end user that violates this restriction.

7.53 SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE - REQUIRED (FEB 2015)

The Contractor must demonstrate that programs, policies and procedures are in place to adequately provide for the confidentiality, integrity, and availability of the information systems used by Contractor to process, store, transmit, and access all government information. In order for the State to accurately evaluate the strength and viability of the Contractor’s security policies, procedures and practices related to confidentiality, integrity and availability, Offerors must submit with their offers a thorough and complete written response to the Service Provider Security Assessment Questionnaire (“Response to SPSAQ”) attached to this Solicitation (Attachment 3), which must address all applicable organizations and applicable information systems. The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions.

7.53 SERVICE PROVIDER SECURITY REPRESENTATION (FEB 2015): The following obligations are subordinate to any other contract clause to the extent the other clause specifically provides for enhanced safeguarding of government information, applicable information systems, or applicable organizations. Offeror (i) warrants that the work will be performed, and any applicable information system (as defined in the clause titled “Information Security - Definitions”) will be established and maintained in substantial conformity with the information provided in Offeror’s Response to SPSAQ; (ii) agrees to provide PEBA with prompt notice of any material variation in operations from that reflected in the Response to SPSAQ; and (iii) agrees to comply with all other obligations involving either information security or information use and disclosure imposed by the contract, notwithstanding any inconsistent statement in Offeror’s Response to SPSAQ. To the extent Offeror’s Response to SPSAQ does not conform to any other contractual requirements, PEBA’s lack of objection does not constitute a waiver.

7.54 TERM OF CONTRACT - EFFECTIVE DATE/INITIAL CONTRACT TERM:

Initial Contract Term: January 1, 2024, through December 31, 2026

Maximum Contract Term: January 1, 2024, through December 31, 2028

The effective date of this contract is the first day of the Maximum Contract Term as specified on the final statement of award. The initial term of the contract is three (3) years from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award.

7.55 TERMINATION FOR CONVENIENCE (JAN 2006): (1) Termination. The Procurement Officer may terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

(2) Contractor's Obligations. The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the State. The Contractor must still complete the work not terminated by the notice of termination and may incur

obligations as are necessary to do so.

(3) Right to Supplies. The Procurement Officer may require the Contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The Contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the Contractor in which the State has an interest. If the Procurement Officer does not exercise this right, the Contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the State has breached the contract by exercise of the Termination for Convenience Clause.

(4) Compensation. (a) The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data required by Section 11-35-1830 bearing on such claim. If the Contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the Contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(b) The Procurement Officer and the Contractor may agree to a settlement and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated;

(c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the Contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:

(i) contract prices for supplies or services accepted under the contract;

(ii) costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services;

(iii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c)(ii) of this paragraph;

(iv) any other reasonable costs that have resulted from the termination. The total sum to be paid the Contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.

(d) Contractor must demonstrate any costs claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph using its standard record keeping system, provided such system is consistent with any applicable Generally Accepted Accounting Principles.

(5) Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the state's right to require the termination of a subcontract, or (ii) increase the obligation of the state beyond what it would have been if the subcontract had contained an appropriate clause.

7.56 SECURITY FOR PERFORMANCE, DAMAGES: The Contractor shall supply security no later than **July 1, 2023**. The Contractor shall supply security in the form of an unconditional irrevocable standby letter of credit, on deposit in or issued by, respectively, a federal or state chartered bank with offices physically located in the State of South Carolina in the amount of two hundred fifty thousand dollars US (\$250,000.00) whereby funds are (1) pledged to the benefit of the State; (2) are not under the control of the Contractor; and (3) are payable to PEBA upon written demand to the holder.

This security is for the faithful performance of this contract between the State and Contractor and will further protect, indemnify and save harmless the State from all costs and damages by reason of the Contractor's default, breach or failure to satisfactorily perform the obligations outlined in this RFP, the Contractor's response thereto, and any amendments, modifications or change orders.

Not sooner than twelve (12) months following the commencement of performance, the Contractor may seek a reduction in the amount of the security and consideration for such a request will depend on Contractor's performance up to the time of the request and the time remaining under the contract. Further, any revenue or other yield generated by the security shall be owned by the Contractor and may be withdrawn periodically so long as then applicable minimum security amount is maintained.

In the event of any condition of breach or other circumstance attributable to the Contractor, PEBA shall have the right to draw against the security such sums as are necessary to make the State whole, including, but not limited to, the costs incurred to secure and compensate for substituted services of another entity made necessary by the breach. Nothing herein shall be construed to mean that the security provided for herein is exclusive or constitutes any limitation or restriction on any remedies to which the State may be entitled.

PART 8

ATTACHMENTS TO SOLICITATION

- Attachment 1 Important Tax Notice – Nonresidents Only
- Attachment 2 Offeror’s Checklist
- Attachment 3 Service Provider Security Assessment Questionnaire
- Attachment 4 Minority Participation Form
- Attachment 5 Business Associate Agreement
- Attachment 6 State Agency Centralized Payroll
- Attachment 7 Monthly Discrepancy Report Detail
- Attachment 8 Monthly Activity by Account Type Report Detail
- Attachment 9 Monthly Claims Processing Statistics Performance Report Detail
- Attachment 10 Monthly Debit Card Statistics Performance Report Detail
- Attachment 11 Monthly Call Center Statistics Report Detail
- Attachment 12 Monthly Bank Reconciliation Report Detail
- Attachment 13 Monthly Outstanding Check Maintenance Report Detail
- Attachment 14 Surplus Funds Report Example
- Attachment 15 Surplus Funds Report Vendor Responsibility Matrix

Attachment 1
IMPORTANT TAX NOTICE - NONRESIDENTS ONLY

Withholding Requirements for Payments to Nonresidents: Section 12-8-550 of the South Carolina Code of Laws requires persons hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within South Carolina to withhold 2% of each payment made to the nonresident. The withholding requirement does not apply to (1) payments on purchase orders for tangible personal property when the payments are not accompanied by services to be performed in South Carolina, (2) nonresidents who are not conducting business in South Carolina, (3) nonresidents for contracts that do not exceed \$10,000 in a calendar year, or (4) payments to a nonresident who (a) registers with either the S.C. Department of Revenue or the S.C. Secretary of State and (b) submits a Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to the person letting the contract.

The withholding requirement applies to every governmental entity that uses a contract ("Using Entity"). Nonresidents should submit a separate copy of the Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to every Using Entity that makes payment to the nonresident pursuant to this solicitation. Once submitted, an affidavit is valid for all contracts between the nonresident and the Using Entity, unless the Using Entity receives notice from the Department of Revenue that the exemption from withholding has been revoked.

Section 12-8-540 requires persons making payment to a nonresident taxpayer of rentals or royalties at a rate of \$1,200.00 or more a year for the use of or for the privilege of using property in South Carolina to withhold 7% of the total of each payment made to a nonresident taxpayer who is not a corporation and 5% if the payment is made to a corporation. Contact the Department of Revenue for any applicable exceptions.

For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at www.sctax.org.

This notice is for informational purposes only. This agency does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, S.C. 29214-0140. All withholding questions should be directed to the Withholding Section at 803-898-5383.



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**NONRESIDENT TAXPAYER
REGISTRATION AFFIDAVIT
INCOME TAX WITHHOLDING**

I-312
(Rev. 6/26/01)
3323

The undersigned nonresident taxpayer on oath, being first duly sworn, hereby certifies as follows:

1. Name of Nonresident Taxpayer: _____

2. Trade Name, if applicable (Doing Business As):

3. Mailing Address: _____

4. Federal Identification Number: _____

5. _____ Hiring or Contracting with:
Name: _____

Address: _____

_____ Receiving Rentals or Royalties From:
Name: _____

Address: _____

_____ Beneficiary of Trusts and Estates:
Name: _____

Address: _____

6. I hereby certify that the above named nonresident taxpayer is currently registered with (check the appropriate box):

- ☐ The South Carolina Secretary of State or
☐ The South Carolina Department of Revenue

Date of Registration: _____

7. I understand that by this registration, the above named nonresident taxpayer has agreed to be subject to the jurisdiction of the South Carolina Department of Revenue and the courts of South Carolina to determine its South Carolina tax liability, including estimated taxes, together with any related interest and penalties.

8. I understand the South Carolina Department of Revenue may revoke the withholding exemption granted under Code Sections 12-8-540 (rentals), 12-8-550 (temporarily doing business or professional services in South Carolina), and 12-8-570 (distributions to nonresident beneficiary by trusts or estates) at any time it determines that the above named nonresident taxpayer is not cooperating with the Department in the determination of its correct South Carolina tax liability.

The undersigned understands that any false statement contained herein could be punished by fine, imprisonment or both.

Recognizing that I am subject to the criminal penalties under Code Section 12-54-44 (B) (6) (a) (i), I declare that I have examined this affidavit and to the best of my knowledge and belief, it is true, correct and complete.

Signature of Nonresident Taxpayer (Owner, Partner or Corporate Officer, when relevant) (Seal) _____
Date

If Corporate officer state title: _____

(Name - Please Print)

Attachment 2 OFFEROR'S CHECKLIST

Review this checklist prior to submitting your proposal. If you fail to follow this checklist, you risk having your proposal rejected.

This checklist is included as a reminder only to help offerors avoid common mistakes. Responsiveness will be evaluated against the solicitation, not against this checklist. You do not need to return this checklist with your response.

- ☐ Do not include any of your standard contract forms.
- ☐ Unless expressly required, do not include any additional boilerplate contract clauses.
- ☐ Reread your entire proposal to make sure your proposal does not take exception to any of PEBA's mandatory requirements.
- ☐ Make sure you have properly marked all protected, confidential or trade secret information in accordance with the instructions entitled: SUBMITTING CONFIDENTIAL INFORMATION. Do not mark your entire proposal as confidential, trade secret or protected. Do not include a legend on the cover stating that your entire response is not to be released.
- ☐ Have you properly acknowledged all amendments? Instructions regarding how to acknowledge an amendment should appear in all amendments issued.
- ☐ Make sure your proposal includes a copy of the solicitation cover page. Make sure the cover page is signed by a person who is authorized to contractually bind your business.
- ☐ Make sure your proposal includes the number of copies requested.
- ☐ Check to ensure your proposal includes everything requested.
- ☐ If you have concerns about the solicitation, do not raise those concerns in your response. After opening, it is too late as this solicitation includes a question-and-answer period. Raise your questions as a part of that process.

Attachment 3
SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE

Instructions: (1) Attach additional pages or documents as appropriate and make sure answers cross reference to the questions below. (2) As used in this Questionnaire, the phrase “government information” shall have the meaning defined in the clause titled “Information Security.” (3) This Questionnaire must be read in conjunction with both of the following two clauses (a) Service Provider Security Assessment Questionnaire – Required, and (b) Service Provider Security Representation.

Access Control

1. Describe your policies and procedures that ensure access to government information is limited to only those employees and contractors who require access to perform your proposed services.
2. What safeguards and practices do you have in place to vet your employees and contractors who will have access to government information?
3. Describe safeguards that are in place to prevent unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access or disclosure of government information.
4. Please explain your key escrow (key management) solution including the terms and conditions of your escrow solution for accessing encrypted data by third parties.

Data Protection and Disposal

1. Do you have documented policy and procedures for managing information assets? If yes, please provide those policies and procedures.
2. Will government information be encrypted at rest? Will government information be encrypted when transmitted? Will government information be encrypted during data backups, and on backup media? Please elaborate.
3. How will government information be managed after contract termination? Will government information provided to the Contractor be deleted or destroyed? When will this occur?

Data Protection and Recovery

1. Describe your disaster recovery and business continuity plans. When was the last time you successfully tested your Business Continuity plan? When was the last time you successfully tested your disaster recovery plan?
2. What are your Restore Point Objectives and your Restore Time Objectives for PEBA data? Did you meet your objectives during your most recent test?

Third Party Management

1. Identify any third party which will host or have access to government information.
2. Describe and explain your security policies and procedures as they relate to your use of your contractors and next-tier sub-contractors.

Human Resources

1. Do you conduct employee awareness training? If so, please explain.

Audit and Compliance

1. List any reports or certifications that you have from properly accredited third-parties that demonstrate that adequate security controls and assurance requirements are in place to adequately provide for the confidentiality, integrity, and availability of the information systems used to process, store, transmit, and access all government information. (For example, an ISO/IEC 27001 compliance certificate, an AICPA SOC 2 (Type 2) report, or perhaps an AICPA SOC 3 report (i.e., a SysTrust or WebTrust seal)). For each certification, describe the scope of the assessment performed. Will these reports / certifications remain in place for the duration of the contract? Will you provide the state with most recent and future versions of the applicable compliance certificate / audit report?

Physical Security

1. Please list the geographical locations of your data centers that could contain PEBA data. Do your secondary/failover sites have commensurate security with your primary site?
2. Describe the policies, procedures and practices you have in place to provide for the physical security of your data centers and other sites where government information will be hosted, accessed or maintained.

Detection and Prevention

1. What controls are in place to detect security breaches? What system and network activity do you log? How long do you maintain these audit logs?
2. Is penetration testing and/or vulnerability assessments performed annually? Is this done with an outside vendor or is it performed using internal staff? Please list the last 3 assessment dates.

Incident Response

1. Describe your incident response policies and practices.
2. Have you had any breaches in the last 3 years, as defined by HIPAA, which involve more than 500 records? If yes, please provide details. Have you had paid any HIPAA related fines in the last three years? If yes, please describe.

Security Requirements and General Information

1. Are there any planned system upgrades, conversions, other system changes that may affect PEBA in the next year? If yes, please describe.
2. Are there any other material items that you believe we should be aware of?

Offeror's response to this questionnaire includes any other information submitted with its offer regarding information or data security.

SIGNATURE OF PERSON AUTHORIZED TO REPRESENT THE ACCURACY OF THIS INFORMATION ON BEHALF OF CONTRACTOR:

By: _____
Authorized signature

Date: _____

Its: _____
Printed name of person signing above

Title of person signing above

Attachment 4
MINORITY PARTICIPATION

Is the Offeror a South Carolina Certified Minority Business? ☐ Yes ☐ No

Is the Offeror a Minority Business certified by another governmental entity? ☐ Yes ☐ No

If so, please list the certifying governmental entity:

Will any of the work under this contract be performed by a SC certified Minority Business as a subcontractor?
☐ Yes ☐ No

If so, what percentage of the total value of the contract will be performed by a SC certified Minority Business as a subcontractor?

Will any of the work under this contract be performed by a minority business certified by another governmental entity as a subcontractor? ☐ Yes ☐ No

If so, what percentage of the total value of the contract will be performed by a minority business certified by another governmental entity as a subcontractor?

If a certified Minority Business is participating in this contract, please indicate all categories for which the Business is certified:

- ☐ Traditional minority
- ☐ Traditional minority, but female ☐ Women (Caucasian females)
- ☐ Hispanic minorities
- ☐ DOT referral (Traditional minority) ☐ DOT referral (Caucasian female)
- ☐ Temporary certification
- ☐ SBA 8 (a) certification referral
- ☐ Other minorities (Native American, Asian, etc.)

(If more than one minority contractor will be utilized in the performance of this contract, please provide the information above for each minority business.)

The Department of Administration, Division of Small and Minority Business Contracting and Certification, publishes a list of certified minority firms. The Minority Business Directory is available at the following URL:
<http://osmba.sc.gov/directory.html>

Attachment 5
BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is entered into as of the ____ day of _____, _____ between **NAME OF BUSINESS ASSOCIATE, ADDRESS OF BUSINESS ASSOCIATE** (hereinafter referred to as “Business Associate”) and the **South Carolina Public Employee Benefit Authority**, 202 Arbor Lake Drive, Columbia, South Carolina 29223 (hereinafter referred to as the “Covered Entity”).

In consideration of the mutual promises and agreements set forth herein, Covered Entity and Business Associate do hereby contract and agree as follows:

1. DEFINITIONS

- (a) “Breach” shall have the same meaning as the term “Breach” in 45 CFR § 164.402.
- (b) “Business Associate” shall generally have the same meaning as the term “Business Associate” at 45 CFR § 160.103, and in reference to the party to this agreement, shall mean **NAME OF BUSINESS ASSOCIATE**.
- (c) “Compliance Date” shall have the same meaning as the term “Compliance Date” in 45 CFR § 160.103.
- (d) “Covered Entity” shall generally have the same meaning as the term “Covered Entity” at 45 CFR § 160.103, and in reference to the party to this agreement shall mean the South Carolina Public Employee Benefit Authority (PEBA).
- (e) “Data Aggregation” shall have the same meaning as the term “Data Aggregation” in 45 CFR § 164.501.
- (f) “Designated Record Set” shall have the same meaning as the term “Designated Record Set” in 45 CFR § 164.501.
- (g) “Electronic Protected Health Information” shall have the same meaning as “Electronic Protected Health Information” in 45 CFR § 160.103.
- (h) “HITECH Act” shall have the same meaning as the Health Information Technology for Economic and Clinical Health Act, as incorporated into the American Recovery and Reinvestment Act of 2009.
- (i) “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- (j) “Individual” shall have the same meaning as the term “Individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- (k) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR parts 160 and 164, subparts A and E.
- (l) “Protected Health Information” or “PHI” shall have the same meaning as the term “Protected Health Information” in 45 CFR § 160.103, limited to the information created or received by Business Associate from, or on behalf of, Covered Entity.
- (m) “Required By Law” shall have the same meaning as the term “Required By Law” in 45 CFR § 164.103.
- (n) “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- (o) “Security Incident” shall have the same meaning as “Security Incident” in 45 CFR § 164.304.
- (p) “Security Rule” shall mean the Security Standards and Implementation Specifications at 45 CFR Part 160 and 164, Subpart C.

(q) “Service Agreement” shall mean the agreement between **NAME OF BUSINESS ASSOCIATE** and PEBA, whereby **NAME OF BUSINESS ASSOCIATE** performs plan administrative tasks on behalf of the benefit program described herein as Covered Entity.

(r) “Unsecured PHI” shall have the same meaning as the term “Unsecured Protected Health Information” in 45 CFR § 164.402.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

(a) Business Associate agrees to use or disclose PHI only as permitted or required by this Agreement or as Required By Law. Business Associate is permitted to use and disclose PHI or Electronic PHI that it creates for, or receives from, Covered Entity or business associate of Covered Entity and to request PHI on behalf of Covered Entity as described in the Agreement, consistent with the HIPAA Rules. When requesting, using, or disclosing PHI, Business Associate shall restrict the request, use, or disclosure of said PHI to the minimum necessary to accomplish the intended purpose of the request, use, or disclosure.

(b) Business Associate agrees to provide access to Covered Entity, at the request of Covered Entity, to PHI in a Designated Record Set in order to meet the requirements under 45 CFR § 164.524.

(c) Business Associate agrees to make available PHI for amendment and incorporate any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity, within thirty (30) days of a written request by Covered Entity.

(d) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity available to the Covered Entity or the Secretary, within thirty (30) days of a written request by the Covered Entity or the Secretary, for the purpose of permitting the Secretary to determine Covered Entity's compliance with the HIPAA Rules.

(e) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528 and to make available to Covered Entity, within thirty (30) days of a written request by Covered Entity, the information required to provide such an accounting to an individual. Business Associate will comply with mandates regarding individuals’ rights under the HITECH Act, including rights to access and accounting of disclosures. Such information shall be made available in an electronic format where directed by Covered Entity. In addition, Business Associate shall include, within its accounting, disclosures for payment and health care operations purposes where such recording or accounting is required by the HITECH Act and as of the effective date for this provision of the HITECH Act. Covered Entity shall provide any additional information to the extent required by the HITECH Act and any accompanying regulations.

(f) Business Associate shall make information available directly to an individual within thirty (30) days, when that individual so requests, if such information is required to be disclosed.

(g) Business Associate agrees to develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the privacy, confidentiality, integrity, and availability of Covered Entity’s electronic and paper PHI that Business Associate creates, receives, maintains, or transmits on Covered Entity’s behalf, as required by the HIPAA Rules and as required by the HITECH Act. Business Associate shall also develop and implement policies and procedures and meet the HIPAA Rules’ documentation requirements as required by the HITECH Act.

(h) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any agent, including a subcontractor, to whom Business Associate provides PHI, agrees in writing, to abide by the same restrictions, conditions, and requirements that apply to Business Associate with respect to PHI and to implement appropriate safeguards to protect it.

(i) Business Associate agrees to notify Covered Entity within two (2) business days of becoming aware of any use or disclosure of PHI not provided for by the Agreement or of any security incident resulting in the successful unauthorized

access, use, disclosure, modification or destruction of information or interference with system operations in an information system, or resulting in any “Breach” of “Unsecured Protected Health Information,” as required by 45 CFR 164.410.

(j) Business Associate will provide written notice of the HIPAA Breach of Unsecured PHI, on behalf of Covered Entity, without unreasonable delay but no later than sixty (60) calendar days following the date the HIPAA Breach of Unsecured PHI is discovered or such later date as is authorized under 45 CFR § 164.412 to each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, used, or disclosed as a result of the HIPAA Breach. For purposes of this paragraph, a HIPAA Breach shall be treated as discovered as of the first day on which the HIPAA Breach is known or should reasonably have been known to Business Associate (including any person, other than the one committing the HIPAA Breach, which is an employee, officer, or other agent of Business Associate).

The content, form, and delivery of such written notice shall comply in all respects with 45 CFR § 164.404(c)-(d).

If the HIPAA Breach of Unsecured PHI involves less than five hundred (500) individuals, Business Associate will maintain a log or other documentation of the HIPAA Breach of Unsecured PHI which contains such information as would be required to be included if the log were maintained by Covered Entity pursuant to 45 CFR § 164.408, and provide such log to Covered Entity within five (5) business days of Covered Entity’s written request.

Additionally, upon request by the Covered Entity, Business Associate shall notify the Secretary of its breach of unsecured protected health information pursuant 45 CFR § 164.408.

(k) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

(l) Business Associate agrees to maintain appropriate clearance procedures and provide supervision to ensure that its workforce follows Business Associate’s security procedures.

(m) Business Associate agrees to provide appropriate training for its staff to ensure that its staff complies with the HIPAA Rules and the requirements of the HITECH Act.

(n) Business Associate agrees to implement appropriate security incident procedures and provide training to its applicable staff sufficient to detect and analyze security incidents.

(o) Business Associate agrees to maintain a current contingency plan in case of an emergency, as required by 45 CFR § 164.308.

(p) Business Associate agrees, as appropriate, to maintain an emergency access plan to ensure that the PHI it holds on behalf of Covered Entity is available when needed, as required by 45 CFR § 164.312.

(q) Business Associate agrees to implement appropriate storage, disposal and reuse procedures to protect any PHI that Business Associate holds for Covered Entity.

(r) Business Associate agrees to provide appropriate backup of the PHI that Business Associate holds for Covered Entity, as required by 45 CFR § 164.308.

(s) Business Associate agrees to have in place appropriate authentication and access controls to safeguard the PHI that Business Associate holds for Covered Entity.

(t) Business Associate agrees to make use of encryption, as appropriate, when transmitting PHI over the Internet.

(u) Business Associate agrees to retain the documentation required by this agreement for six years from the date of its creation or the date when it last was in effect, whichever is later.

(v) Business Associate agrees not to engage in any sale (as defined in the HIPAA Rules) of PHI.

(w) With respect to PHI, Business Associate shall abide by any marketing restrictions established by Section 13406 of the HITECH Act.

(x) With respect to PHI, Business Associate shall abide by any fundraising restrictions established by Section 13406 of the HITECH Act.

3. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION BY BUSINESS ASSOCIATE

(a) Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity, as specified in the Service Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity.

(b) Except as otherwise limited in this agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(c) Except as otherwise limited in this agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate if the disclosures are Required By Law; or if Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the PHI will remain confidential and will be used or further disclosed only as Required By Law or only for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(d) Except as otherwise limited in this agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).

(e) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

4. OBLIGATIONS OF COVERED ENTITY

Covered Entity shall notify Business Associate of any limitations in its notice(s) of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of PHI.

5. PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered Entity shall not request that Business Associate use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity, except Business Associate may use or disclose PHI for data aggregation or management and administrative activities of Business Associate.

6. TERM AND TERMINATION

(a) Term.

The Term of this Agreement and the obligations herein shall be deemed effective as of the Compliance Date or the date of execution of this Agreement, whichever date is later, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or if it is not feasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) Termination for Cause.

Upon either Party's (the Non-Breaching Party's) knowledge of a material breach by the other party (the Breaching Party), the Non-Breaching Party may:

(1) Provide an opportunity for the Breaching Party to cure the material breach or end the violation and terminate this Agreement if the Breaching Party does not cure the material breach or end the violation within the reasonable time specified by the Non-Breaching Party; or

(2) If neither termination nor cure is feasible, the Non-Breaching Party may report the violation to the Secretary. Failure by the Non-Breaching Party to exercise its rights to terminate under this provision shall not be construed as a waiver of its rights to terminate, rescind or revoke the services herein in case of any subsequent breach.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

(2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible, including the need to retain PHI for audit, justification of work product or compliance with other applicable law. Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

7. MISCELLANEOUS

(a) Definitions. All terms that are used but not otherwise defined in this Agreement shall have the meaning specified under HIPAA, including its statute, regulations, and other official government guidance.

(b) Independent Contractor. The relationship between the parties will solely be that of independent contractors engaged in the operation of their own respective businesses.

(c) Third Party Beneficiaries. The parties agree that there are no intended third party beneficiaries under this Agreement.

(d) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules and/or HITECH Act means the section as in effect, or as amended, and for which compliance is required.

(e) Amendment. The parties agree to take such action as is necessary to amend this Agreement as is necessary to comply with the requirements of the HIPAA Rules and other applicable law or regulation.

(f) Survival. The respective rights and obligations of Business Associate under Section 6 (c) of this Agreement shall survive the termination of this Agreement.

(g) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with the applicable requirements under HIPAA and other applicable law or regulation.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date indicated below.

NAME OF BUSINESS ASSOCIATE

S.C. PUBLIC EMPLOYEE BENEFIT AUTHORITY

BY: _____
Signature

BY: _____
Signature

NAME: _____
Type or print name

NAME: _____
Type or print name

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

Attachment 6
MASTER STATE AGENCY PAYROLL CENTER

Comptroller General's Payroll (SCEIS)

- The Contractor sends enrollment file to SCEIS for new year.
- SCEIS loads the file.
- The Contractor works with SCEIS on discrepancies and changes.
- If there is manual refund, the Comptroller General is involved.

Day after each payday

- SCEIS sends file of members with contributions Contractor on secure server.
- Funds transferred electronically via ACH.

Attachment 7 MONTHLY DISCREPANCY REPORT DETAIL

The below chart highlights the reporting responsibility for the previous Contractor and the new Contractor during the transitional years for PEBA's flexible benefits reporting requirements.

The monthly discrepancy report should include the expected amount per payroll cycle by payroll center and Participant, received amount per payroll cycle by payroll center and Participant, all outstanding payroll discrepancies, and money held in suspense and not posted to a Participant account, that can be sorted by the following:

- By employer (payroll center);
- By type of discrepancy;
- By Participant; and
- By date of discrepancy.

The monthly discrepancy report should include, but is not limited to the following data elements:

| Column heading | Data type |
|---|--------------|
| Employer | Alphanumeric |
| Participant name | Alphanumeric |
| Report as of date | Date |
| MSA start date | Date |
| MSA stop date | Date |
| MSA total amount expected annually | \$ |
| MSA expected amount per payroll | \$ |
| MSA received amount per payroll | \$ |
| MSA expected amount received to date | \$ |
| MSA total received to date | \$ |
| MSA difference in expected amount and total received | \$ |
| DCSA start date | \$ |
| DCSA stop date | \$ |
| DCSA total amount expected annually | \$ |
| DCSA expected amount per payroll | \$ |
| DCSA received amount per payroll | \$ |
| DCSA expected amount received to date | \$ |
| DCSA total received to date | \$ |
| DCSA difference in expected amount and total received | \$ |

Attachment 8
MONTHLY ACTIVITY BY ACCOUNT TYPE REPORT DETAIL

The monthly activity report by account type should report the total contributions received and total reimbursements paid by payroll center during the month and year-to-date. This report should also include data at the Participant level so it can be used to identify Participants who have used their entire annual account contribution(s) early in the plan year or who have terminated employment with a negative balance in their account(s). This report should summarize all contributions and reimbursements and provide a monthly snapshot of plan performance.

The monthly activity by account type report should include, but is not limited to the following data elements:

| Column heading | Data type |
|---------------------------------------|--------------|
| Employer | Alphanumeric |
| Participant name | Alphanumeric |
| Employment start date | Date |
| Employment end date | Date |
| MSA MTD total contributions received | \$ |
| MSA MTD total reimbursements paid | \$ |
| MSA YTD total contributions received | \$ |
| MSA YTD total reimbursements paid | \$ |
| MSA YTD account balance | \$ |
| DCSA MTD total contributions received | \$ |
| DCSA MTD total reimbursements paid | \$ |
| DCSA YTD total contributions received | \$ |
| DCSA YTD total reimbursements paid | \$ |
| DCSA YTD account balance | \$ |

Attachment 9
MONTHLY CLAIMS PROCESSING STATISTICS PERFORMANCE REPORT DETAIL

The monthly claims processing statistics performance report should produce total claims processed by account type (i.e., Medical Spending Account, Dependent Care Spending Account, etc.).

The monthly claims processing statistics performance report should include, but is not limited to the following data elements:

| Column heading | Data type |
|---|-----------|
| MSA MTD total claims processed | Number |
| MSA YTD total claims processed | Number |
| MSA MTD claims processed within 1-2 business days | Number |
| MSA MTD claims processed within 3-5 business days | Number |
| MSA MTD claims processed within 5+ business days | Number |
| MSA YTD claims processed within 1-2 business days | Number |
| MSA YTD claims processed within 3-5 business days | Number |
| MSA YTD claims processed within 5+ business days | Number |
| DCSA MTD claims processed within 1-2 business days | Number |
| DCSA MTD claims processed within 3-5 business days | Number |
| DCSA MTD claims processed within 5+ business days | Number |
| DCSA YTD claims processed within 1-2 business days | Number |
| DCSA YTD claims processed within 3-5 business days | Number |
| DCSA YTD claims processed within 5+ business days | Number |
| Average number of business days to process Health Care claims | Number |
| Average number of business days to process DCSA claims | Number |

Attachment 10
MONTHLY DEBIT CARD STATISTICS PERFORMANCE REPORT DETAIL

The monthly debit card statistics performance report should detail the total number of cards issued and the total number of card transactions by account type.

The monthly debit card statistics performance report should include, but is not limited to the following data elements:

| Column heading | Data type |
|--|-----------|
| MTD total number of debit cards issued | Number |
| YTD total number of debit cards issued | Number |
| MSA MTD total number of card transactions | Number |
| MSA YTD total number of card transactions | Number |
| DCSA MTD total number of card transactions | Number |
| DCSA YTD total number of card transactions | Number |

Attachment 11
MONTHLY CALL CENTER STATISTICS REPORT DETAIL

The monthly call center statistics report should include, but is not limited to the following data elements:

| Column heading | Data type |
|---|--------------|
| Call volume | Number |
| Average speed of answer | Number |
| Abandon rate | Number |
| Call drivers by type (i.e., Medical Spending Account, debit card, etc.) | Alphanumeric |
| Number of complaints | Number |
| Average time to handle complaints | Number |

Attachment 12
MONTHLY BANK RECONCILIATION DETAIL

The monthly bank reconciliation should tie to the beginning and ending bank account balances at the bank, amounts in transit and specific reconciling items. All items noted on the bank reconciliation should include when the reconciling item will be resolved and how. The bank reconciliation must tie to the bank account set up in PEBA's name as well as Participant accounts.

The following reports should be included in the monthly bank reconciliation package:

- Official monthly bank statement;
- Outstanding item report (deposits, transfers and payments); and
- Daily deposit report, detailed by payroll center and amount.

The monthly outstanding items report and daily deposit report should include, but are not limited to the following data elements:

| Column heading | Data type |
|----------------------------|--------------|
| Participant name | Alphanumeric |
| MSA annual amount elected | \$ |
| MSA start date of election | Date |
| MSA end date of election | Date |
| MSA rolled forward | \$ |
| MSA available to roll | \$ |
| MSA available | \$ |
| MSA contributions MTD | \$ |
| MSA contributions YTD | \$ |
| MSA payments MTD | \$ |
| MSA payments YTD | \$ |
| MSA balance | \$ |
| DSCA annual amount elected | \$ |
| DSCA contributions MTD | \$ |
| DSCA contributions YTD | \$ |
| DSCA payments MTD | \$ |
| DSCA payments YTD | \$ |
| DSCA balance | \$ |
| HSA contributions MTD | \$ |
| HSA transfers YTD | \$ |
| HSA refunds YTD | \$ |
| HSA period net | \$ |

Attachment 13
MONTHLY OUTSTANDING CHECK MAINTENANCE REPORT DETAIL

The monthly outstanding check register report should include, but is not limited to the following data elements:

| Column heading | Data type |
|----------------|--------------|
| Payee | Alphanumeric |
| Amount | \$ |
| Check number | Number |
| Date issued | Date |

Attachment 14
SURPLUS FUNDS REPORT EXAMPLE

October xx, 2025

S.C. Public Employee Benefit Authority
Attn: Phyllis Buie
202 Arbor Lake Drive
Columbia, SC 29223

Dear Ms. Buie:

The updated Funds Report for the plan year ending December 31, 2024, is as follows:

| Example of Plan Year 2024 Report (Reported in October 2025) | | Vendor Responsibility |
|--|---------------|----------------------------------|
| Forfeitures: | | |
| 2023 Updated Forfeitures | | |
| Dependent | \$ 157,266.25 | Previous |
| Medical | \$ 565,937.42 | Previous |
| 2023 Reported Forfeitures | | |
| Dependent | \$ 157,266.25 | Previous |
| Medical | \$ 565,977.90 | Previous |
| Total Change in 2023 Forfeitures | \$ (40.48) | |
| 2024 Plan Year Forfeitures | | |
| Dependent | \$ 139,748.69 | New |
| Medical | \$ 642,750.37 | New |
| Total 2024 Plan Year Forfeitures | \$ 782,499.06 | |
| Adjustments to 2024 Plan Year Forfeitures | \$ (2,660.31) | New |
| 2023 Stale Dated Checks | \$ 20,822.37 | Previous |
| 2024 Interest | \$ 247.93 | New |
| Total Surplus Funds | \$ 800,868.57 | |

If you have any questions, please contact me at (xxx) xxx-xxxx. To request a payout of these funds, please send an email to me at xxxx@xxxx.com.

Thank you,

Attachment 15
SURPLUS FUNDS REPORT VENDOR RESPONSIBILITY MATRIX

The below chart highlights the reporting responsibility for the previous Contractor and the new Contractor during the transitional years for PEBA's flexible benefits reporting requirements.

| Example of Plan Year 2024 Report (Reported in October 2025) | | | Vendor Responsibility | | | | | |
|--|---------------|----------|--------------------------------------|------------|--------------------------------------|------------|--------------------------------------|------------|
| | | | Plan Year 2023 (Reported in 2024) | | Plan Year 2024 (Reported in 2025) | | Plan Year 2025 (Reported in 2026) | |
| | | | Previous Vendor | New Vendor | Previous Vendor | New Vendor | Previous Vendor | New Vendor |
| Forfeitures: | | | | | | | | |
| 2023 Updated Forfeitures | | | | | | | | |
| Dependent | \$ 157,266.25 | Previous | ✓ | | ✓ | | | ✓ |
| Medical | \$ 565,937.42 | Previous | ✓ | | ✓ | | | ✓ |
| 2023 Reported Forfeitures | | | | | | | | |
| Dependent | \$ 157,266.25 | Previous | ✓ | | ✓ | | | ✓ |
| Medical | \$ 565,977.90 | Previous | ✓ | | ✓ | | | ✓ |
| Total Change in 2023 Forfeitures | \$ (40.48) | | ✓ | | ✓ | | | ✓ |
| 2024 Plan Year Forfeitures | | | | | | | | |
| Dependent | \$ 139,748.69 | New | ✓ | | | ✓ | | ✓ |
| Medical | \$ 642,750.37 | New | ✓ | | | ✓ | | ✓ |
| Total 2024 Plan Year Forfeitures | \$ 782,499.06 | | ✓ | | | ✓ | | ✓ |
| Adjustments to 2024 Plan Year Forfeiture | \$ (2,660.31) | New | ✓ | | | ✓ | | |
| 2023 Stale Dated Checks | \$ 20,822.37 | Previous | ✓ | | ✓ | | | ✓ |
| 2024 Interest | \$ 247.93 | New | ✓ | | | ✓ | | ✓ |
| Total Surplus Funds | \$ 800,868.57 | | ✓ | | ✓ | ✓ | | ✓ |