

## **Attachment 8 – Questions and Answers**

### **Locator Services for S.C. PEBA**

**The following questions were submitted in writing by Vendor A. (Answers follow.)**

**1. Vendor A is a small privately held corporation and does not produce audited financials or annual reports. Can this section be waived?**

**A.** If Offeror is not required to file audited financials or annual report, please provide your unaudited financial reports/statements for the stated timeframe along with a statement certifying that Offeror is not required to file audited financials or annual reports.

**2. Vendor A has over 1300 happy clients; many of whom have relied on our services for decades and many who have recently transitioned to using our services. Over the years, many clients requested express written permission to use their names in a marketing or sales capacity be added to our contract and since that aligns with our focus on data security and privacy that is now a standard clause in our contract for all clients. Can this section be waived?**

**A.** The Offeror should be able to provide the small number of references requested. It's not uncommon for Offerors to get permission from existing clients. This section will not be waived.

**3. a. Can multiple service offerings be provided?**

**A:** No. Please bid as specified.

**b. Will there be additional files out side of the 50,000 record file and the 240,000 record file? What are the additional expected record counts for those files?**

**A:** Possibly. If we are successful in locating missing participants from the first file, PEBA may decide to utilize this process to assist in locating members as they become inactive in the future. The exact number of records is unknown, but we generally have 20,000 to 40,000 members move to inactive status each year.

**c. Did price per file mean price per record?**

**A:** Yes.

**4. Section 7.30 CONTRACTOR’S LIABILITY INSURANCE-GENERAL (FEB 2015), proposed change of State jurisdiction.**

**A:** PEBA will not change any jurisdictional requirement to any state other than South Carolina.

**5. Section 7.31 CONTRACTOR’S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY (FEB 2015), proposed change of State jurisdiction.**

**A:** PEBA will not change any jurisdictional requirement to any state other than South Carolina.

**6. Section 7.56 CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS.**

**CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS. (1)As used herein “Confidential Information: shall mean information not routinely disclosed to the public or required to be disclosed under the law including, but not limited to, certain information provided in connection with this Agreement. all technology, software programs, procedures, methods of operation, sources of information, databases, trade secrets, know-how, proprietary information, formulae, processes, techniques, expansion plans, programs, program decks, routines, subroutines, operating systems, internal controls, security procedures, inventions, method of operation or proposed methods of operation, objects and source codes, updates thereto, market analysis, inventions, and related items used by Berwyn its work pursuant to this Agreement. Customer acknowledges Berwyn and its licensors claim exclusive and proprietary rights in preexisting works of authorship and other intellectual property that Berwyn uses in its work pursuant to this Agreement. Confidential Information also includes all non-public personal information, personally identifiable information, or protected health information (“PHI”) including that as defined in and regulated by the Gramm-Leach-Bliley Act (15 U. S.C. § 6801, et seq.), (“GLBA”), the Driver’s Privacy Protection Act (18 U.S.C. § 2721, et seq.), (“DDPA”), the Health Insurance Portability and Accountability Act of 1996 and regulations (“HIPPA”); the Health Information Technology for Economic and Clinical Health Act (“HITECH”), the Bipartisan Budget Act of 2013 (H.J.Res59) (“The Act”) or any other applicable privacy law or regulation (collectively “PPI”).**

**(2)Non-Confidential Information. Confidential Information shall not include information: (i) previously known to the other party without an obligation of confidence; (ii) independently developed by or for the other party without reference**

to or use of the Confidential Information; (iii) lawfully acquired by the other party from a third party which is not, to the other party's knowledge, under an obligation of confidence with respect to such information; or (iv) that is or becomes generally available to the public at no fault of the parties.

(3) Each party shall hold Confidential Information in strict confidence. Each party shall take all reasonable care and steps to assure that any Confidential Information shall not be disclosed to third parties without the prior written permission of the other party or as otherwise provided herein or by law. The parties agree to keep each other's Confidential Information confidential after this Agreement ends for as long as the Confidential Information remains as such. If the Confidential Information is a trade secret or other intellectual property, the parties agree to protect it as long as it remains legally protected intellectual property. If the Confidential Information is PPI or personal health information ("PHI"), as defined in applicable laws and regulations, the parties agree that their confidentiality obligations will not expire.

(4) Each party agrees to use, disclose, or disseminate the other party's Confidential Information to its employees, officers, or agents only on a "need to know basis" and only for a permissible use and for the purpose of performing the terms of this Agreement and any associated SOWs.

**A:** PEBA has confidentiality provisions in the RFP, and will rely on those, rejecting those suggested for paragraph 7.56.

7. Offeror A proposes to add Sections 7.57 – 7.64.

**7.57 PERMISSIBLE PURPOSE AND USE (1)** Contractor hereby grants to PEBA a restricted license to the Contractor's services, both currently existing and as may become available in the future, solely for PEBA's own internal business purpose subject to the restrictions and limitations set forth herein:

- a. PEBA represents and warrants that PEBA's use of Contractor's services shall be for legitimate business purposes. PEBA acknowledges and agrees that it may be required to certify its permissible use of Personally Protected Information (PPI) when services begin and agrees it will recertify, in writing, its permissible uses upon request.
- b. PEBA shall not use Contractor's services for marketing purposes or to resell or broker Contractor's services to any third party. PEBA agrees that if Contractor determines or reasonably suspects that PEBA is engaging in marketing activities, reselling or brokering of Contractor's services information, programs, computer applications, or data, or is otherwise violating any provision of this Agreement, or any of the laws, regulations or rules described herein, Contractor may take immediate action, including immediately terminating the delivery of, and the license to use Contractor's services. PEBA shall not access Contractor's services from Internet Protocol addresses located outside of the United States and its

territories without Contractor's prior written approval. PEBA may not use data to create a competing product.

- c. PEBA and Contractor agree that they will not (i) use any PPI received from the other party, regardless of the source of the data, for any purpose other than communication with its clients, insurers and insureds, pensioners, vested participants; beneficiaries, and for recordkeeping and record maintenance, and fraud prevention; (ii) sell, sublicense, or otherwise distribute in any manner PPI received from the other party to any third party; (iii) use any NPPI received from the other party for any unlawful purpose, (iv) use any PPI received from the other party to identify and/or solicit potential PEBA's for its products, or (v) use any PPI received from the other party for any purpose that would violate the privacy obligation policy and any other terms and provisions under law.

**7.58 GLBA, DPPI and Applicable Privacy Laws:** PEBA recognizes that any NPPI may be governed by use, non-disclosure and privacy obligations of the GLBA; DPPA, HIPAA, and HITECH. PEBA acknowledges that it may have its own obligation for use, non-disclosure and privacy under these acts. PEBA shall not obtain and/or use PPI data through Contractor services, in any manner that would violate any of these acts or applicable state or local laws, regulations and rules. PEBA certifies with respect to PPI data received through Contractor services that it complies with the Interagency Standards for Safeguarding PEBA Information issued pursuant to the GLBA.

**7.59 Social Security and Driver's License Numbers.** If PEBA obtains Social Security Numbers ("SSNs") or Driver's License Numbers through the Contractor's Services, PEBA certifies it is a legally authorized recipient with a permitted use and will not use the SSNs for any purpose other than as permitted under this Agreement. Upon request, PEBA agrees it will recertify, in writing, to Contractor, that it is an appropriate user and that it has one or more authorized uses. In the event PEBA is not a legally authorized recipient and/or does not have a permitted use at any time during the term of this Agreement, Contractor may immediately preclude PEBA from receiving SSNs. In addition to the restrictions on distribution set forth in Section 5.1.a of this Agreement, PEBA agrees that it will not permit SSNs obtained through the Contractor's services to be used by an employee or contractor that is not an appropriate user with an appropriate use. PEBA may not, to the extent permitted by the terms of this Agreement, transfer SSNs via email or clear-text File Transfer Protocol ("FTP") without Contractor's prior written consent.

**7.60 Public Records Products Services.** Contractor's services are not provided by "consumer reporting agencies," as that term is defined in the Federal Fair Credit Reporting Act, (15 U. S.C. 1681, et seq.), (the "FCRA"), and do not constitute Consumer Reports. Accordingly, Contractor's services may not be used in whole or in part as a factor in determining eligibility for credit, insurance, employment or

another purpose in connection with which a consumer report may be used under the FCRA. PEBA certifies that it will not use any of the information it receives through Contractor' services to determine, in whole or in part an individual's eligibility for any of the following products, services or transactions: (1) credit or insurance to be used primarily for personal, family, or household purposes; (2) employment purposes; (3) a license or other benefit granted by a government agency; or (4) any other product, service or transaction in connection with which a consumer report may be used under the FCRA or any similar state statute, including without limitation apartment rental, check-cashing, or the opening of a deposit or transaction account. (B) by way of clarification, without limiting the foregoing, , PEBA may use, except as otherwise prohibited or limited by this Agreement, information received through the Contractor Group Services for the following purposes: (1) to verify or authenticate an individual's identity; (2) to prevent or detect fraud or other unlawful activity; and, (3) to locate an individual.

**7.61 DMF Data:** Contractor is certified as a licensee of the Social Security Limited Access Death Master File ("DMF"). It is understood and agreed that Contractor uses information obtained from the Social Security Administration ("SSA"), and DMF data. As a condition to receiving information obtained by Contractor from the DMF (as defined in 15 CFR § 1110.2), PEBA certifies that it meets the applicable requirements to receive such information as required by Section 203 of the Bipartisan Budget Act of 2013. PEBA further certifies that it will not subsequently disclose the information obtained by Contractor from the DMF to any person who does not meet the requirements set forth in Section 203. By using Contractor's services, PEBA represents, warrants, and covenants:

- a. That PEBA will use such DMF data solely for a legitimate business or fraud prevention purpose, as those terms are defined in 15 CFR 1110;
- b. That PEBA will disclose such DMF data only to such third parties as have a legitimate business or fraud prevention purpose, as those terms are defined in 15 CFR 1110, are on a need-to-know basis, and who agree in writing to the same terms contained herein and in 15 CFR 1110; and,
- c. That PEBA has systems, procedures, and facilities in place sufficient to prevent unauthorized disclosure of such data:
- d. That PEBA may be subject to penalties for unauthorized disclosures or use of the DMF and will indemnify Contractor for any penalty it may be required to pay as result of PEBA's failure to comply with the applicable conditions of this section.

**7.62 Certification:** PEBA certifies that (a) it is not operating out of a residence; (b) it is not (i) a motor vehicle dealer, (ii) a motor vehicle manufacturer and/or (iii) a motor vehicle warranty and/or recall company; (c) neither PEBA nor any individual affiliated with PEBA, including, without limitation, its employees and independent contractors, have ever been charged or alleged to have committed or been involved with credit fraud or other unethical business practices, engaged in fraudulent or

illegal activities, such as identity theft, harassment or stalking; (d) it is not listed as a Specially Designated National on the Office of Foreign Asset Control (OFAC) website at: <http://www.treas.gov/offices/enforcement/ofac/index.shtml>; and (e) PEBA is properly licensed to engage in its business, is in compliance with federal, state and local law requirements for its business and has been conducting its business for a period of more than one (1) year.

**7.63 Audit Rights:** PEBA understands and agrees that in order to ensure compliance with state and federal privacy laws, regulations or rules, regulatory agency requirements, the terms and conditions of this Agreement, and Contractor's obligations under its contracts with its data providers, Contractor may conduct periodic reviews of PEBA's use of Contractor's services and, upon reasonable notice, audit PEBA's records, processes and procedures related to PEBA's use, storage and disposal of Contractor's services and information. PEBA agrees to cooperate fully with any and all audits. In similar fashion, PEBA may conduct, upon reasonable notice, a yearly audit of Contractor's processes and procedures.

**7.64 DEATH RECORDS DISCLAIMER** To the extent PEBA receives death match information, PEBA acknowledges that all states and municipalities do not provide death records to Contractor and therefore, Contractor cannot guaranty access to, or availability of any particular death record database. PEBA also acknowledges that as part of certain services, Contractor provides results based upon published obituaries from various sources. PEBA is aware and understands that it is impossible for Contractor to obtain obituaries from every available source. As such, PEBA is aware and understands that not all deaths are reported; not all deaths published in obituaries; not all deaths are released by each state, SSA or other governmental agencies; and, that all death record and obituary databases contain errors, omissions and records with incomplete information. The absence of a match on PEBA's query does not guarantee that non-matching individual(s) are not deceased. Contractor cannot, and does not guaranty or warrant that all deaths will be identified. Contractor makes no representation or warranty as to the completeness or accuracy of its Results, or the content of any database it uses.

**A:** PEBA is open to provisions like the suggested paragraphs 7.57 through 7.64, but they are not appropriate to make part of PEBA's RFP. Instead, PEBA will negotiate the appropriate terms during the Record of Negotiations with the highest ranked Offeror. PEBA cannot, however, agree to any term that requires PEBA to indemnify any entity. Additionally, PEBA will want the Offeror to state which laws require these provisions.