	State of South Carolina **Request for Proposal**	Solicitation Number: Date Issued: Procurement Officer: Phone: E-Mail Address:	PEBA0012015 01/07/2015 Georgia Gillens, CPPO, CPPB (803) 734-0010 GGillens@peba.sc.gov

DESCRIPTION: **Pharmacy Benefits Management Services**

USING GOVERNMENTAL UNIT: **S.C. Public Employee Benefit Authority (PEBA)**

The Term "Offer" Means Your "Bid" or "Proposal". Unless submitted on-line, your offer must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior. See "Submitting Your Offer" provision.

SUBMIT YOUR OFFER ON-LINE AT THE FOLLOWING URL: http://www.procurement.sc.gov

SUBMIT OFFER BY (Opening Date/Time): **02/12/2014 2:30 PM E.S.T.** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: **See Page 3. If no redacted copy is being provided, initial here _____**

CONFERENCE TYPE: **Mandatory Pre-Proposal Meeting** DATE & TIME: **01/29/2015 10:00 AM** (As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions)	LOCATION: **S.C. Public Employee Benefit Authority, 202 Arbor Lake Drive, Columbia SC 29203**

AWARD & AMENDMENTS	Award will be posted on **03/12/2015** . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: http://www.procurement.sc.gov

Unless submitted on-line, you must submit a signed copy of this form with Your Offer. By submitting a bid or proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date. (See "Signing Your Offer" and "Electronic Signature" provisions.)

NAME OF OFFEROR (full legal name of business submitting the offer)		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 (Person must be authorized to submit binding offer to contract on behalf of Offeror.)		TAXPAYER IDENTIFICATION NO. (See "Taxpayer Identification Number" provision)
TITLE (business title of person signing above)		STATE VENDOR NO. (Register to Obtain S.C. Vendor No. at www.procurement.sc.gov)
PRINTED NAME (printed name of person signing above)	DATE SIGNED	STATE OF INCORPORATION (If you are a corporation, identify the state of incorporation.)

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)

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(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.) (See "Notice" clause) _____ Area Code - Number - Extension Facsimile _____ E-mail Address
PAYMENT ADDRESS (Address to which payments will be sent.) (See "Payment" clause) ____Payment Address same as Home Office Address ____Payment Address same as Notice Address **(check only one)**	ORDER ADDRESS (Address to which purchase orders will be sent) (See "Purchase Orders and "Contract Documents" clauses) ____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 "Amendments to Solicitation" Provision)

Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date

DISCOUNT FOR PROMPT PAYMENT (See "Discount for Prompt Payment" clause)	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	_____Calendar Days (%)

PREFERENCES - A NOTICE TO VENDORS (SEP. 2009): On June 16, 2009, the South Carolina General Assembly rewrote the law governing preferences available to in-state vendors, vendors using in-state subcontractors, and vendors selling in-state or US end products. This law appears in Section 11-35-1524 of the South Carolina Code of Laws. A summary of the new preferences is available at www.procurement.sc.gov/preferences . ***ALL THE PREFERENCES MUST BE CLAIMED AND ARE APPLIED BY LINE ITEM, REGARDLESS OF WHETHER AWARD IS MADE BY ITEM OR LOT.*** **VENDORS ARE CAUTIONED TO CAREFULLY REVIEW THE STATUTE BEFORE CLAIMING ANY PREFERENCES. THE REQUIREMENTS TO QUALIFY HAVE CHANGED. IF YOU REQUEST A PREFERENCE, YOU ARE CERTIFYING THAT YOUR OFFER QUALIFIES FOR THE PREFERENCE YOU'VE CLAIMED. IMPROPERLY REQUESTING A PREFERENCE CAN HAVE SERIOUS CONSEQUENCES.** [11-35-1524(E)(4)&(6)] **PREFERENCES DO NOT APPLY.**

PREFERENCES - ADDRESS AND PHONE OF IN-STATE OFFICE: Please provide the address and phone number for your in-state office in the space provided below. An in-state office is necessary to claim either the Resident Vendor Preference (11-35-1524(C)(1)(i)&(ii)) or the Resident Contractor Preference (11-35-1524(C)(1)(iii)). Accordingly, you must provide this information to qualify for the preference. An in-state office is not required, but can be beneficial, if you are claiming the Resident Subcontractor Preference (11-35-1524(D)). **PREFERENCES DO NOT APPLY.**

____In-State Office Address same as Home Office Address
____In-State Office Address same as Notice Address **(check only one)**

End of PAGE TWO

NUMBER OF COPIES

Offerors will need to follow these instructions carefully when responding to the solicitation.

1. The original solicitation response should be submitted to PEBA and is the official response.

All bidders must attach all documents, including additional requested documents to their.

Please submit the following:

1. **One (1) original** hardcopy and one **redacted** hardcopy of the technical response and price proposal response. .PDF format is preferred.
2. **Two (2)** copies. Please number your copies Copy 1 of 2, 2 of 2, etc.

All copies requested must be delivered no later than the date and time specified on the cover page of the solicitation to the following address:

S.C. Public Employee Benefit Authority
Attention: ***Georgia Gillens, CPPO, CPPB***
Attention: PEBA0012015
S.C. Public Employee Benefit Authority
202 Arbor Lake Drive
Columbia, SC 29223

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I. SCOPE OF SOLICITATION

ACQUIRE SERVICES (JAN 2006)

The purpose of this solicitation is to acquire services complying with the enclosed description and/or specifications and conditions. [01-1010-1]

MAXIMUM CONTRACT PERIOD - ESTIMATED (Jan 2006)

Start date: 01/01/2016 End date: 12/31/2020. Dates provided are estimates only. Any resulting contract will begin on the date specified in the notice of award. See clause entitled "Term of Contract - Effective Date/Initial Contract Period". [01-1040-1]

INITIAL CONTRACT PERIOD

The contract term will commence on January 1, 2016 and expire 12:00 midnight December 31, 2018, unless extended for an additional period. The contract may be extended at the end of the initial contract period unless PEBA elects not to extend the contract. Extensions may be less than, but will not exceed, two (2) additional one (1) year periods.

It is the intent of the State of South Carolina, S.C. Public Employee Benefit Authority (PEBA), in accordance with all requirements stated herein or attached hereto, to solicit proposals for Pharmacy Benefit Management Services for the State Health Plan (Plan). The contract will be between PEBA and the Pharmacy Benefit Manager. PEBA is seeking proposals based upon the following parameters:

Commercial Plan: The Commercial Plan will provide pharmacy coverage for all non-Medicare participants in the State Health Plan, MUSC Pilot Plan, all Medicare primary participants who have opted out of the Indirect Employer Group Waiver Plan (EGWP) with Wrap Plan, and Medicare primary participants enrolled in the Savings Plan. Administrative services shall be based on the current prescription drug plan and shall be based on a self-funded, transparent financial pricing arrangement. Under this arrangement, the State will receive the guaranteed manufacturer payment amounts as proposed by the Contractor in response to this Request for Proposal, in addition to all monies from pharmaceutical manufacturers that are described as revenue sources by the Contractor and are attributable to the utilization of the State's pharmacy benefit program. The commercial plan consists of:

- State Health Plan –Standard (includes membership in both Standard and Medicare Supplement plans). This is a grandfathered ACA compliant plan. The Plan's prescription drug benefit operates as a "Drug Card," with the drug program carved out from the major medical provisions of the Plan. Co-payments, effective January 1, 2015, are as follows: Tier 1 (generic drugs), $9 co-pay/prescription retail (30 day supply); $22 co-pay/prescription mail order (63-90 day supply); Tier 2 (Preferred brand drugs), $38 co-pay/prescription retail (30 day supply); $95 co-pay/prescription mail order (63-90 day supply); and, Tier 3 (Non-preferred brand drugs) $63 co-pay/prescription retail (30 day supply); $158 co-pay/prescription mail order (63-90 day supply). There is no annual deductible for prescription drugs, and there is a $2500/person annual co-payment maximum under this program. There is a "pay-the-difference" policy in place, in which the benefit payable for a brand drug with a generic equivalent is limited to what is payable for the generic; any pay-the-difference amount is not considered in calculating the annual co-payment maximum. Prior authorization is required for drugs in certain treatment categories under certain conditions.

- State Health Plan—Savings. The Savings Plan, in which prescription drugs are integrated with the medical plan. This is a grandfathered ACA compliant plan. The PBM's role with this "100% co-pay" product is to calculate the allowance at the point of sale and inform the pharmacy, which would collect the full allowance from the patient. The PBM transmits, in real time, the allowance to the Plan's medical claims administrator, currently Blue Cross Blue Shield of South Carolina, for application of deductible credit, and if appropriate, payment of claim to the patient.

- MUSC Health Plan Pilot**.** The MUSC plan includes only active employees working at MUSC (Medical University of South Carolina) and the MUHA (Medical University Hospital Authority) and their covered dependents. This plan is a non-grandfatheredACA-compliant with inclusion of covered preventive pharmacy services as mandated by the ACA, and includes the federally-defined MOOP (Maximum Out-of-Pocket) for members, requiring coordination with the medical claims administrator to accumulate the MOOP in real time. PEBA will provide the Contractor with the complete plan of covered benefits no later than October 1 prior to the effective plan year. The claims administrator for this plan is Blue Cross Blue Shield of South Carolina.

PEBA will participate in the Retiree Drug Subsidy (RDS) program for those Medicare-eligible retirees who opt out of the Indirect EGWP with Wrap Plan. These members will be enrolled in the Commercial Plan.

Indirect EGWP with Wrap Plan: The Indirect EGWP with Wrap Plan (Indirect EGWP + Wrap) will provide pharmacy benefits for all Medicare primary participants covered by the State Health Plan. Administrative services for Medicare eligible participants include the use of an Indirect Employer Group Waiver Plan to provide Standard Medicare Part D benefits and a Wrap plan that will provide coverage such that members have access to all benefits offered to members enrolled in the commercial plan. Coverage under the Wrap plan should mirror the commercial plan including co-pay amounts, the "pay-the-difference" policy and utilization management. Both the Indirect EGWP and Wrap products will be self-funded, transparent pricing arrangements (as described above).

PEBA will make one (1) award to one (1) Offeror. The award will be made to the highest ranked, responsive and responsible Offeror whose offer is determined to be the most advantageous to the State. Selection will be at the sole discretion of PEBA.

INTRODUCTION

PEBA was established by the South Carolina General Assembly on July 1, 2012, as part of the retirement reform legislation, Act No. 278. The Employee Insurance Program (EIP) and the South Carolina Retirement Systems were incorporated into the S.C. Public Employee Benefit Authority (PEBA).

PEBA is responsible for managing the state of South Carolina's insurance benefits program. Participating entities (all state agencies, school districts, and those eligible local governments 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 benefits package. The health, dental, basic life 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. Some of the employee-pays-all plans include Dental Plus, Optional and Dependent Life Insurance, Supplemental Long Term Disability, MoneyPlus (the state's flexible benefits program), and the State Vision Plan. Health, Dental, Dental Plus, and the State Vision Plan benefits are available to retirees and survivors.

The State Health Plan (or Plan) is a self-funded health plan for active and retired employees of approximately 681 state agencies, school districts, and participating local governments. As of January 2015, 256,375 subscribers are enrolled in the Plan, with a total of 447,240 participants insured by the Plan, including subscribers, spouses, and children. Catamaran currently serves as Pharmacy Benefits Manager for the State under a contract that commenced January 1, 2013 and the initial term will expire 12:00 midnight December 31, 2015.

In Plan year 2014 the State Health Plan paid $641,931,667.16 in prescription drug claims ($25,560,057.13 occurred through mail service, and $616,371,610.03 through the retail network), with another $128,982,824.81 in patient liability (co-pay or deductible). The prescription count in Plan year 2014 was 7,548,433. The Plan's prescription drug benefit operates as a "Drug Card," with the drug program carved out from the major medical provisions of the Plan. Co-payments, effective January 1, 2015, are as follows: Tier 1 (generic drugs), $9 co-pay/prescription retail (30 day supply); $22 co-pay/prescription mail order (63-90 day supply); Tier 2 (Preferred brand drugs), $38 co-pay/prescription retail (30 day supply); $95 co-pay/prescription mail order (63-90 day supply); and, Tier 3 (Non-preferred brand drugs) $63 co-pay/prescription retail (30 day supply); $158 co-pay/prescription mail order (63-90 day supply). There is no annual deductible for prescription drugs, and there is a $2500/person annual co-payment maximum under this program. There is a "pay-the-difference" policy in place, in which the benefit payable for a brand drug with a generic equivalent is limited to what is payable for the generic; any pay-the-difference amount is not considered in calculating the annual co-payment maximum. Prior authorization is required for drugs in certain treatment categories under certain conditions. In 2014 the Plan paid $26,997,141.87 for Mail at Retail which is 4.21% of total plan cost. The 60,908 Mail at Retail claims represent 0.81% of the total prescriptions.

As part of the State Health Plan, the State began offering a HSA-qualified "high-deductible health plan" option in January 2005, known as the Savings Plan, in which prescription drugs are integrated with the medical plan. The PBM's role with this "100% co-pay" product is to calculate the allowance at the point of sale and inform the pharmacy, which would collect the full allowance from the patient. The PBM transmits, in real-time, the allowance to the Plan's medical claims administrator, currently Blue Cross Blue Shield of South Carolina, for application of deductible credit, and if appropriate, payment of claim to the patient. Of the subscribers in the State Health Plan, 10,281 currently are enrolled in the Savings Plan.

In January 2014, the State began offering the MUSC Health Plan pilot to only active employees working at MUSC (Medical University of South Carolina) and the MUHA (Medical University Hospital Authority) and their covered dependents. This plan is a non-grandfathered ACA-compliant plan, with inclusion of covered preventive pharmacy services as mandated by the ACA, and includes the federally-defined MOOP (Maximum Out-of-Pocket) for members, requiring coordination with the medical claims administrator to accumulate the MOOP in real time. PEBA will provide the CONTRACTOR with the complete plan of covered benefits no later than October 1 prior to the effective plan year. The claims administrator for this plan is Blue Cross Blue Shield of South Carolina. As of January 2015, there are 8,972 currently enrolled in the MUSC Health Plan pilot, with a total of 17,397 participants insured by the Plan.

The following attachments are provided with this Request for Proposal:

- Attachment One (1): Non-Disclosure Agreement
- Attachment Two (2): Business Associate Agreement
- Attachment Three (3): Service provider Security Assessment Questionnaire
- Attachment Four (4): List of Co-Pay Waiver Drugs

In order to obtain the confidential data listed below, which contains confidential data that is necessary to complete a Proposal in response to this Request for Proposal; each vendor must print, complete and return Attachment One (1): Non-Disclosure Agreement, to the Procurement Officer, Georgia Gillens, prior to the

adjournment of the pre-proposal conference on January 29, 2015. A scanned copy with the appropriate signature, transmitted by e-mail, is acceptable. Upon receipt and approval of an executed Non-Disclosure Agreement vendors will receive credentials for the FTP server. Only those vendors who plan to respond to this Request for Proposal should submit the Non-Disclosure Agreement. PEBA reserves the right, in its sole determination, to withhold the confidential data listed below from any vendor who cannot demonstrate its ability to meet the minimum requirements and/or is not in the business of providing the required services.

The following confidential data will be available for download after the execution of the Non-Disclosure Agreement with PEBA:

- Exhibit 1: Pharmacy Disruption based on Volume
- Exhibit 2: Pharmacy Disruption based on Total Amount Paid
- Exhibit 3: Formulary Analysis
- Enrollment data will be provided in a comma delimited format. The database will consist of the following elements:

  a.) Unique Patient Identifier
  b.) Contract / Subscriber Identifier
  c.) Subscriber Type (Active, COBRA, Survivor, Retiree)
  d.) Medicare status (Y or N)
  e.) Patient date of birth
  f.) Patient gender
  g.) Patient ZIP code
  h.) Patient Relationship to the Insured
  i.) Eligibility Start Date
  j.) Eligibility End Date

- Claims data will be provided in a comma delimited format. The database will consist of the following elements:
  a.) Unique Patient Identifier
  b.) Pharmacy ID (NABP)
  c.) Physician ID (DEA ID)
  d.) Dispense Date
  e.) NDC code
  f.) Days of Therapy
  g.) Metric quantity
  h.) DAW Code
  i.) Drug type (generic, single source brand, multi-source brand)
  j.) Pharmacy type (Mail Order, Retail)
  k.) Medicare Indicator
  l.) AWP as of dispense date
  m.) Specialty indicator (This indicator is developed based upon drugs typically considered specialty in the marketplace. Offerors are required to submit their organization's specialty list with their Request for Proposal response in the electronic format specified in Part V, Information for Offerors to Submit, Tab A-2: Questionnaire of the Offeror's Technical Proposal Response.

Data will be extracted based on calendar yearS 2013 and 2014.

SCHEDULE OF KEY DATES IN THE PROPOSAL PROCESS
All dates subject to change

1.	Distribution of the Request for Proposal	01/07/2015
2.	Questions on the Request For Proposal	01/22/2015
3.	(a) Pre-Proposal Conference; (b) Final Deadline for Submission of All Questions; and, (c) Final Deadline for Submission of the Non-Disclosure Agreement (If Applicable)	01/29/2015
4.	State's Written Responses to Questions (tentative)	02/03/2015
5.	Submission and Opening of Proposals (3:00 p.m.)	02/19/2015
6.	Intent to Award Posting Date (tentative)	03/17/2015
7.	Intent To Award Becomes Official (tentative)	03/30/2015
8.	Implementation Plan Due	05/15/2015
9.	Live Test Demonstration	11/30/2015
10.	Contract Performance	01/1/2016

II. INSTRUCTIONS TO OFFERORS - A. GENERAL INSTRUCTIONS

DEFINITIONS

EXCEPT AS OTHERWISE PROVIDED HEREIN, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION.

AMENDMENT means a document issued to supplement the original solicitation document.
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.
CONTRACT See 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 changes clause of the contract authorizes the Procurement Officer to order without the consent of the contractor.
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.
LOCALLY OWNED PHARMACY means a privately-owned pharmacy doing business in a retail setting in South Carolina, with its principal place of business in South Carolina**,** but does not include:

· *a national chain pharmacy (a pharmacy doing business in states other than South Carolina and routinely known in the pharmacy industry as a national chain),
· *a pharmacy included as part of a department store or grocery store,
· *a government-operated pharmacy
· *a pharmacy affiliated with a hospital, college/university, or other institution, whether publicly or privately-owned
*a pharmacy affiliated with a clinic that qualifies the pharmacy for federal "340B" pricing

OFFER means the bid or proposal submitted in response this solicitation. The terms Bid and Proposal are used interchangeably with the term Offer.
OFFEROR means the single legal entity submitting the offer. The term Bidder is used interchangeably with the term Offeror. See bidding provisions entitled Signing Your Offer and Bid/Proposal As Offer To Contract.
PAGE TWO means the second page of the original solicitation, which is labeled Page Two.
PARTICIPANT means an individual who participates in the plan, including all (a) Active employees; (b) Employees on leave of absence; (c) Retirees; (d) Survivors of deceased employees; (e) Survivors of deceased retirees; (f) COBRA participants enrolled in the Plan, and(g) any enrolled dependents of the individuals identified in (a) through (f) herein. The term Member is used interchangeably with the term Participant.
PROCUREMENT OFFICER means the person, or his successor, identified as such on the Cover Page.
YOU and YOUR means Offeror.
SOLICITATION means this document, including all its parts, attachments, and any Amendments.
STATE means the Using Governmental Unit(s) identified on the Cover Page.
SUBCONTRACTOR means any person having a contract to perform work or render service to Contractor as a part of the Contractor's agreement arising from this solicitation.
SUBSCRIBER means an Active or Retired Employee, Surviving Child/Surviving Spouse or COBRA enrollee of an Employer.
USING GOVERNMENTAL UNIT means the unit(s) of government identified as such on the Cover Page. If the Cover Page names a Statewide Term Contract as the Using Governmental Unit, the Solicitation seeks to establish a Term Contract [11-35-310(35)] open for use by all South Carolina Public Procurement Units [11-35-4610(5)].
WORK means all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.
[02-2A003-1]

AMENDMENTS TO SOLICITATION (JAN 2004)

(a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: www.procurement.sc.gov (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 letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged. [02-2A005-1]

AWARD NOTIFICATION (NOV 2007)

Notice regarding any award or cancellation of award will be posted at the location specified on the Cover Page. If the contract resulting from this Solicitation has a total or potential value of fifty thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation. Should the contract resulting from this Solicitation have a total or potential value of one hundred thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation and any award will not be effective until the eleventh day after such notice is given. [02-2A010-1]

BID/PROPOSAL AS OFFER TO CONTRACT (JAN 2004)

By submitting Your Bid or Proposal, You are offering to enter into a contract with the Using Governmental Unit(s). 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. [02-2A015-1]

BID ACCEPTANCE PERIOD (JAN 2004)

In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing. [02-2A020-1]

BID IN ENGLISH and DOLLARS (JAN 2004)

Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation. [02-2A025-1]

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 bid or 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 bid or 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. [02-2A032-1]

CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004)

(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; and
(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.

(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 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 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 may terminate the contract resulting from this solicitation for default.
[02-2A035-1]

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

[02-2A040-2]

COMPLETION OF FORMS/CORRECTION OF ERRORS (JAN 2006)

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 bid. Do not modify the solicitation document itself (including bid schedule). (Applicable only to offers submitted on paper.) [02-2A045-1]

DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (MAY 2011)

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. [02-2A047-1]

DEADLINE FOR SUBMISSION OF OFFER (JAN 2004)

Any offer received after the Procurement Officer of the governmental body 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 the governmental bodies mail room which services that purchasing office prior to the bid opening. [R.19-445.2070(H)] [02-2A050-1]

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. [02-2A065-1]

DUTY TO INQUIRE (JAN 2006)

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. 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. Failure to do so will be at the Offeror's risk. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention. [02-2A070-1]

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 by 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. [02-2A075-2]

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. [02-2A080-1]

PROTESTS (JUNE 2006)

Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen days of the date of issuance of the applicable solicitation document at issue. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". [Section 11-35-4210] [02-2A085-1]

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. [02-2A090-1]

PREPARATION OF PROPOSAL

Preparation of Proposal: (a) All 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 Request for Proposal. Emphasis should be on completeness and clarity of content. (c) If your Offer includes any comment over and above the specific information requested in our Request for Proposal, you are to include this information as a separate appendix to your offer. Offers which include either modifications to any of the Request for Proposal's contractual requirements or an Offeror's standard terms and conditions may be deemed non-responsive and not considered for award.

QUESTIONS FROM OFFERORS (JAN 2004)

(a) Any prospective Offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions must be received by the Procurement Officer no later than five (5) days prior to opening unless otherwise stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. 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. (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. [02-2A095-1]

REJECTION/CANCELLATION (JAN 2004)

The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065] [02-2A100-1]

RECEIPT OF PROPOSALS

PEBA will receive sealed proposals until 3:00 p.m. local time on the opening date shown. The submitting Offeror should have printed on the envelope or wrapping containing his proposal the Proposal Title specified on the Cover Page of this Request for Proposal (page 1) and the proposal opening date/time. PEBA assumes no responsibility for unmarked or improperly marked envelopes. All envelopes received showing the Request for Proposal title and opening date/time will be placed directly under locked security until the date and time of opening. Proposals transmitted electronically or submitted via PEBA's facsimile machine will not be accepted.

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 PEBA based on any misunderstanding, failure by PEBA to properly convey the information, or failure by PEBA to provide the Offeror with pertinent information as intended by the Request for Proposal. Additionally, the Offeror, its officers, agents, or representatives waive and release PEBA 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 PEBA, whether or not the information is relied on by PEBA. 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.

RESPONSIVENESS/IMPROPER OFFERS (JAN 2004)

(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 Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

(c) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070].

(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, or if it is so unbalanced as to be tantamount to allowing an advance payment.
[02-2A105-1]

RESTRICTIONS APPLICABLE TO OFFERORS (JAN 2004)

Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of the state Ethics Act. (a) After issuance of the solicitation, ***you agree not to discuss this procurement activity in any way with the Using Governmental Unit or its employees, agents or officials*** All communications must be solely with the Procurement Officer. This restriction may be lifted by express written permission from the Procurement Officer. This restriction expires once a contract has been formed. (b) Unless otherwise approved in writing by the Procurement Officer, ***you agree not to give anything to any Using Governmental Unit or its employees, agents or officials prior to award.*** [02-2A110-1]

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 venturer 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 is has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal. [02-2A115-1]

STATE OFFICE CLOSINGS (JAN 2004)

If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids 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 bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at: http://scemd.org/index.php/department/response/severe-winter-weather
[02-2A120-2]

SUBMITTING CONFIDENTIAL INFORMATION (AUG 2002)

(An overview is available at www.procurement.sc.gov) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by 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. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. 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. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page 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 is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not 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. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.) [02-2A125-1]

SUBMITTING YOUR OFFER OR MODIFICATION (JAN 2004)

(a) Offers and offer modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) - (1) Addressed to the office specified in the Solicitation; and (2) Showing the time and date specified for opening, the solicitation number, and the name and address of the bidder. (b) If you are responding to more than one solicitation, each offer must be submitted in a different envelope or package. (c) Each Offeror must submit the number of copies indicated on the Cover Page. (d) 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 in the Solicitation. (e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation. (f) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation. [02-2A130-1]

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. [02-2A135-1]

TAXPAYER IDENTIFICATION NUMBER (JAN 2004)

(a) If Offeror is owned or controlled by a common parent as defined in paragraph (b) of this provision, Offeror shall submit with its Offer the name and TIN of common parent.
(b) Definitions: "Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member. "Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.
(c) If Offeror does not have a TIN, Offeror shall indicate if either a TIN has been applied for or a TIN is not required. If a TIN is not required, indicate whether (i) Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States; (ii) Offeror is an agency or instrumentality of a state or local government; (iii) Offeror is an agency or instrumentality of a foreign government; or (iv) Offeror is an agency or instrumentality of the Federal Government. [02-2A140-1]

UNSUCCESSFUL OFFERORS

Offerors not awarded a contract under this solicitation may request return of their proposals within thirty (30) calendar days after notification of award is posted. All cost of returns will be paid by the Offeror. Thirty (30) calendar days after notification of award is posted all materials submitted by firms not awarded a contract may be destroyed.

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://www.scbos.com/default.htm) [02-2A145-1]

WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004)

Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder 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 bid. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085. [02-2A150-1]

II. INSTRUCTIONS TO OFFERORS -- B. SPECIAL INSTRUCTIONS

CONFERENCE - PRE-BID/PROPOSAL (JAN 2006)

Mandatory Pre-Proposal Conference Date and Time: **01/29/2015 10:00 AM E.S.T.**
Location of Pre-Bid/Proposal Conference: **S.C. Public Benefit Authority, 2nd Floor Conference Room, 202 Arbor Lake Drive, Columbia, SC.**

NOTE: Due to the importance of all Offerors having a clear understanding of the specifications and requirements of this Request for Proposal, attendance at the pre-proposal conference is mandatory. The South Carolina Public Employee Benefit Authority strongly recommends that, at a minimum, the proposed account manager and the individual responsible for preparing and submitting the Offeror's proposal be in attendance. Prospective Offerors will be limited to two (2) representatives. Prospective Offerors will be allowed additional representatives who may participate in the pre-proposal conference via telephone by dialing 888-450-5996, passcode 794764.

Any questions, comments, requests for information or clarifications regarding the Request For Proposal 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 Request for Proposal until (or in) the submission of your proposal. Potential Offerors are strongly encouraged to mail, e-mail or fax their questions on the Request for Proposal prior to the conference. Any written questions, requests for information or request for clarifications received prior to the conference, or prior to the adjournment of the conference, will be responded to in the form of a written amendment to the Request for Proposal and e-mailed to all prospective Offerors. The amendment will also be posted at the following web address: http://www.mmo.sc.gov/MMO/spo/MMO-eip-solicitations.phtm. Once the Conference is adjourned, no further questions regarding the Request for Proposal will be accepted.

SUBMISSION OF QUESTIONS

All questions, comments, requests for information or clarifications regarding this Request for Proposal must be submitted as indicated below. All questions, comments, requests for information or clarifications should, to the highest degree possible, cite the specific Request for Proposal section and paragraph number(s) to which the question refers. All questions, comments, requests for information or clarifications regarding this Request for Proposal should include the identity of the sender, firm name, mailing address, telephone number, and e-mail address. Email is the preferred method for submitting questions with "Questions: Pharmacy Benefit Management Services RFP" as the subject of the email. Submit questions in an easily copied format such as MS Word.

Mark envelopes on questions mailed: QUESTIONS
Title: Pharmacy Benefit Management Services RFP
Attn.: Georgia Gillens, CPPO, CPPB

SEND QUESTIONS TO:

MAIL TO:
S.C. Public Employee Benefit Authority
Insurance Benefits
PO Box 11960
Columbia, SC 29211-1960
Attention Georgia Gillens, CPPO, CPPB

HAND DELIVER/EXPRESS
S.C. Public Employee Benefit Authority
Insurance Benefits
202 Arbor Lake Drive
Columbia, SC 29223
Attention Georgia Gillens, CPPO, CPPB

E-MAIL ADDRESS:
ggillens@peba.sc.gov

CLARIFICATION (NOV 2007)

Pursuant to Section 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. [Section 11-35-1520(8); R.19-445.2080] [02-2B055-1]

PROTEST - CPO - MMO ADDRESS (JUNE 2006)

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 facsimile at 803-737-0639 , or
(c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. [02-2B122-1]

III. SCOPE OF WORK/SPECIFICATIONS

DELIVERY DATE -- 30 DAYS ARO (JAN 2006)

Unless otherwise specified herein, all items shall be delivered no later than thirty days after contractor's receipt of the purchase order. If the using governmental unit requests delivery sooner than the time specified, contractor may invoice the ordering entity any additional shipping charges approved by the ordering entity on the purchase order. [03-3025-1]

DELIVERY/PERFORMANCE LOCATION -- SPECIFIED (JAN 2006)

After award, all deliveries shall be made and all services provided to the following address, unless otherwise specified: **S.C. Public Employee Benefit Authority, 202 Arbor Lake Drive, Columbia SC.**
[03-3030-1]

SCOPE OF WORK

The Contractor shall provide Pharmacy Benefit Management services to the State, in accordance with all of the requirements outlined in this Request for Proposal (including all attachments) and the Offeror's response thereto. The Contractor shall administer, manage, and provide all goods, personnel, and services necessary to deliver to the State complete Pharmacy Benefit Management services in a manner consistent with state and federal laws and in a fiscally sound manner.

The State is seeking proposals which comply with each of the requirements described in Part III, Scope of Work, Sections A through L below. In addition, Offeror's financial proposal MUST be provided as a fixed, all-inclusive PMPM administrative fee which includes the cost of compliance with each of the Scope of Work items for Non-Medicare (Commercial) and Medicare-eligible (Indirect EGWP + Wrap) participants. The State considers any proposal which provides any deviations from, or caveats to, Part III, Scope of Work, Sections A through L, 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 so, considered and determined by the South Carolina Public Employee Benefit Authority before the submission date for all proposals, that all prospective Offerors will have a common and uniform basis upon which to submit its proposals, including a fixed, single, all-inclusive PMPM administrative fee.

The Contractor shall provide, at a minimum, the following material and essential requirements for the fixed, single, all-inclusive PMPM administrative fee, for the initial contract term of three (3) years, without deviation or modification, subject to any modifications that may be issued in an Amendment to the Request for Proposal by the South Carolina Public Employee Benefit Authority resulting from the question and answer phase:

A. Pricing and Cost Containment Requirements

1. The Contractor shall establish and maintain a comprehensive drug utilization review program that includes concurrent, prospective and retrospective therapeutic drug monitoring with the objectives of minimizing the risk of adverse drug interactions or drug-induced illness; increasing use of drug therapies that are medically necessary and most clinically and cost effective; identifying individual prescribers and/or pharmacies that demonstrate patterns of possible misuse; and promoting cost effective drug therapies in accordance with national prescribing guidelines.

2. The Contractor shall provide a drug formulary, or preferred drug list (PDL), that will be made available to the participant, using the incentive of lower cost if a product on the preferred drug list and/or a generic alternative can be used with the attending physician's approval.

3. The Contractor shall provide their most aggressive and broadest Maximum Allowable Cost (MAC) pricing for generic drugs that uses a MAC price list that is subject to review and modification for inclusion of generic drugs representing the greatest cost savings to the Plan based on participant's drug utilization.

4. The Contractor shall propose and implement pricing guarantees for brand and generic prescription drugs at different delivery channels to be applied to all chain, institutional, and government-owned pharmacies (Tab A-9: Financial Proposal). However, PEBA will determine such pricing for locally-owned pharmacies, as defined by PEBA. PEBA will transmit locally-owned pharmacy pricing in terms of dispensing fees and an effective discount off of Average Wholesale Price for brands and generics at different delivery channels to the Contractor no less than 90 days prior to the effective date for such pricing.

5. The Contractor shall apply the same Maximum Allowable Cost (MAC) list and pricing at mail order that is applied at retail.

6. The items listed below shall be included within the fixed, single, all-inclusive PMPM Non-Medicare Administrative Fee and within the fixed, single, all-inclusive PMPM Medicare Primary Administrative fee offered in Line 1 and Line 2 respectively of Table I of Tab A-9: Financial Proposal. The Contractor shall include, at a minimum, the following services in their proposed Administrative Fees, whether directly provided or provided through a subcontractor.

   a) Account services and account management
   b) Data management and reporting
   c) Ad hoc reports
   d) Access to Web-based reporting
   e) Customer satisfaction survey
   f) Member services and call center
   g) PEBA-specific internet website
   h) Toll-free number for participants
   i) Toll-free number for pharmacies
   j) Toll-free number for providers
   k) Subscriber enrollment packages
   l) ID Card production and delivery (Commercial and Indirect EGWP + Wrap plan participants)
   m) Online Network listing
   n) Online formulary/preferred drug listings
   o) Participant on-line access
   p) Network management
   q) Provider Contracting

r) Network pharmacy audits
s) Eligibility administration
t) Electronic and paper claims processing
u) Mail services claims integration
v) Mail service program that automatically substitutes a generic for a brand alternative when prescribing physician has authorized generic substitution
w) Specialty pharmacy claims integration
x) Prospective specialty drug utilization review
y) E-Prescribing connectivity
z) POS Messaging
aa) Generic messaging, which includes notices to the Plan regarding upcoming generic releases and communications to Plan participants to increase awareness of the value of generic drugs
bb) Claims forms
cc) Appeal determinations
dd) Explanation of benefits (EOB)
ee) Semi-annual benefit statements mailed to participants with savings opportunities of $50 or more
ff) Coordination of Benefits (Medicare Part B, Medicaid, and Participant submitted)
gg) Designated clinical service team
hh) Clinical and formulary management
ii) Clinical initiatives based on national clinical guidelines to assist a physician in optimizing patient care through the identification of potential gaps in care in a patient's treatment
jj) Quantity Level Limit (QLL) system edits and support
kk) Prior Authorization (PA) edits and support
ll) Step Therapy edits and support
mm) Duration of Therapy edits and support
nn) Concurrent, Prospective and Retrospective DUR that ensures appropriate utilization of drugs based on product choice, quantity dispensed, dosing, and duration of therapy
oo) Abuse/Fraud program development and management
pp) Evaluation of the appropriateness of controlled substances and other targeted drugs, ensuring safe and appropriate utilization; and communication to physicians via mail as necessary
qq) Rebate management/administration, including rebate aggregation services
rr) Data processing
ss) Systems maintenance
tt) Electronic data transfer to data warehouse vendor
uu) HIPAA compliance
vv) Implementation/transition assistance, as necessary
ww) Printing and mailing costs
xx) Corporate and other overhead
yy) Taxes
zz) All other functions required to fulfill the requirements of this contract
aaa) Other clinical and/or administrative programs the Offeror chooses to provide in excess of the requirements of this contract
bbb) All costs associated with the ACA real-time MOOP Accumulator

7. The Medicare Primary Administrative Fee quoted in Line 2 of Table I in Tab A-9: Financial Proposal shall be a composite fee for Medicare primary participants regardless whether the participant is enrolled in or opted out of the Indirect EGWP + Wrap plan. The Contractor shall include, at a minimum, the following services in the fixed, single, all-inclusive PMPM Medicare Primary Administrative Fee for participants who enroll in or opt out of the Indirect EGWP + Wrap plan.

   a.) Monthly cost report submission to CMS, regardless of frequency of submission selected by State.
   b.) Paper claim submission fee for Coordination of Benefits for Medicare Part D enrollees.
   c.) Prior authorizations to categorize Part B covered drugs for exclusion from claim submission in accordance with CMS guidelines and in coordination with PEBA.
   d.) Storage of data for CMS audit, and participation in CMS audits, as needed.
   e.) Certificates of Coverage at termination of Creditable Coverage, including postage and mailing.
   f.) Calculation and submission annually of the final reconciliation cost report to CMS.
   g.) All other functions required to support the State's participation in the RDS program.

9. The Contractor shall provide 100% of all pharmaceutical rebate monies, represented by a system of Guaranteed Rebates, based on a guarantee per branded prescription, with guaranteed rebate amounts remitted to PEBA within ninety (90) days of the end of each quarter. Rebates received by the Contractor, or any subcontractor, in excess of guaranteed amounts shall be remitted along with, and in addition to, the Guaranteed Rebates for the quarter in which the excess rebates are received. There will be an annual true-up to the guarantee no later than one-hundred eighty (180) days after the end of the Plan Year. If the contractor utilizes a subcontractor for rebate aggregation services, the cost for that subcontractor shall be included in the fixed, all-inclusive, PMPM Administrative Fee.

10. The Contractor shall provide a transparent financial pricing arrangement in which they disclose all sources of 1) revenues derived by relationships with pharmaceutical manufacturers, from the State's utilization at mail order, specialty and retail and 2) all pharmaceutical manufacturer fees that offset costs associated with required clinical applications and/or services conducted by the Contractor in order to support the dispensing of certain medications. The State must receive all monies from pharmaceutical manufacturers that are attributable to the State's utilization. Fees from pharmaceutical manufacturers that are for the purpose of offsetting costs associated with required clinical applications and/or services, while required to be identified, are not required to be passed to the State.

11. The Contractor shall provide a system of coverage reviews for selected medications, including the use of step therapy algorithms based on national prescribing guidelines that require trials on less expensive yet equally clinically effective alternatives prior to prescribing more expensive drug therapies.

12. The Contractor must offer an aggressive specialty pharmacy program that includes pricing and clinical applications specific for the specialty program. Pricing should include discount guarantees per product per retail and specialty channels of distribution.

13. The Contractor shall administer PEBA's incentive based generic prescription drug co-pay waiver program. In the program, participants designated by the Third Party Administrator for Medical Claims, currently Blue Cross Blue Shield of South Carolina, shall receive generic prescription drugs for selected disease states without the payment of a co-pay. Disease states currently covered by the program include coronary heart disease, hypertension, hyperlipidemia, congestive heart disease, and diabetes. Test strips and other diabetic supplies are also included in the co-pay waiver program. A list of products eligible for the co-pay waiver is included in Section IX of this RFP. Participants are eligible for the generic co-pay waiver based on successful completion of disease management education programs and for obtaining specified medical care for each condition. The co-pay waiver will take effect the first of the month following the month in which the participant qualifies and will last one (1) year. Participants need to re-qualify to continue receiving the waiver. For participants enrolled in the Savings Plan option, there will be no patient liability at the point of sale. The co-pay waiver will apply at both retail and mail-order pharmacies. Enrollment data for the generic co-pay waiver program will be transmitted to the Contractor on a monthly basis from the plan's Third Party Administrator for Medical Claims, currently Blue Cross Blue Shield of South Carolina, or any successor. The Contractor is responsible for loading the eligibility files prior to the effective date of the co-pay waiver so that claims will process correctly. Effective dates for the waiver must be visible to PEBA Customer Service staff when viewing the Contractor's system. The Contractor shall cooperate with the S.C. Public Employee Benefit Authority and the plan's current Third Party Administrator for Medical Claims, or any successor, in the ongoing development, marketing, enhancement, and operation of this program and any new health or wellness initiatives that affect prescription drug benefits offered by PEBA. As of September 2014 there are 3,669 members enrolled in the generic co-pay waiver program.

14. The Contractor shall, on an annual basis, reconcile the guarantee for each element of the cost proposal, <u>including rebates</u>, with actual results. Each element will be evaluated independently and surpluses in one pricing element may not be applied to pricing elements in deficit. The contractor shall reimburse PEBA the calculated financial difference between actual performance for the measure and the guaranteed performance for all components of the pricing guarantee that do not meet or exceed the guarantee. The following types of claims / transactions are excluded from guarantee calculations:

    a. Reversal and adjustment claims
    b. Compounds
    c. Claims reimbursed the pharmacy's usual and customary charge
    d. Claims for which a valid AWP could not be determined.

This reconciliation shall occur no more than six (6) months after the end of year plan year. All branded prescriptions with the exclusion of reversal and adjustment claims are considered rebateable and are therefore subject to the rebate reconciliation. Effective discount is calculated at the contractual ingredient cost / AWP and does not consider patient liability as discount. As such, zero balance claims are to be included in the guarantee analysis.

15. Maximum Out of Pocket (MOOP): The Contractor shall possess the capability to administer the federally-defined member MOOP in an ACA-compliant plan in real time in coordination with the State Health Plan's medical claims administrator. This capability shall entail transmitting to the pharmacy the correct patient co-payment due, at that exact time, if the patient is a member of a plan with an applicable MOOP. This duty will require real time coordination with the medical claims administrator. The State-sponsored MUSC plan is an ACA-compliant plan with a MOOP in force beginning in 2015, and the Contractor shall prepare as if the other State-sponsored plans may be ACA-compliant effective at any time during the term of this contract.

- MUSC Health Plan Pilot**.** The MUSC plan includes only active employees working at MUSC (Medical University of South Carolina) and the MUHA (Medical University Hospital Authority) and their covered dependents. This plan is non-grandfathered ACA-compliant with inclusion of covered preventive pharmacy services as mandated by the ACA at select pharmacies, and includes the federally-defined MOOP (Maximum Out-of-Pocket) for members, requiring coordination with the medical claims administrator to accumulate the MOOP in real time. PEBA will provide the Contractor with the complete plan of covered benefits no later than October 1 prior to the effective plan year. The claims administrator for this plan is Blue Cross Blue Shield of South Carolina.

B. Pharmacy Network Management Requirements

1. The Contractor shall market, develop, organize, implement, operate and maintain a network of participating pharmacies. While PEBA understands that contracts are between the PBM and the pharmacy, the PBM must work towards maximizing participation to ensure a successful and robust network.

2. The Contractor shall contact all retail pharmacy chains, independent pharmacies, and nursing home pharmacies operating in South Carolina and solicit their participation in the Pharmacy Network. The S.C.Public Employee Benefit Authority desires the maximum participation by all willing pharmacies, whether independent or national chain, and the greatest geographical coverage for the Network within the State, including rural areas.

3. The Contractor shall extend the opportunity of Network participation to any willing retail pharmacies and pharmacy chain stores located in other states to enable State Health Plan participants who work or reside outside the state to have access to the Pharmacy Network.

4. The Contractor shall provide representatives to make personal contact with the pharmacy provider community to communicate Plan rules, benefits or changes and claims filing procedures, and related pharmacy issues. All material distributed to providers is subject to approval by PEBA Communications Director or her designee(s).

5. The Contractor shall provide mail-order and specialty pharmacy services. Any program to encourage use of the mail or specialty pharmacy shall not be implemented by the Contractor without the express approval by PEBA's Director or his designee(s). Upon request of PEBA, the Contractor shall accept from the incumbent Pharmacy Benefits Manager, a claims file which shall be used to transfer participant's current mail and specialty pharmacy prescriptions and related prior authorizations .

6. The Contractor shall offer a retail maintenance pharmacy network, similar in respects to the "Retail Maintenance Network" currently in place, which allows participants in the Commercial and Indirect EGWP + Wrap Plans options to purchase 90-day supplies of prescription drugs at local pharmacies for the same co-payment available through the mail order pharmacy. The plan shall also receive the same AWP discount for a 90-day supply dispensed at a retail maintenance pharmacy network as the mail-order pharmacy. Participants in the Savings Plan option pay the full allowed amount for prescription drugs.

7. The Contractor shall maintain and apply generally accepted medical standards and practices to determine whether prescribed drug treatments provided to participants are consistent with generally accepted criteria.

8. The Contractor shall demonstrate, on or before October 1, 2015, that the Network is capable of commencing operation on January 1, 2016.

9. The State shall have the right to copies of the contract between the pharmacies and the PBM.

C. Customer Service, Communications, and Training Requirements

1. The Contractor shall provide dedicated customer service representatives, with training on the specific features of the benefits of the State Prescription Drug Plan, to respond to written and telephone inquiries from participants, providers, and agencies, to answer questions, provide assistance with accessing benefits, and to resolve claims payment problems. Customer service representatives must be knowledgeable about all plans offered by PEBA and able to assist members with questions regardless of the plan in which they are enrolled. In addition, the Contractor shall make available to participants a Pharmacy Help Line to provide information and status on prescriptions and to provide participants with alternative drug options. Contractor will provide training materials for its representatives to PEBA for review and approval prior to implementation of the contract and as requested. The Contractor will be required to demonstrate that it has established and staffed telephone lines by November 15, 2015.

2. The Contractor shall provide State Health Plan dedicated representatives with a manager on site readily available during business hours (Eastern Standard Time) and on the same business days as PEBA to take calls from S.C. Public Employee Benefit Authority customer service representatives and managers. The Contractor's representatives shall be capable of responding to all inquiries and be able to resolve issues of eligibility, enrollment, claims, and any other administrative matter presented to them. The Contractor shall provide an escalation process of problem resolution to PEBA customer service managers. This process shall involve Contractor management representatives who have authority to resolve more complex issues. The Contractor will be required to demonstrate that it has established and staffed telephone lines by November 15, 2015.

   Note: Due diligence - The Contractor will provide PEBA an opportunity to visit call center, interview staff, etc prior to the start of the contract. The visit will be at PEBA's expense.

3. The Contractor agrees to furnish SHP-specific information on covered prescription drug benefits, and how to access them, to participants and providers. The Contractor shall provide communication information between the Contractor and participants under the Plan, the pharmaceutical community, and PEBA that describes the features, operation, and any changes of the Prescription Drug benefit and increases awareness of the Plan benefits and changes. All communication pieces must be reviewed and approved by PEBA in advance. Communications with PEBA, participants, and network pharmacies will be undertaken to ensure that electronic data transfer, fax, telephone, and hard copy transfer of information are accurate and efficient, as determined by PEBA Communications Director or her designee(s).

4. The Contractor agrees to develop and distribute forms and materials and provide timelines for their development and updates, all of which are subject to approval by PEBA Communications Director or her designee(s) prior to actual use, to participants and Benefit Administrators, including, but not limited to:

   a. Claim forms;
   b. Explanation of benefits (EOB) forms;
   c. A web based directory of all pharmacies participating in the pharmacy network. A paper directory shall be provided upon request;
   d. Preferred Drug List(s);
   e. Articles describing features of the prescription drug programs for publication in PEBA newsletters;
   f. Brochures, payroll stuffers, posters, or similar materials.
   g. ID cards

5. The Contractor shall produce and distribute identification cards for participants. Cards shall be co-branded with PEBA.

6. Subject to the requirements of Part III. Scope of Work, Section I. Eligibility of Participants and Computer Support Requirements, Item 13, and the security arrangements as agreed to between the parties, the Contractor shall have in place a State Health Plan specific, secure, password protected, Internet website by October 1, 2015, through which participant can access plan, pharmacy and formulary information online. This web site shall include links to the State Health Plan Internet home page and shall make available a multitude of information to participants. Such web-based access shall include the ability to, at a minimum:

   a. Place online refills, check order status and track mail order shipment;
   b. Track prescription history (2 years minimum);
   c. Check drug cost and drug information, such as drug interactions and precautions and plan limits;
   d. Locate participating pharmacies and hours of operation;
   e. Communicate with a pharmacist or a customer service representative;
   f. Access the Preferred Drug List;
   g. Access Plan benefit information;
   h. Access forms and brochures (all forms that are to be completed by participant, Benefits Administrators, and/or pharmacies shall be available in electronic format);
   i. Access preventive educational information; and,
   j. Access general health, prescription compliance and chronic disease information.

7. The Contractor shall print, distribute, and mail (including processing of returned mail) all communications materials and items approved by PEBA Communications Director or her designee(s). Distribution to active employees is through the employee's Benefits Administrator, and by mail to addresses of eligible retirees, COBRA participants, and survivors.

8. The Contractor shall maintain a sufficient inventory of all current printed materials for distribution/mailing to employers upon the request of PEBA, or provide on demand service delivery for all printed materials.

9. Each year the Contractor shall pay a proportionate share of the total cost, as determined by PEBA, of printing and distributing the "Insurance Benefits Guide," which is prepared, published and distributed annually by PEBA. The current PBM contractor's proportionate share for the 2014 guide was $19,359.40.

10. The Contractor shall not conduct any mass mailings to participants or contact benefit administrators or other State group benefits personnel without the prior express permission of PEBA Communications Director or her designee(s).

11. The Contractor shall not, during the term of this contract, or for a period of two (2) years after termination of the contract, or any extension thereof, solicit any business, engage in enrolling employees, offer products or services, or contact any employer group participating in the State Prescription Drug program except as necessary to carry out the requirements of this contract.

12. The Contractor shall provide its personnel, as needed, to inform providers, employers, and participants of rules, updates, changes, and other features of the Prescription Drug Plan, especially during the October enrollment period. Training and education sessions may be held at PEBA or various employer sites statewide. All materials distributed by the Contractor are subject to prior approval by PEBA Communications Director or her designee.

13. The Contractor shall provide personnel at PEBA's annual Benefits Administrators Conference (four days) held each year in August, beginning in August 2015. Approximately three hundred (300) benefit administrators and other essential benefits personnel attend each day. The Conference is held in Columbia, South Carolina. Each Contractor has the opportunity to be represented as the State Plan Contractor for his or her product and/or service.

14. Each year, beginning in 2015, the Contractor shall pay a fee of five thousand dollars ($5,000) to PEBA for support of the annual Benefits Administrator's Conference. This fee includes the Contractor's registration and booth fee for the Conference.

15. The Contractor shall provide callers with a survey instrument to gauge customer satisfaction at the end of each call. Survey results shall be provided to PEBA within fifteen (15) days of the end of each month. An assessment of $5000 per month shall be levied against the Contractor for each month the Contractor fails to obtain a 95% overall satisfaction rate as liquidated damages for the Contractor's failure to meet this performance standard. The survey instrument shall be subject to review and approval by PEBA. (See Pg. 5a of Tab A-9: Performance Guarantees, which is located in the Technical Proposal.)

16. The Contractor shall annually conduct and submit the results to PEBA of a Participant Satisfaction Survey. A random sample shall be selected using a 95% confidence level, a 5% margin for error and an expected return rate of 15%. The results of the Participant Satisfaction Survey shall be submitted to Georgia Gillens, Procurement Officer within fifteen (15) days after the completion of the survey. (See Pg. 5a of Tab A-9: Performance Guarantees, which is located in the Technical Proposal.)
17.

D. Claims Processing and Payment Requirements

1. The Contractor shall process all prescription drug claims incurred by eligible participants on and after January 1, 2016, and during the entire term of the contract, determine whether the claim is payable, and pay the claim subject to applicable Plan provisions. Provided, however, that following termination of this contract, the Contractor shall continue for a period of twelve (12) months to process all prescription drug claims for the Plan that were incurred during the term of the contract at no additional charge.

2. The Contractor, under the Savings Plan option (100% co-pay), shall calculate the allowance at the point of sale and inform the pharmacy, which would collect 100% of the allowance from the patient. The Contractor shall transmit, in real-time on a daily basis, the allowance electronically to the Plan's medical claims administrator, currently Blue Cross and Blue Shield of South Carolina, or any successor, for application of deductible credit, and if appropriate, payment of claim to the participant.

3. The Contractor shall implement plan modifications as required under the Medicare Modernization Act (MMA), also known as the Prescription Drug, Improvement, and Modernization Act of 2003 (DIMA), or for compliance with any other federal requirements.

4. The Contractor shall provide an online data link between each participating network pharmacy and the PBM that permits the pharmacist, prior to the completion of the transaction, to:
   a. verify patient's eligibility;
   b. receive the current pricing information on the prescription drug;
   c. provide purchase approval to the participating pharmacy by means of an online system;
   d. conduct concurrent drug utilization reviews to identify and notify the participant of any drug treatment that is potentially harmful, unnecessary, non-covered, or requires prior authorization;
   e. receive information on lower cost alternatives from the preferred drug list maintained by the PBM or

lower cost generic alternatives, if appropriate;

f. inform the participant of all information that indicates that the prescription may be inappropriate for the individual; and

g. receive any information maintained by the PBM on therapeutic contraindications or potential problems from use of the drug prescribed.

5. The Contractor shall provide the necessary claim forms that can be submitted directly to the Contractor by State Health Plan participants for processing after making a prescription drug purchase at a network pharmacy in which the pharmacist was unable to verify the participant's eligibility. The drug claim form shall provide a disclaimer statement indicating that reimbursement is not guaranteed and that the Contractor will review the claim, subject to limitations, exclusions, and other provisions of the State Health Plan. Note to Offerors: In 2014 processed to date, there were 6,084 prescriptions adjudicated through the paper claims process.

6. The Contractor shall generate and mail a check, as required, and an explanation of benefits or denial notice for participant submitted claims and a remittance advice for provider submitted claims. The form of the Explanation of Benefits (EOB), denial notice and remittance advice are subject to S.C. Public Employee Benefit Authority approval.

7. The Contractor shall maintain a history of all prescription drug claims paid both at retail and mail order. No less than twenty-four (24) months of claims history shall be maintained online.

The Contractor shall identify areas of potential claims payment discrepancies and take corrective actions. In actions. In the case of a plan or member overpayment, refunds should be issued within thirty-one (31) days of discovery. The Contractor shall notify PEBA if participant or provider fraud is discovered and shall pursue all legal means available in order to recover fraudulent claim payments to a participant or a provider.

9. The Contractor shall perform reviews, such as verification of services billed, to identify and report to PEBA improper provider billing practices, and take appropriate action.

10. The Contractor shall identify any instance where coordination of benefits applies and take appropriate action to recover claims payments or other costs. The Contractor shall be responsible for capturing and enforcing coordination of benefits at the point of sale, as provided by PEBA. The Contractor shall report Plan savings as a result of coordination of benefits.

11. The Contractor shall provide access to pharmacy and medical advisors, and pharmaceutical texts, literature, pharmacy care standards and other materials as needed for consideration and determination of claims, and for review of disputed claims or appeals of denials in whole or in part.

12. The Contractor shall provide an internal appeals process for all claim denials in accordance with Article 12 of the State Health Plan (see Article 12 of the Plan of Benefits, in PDF format, at **http://www.mmo.sc.gov/MMO/spo/MMO-eip-solicitations.phtm**). If any part of a claim is denied by the Contractor and the participant requests a review within six months after receiving notice of the decision from the Contractor, the Contractor must provide a review of the decision. If the Contractor continues to deny any part of the claim, the participant will be able to appeal the Contractor's decision to PEBA. The Contractor will cooperate with PEBA's appeals process for disputed claims, providing personnel to supply complete, accurate, timely, and legible documentation as necessary to support the Contractor's decisions and assist PEBA in its review. The documentation shall include at a minimum: (a) the determination, which should reflect sufficient understanding of the information relevant to the claim; reference to the information submitted by the participant; analysis of why the claim is denied; and reference to the applicable Plan

language, standards and determinations of the U.S. Food and Drug Administration, and utilization review and management standards established by the Contractor for the Plan; (b) all documentation submitted by the participant regarding the claim; (c) a copy of the Plan language, standards and determinations of the U.S. Food and Drug Administration, utilization review and management standards, and any other standards relied upon by the Contractor; and (d) documentation of contacts with the participant, whether via e-mail, telephone, or letter, regarding the claim. At all times, the Contractor shall provide access to pharmacy and medical advisors for further review of disputed claims or appeals as needed by PEBA. If PEBA denies any part of a claim and the participant appeals to the courts, the Contractor will be responsible for providing legal representation to defend the denial. Such legal representation must include attorneys experienced in employee benefits defense or appearance before the South Carolina Administrative Law Court.

The Contractor shall coordinate, in real-time on a daily basis, with the Third Party Administrator for Medical Claims, currently Blue Cross Blue Shield of South Carolina, or any successor, in the application of payments for outpatient infertility treatment, and with any other Plan payment limits that include both medical and pharmacy claims payments. Except in isolated instances, the Pharmacy Benefits Manager processes all drug claims. The Plan pays a total lifetime maximum of $15,000 for infertility treatment. Prescription drugs for treatment of infertility are subject to a 30 percent coinsurance payment under both the Savings Plan and the Standard Plan. This expense does not apply to the $2,500, per person prescription co-payment maximum under the Standard Plan. It does apply to the Savings Plan deductible. The 70 percent plan payment for prescription drugs for infertility treatments applies to the $15,000 maximum lifetime payment for infertility treatments. In the Savings Plan, the Contractor shall adjudicate prescription claims and transmit them to the Third Party Administrator for Medical Claims, which in turn either applies deductible credit or issues a check to the patient.

E. Reporting Requirements

1. The Contractor will be expected to submit regular reports detailing financial, member services, and administrative data by location and by status. This data will support performance standards and associated guarantee monitoring, internal management reporting, and other benefits activities.

2. The Contractor shall provide the Performance Guarantee report , via e-mail, to the Analytics and Health Initiatives Manager of PEBA:

   a. Performance Guarantee Reports indicating compliance or non-compliance with each of the performance standards. Due date: Within forty-five (45) days of the end of the quarter and Plan Year. Frequency: Quarterly and Annually.

3. The Contractor shall be required to provide, in a format and on a basis acceptable to PEBA, standardized management reports, that shall include, at a minimum, the following reports and measures:
   a. Financial Performance Measures Reports:
      - Key prescription drug plan cost components
      - Key member demographic cost components
      - Plan savings as a result of coordination of benefits
   b. Utilization Reports for claims processed by:
      - Retail generics
      - Retail single source brands
      - Retail multisource brands
      - Mail order generics
      - Mail order single source brands
      - Mail order multisource brands

- Retail Maintenance generics
- Retail Maintenance single source brands
- Retail Maintenance multisource brands
- Compound drugs
- Specialty generics
- Specialty single source brands
- Specialty multisource brands
- Formulary status
- Pharmacy / Pharmacy chain / Independent

The Contractor shall be required to provide PEBA with access to an online query system for analysis of, at a at a minimum, prescription drug claims data related to:

- Individual Claimants (Subscriber Type, Member Type, Entity Type, etc.)
- Prescription Drug Information
- Network Pharmacy Information
- Prescriber Information

5. The Contractor shall provide, at PEBA's request, ad hoc or customized reports that cannot be generated from the online query system to analyze prescription drug claims and benefits in support of PEBA's decision-making activities.

6. The Contractor shall be required by PEBA to provide assistance, as needed, with respect to the estimated cost impact of benefit modifications.

7. The Contractor shall be required to provide to PEBA and/or its designated representative, at least semi-monthly and within ten (10) calendar days of the end of the reporting period, a detailed claims transaction file that is transmitted to PEBA or its designee in a secure fashion. The file shall include, at a minimum the following information:
   a. Subscriber Social Security Number
   b. Patient Social Security Number
   c. Patient Name
   d. Patient Date of Birth
   e. Patient Gender
   f. Patient's Relationship to the Subscriber
   g. Pharmacy NABP or other pharmacy identifier
   h. Pharmacy Affiliation (chain/independent)
   i. Pharmacy ZIP Code
   j. Pharmacy Name
   k. DEA ID of prescribing physician or other physician identifier
   l. Dispense Date
   m. Date claim processed
   n. Date claim received
   o. NDC Code
   p. Drug Name
   q. Drug class
   r. Metric Quantity
   s. Days Supplied
   t. Ingredient Cost
   u. Professional Fee Paid
   v. Sales Tax paid

w. Patient Payment Amount
x. Plan payments
y. Other coverage payments
z. DAW indicator
aa. Type of Drug (Name, Generic, Brand with Generic Equivalent)
bb. Amount Charged by Pharmacy
cc. Average Wholesale Price
dd. Pricing Methodology (i.e. U and C, AWP, MAC)
ee. Pharmacy Type (i.e. Retail, mail order, retail maintenance)
ff. Specialty indicator
gg. Compound drug indicator

8. The Contractor shall be required to provide to PEBA and/or its designated representative, at least semi-monthly and within ten (10) calendar days of the end of the reporting period, a detailed provider listing file that is transmitted to PEBA or its designee in a secure fashion. The file shall include, at a minimum the following information:

    a. Pharmacy NABP
    b. Pharmacy Name
    c. Pharmacy FEIN
    d. Pharmacy NPI
    e. Chain Identification (i.e. code that relates all pharmacies to a common ownership or control structure)
    f. Compounding Pharmacy Indicator ("Yes", if the pharmacy's **primary** function is to fill compound prescriptions; otherwise, "No.")
    g. Address Line 1
    h. Address Line 2
    i. City
    j. State
    k. ZIP
    l. Phone Number
    m. Local Pharmacy Indicator (as determined by PEBA)
    n. Commercial Retail network effective date
    o. Commercial Retail network ending date
    p. Commercial Retail maintenance network effective date
    q. Commercial Retail maintenance network ending date
    r. EGWP Retail network effective date
    s. EGWP Retail network ending date
    t. EGWP Retail maintenance network effective date
    u. EGWP Retail maintenance network ending date

F. Indirect EGWP + Wrap Requirements

The requirements related to the administration of an Indirect EGWP + Wrap plan shall include, but are not limited to, the following.

1. The Contractor shall, at a minimum, provide all administrative services and clinical programs required by CMS and other federal entities.

2. The Contractor shall develop and implement, in conjunction with PEBA and its designees, a comprehensive communication and participant education campaign to assure maximum participation in the Indirect EGWP + Wrap plan.

3. The Contractor shall develop CMS required Covered Retiree communication templates, customer service scripting, and other communication tools. The Contractor will be responsible for submission of the materials to CMS for review, in accordance with applicable guidelines and waivers. The Contractor shall distribute such communications to eligible participants and shall also provide standard web site development and maintenance consistent with CMS regulations.

4. The Contractor shall produce and distribute participant identification cards for those participants enrolled in the Indirect EGWP + Wrap plan. The card shall contain each participant's identification number in accordance with CMS guidelines and with final approval from PEBA.

5. The Contractor shall collect and pass through all federal subsidies, including but not limited to the risk-adjusted direct per Member per Month subsidy, federal reinsurance payments for catastrophic coverage, Low Income Cost Sharing subsidies (LICS), Low Income Premium Subsidies (LIPS) and Coverage Gap Discount Program (CGDP) to the Plan in accordance to a published, agreed upon schedule. PEBA acknowledges and agrees that the schedule may be subject to change and the timing of payments is at the discretion of CMS; payment delays on the part of CMS will result in payment delays to the Contractor and PEBA. In such cases, the Plan Sponsor will have no liability.

6. The Contractor shall provide PEBA with a files in an agreed upon format containing the submitted Prescription Drug Event (PDE) data and subsequent PDE data associated with actual subsidies received.

7. The Contractor will provide PEBA the CMS Monthly Membership Report (MMR) and Plan Payment Report (PPR) file as subsidy payments are pass through to PEBA.

8. The Contractor shall be responsible for the management of the low-income premium subsidy refunds to beneficiaries.

9. Upon receipt of notification from CMS regarding a participant's disenrollment, the Contractor shall notify PEBA of the disenrollment and send a letter informing the participant about his or her disenrollment from the Plan.

10. The Contractor shall provide customer service support, including but not limited to open enrollment services, for the State's Medicare primary participants who are enrolled in the Indirect EGWP + Wrap plan. The customer service support should be provided by the same customer service representatives that support the non-Medicare primary participants.

11. The Contractor shall provide maintenance and support of the CMS Prescription Drug Event (PDE) process.

12. The Contractor shall establish and maintain a CMS-approved Medicare Part D formulary and P&T Committee support for the Medicare Part D formulary. The Contractor shall also establish and maintain a list of Wrap drugs and establish a process to automatically allow coverage of non-Medicare Part D drugs covered on the Wrap list in accordance with the commercial plan.

13. The Contractor shall track participant true-out-of-pocket expenses (TrOOP) in accordance with CMS requirements for the enhanced PDP, including delivery or required reporting and data feeds to communicate TrOOP balances to participants. The Contractor shall also track and supply a participant's Maximum Out of Pocket (MOOP) to all drugs obtained by the member, included Part D and wrap drugs.

14. The Contractor shall cooperate with CMS audit requests in accordance with CMS regulations.

G. Retiree Drug Subsidy Requirements

1. The Contractor shall provide monthly transmissions to CMS for purposes of collecting the Retiree Drug Subsidy. The Contractor shall participate in PEBA's Medicare Qualified Retiree Prescription Drug Plan, and its activities will be consistent and comply with PEBA's obligations as a Sponsor under 42 CFR Part 423.

2. PEBA acknowledges that it is required to submit an application for the Subsidy to CMS on an annual basis. The Contractor's application assistance shall include, at a minimum, the following:

   a. reviewing the Retiree Drug Subsidy Plan Sponsor application upon its release by CMS and providing guidance and responsibility determination between the Contractor and PEBA for its completion;
   b. providing guidance and support to PEBA concerning appropriate language for use in the application;
   c. providing the appropriate claims information or other information required by the application; and,
   d. providing a template work plan which will include installation and implementation guidelines.

3. CMS requires Plan Sponsors to submit Qualifying Covered Retiree eligibility updates on a monthly basis to keep an accurate account of Subsidy-eligible participant. Upon PEBA's request, the Contractor shall perform the following eligibility and CMS interface functions:

   a. The Contractor shall prepare the Medicare Part D Subsidy billing package, which shall contain both summary and detailed per retiree information for the Medicare Part D Subsidy. The Contractor shall calculate the allowable gross costs and associated Subsidy amount (net of any rebates and annual financial guarantees paid by the Contractor to PEBA), and provide the information to PEBA via CMS upload for approval and submission to CMS. In addition, the Contractor shall provide PEBA with a file in an agreed upon format containing the per participant costs associated with each cost report

   b. PEBA has entered into and uses a VDSA with CMS. The Contractor shall offer PEBA the option of a monthly, quarterly, or interim annual billing cycle (assuming CMS continues to allow these options). PEBA shall advise the Contractor at the time of the application, if it wishes to receive payments from CMS on a monthly, quarterly, or interim annual basis so that the Contractor may prepare submissions accordingly. The monthly and quarterly options shall utilize estimated rebates to calculate the Subsidy amount. As estimated rebates shall be utilized for monthly, quarterly, and interim annual Subsidy filings, the Contractor shall calculate a rebate and annual guarantees deemed to be price concession "true up" to adjust the Subsidy billing according to actual rebates as required by CMS no later than fifteen (15) months after the end of the Plan year. If PEBA wishes to

challenge specific CMS eligibility or payment determinations, it shall be responsible for filing an appeal with CMS.

c. PEBA shall provide complete and accurate eligibility information, including Qualifying Covered Retiree eligibility, the Subsidy eligibility period applicable to those Retirees, and CMS verifications, to the Contractor. PEBA shall be solely responsible for actual approval and final submission of cost report data uploaded by the Contractor to CMS via the CMS Retiree Drug Subsidy ("RDS") website. The Contractor shall work with PEBA to process CMS formatted covered retiree list file during the final reconciliation process for the plan year.

4. The Contractor shall produce and distribute, via regular mail, Notice of Creditable Coverage letters (upon release of CMS guidance).

5. The Contractor shall provide PEBA with sample communication language to use with Medicare-eligible populations. The Contractor shall provide template communication language for the following communication materials:

   a. Quarterly Newsletter Articles.
   b. Frequently Asked Questions (FAQs) and their corresponding responses to be used in communications or CSR training.
   c. Medicare Part D specific content for benefit materials, "Welcome Kits", and Open Enrollment campaigns.

6. In compliance with CMS and False Claims Act requirements, the Contractor shall store all S.C. Public Employee Benefit Authority's claims, utilization management, and eligibility data for a ten (10) year period.

7. To the extent requested by PEBA, the Contractor shall submit to the True Out-of-Pocket ("TrOOP") facilitator, TrOOP costs for the secondary claims of PEBA's participants enrolled in Medicare Part D.

8. The Contractor and PEBA shall abide by all applicable Federal and State laws and regulations and CMS guidance related to the Retiree Drug Subsidy Program.

9. To the extent applicable to the Retiree Drug Subsidy Program, the Contractor shall make its books and other records available to the Department of Health and Human Services, the Office of Inspector General, or their authorized designees, for audits, evaluations, and inspections. PEBA, and to the extent applicable the Contractor, shall maintain the following records for ten (10) years after the expiration of the plan year in which the costs were incurred or longer in the event of (or if PEBA should know that the records are subject to) an ongoing investigation, litigation or negotiation involving civil, administrative or criminal liability: reports and working documents of the actuaries who wrote the attestation submitted in accordance with 42 CFR § 423.884(a); all documentation of costs incurred and other relevant information utilized for calculating the amount of the Subsidy payment including the underlying claims data; any other records specified in applicable CMS guidance.

10. The Contractor shall cooperate and provide PEBA information and guidance regarding the Retiree Drug Subsidy Program.

11. The Contractor shall provide CMS with the eligibility file with the Qualifying Covered Retirees. The Contractor shall collect from CMS and remit to PEBA the verifications of eligibility by CMS for the Qualifying Covered Retirees. The Contractor shall provide PEBA with periodic updates to the Qualifying Covered Retiree eligibility file. The Contractor shall have no involvement with, nor responsibility for, the

eligibility determination for the benefit program. PEBA is also responsible for claims of Eligible Persons, even if it is later determined that such claims are not eligible for the Retiree Drug Subsidy. PEBA reserves the right to determine for which enrollee populations PEBA will apply for the Subsidy. PEBA shall elect to submit the updates to CMS on a monthly or quarterly basis, consistent with applicable CMS directives.

12. The Contractor, upon approval of PEBA, shall submit to CMS the initial Qualifying Covered Retiree eligibility file for calendar year 2014 and all necessary information. PEBA acknowledges that for subsequent contract years, submission may be due to CMS at least ninety (90) days before the start of the plan year.

13. PEBA acknowledges that deviation from the requirements in this Section and CMS requirements may result in noncompliance that will affect PEBA's eligibility for the Subsidy.

14. PEBA shall not delegate to the Contractor the responsibility for filing an actuarial equivalence attestation with CMS, in accordance with CMS directives. PEBA acknowledges that CMS has required the actuarial attestation to be submitted to CMS on the date PEBA's Subsidy application is filed with CMS.

15. PEBA shall reasonably cooperate with the Contractor in providing any information required to be submitted to CMS or necessary for any submission to CMS. PEBA acknowledges that information provided to the Contractor in connection with the Retiree Drug Subsidy Program may affect the calculation of CMS payments to PEBA and that inaccuracies to CMS in such information may result in Federal civil action and/or criminal prosecution. PEBA agrees that all of the information it shall submit to the Contractor in connection with the Retiree Drug Subsidy Program shall be accurate, complete, and truthful.

H. Financial Requirements

1. Administrative Fees payable to Contractor
   a. Administrative fees are specific to PEBA. The administrative fees must be quoted on a fully-loaded basis, i.e., fees must include all direct and indirect costs, general and administrative overhead, purchasing burden, underwriting, actuarial related services, subcontracting, and profit. Two (2) administrative fees must be quoted: (a) a fixed, single, all-inclusive PMPM administrative fee for Non-Medicare participants; and, (b) a fixed, single, all-inclusive PMPM administrative fee for Medicare primary participants. All administrative fees must be quoted on per member per month (PMPM) basis. No other fees or charges may be added to the contract after award, nor will the Contractor be compensated on any basis other than the applicable fully loaded per PMPM rate.

   b. The administrative fee(s) payable to the Contractor shall be considered full and complete compensation for all goods, services and requirements to provide pharmacy benefits to PEBA.

   c. The total dollar amount of monthly administrative fees shall be determined by PEBA based upon PEBA enrollment files.

   d. Administrative fees shall be remitted to the Contractor monthly by the 15th working day of the current month per the state's working schedule. All disbursements of administrative fees shall be processed via Automated Clearing House (ACH) transaction to the financial institution provided by the Contractor. The ACH transaction will be initiated by the SC State Treasurer.

   e. The Contractor shall not provide invoices for administrative fees to PEBA.

2. Claims Reimbursements to Contractor

a. The Contractor shall accept claims reimbursements no more frequently than weekly and no less frequently than monthly.

b. The Contractor shall provide invoices to PEBA (preferably via secured web based access). Invoices must clearly identify the claims period and provide itemization of amounts of claims, credits, refunds and offsets by plan for all plans offered by the state (currently Standard, Savings, and MUSC). The Contractor shall record and collect overpayments in a timely manner and offset claims invoices for refunds. The layout of the invoices must be in an acceptable format approved by PEBA.

c. The Contractor shall provide a monthly itemized reconciliation of PEBA account activity to claims payment reimbursement, including itemized provider reimbursements, outstanding payments, refunds and other offsets.

d. PEBA shall remit reimbursement to the Contractor within 5 business days following receipt of invoices. The Contractor shall not hold PEBA funds, such that interest accrues to the Contractor's benefit. All claims reimbursements shall be processed via Automated Clearing House (ACH) transaction to the financial institution provided by the Contractor. The ACH transaction will be initiated by the SC State Treasurer.

3. Pharmacy Rebates due to PEBA

a. Rebates shall provide complete pass through of all revenue the Contractor receives from outside sources related to PEBA's utilization or enrollment of programs, which includes but is not limited to Manufacturer Payments, Rebates, fees, discounts, grants or payments of any kind that are associated with the utilization of the PEBA pharmacy benefit program.

b. Along with complete pass through of Rebates, the Contractor must provide a guaranteed minimum dollar amount per paid brand or generic prescription that SCPEBA will receive for Rebates. The Contractor shall pay Rebates quarterly with itemization of amount by plan for all plans offered by the state (currently Standard, Savings, and MUSC). There must be an annual reconciliation between the guarantee and actual amount of Rebates paid.

c. The Contractor shall remit quarterly pharmaceutical rebates to PEBA to be paid 90 days after the end of each quarter. Quarterly rebates shall include no less than the guaranteed per prescription totals for the quarter. The Contractor shall monitor actual rebates received per rebate earning period and remit all rebates in excess of the minimum guarantee with the next scheduled rebate payment. The Contractor shall provide reports for all rebates remitted to identify the basis of the guaranteed rebates. The Contractor shall remit to PEBA all true-up amounts to the guarantees for the plan year no more than 180 days following the end of the plan year. Rebates and True-ups should be forwarded to PEBA via ACH/Wire to the financial institution provided by PEBA to the Contractor.

d. The Contractor shall provide PEBA with projected rebate totals for each plan year no more than 30 days prior to the beginning of each plan year and provide updates to the estimated plan year rebates no more than every 90 days.

4. CMS Subsidies due to PEBA

   a. The Contractor shall remit all available EGWP subsidy dollars promptly to PEBA. The Contractor shall coordinate with CMS to acquire all subsidy funds available to the state. The Contractor shall remit subsidy funds to PEBA within five (5) days of receipt. The Contractor shall not hold PEBA funds, such that interest accrues to the Contractor's benefit. All subsidies remitted should be forwarded to PEBA via ACH/Wire to the financial institution provided by PEBA to the Contractor. The Contractor shall provide reports that validate any subsidies remitted to the state.

   b. The Contractor shall provide PEBA with projected subsidy totals for each plan year no more than 30 days prior to the beginning of each plan year and provide updates to the estimated plan year subsidies no more than every 90 days.

5. Statements on Standards for Attestation Engagements #16 (SSAE 16) Report.
   The Contractor shall provide to PEBA a SSAE 16 report by August 15 each year. 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. Contractor shall provide additional financial data as requested.

I. Eligibility of Participants and Computer Support Requirements

Eligible Active subscribers and their dependents will be enrolled in the Commercial Plan. Eligible non Medicare retirees and their dependents will also be enrolled in the Commercial plan. Eligible Medicare primary participants will be enrolled in the Indirect EGWP + Wrap plan. Dependents of Medicare primary subscribers will be enrolled in either plan depending on whether or not they are Medicare primary. If they are Medicare primary, they will be in enrolled in the Indirect EGWP plan. If they are not Medicare primary, they will be enrolled in the Commercial Plan.

Medicare primary participants have the option of opting out of the Indirect EGWP + Wrap plan. If they choose to opt out of the Indirect EGWP + Wrap plan, they have the option of enrolling in the Commercial Plan, enrolling in another non-PEBA sponsored (not PEBA's) Medicare Part D prescription drug plan or refusing prescription coverage. Also, Medicare primary subscribers and Medicare primary dependents that previously Opted out of the Indirect EGWP + Wrap plan, can choose to opt back into the Indirect EGWP plan.

1. PEBA shall provide the Contractor an initial electronic membership file containing only current subscribers and their dependents for purposes of establishing eligibility. The Contractor will be provided one file and the Contractor shall determine if a subscriber and/or their dependent should be enrolled in the Indirect EGWP plan or the Commercial Plan based on the information provided on the membership file such as participant type (active/non active) and Medicare status.

2. PEBA shall provide the Contractor, on a daily basis, an electronic file of updates or changes including new enrollments, changes in a participant's enrollment, reinstatement of a participant's enrollment and termination of a participant's enrollment for purposes of verifying eligibility at the point of sale prior to dispensing an eligible participant's prescription. The Contractor shall accept, process, maintain and update eligibility information from the files provided by the PEBA within (48) hours of receipt. The Contractor shall refer to PEBA, for consideration and PEBA's final decision, any questions with respect to an individual's eligibility for benefits.

3. The S. C. Public Employee Benefit Authority conforms to the Commercial X12 834 data transmission through electronic data interchange. Data transfer is performed using one of the following methods of transfer: (1) FTP using PGP encryption; (2) https with certificate authority to ensure encrypted data transfer; (3) FTP using VPN tunnel. The Contractor must accept and deliver eligibility data through this method.

4. The Contractor shall provide the S. C. Public Employee Benefit Authority with a daily file acknowledgement of files received and entered in the Contractor's system.

5. The Contractor shall also provide the S. C. Public Employee Benefit Authority a daily processing report, in a format acceptable to the S. C. Public Employee Benefit Authority, of any transactions that did not update when eligibility data sent from the S. C. Public Employee Benefit Authority to the Contractor was entered into the Contractor's system.

6. The Contractor shall maintain in its database occurrences of participant coverage history, as well as participant opt out history (including effective dates, termination dates, and enrolling in another Medicare Part D prescription drug plan) sufficient to adjudicate claims, reconcile subsidy information and reconcile eligibility data with the S. C. Public Employee Benefit Authority. PEBA staff shall be able to access participant history in the Contractor's system.

7. The Contractor shall provide the S. C. Public Employee Benefit Authority with a monthly membership file containing only Covered participants in an active status, for comparison to the S. C. Public Employee Benefit Authority's database. The S. C. Public Employee Benefit Authority will accept the file in an electronic format acceptable to the S. C. Public Employee Benefit Authority. The S. C. Public Employee Benefit Authority's eligibility database shall be considered the system of record for any questions pertaining to eligibility of benefits.

8. The Contractor shall provide the S. C. Public Employee Benefit Authority with a monthly file (the first working Monday of each month) of participants that opted out of the Indirect EGWP + wrap plan or opted in the Indirect EGWP + wrap plan. The file should also include subscribers that enrolled in another Medicare Part D prescription plan or disenrolled from another Medicare Part D prescription plan.

9. The S. C. Public Employee Benefit Authority shall provide the Contractor, on an agreed upon schedule, a full positive enrollment file.

10. The Contractor shall provide a secure online connection for purposes of permitting selected S. C. Public Employee Benefit Authority personnel access to make online inquiries of the Contractor's database and the ability to make real-time changes to the Contractor's records regarding a participant's eligibility. Contractor shall provide different levels of access to the database for employees based on PEBA's specifications. Regardless of the level of access, the data for all State Health Plan members shall be accessible to the employee through a single sign-on. All changes by the S. C. Public Employee Benefit Authority are subject to strict controls including a limited number of persons with access; use of passwords. The Contractor shall provide the S. C. Public Employee Benefit Authority documentation of all direct updates by the S. C. Public Employee Benefit Authority to the Contractor's database. Data integrity, security requirements, and HIPAA regulations require an encrypted connection for transfer of data. The preferred method of connectivity is through a secure, encrypted VPN tunnel. This requires the establishment of a VPN tunnel between the firewall of the Contractor and the firewall of the S. C. Public Employee Benefit Authority.

11. The Contractor shall implement and document comprehensive security programs securing all data, informational and transactional components from unauthorized access from any internal or external source including Contractor and its subcontractors, S.C. Public Employee Benefit Authority employees, third party users or outside intruders. Contractor shall use, implement, and document reasonable, recognized and proven appropriate security practices to make information secure. The security system must include the capability of immediate detection and documentation of any security compromise or breach. If the security of the system is compromised or breached in any way, the Contractor shall notify PEBA immediately, but no later than sixty (60) minutes following the compromise or breach. The notice shall be in writing, delivered by means establishing actual receipt (i.e. in hand, email with return receipt, etc.) and if emergency situations preclude written notice within sixty (60) minutes, notice may be given by other than in writing. If or not initially in writing, within one (1) business day written notice shall be provided including time, nature, diagnosis including cause, actual and potential consequence and recommendations for corrective action of the breach or compromise. The Contractor shall be liable to PEBA for any compromise or breach whatsoever and shall be liable for all reasonable and appropriate costs (as determined by PEBA) associated with the compromise or breach. Offerors shall fully describe the methods and means to be deployed to satisfy this requirement (Q-129 of Attachment A-2: Service Description Questionnaire). These requirements apply to all activities to be performed hereunder including but not limited to those set out in III.C.5 above.

12. The Contractor shall maintain database backups with such redundancy and in a manner that will eliminate disruption of service or loss of data due to system or program failures.

13. The Contractor shall 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. At a minimum, the Contractor shall have at least one remote back up and disaster recovery site capable of fully (100%) restoring its processing capability within seventy-two (72) hours and all data must be captured and backed up on a continuous basis up to any service interruption. The disaster recovery plan shall include instantaneous failover and recovery without loss of data, information, or transactions. The plan must include a disaster recovery site or sites located outside the effects of a common disaster that would otherwise impact the primary site.

14. The Contractor shall maintain a business continuity plan including provisions for the periodic testing of system failover, disaster recovery, and redundant communications cutover.

J. Implementation Plan

1. The Contractor shall be responsible for the preparation and execution of a Final Implementation Plan. The Final Implementation Plan shall be submitted to PEBA not later than May 15, 2015.

2. The Contractor's Final Implementation Plan shall be based upon the proposed implementation plan and shall outline, in detail, all the steps necessary to begin full performance of the contract on January 1, 2016 and shall specify expected dates of completion of all such steps and identify the person(s) responsible for each step.

3. In the event of any failure by the Contractor to strictly adhere to the Final Implementation Plan, as agreed upon between the Contractor and PEBA (and without the express written waiver of the State before the date of the agreed upon time for completion), the Contractor shall pay to the State the amount of $5000 per day for each day or partial day during which the Contractor is not in compliance with the Final Implementation Plan. If, after fifteen (15) days' notice, the Contractor has failed to pay any amount due hereunder, the amount shall be withdrawn from the security.

4. Live Test Demonstration. The Contractor shall complete, no later than November 30, 2015, a live test demonstration of the processing of test claim scenarios with 100% accuracy. The claim scenarios (approximately 30) shall be provided by PEBA to the contractor with sufficient detail to support the adjudication process. Production PEBA enrollment will be used for member data and the contractor shall assume its contracted pharmacy networks (retail and retail maintenance). The demonstration must be performed in the presence of PEBA staff and/or designated representatives or using a mutually agreed upon electronic presentation methodology.

K. Account Management and Personnel Requirements

1. The Contractor shall provide an Account Management Team which shall include, at a minimum, a designated account manager, a designated financial analyst, a dedicated customer service manager, a claims manager, and a registered pharmacist. These five (5) personnel shall be knowledgeable about all aspects of the Pharmacy Benefits Management Program and shall be onsite during the implementation process until PEBA is satisfied that all transitional issues have been resolved. PEBA reserves the right to recall the vendor onsite in the event of ongoing problems. The account manager shall serve as the primary contact to respond to PEBA's needs, questions, and/or issues. The customer service manager shall serve as primary contact for customer inquiries from PEBA customer service.

2. The Contractor's Account Management Team shall meet with PEBA as necessary, but not less than quarterly, to review financial performance and service issues and to take corrective action as directed and approved by PEBA. One of the scheduled meetings shall consist of an annual review at PEBA's office in Columbia, SC, to review and summarize financial and clinical issues regarding the claims experience and financial performance of the Pharmacy Benefit Management program during the previous plan year. The Contractor shall also, during these meetings, assist PEBA in its ongoing review of PEBA prescription drug program, and advise PEBA to the following:

   a. Follow-up to, and status of, any agreed upon corrective action resulting from any preceding meetings;

   b. Developments in the pharmacy benefit management industry as a whole including, but not limited to, new programs, techniques, models, and the like that will reduce the State's cost while improving upon the participant's health and satisfaction of the benefit;

   c. Legal developments including, but not limited to, regulatory, administrative, statutory, and judicial developments relating to pharmacy benefit management. However, the Contractor must promptly notify the South Carolina Public Employee Benefit Authority of any changes in the law or regulations affecting pharmacy benefit management activities.

L. Performance Standards and Guarantees (Liquidated Damages)

1. Performance shall be provided in a first class manner. The Contractor shall strictly adhere to the agreed upon performance standards and associated guarantees and related liquidated damages for deviation from those standards as agreed to between PEBA and Contractor. There are no required minimum liquidated damages and PEBA will take into consideration a variety of factors, in addition to the specific Offerors' proposed liquidated damages, such as record of past performance. Liquidated damages will be assessed on the same schedule as measured unless otherwise agreed to in writing between PEBA and Contractor.

IV. INFORMATION FOR OFFERORS TO SUBMIT

INFORMATION FOR OFFERORS TO SUBMIT -- GENERAL (JAN 2006)

Offeror shall submit a signed Cover Page and Page Two. Offeror should submit all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in section IX. Attachments to Solicitations. [04-4010-1]

SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE (OCT 2014)

The Contractor must demonstrate that programs, policies and procedures are in place to securely collect, manage, store, process and access all government information (as defined in the clause titled "Information Security"). In order for the State to accurately evaluate the strength and viability of the Contractor's security policies, procedures and practices related to data security, usage and privacy, Offerors must provide either (a) a thorough and complete written response to the Service Provider Security Assessment Questionnaire ("Response to SPSAQ") attached to this Solicitation, or (b) an ISO/IEC 27001 compliance certificate issued by a properly accredited body or an SOC 2 (Type 2) or SOC 3 report from a qualified auditor, either of which must address all any computerized infrastructure that may containing government information. [04-4027-1]

INFORMATION FOR OFFERORS TO SUBMIT

Proposals will be accepted only from the entity that will be providing the services hereunder. Offerors shall submit:

a. One (1) original marked "original" and six (6) identical paper copies of your Technical Proposal.
b. Four (4) labeled CDs containing a copy of the Offeror's Technical Proposal Response (in MS Word, MS Excel and/or PDF format where appropriate).
c. One (1) original marked "original" and four (4) paper copies of your Financial Proposal.
d. Four (4) labeled CDs containing a copy of the Offeror's Financial Proposal Response (MS Excel).
e. One (1) CD labeled "original redacted" containing a redacted version of your original Technical Proposal.
f. One (1) CD labeled "original redacted" containing a redacted version of your original Financial Proposal.

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 CD 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 in the following format: compact disk (CD) in one of the following formats: CD-R; DVD ROM; DVD-R; or DVD+R. File format shall be Microsoft Word 97 or later. Except for the redacted information, the CD 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 listed order:

A. Technical Proposal

1. Cover Page

Offerors must submit a signed copy of the cover page (page one) with their offer. By submitting a proposal, Offeror agrees to be bound by all of the terms of the Solicitation. Offerors agree to hold their offer open for a minimum of ninety (90) calendar days after the Opening Date.

2. Executive Summary

An Executive Summary shall be provided with the Offeror's Proposal. The Executive Summary should bear the name and address of the Offeror, the title of this Request for Proposal, acknowledgement of the receipt of any amendments, and a statement as to whether the Offeror (including any subcontractors) is in good standing with CMS in order to be able to enroll Medicare primary participants in an Indirect EGWP with Wrap plan. The Executive Summary should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this Request for Proposal.

Statement of Acceptance: Offerors shall reply to Part I Instructions to Offerors, Part II Scope of Proposal, Part III Scope of Work, Part VII Terms and Conditions and Part VIII Contract Term, by declaring that the Offeror fully understands, agrees to, and will comply with all of the provisions/requirements/terms in each of these Parts. Offerors shall include this statement of acceptance in their Executive Summary. Please note that the State considers any proposal containing deviations, exceptions or caveats to the Request for Proposal that have not been submitted for consideration during the question and answer phase and adopted by the South Carolina Public Employee Benefit Authority as unacceptable.

3. Table of Contents

The Proposal shall 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 must include such supplemental materials. Supplemental information (i.e., information not required) and attachments included by the organization should be clearly identified in the Table of Contents and provided as a separate section.

4. Offeror's Technical Proposal Response (Excel Doc)

Offerors shall complete each of the Tabs (A-1 through A-9) described in this section, entitled Offeror's Technical Proposal Response. Each of the Tabs must be completed in the MS Excel format (version 2007) in which it is provided. Please contact the Procurement Officer, Georgia Gillens, for the Excel format version.

Offerors shall complete each of the Tabs (A-1 through A-9) according to the instructions described below and any additional instructions included at the top of each worksheet. All cells which have been highlighted in yellow require a response from the Offeror. Response types throughout the documents include selecting from a pre-set drop down menu, entering a numerical value and/or submitting a detailed written response. If the cell includes a drop down menu, the Offeror shall not provide a response that is not provided in the drop down list. Microsoft Excel will only print the first 1,024 characters in each cell. Therefore, please limit the length of your response to 1,024 characters. Additional space has been provided in Tab A-2b: Additional Questionnaire Answers for the Offeror to continue a response from Tab A-2a: Questionnaire. In addition, the unlocked cells will automatically lock if the Offeror pastes an answer into a cell. This will prohibit the user from editing the cell(s) at a later time. The Offeror can use the Undo function to unlock the cell only if changes have not been saved since the paste occurred.

Each of the Tabs (A-1 through A-9) described in this section must be completed in the MS Excel format in which it is provided (please contact the Procurement Officer, Georgia Gillens, for the excel format version).

Once the Offeror has completed all nine (9) Tabs in this section, please print your final documents and insert them in your Technical Proposal.

Tab A-1: Background and Qualifications

Offerors shall complete Tab A-1: Background and Qualifications, as requested. In Section III of Tab A-1, entitled Mandatory Minimum Qualifications, Offerors shall describe, in detail, how the Offeror satisfies each mandatory minimum qualification. In section IV of Tab A-1, entitled References, Offerors shall provide at least one (1) reference for which the proposed account manager currently provides services.

Tab A-2: Service Description Questionnaire

Offerors should answer each question in Tab A-2a: Service Description Questionnaire completely in the space provided. If additional space is needed, the response can be continued in Tab A-2b: Additional Answers to Questionnaire. Continued responses should be labeled clearly with both the Section number (A-2a) and the corresponding question number.

If a drop down list is available, the Offeror should select a response from the list provided.

Tab A-3: Subcontractor Questionnaire

Offerors should complete one section of the Subcontractor Questionnaire for each subcontractor proposed to perform any of the requirements of this contract. All subcontractor arrangements must be finally established and all contracts negotiated with subcontractors prior to submission of proposals. Following submission of proposals and prior to award, copies of all subcontractor contracts may be requested for review by PEBA.

Tab A-4: Access to Network Pharmacies

The analysis of Chain Pharmacies shall be based on the proposed networks for the Commercial Plan and the EGWP Plan. These networks should be broad networks utilized by State Health Plan participants in their respective plan. Using the table in Tab A-4, please list all national chains, grocers, department stores, etc. participating in your network as a single entry for each network chain.

Tab A-5: Access to Network Pharmacies - Independents

The analysis of Independent Pharmacies shall be based on the proposed networks for the Commercial Plan and the EGWP Plan. These networks should be broad networks utilized by State Health Plan participants in their respective plan. Using the table in Tab A-5, please list all locally owned, independent, institutional, nursing home, or other non-chain pharmacies separately.

Tab A-6: Pharmacy Disruption based on Volume

Offerors should complete this exhibit by indicating whether or not the named pharmacy is a member of the network being proposed for the State Health Plan (non-Medicare participants and participants who opt-out of the Indirect EGWP with Wrap plan) or the Indirect EGWP with Wrap plan (Medicare primary participants). Valid responses are either “Yes” or “No”. All other responses will be treated as a “No” response.

Tab A-7: Pharmacy Disruption based on Total Amount Paid

Offerors shall complete this exhibit by indicating whether or not the named pharmacy is a member of the network being proposed for the State Health Plan (non-Medicare participants and participants who opt-out of the Indirect EGWP with Wrap plan) or the Indirect EGWP with Wrap plan (Medicare primary participants). Valid responses are either “Yes” or “No”. All other responses will be treated as a “No” response.

Tab A-8: Formulary Analysis

Offerors shall submit to the State in MS Excel format with read/write capabilities its proposed Preferred Drug List (PDL). This list must contain the NDC-11 Code, drug name and price per metric quantity for each drug in the list. If applicable, a separate PDL shall be submitted for the formulary proposed for the Indirect EGWP + WRAP plan.

In Section III of Tab A-8, Formulary Analysis, Offerors shall indicate the formulary tier (i.e. generic, preferred brand, non-preferred brand, preferred specialty drug or non-preferred specialty drug) for each drug listed and for the appropriate plan. (Column F: State Health Plan - non-Medicare participants and participants who opt-out of the Indirect EGWP with Wrap plan. Column G: Indirect EGWP with Wrap plan - Medicare primary participants.) The Offeror shall select the appropriate tier from the drop down list provided in columns F and G.

Tab A-9: Performance Guarantees

Offerors shall propose guarantees, at a minimum, for those performance standards/measurements outlined in Tab A-9. The Contractor shall strictly adhere to their proposed performance standards and associated guarantees and related liquidated damages for deviation from those standards as agreed to between PEBA and Contractor. Liquidated damages will be assessed on the same schedule as measured unless otherwise agreed to in writing between PEBA and Contractor**.**

5. Response Documents

Offerors shall include response documents requested in Tabs A-1, A-2 and A-8 in the following order:

- Tab A-1: Certificates of Insurance
- Tab A-1: Financial Statements
- Tab A-1: Financial Ratings
- Tab A-2: MAC List – Commercial Plan
- Tab A-2: Formulary Development Criteria
- Tab A-2: Detailed Utilization Management Program List
- Tab A-2: Sample Pharmacy Solicitation Materials
- Tab A-2: Sample Contract
- Tab A-2: Sample Refill Order Form
- Tab A-2: Patient Advisory Information
- Tab A-2: Specialty Drug List – Commercial Plan
- Tab A-2: Sample Communications Materials
- Tab A-2: Sample Standard Reporting Package
- Tab A-2: MAC List – Indirect EGWP
- Tab A-2: Specialty Drug List – Indirect EGWP
- Tab A-2: Indirect EGWP Sample Communication
- Tab A-2: Data Security
- Tab A-2: Service Provider Security Assessment Questionnaire
- Tab A-2: Implementation Team Organization Chart
- Tab A-2: Implementation Plan
- Tab A-2: Account Management Team Organization Chart
- Tab A-2: Account Management Support
- Tab A-2: Account Team Biographies
- Tab A-8: Preferred Drug List – Commercial Plan
- Tab A-8: Preferred Drug List – Indirect EGWP

6. Minority Participation Forms

The Offeror shall include a completed Minority Participation form for itself if it is a South Carolina certified Minority Business.

In addition, the Offeror shall include a completed Minority Participation form for each proposed subcontractor who is a South Carolina certified Minority Business.

MINORITY PARTICIPATION (JAN 2006)

Is the bidder a South Carolina Certified Minority Business? [ ] Yes [ ] No

Is the bidder 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.)

For a list of certified minority firms, please consult the Minority Business Directory, which is available at the following URL:http://www.govoepp.state.sc.us/osmba/
[04-4015-1]

B. Financial Proposal

1. Cover Letter

A cover letter shall be provided with the Offeror's Financial Proposal. This cover letter should bear the name and address of the Offeror, the title of this Request for Proposal and acknowledgement of receipt of any amendments to this Request for Proposal. In addition, the cover letter should provide a list of the additional clinical and/or administrative programs that are being offered to the State as a part of the Offeror's fixed, single, all-inclusive PMPM administrative fees (please see Part III, Scope of Work, Section A, #5(zz) and #5(aaa)). **Do not include any pricing for optional programs not included in the Offeror's fixed, single, all-inclusive PMPM administrative fee for Non-Medicare or Medicare primary participants.** The following statement shall be included in the cover letter:

> I, _____, hereby certify that the financial proposal submitted in response to this Request for Proposal contains only this cover letter and a completed Tab A-10: Financial Proposal form. No pricing variables have been submitted in response to this Request for Proposal and Tab A-10: Financial Proposal has not been modified to include pricing variables. Furthermore, the fixed, single, all-inclusive PMPM administrative fees requested in Table I of Tab A-10: Financial Proposal include all costs associated with providing the State with all required services described in Part III, Scope of Work, Sections A through L. Any indication to the contrary that may appear in our proposal was inadvertent and should be ignored and not taken into consideration. Otherwise stated, Part III, Scope of Work, Section A through L requirements will be met fully, satisfactorily, and performed in their entirety, without exception of any sort, in a first class manner for the fixed, single, all-inclusive PMPM price proposed for at least the initial three (3) year term of the contract.

The cover letter should be brief and is required to be signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this Request for Proposal.

2. Offeror's Financial Proposal Response (Excel Doc)

Offerors shall complete Tab A-10 Financial Proposal in this section, entitled Offeror's Financial Proposal Response. Please contact the Procurement Officer, Georgia Gillens, for the excel format version. Offerors shall complete Tab A-9: Financial Proposal in accordance with the instructions described below and any additional instructions included at the top of Tab A-9. All cells which have been highlighted in yellow require a response from the Offeror. Response types throughout the documents include selecting from a pre-set drop down menu, entering a numerical value and/or submitting a detailed written response. If the cell includes a drop down menu, the Offeror shall not provide a response that is not provided in the drop down list.

The financial proposal must be signed by an officer of the company.

The tabs described in this section must be completed in the MS Excel format in which it is provided (please contact the Procurement Officer, Georgia Gillens, for the excel format version). Once the Offeror has completed the Tabs in this section, please print your final document and insert it in your Financial Proposal. The Financial Proposals shall be submitted in a sealed envelope labeled "Financial Proposal Documents". No information from the Financial Proposals should be included in the Technical Proposal.

Tab A-10: Financial Proposal

In Tab A-9, Offerors shall provide guarantees for pricing (as a percent off of AWP utilizing AWP as reported by Medi-Span), dispensing fees (as a dollar amount per script) and rebates (as a dollar amount per script). In addition, Offerors shall propose fully loaded Administrative Fees for the administration of the non-Medicare participant benefits and the administration of Medicare primary participants. Administrative Fees must be quoted on a per member per month (PMPM) basis.

Please note that the financial proposal submitted by the Offeror must be provided as a fixed, single, all-inclusive PMPM administrative fee which includes the cost of compliance with each of the items in Part III, Scope of Work, for Non-Medicare and Medicare-eligible participants. The State considers any proposal which includes any deviations from or caveats to Part III, Scope of Work, as unacceptable. In addition, financial proposals which are not submitted in accordance with the instructions of the Request for Proposal are also considered to be unacceptable.

1. Administrative fees shown in Tab A-10 are specific to PEBA. The administrative fees must be quoted on a fully-loaded basis, i.e., fees must include all direct and indirect costs, general and administrative overhead, purchasing burden, underwriting, actuarial related services and profit. Two (2) administrative fees must be quoted: (a) a fixed, single, all-inclusive PMPM administrative fee for Non-Medicare participants; and, (b) a fixed, single, all-inclusive PMPM administrative fee for Medicare primary participants. All administrative fees must be quoted on per member per month (PMPM) basis. No other fees or charges may be added to the contract after award, nor will the Contractor be compensated on any basis other than the applicable fully loaded per PMPM rate.

2. Your offer for claims processed at retail pharmacies must provide complete "pass-through" pricing. No “spread” pricing is permitted. The Plan shall obtain the benefit of your contractual pricing with pharmacies. In the Commercial Plan, patient liability shall be calculated on “Lesser of 2” logic, meaning the lesser of the copayment or the pharmacy’s Usual and Customary charge. In the EGWP Plan, because of federal regulation, patient liability shall be calculated on “Lesser of 3” logic, meaning the lesser of the copayment, the pharmacy’s Usual and Customary charge, or the contractual allowance. This also applies to mail order and specialty pricing guarantees if the Offeror does not own its mail order and specialty pharmacy. If a Offeror owns its mail order and/or the specialty pharmacy, the Offeror must meet pricing guarantees for those claims but pass through of actual acquisition cost of the pharmacy is not required.

3. The drug ingredient cost guarantees may NOT include consideration for the following: (a) claims that may be reimbursed based upon a pharmacy U&C price; (b) compounds; (c) savings associated with any drug utilization review program, which includes but is not limited to switching from brands to generics, prior authorization denials or concurrent reviews; (d) overages/savings from meeting guarantees for other pricing terms such as Rebates; or **(e) 50% drug discount from pharmaceutical manufacturers for brand drugs in the donut hole.**

The drug ingredient cost guarantees (discount percentages off AWP) offered in the table below must be expressed as a minimum guarantee for both brand and generic drugs. The AWP must be from Medispan and be the one associated with the actual NDC-11 submitted by the pharmacy and used to fill the prescription. Also, note that the actual published AWP will be used.

Single Source Generics will be included in the guarantees for generic drugs during the period of exclusivity.

The financial proposal evaluation will be based upon AWP as submitted by Medispan as of the dispense date of the prescription. The financial proposal is offered and reconciled in accordance with the following:

a.) MAC at Retail and Mail
b.) Non-MAC contract rate at Retail and Mail

The formula to be used to determine actual performance against the Contractor's quoted pricing guarantees shall be the ratio of the Total Ingredient (materials) Cost (net of the excluded items listed above, for all claims inclusive of Zero Balance Claims) to the undiscounted (gross) Average Wholesale Price (AWP) (net of the excluded items listed above, for all claims inclusive of Zero Balance claims).

4. In the event there are changes in the marketplace to the baseline measure used to guarantee the ingredient costs of drugs (e.g. elimination of AWP, change in calculation of AWP, etc.), the discounts will be adjusted accordingly to provide an equivalent price. The Contractor shall provide notice to PEBA and shall provide a means to independently evaluate whether the effective equivalent to the quoted AWP discount rate has been achieved. Any change in the marketplace that would require an adjustment to the pricing would require a contract modification.

5. The guaranteed minimum AWP discount shall be applicable to only the drug-type and place of service quoted. Prescriptions for specialty drugs sent to the mail order pharmacy shall be rerouted to a Specialty pharmacy to be filled by the specialty pharmacy and subject to the pricing guarantees provided for specialty drugs. Since each pricing guarantee is independent of the other pricing guarantees, any surplus in one pricing component cannot be applied to a deficit in another pricing category.

6. The guaranteed maximum average annual dispensing fee per claim that is processed at the retail pharmacies shall be based on paid claims NOT claims that are reversed, rejected or not billed to the client.

7. The guaranteed maximum average annual dispensing fee per claim that is processed at the mail and specialty pharmacies, if any, shall be a fixed amount per paid claim.

8. "Rebates" for purposes of your offer must provide complete pass through of all revenue you receive from outside sources related to PEBA's utilization or enrollment of programs, which includes but is not limited to Manufacturer Payments, Rebates, fees, discounts, grants or payments of any kind that are associated with the utilization of PEBA's pharmacy benefit program.

9. Along with complete pass through of "Rebates", you must provide a guaranteed minimum dollar amount per paid brand or generic prescription that PEBA will receive for "Rebates." The Contractor shall pay Rebates due no less frequently than quarterly. There must be an annual reconciliation between the guarantee and actual amount of Rebates paid.

10. With respect to the Indirect EGWP + WRAP, all federal funds, including direct subsidy and catastrophic reinsurance, and the 50% brand discounts from drug manufacturers for claims in the donut hole shall be passed through to the Plan.

11. Your fixed, single, all-inclusive administrative fees shall be quoted on a per member per month (PMPM) basis. The financial proposal will be based upon the information provided in Tab A-10: Financial Proposal. Offerors MUST not submit any supplemental pricing information or documents with their proposal.

12. Based on the information provided in this Request for Proposal, there will be no increases to quoted fees after the awarded vendor has been announced.

13. All costs that will be charged to PEBA for these services must be included on the exhibits in Tab A-10: Financial Proposal.

NOTE: It is not the normal practice of PEBA to solicit Best and Final Offers. Offerors should put their best foot forward with the initial proposal submission.

SUBMITTING REDACTED OFFERS (FEB 2007)

You are required to mark the original copy of your offer to identify any information that is exempt from public disclosure. You must do so in accordance with the clause entitled "Submitting Confidential Information." In addition, you must also submit one complete copy of your offer from which you have removed any information that you marked as exempt, i.e., a redacted copy. The information redacted should mirror in ever 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 magnetic media. (See clause entitled "Magnetic Media Required Format.") Except for the redacted information, the CD must be identical to the original hard copy. Portable Document Format (.pdf) is preferred. [04-4030-1]

V. QUALIFICATIONS

QUALIFICATION OF OFFEROR (JAN 2006)

To be eligible for award of a contract, a prospective contractor must be 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 the State, 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. [05-5005-1]

QUALIFICATIONS -- REQUIRED INFORMATION (JAN 2006)

In order to evaluate your responsibility, Offeror shall submit the following information or documentation for the Offeror and any subcontractor, if the value of subcontractor's portion of the work exceeds 10% of your price (if in doubt, provide the information):
(a) Include a brief history of the Offeror's experience in providing work of similar size and scope.
(b) Your most current financial statement, financial statements for your last two fiscal years, and information reflecting your current financial position. If you have audited financial statements meeting these requirements, you must provide those statements. [Reference Statement of Concepts No. 5 (FASB, December, 1984)]
(c) A detailed, narrative statement listing the three most recent, comparable contracts (including contact information) which you have performed and the general history and experience of your organization.
(d) A list of every business for which Offeror has performed, at any time during the past three year(s), services substantially similar to those sought with this solicitation. Err on the side of inclusion; by submitting an offer, Offeror represents that the list is complete.
(e) List of failed projects, suspensions, debarments, and significant litigation.
[05-5015-1]

SUBCONTRACTOR -- IDENTIFICATION (JAN 2006)

If you intend to subcontract with another business for any portion of the work and that portion exceeds 10% of your price, your offer must identify that business and the portion of work which they are to perform. Identify potential subcontractors by providing the business name, address, phone, taxpayer identification number, and point of contact. In determining your responsibility, the state may evaluate your proposed subcontractors. [05-5030-1]

MANDATORY MINIMUM QUALIFICATIONS

In order for an Offeror to be considered for an award it must demonstrate that it possesses, as of the date of proposal submission, all of the following minimum qualifications:

a. Offeror must have been in the business of providing Pharmacy Benefit Management Services, including administration of a retail pharmacy network, for a minimum of five (5) years.

b. Offeror must be currently providing Pharmacy Benefit Management Services of the type and scope outlined herein (excluding discount card programs) for a minimum of 2,000,000 covered managed lives.

c. Offeror must be currently accredited by URAC.

d. Offeror must currently manage the prescription benefit of at least one (1) state government client or, alternatively, public sector employer, of at least 250,000 lives, with membership including both Medicare and non-Medicare eligible participants; and must manage the prescription benefit of at least three (3) additional employer accounts, each including at least 25,000 lives.

e. Offeror must provide proof of an administration of a total drug spend volume (plan payments and patient co-pays and deductibles) of not less than two billion dollars ($2,000,000,000) in calendar year 2014.

f. Offeror must have managed, now or in the past, the prescription benefit of at least one (1) state government client or, alternatively, public sector employer, of at least 300,000 lives, (coverage more consistent with the numbers of lives the State Health Plan covers) with membership including both Medicare and non-Medicare eligible participants; and must manage the prescription benefit of at least three (3) additional employer accounts, each including at least 100,000 lives.

g. Offeror must have filled at least two million (2,000,000) scripts annually in South Carolina any of the last 3 years (2012, 2013, 2014).

h. Offeror must currently manage the EGWP with Wrap benefit of at least one (1) public sector employer of at least 25,000 lives.

Any Offeror not meeting these requirements will not be considered for award, and therefore will not be evaluated.

VI. AWARD CRITERIA

AWARD CRITERIA -- PROPOSALS (JAN 2006)

Award will be made to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State. [06-6030-1]

AWARD TO ONE OFFEROR (JAN 2006)

Award will be made to one Offeror. [06-6040-1]

COMPETITION FROM PUBLIC ENTITIES (JAN 2006)

If a South Carolina governmental entity submits an offer, the Procurement Officer will, when determining the lowest offer, add to the price provided in any offers submitted by non-governmental entities a percentage equivalent to any applicable sales or use tax. S.C. Code Ann. Regs 117-304.1 (Supp. 2004). [06-6057-1]

EVALUATION FACTORS -- PROPOSALS (JAN 2006)

Offers will be evaluated using only the factors stated below. Evaluation factors are stated in the relative order of importance, with the first factor being the most important. Once evaluation is complete, all responsive offerors will be ranked from most advantageous to least advantageous.

AWARD CRITERIA

Proposals will be evaluated by a review panel on the basis of the following criteria. Evaluation criteria are stated in relative order of importance with the first criteria being the most important. Once evaluation is complete, all responsive Offerors shall be ranked from most advantageous to least advantageous in each of the Option(s) under consideration.

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

A. Total Net Cost. Ranking of financial proposals will be based on a simulated total net cost to PEBA, which will be calculated as the sum of the fixed, all-inclusive PMPM administrative fees and claims net of guaranteed rebates. The estimated claims cost will be based on the repayment of claims incurred during the period January 1, 2014 through December 31, 2014 using each Offeror's pricing guarantees quoted in Tab A-9 and the Offeror's submitted preferred, MAC and specialty drug lists (the Offeror with the lowest total net cost under each Option will receive all of the evaluation points assigned to the criterion of Total Net Cost. Points will be awarded proportionally to each of the other Offerors on the basis of the following formula ((lowest net cost amount / Offeror net cost amount) * assigned evaluation points).

B. Background and Qualifications. The information submitted in response to Part V, Information For Offerors To Submit, Tab A-1 Background and Qualifications, will be used to evaluate this criterion.

C. Pharmacy Network Management. The information submitted in response to Part V, Information For Offerors To Submit, Tab A-2 Service Description Questionnaire, Questions Q-9 through Q-51, Tab A-4 and A-5 Access to Pharmacies, Tab A-6 Pharmacy Disruption Based on Volume, and Tab A-7 Pharmacy Disruption Based on Total Amount Paid will be used to evaluate this criterion.

D. <u>Formulary Analysis</u>. The information submitted in response to Part V, Information For Offerors To Submit, Tab A-8 Formulary Analysis, will be used to evaluate this criterion.

E. <u>Service Description</u>. The information submitted in response to Part V, Information For Offerors To Submit, Tab A-2 Service Description Questionnaire, will be used to evaluate this criterion.

- Pricing and Cost Containment (Tab A-2 Service Description Questionnaire; Questions Q-1 through Q-8)
- Customer Service, Communications and Training (Tab A-2 Service Description Questionnaire; Questions Q-52 through Q-70)
- Claims Processing and Payment (Tab A-2 Service Description Questionnaire; Questions Q-71 through Q-88)
- Reporting (Tab A-2 Service Description Questionnaire; Questions Q-90 through Q-97)
- Retiree Drug Subsidy (Tab A-2 Service Description Questionnaire; Questions Q-98 through Q-99)
- Financial (Tab A-2 Service Description Questionnaire; Question Q-100)
- Indirect EGWP + Wrap Options (Tab A-2 Service Description Questionnaire; Questions Q-101 through Q-119)
- Eligibility of Participants and Computer Support (Tab A-2 Service Description Questionnaire; Questions Q-120 through Q-135)
- Account Management and Personnel (Tab A-2 Service Description Questionnaire; Questions Q-139 through Q-142)

F. <u>Performance Guarantees</u>. The information submitted in response to Part V, Information For Offerors To Submit, Tab A-9 Performance Guarantees, will be used to evaluate this criterion.

VII. TERMS AND CONDITIONS -- A. GENERAL

ASSIGNMENT (JAN 2006)

No contract or its provisions may be assigned, sublet, or transferred without the written consent of the Procurement Officer. [07-7A004-1]

BANKRUPTCY (JAN 2006)

(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 the Using Governmental Unit. This notification shall be furnished within five (5) 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. [07-7A005-1]

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 the solicitation. [07-7A010-1]

CONTRACT DOCUMENTS and ORDER OF PRECEDENCE (JAN 2006)

(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) documentation regarding the clarification of an offer [e.g., 11-35-1520(8) or 11-35-1530(6)], if applicable, (3) the solicitation, as amended, (4) modifications, if any, to your offer, if accepted by the Procurement Officer, (5) your offer, (6) any statement reflecting the state's final acceptance (a/k/a "award"), and (7) 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 (6) above shall apply notwithstanding any additional or different terms and conditions in either (i) a purchase order or other instrument submitted by the State or (ii) any invoice or other document submitted by Contractor. 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 any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect. [07-7A015-1]

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
[07-7A020-1]

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 the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper 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 that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail. [07-7A025-1]

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. [07-7A030-1]

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. [07-7A035-1]

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. [07-7A040-1]

NON-INDEMNIFICATION (JAN 2006)

Any term or condition is void to the extent it requires the State to indemnify anyone. [07-7A045-1]

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. [07-7A050-1]

PAYMENT and INTEREST (MAY 2011)

(a) Unless otherwise provided in this Solicitation, the State 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 the Government. (b) Unless otherwise provided herein, including the purchase order, payment will be made by check. (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, 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, the State 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 the State 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. (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. [07-7A055-2]

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. [07-7A060-1]

PURCHASE ORDERS (JAN 2006)

Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The using governmental unit shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, 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. [07-7A065-1]

SETOFF (JAN 2006)

The state shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the state with regard to this contract, any other contract with any state department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the state for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. [07-7A070-1]

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, Intellectual Property Indemnification, and any provisions regarding warranty or audit. [07-7A075-1]

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 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 Contractor's net income or assets shall be the sole responsibility of the contractor. [07-7A080-1]

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 therefor. 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. [07-7A085-1]

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. [07-7A090-1]

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. [07-7A095-1]

VII. TERMS AND CONDITIONS -- B. SPECIAL

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 the State or is considered by the State to be superior to other products or services. The State reserves the right to review and approve any commercial advertising to which the State'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.

ATTORNEYS' FEES

In the event that the State is required and shall bring suit or action to compel performance of or recover for any breach of any stipulation, covenant, term or condition of this contract, the State may seek attorneys' fees from the Contractor and the Contractor will pay to the State such attorneys' fees as the court may award. Contractor will, in all instances, bear its own attorneys' fees and expenses.

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. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. 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.
[07-7B025-1]

CHANGE ORDERS

The procedure for change orders shall be as follows: Offerors have a duty to inform PEBA of any possible item that may affect cost in the Request for Proposal issued by PEBA. The failure to do so will result in the Contractor being responsible for any additional costs during the term of the contract due to the failure to inspect and advise. Additionally, under the applicable contract interpretation provisions, the Contractor agrees to defer to the reasonable interpretation of PEBA regarding PEBA's requirements. Also, if a requirement is presently known but not effective until some time during the contract, it should be reflected in the proposal price. If there is a new and necessary requirement, not reasonably within the scope of the specifications, and not known prior to the date the notice of the intent to award is issued, then a change order request may be submitted to PEBA. The change order should be submitted with a proposed price, and supported by sufficient detail for PEBA to evaluate the fairness of the price which shall include a comparison to the Contractor's original price proposal and a proposed implementation schedule. The Contractor bears the burden of establishing that the duty to inspect and advise does not apply or was complied with as well as the requirements of this provision for a change order are each established by clear and convincing evidence. Following submission of a change order proposal by the Contractor and a determination by PEBA that the change order is proper, the parties shall negotiate in good faith to agree on the price and schedule for the proposed change. If the negotiations are unsuccessful, PEBA will determine in good faith a reasonable price for the change order, and the Contractor may submit any difference in price for resolution pursuant to S.C. Code Section 11-35-4230. In no event will the Contractor withhold or delay services as the result of any dispute between the parties regarding a change order or any other matter.

The above requirements shall apply to any change orders, contract modifications, or other deviations to this agreement. Failure to receive the prior written and express approval of PEBA prior to implementing any changes to the requirements provided for hereunder, for which requests for extra or additional compensation are thereafter submitted by the Contractor to PEBA, shall impose no liability for payment upon PEBA and may be rejected by PEBA without recourse.

CISG (JAN 2006)

The parties expressly agree that the UN Convention on the International Sale of Goods shall not apply to this agreement. [07-7B030-1]

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. [07-7B035-1]

CONFERENCE – PRE-PERFORMANCE (JAN 2006)

Unless waived by the Procurement Officer, a pre-performance conference between the contractor, state and Procurement Officer shall be held at a location selected by the state 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 successful contractor or his duly authorized representative shall be required to attend at contractor's expense.

[07-7B040-1

CONTRACT INTERPRETATON

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.

The above requirements shall apply to any change orders, contract modifications, or other deviations to this agreement. Failure to receive the prior written and express approval of PEBA prior to implementing any changes to the requirements provided for hereunder, for which requests for extra or additional compensation are thereafter submitted by the Contractor to PEBA, shall impose no liability for payment upon PEBA and may be rejected by PEBA without recourse.

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. [07-7B045-1]

CONTRACT MODIFICATION

PEBA may at any time, by written order, and unilaterally, make changes within the general scope of this contract in any one or more of the following:
(a) Description of services to be performed;
(b) Time of performance (i.e. hours of the day, days of the week, etc.);
(c) Place of performance of the services; and
(d) Term of Contract.

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. [07-7B060-1]

CONTRACTOR SOLELY RESPONSIBLE FOR PERFORMANCE/SUBCONTRACTORS

The Contractor will be solely responsible for performance under this contract. The State will rely upon the Contractor for full, complete, and satisfactory performance under the terms and conditions of this contract and for any relief, or judgment which may be requested by the State against the Contractor or which may be entered against the Contractor in any litigation which may arise under this contract or the relationship between the parties.

If the Contractor's services provided for hereunder include services, equipment or materials supplied by a subcontractor, 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.

CONTRACTOR'S LIABILITY INSURANCE

(a) 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 no less than A: VII, 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 $5,000,000 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. The coverage can be a combination of primary and excess coverage or self-insured and excess coverage, and the insurance shall name PEBA as an additional named insured.

(2) Auto Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000 per accident for bodily injury and property damage.
(3) 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) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, 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, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, 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 signed original certificates of liability insurance

(ACCORD 25) 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, 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 every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit 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 Using Governmental Unit 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 purchase coverage with a lower deductible or retention or 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.

[07-7B056-1]

CONTRACTOR'S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY (OCT 2014)

[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 well in advance of opening.]

(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 no less than A: VII, 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, destroy, or otherwise control non-public personally identifiable information in any format; (B) loss 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 five million ($5,000,000.00) dollars per occurrence and ten million ($10,000,000.00) 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) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the policy or policies of insurance required by this clause.

(i) For any claims related to this contract, the insurance coverage required by this clause shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance

or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.
(j) 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, including policy declarations and any endorsements required by this section, at any time.
(k) 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.
(l) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit 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 Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.
(m) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. [07-7B058-1]

CONTRACTOR'S OBLIGATION -- GENERAL (JAN 2006)

The contractor shall provide and pay for all materials, tools, 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. [07-7B065-1]

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 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.

[07-7B075-1]

ESTIMATED QUANTITY -- PURCHASES FROM OTHER SOURCES (JAN 2006)

The state may bid separately any unusual requirements or large quantities of supplies covered by this contract. [07-7B090-1]

ESTIMATED QUANTITY -- UNKNOWN (JAN 2006)

The total quantity of purchases of any individual item on the contract is not known. The State does not guarantee that the State will buy any specified item or total amount. The omission of an estimated purchase quantity does not indicate a lack of need but rather a lack of historical information. [07-7B095-1]

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 Standard Business Associate Agreement, 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.

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. [07-7B097-1]

INDEMNIFICATION – THIRD PARTY CLAIMS (NOV 2011)

Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or 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, regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. 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 shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. [07-7B100-2]

INDEMNIFICATION - THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION (OCT 2014)

(a) Without limitation, Contractor shall defend and hold harmless Indemnitees from and against any and all suits, claims, investigations, or fines (hereinafter "action") of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) 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) 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 an Indemnitee, and whether or not such action is brought by a third party or an Indemnitee, but only if the act or omission constituted a failure to perform some obligation imposed by the contract or the law.

(b) Indemnitee must notify contractor in writing within a reasonable period of time after Indemnitee first receives written notice of any action. Indemnitee's failure to provide or delay in providing such notice will relieve contractor of its obligations under this clause only if and to the extent that such delay or failure materially prejudices contractors ability to defend such action. Indemnitee must reasonably cooperate with contractor's defense of such actions (such cooperation does not require and is without waiver of an Indemnitees attorney/client, work product, or other privilege) and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, allow contractor sole control of the defense, so long as the defense is diligently and capably prosecuted. Indemnitee may participate in contractor's defense of any action at its own expense. Contractor may not, without Indemnitee'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 Indemnitee 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, an Indemnitee or otherwise adversely affect an Indemnitee. Indemnitee's consent is necessary for any settlement that requires Indemnitee to part with any right or make any payment or subjects Indemnitee to any injunction.

(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.

(d) "Indemnitee" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. [07-7B102-1]

INFORMATION SECURITY (OCT 2014)

(a) *Definitions*. 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.

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, the using governmental unit, 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.
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, 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.
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.
Safeguarding means measures or controls that are prescribed to protect information.
Software means any computer program acquired, accessed, or used by the Using Governmental Unit or a third party pursuant to or as a result of this contract.
Third party means any person or entity other than the Using Governmental Unit, 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.
Voice means all oral information regardless of transmission protocol.
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.
(b) *Safeguarding requirements and procedures*. The 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.
(c) *Subcontracts.* Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement the limitations and restrictions of this clause on, any other person or entity that contractor authorizes to take action related to government information.
(d) *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. [07-7B104-1]

INFORMATION SECURITY – DATA LOCATION (OCT 2014)

Contractor is prohibited from accessing, processing, transmitting, or storing government information, as defined in the clause titled Information Security, outside the continental United States. This obligation is a material requirement of this contract. [07-7B106-1]

INFORMATION USE AND DISCLOSURE (OCT 2014)

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. 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 following terms shall have the meanings set out in the clause titled Information Security: "**compromise**," "**government information**," "**information**," "**public information**," "**software**," "**third party**," "**unrestricted information**," and "**web-based service**."

(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 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 limitations and restrictions 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) disclose government information to persons having a need-to-know (e.g., subcontractors); and (ii) use (including access, process, transmit, and store) and maintain the government information itself. Before disclosing government information to a subcontractor or third party, Contractor shall give the using governmental unit detailed written notice regarding 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 the using governmental unit's failure to perform or the pendency of a dispute, Contractor agrees to promptly destroy and return to the using governmental unit all government information in its possession upon written request of using governmental unit (provided that, if the contract has not expired or been terminated, Contractor shall be excused from the performance of any work reasonably dependent on Contractor's further access to such government information).

(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 entitled Information Use and Disclosure – Standards.

(h) *Safeguarding Information.* Without limiting any other legal or contractual obligations, Contractor agrees to 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. Upon request by using governmental unit, Contractor shall confirm Contractor's compliance with this section in writing signed by Contractor's most senior executive responsible for information technology security.

(i) *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 using governmental unit 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 the using governmental unit all information necessary to enable the using governmental unit 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 to such parties by Contractor, and if not (e.g., if legally required of the using governmental unit), Contractor shall reimburse using governmental unit 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) pay any related fines or

penalties imposed on the using governmental unit by a government authority, and (4) reimburse the Using Governmental Unit all costs reasonably incurred for communications and public relations services involved in responding to the compromise or improper use.
(j) *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 the using governmental unit may have, and notwithstanding any other term of this contract, Contractor agrees that using governmental unit may have no adequate remedy at law for a breach of Contractor's obligations under this clause and therefore the using governmental unit shall be entitled to pursue equitable remedies in the event of a breach of this clause. [07-7B108-1]

INFORMATION USE AND DISCLOSURE – STANDARDS (OCT 2014)

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 the Using Governmental Unit 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, 2014 Act No. 286, § 117.117, as revised in any future annual appropriations act. [07-7B110-1]

INTELLECTUAL PROPERTY INFRINGEMENT (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. [07-7B105-1]

INTERVENTION OF THIRD PARTY AND ASSISTANCE

In the event that the Contractor does not meet any single deliverable or any other requirement after three (3) attempts, including those specified in the warranty provisions herein, Contractor shall provide at its own expense, subject to prior approval by PEBA as to the identity of the entity performing the services, sufficient additional oversight and assistance as deemed appropriate by PEBA.

Furthermore, PEBA has the option to retain a third party with the financial responsibility for the third party to be paid by the Contractor. This includes, but is not limited to, quality assurance, quality control, and/or independent verification and validation services. Once deployed, these services shall remain in place for such time as PEBA, in its sole discretion, deems appropriate. These services will be at no additional expense to PEBA.

LAWSUIT NOTIFICATION AND COOPERATION

The Contractor shall notify PEBA of any class action lawsuits asserted or brought against the Contractor, which are pending or known to the Contractor as of the date of submission of the proposal as well as any asserted or brought against the Contractor after the date of submission of the proposal and prior to the termination of the contract. 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 other than the Contractor.

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. [07-7B115-1]

OFFSHORE CONTRACTING PROHIBITED (OCT 2014)

No part of the resulting contract from this solicitation may be performed offshore of the United States by persons located offshore of the United State or by means, methods, or communications that, in whole or in part, take place offshore of the United States. [07-7B122-1]

OWNERSHIP OF MATERIAL

All data, material and documentation shared by the State with the Contractor, or generated by the Contractor or State pursuant to this contract, shall belong exclusively to the State. All data and other records entered into any database of the State or supplied to (and maintained by) the Contractor for and/or by the State are, and shall remain, the sole property of the State. Contractor shall not, without the State's written consent, copy or use such records except to carry out contracted work, and will not transfer such records to any other party not involved in the performance of this Contract, and will return all records to the State upon completion of the work hereunder.

All reports, bulletins, pamphlets, summaries, similar materials, lists of employees, retirees, or any other program, product, list, or other usable and useful information (including anything generally regarded as a "made for hire" product) shall become and remain the sole property of the State, including, but not limited to, all copyright protections and ownership and shall be released at no extra costs to the State at the termination of this contract.

Copyright or any other intellectual property right or ownership (copyright) of any preexisting items (items not specifically produced herein and which are in existence prior to the start of this contract) shall remain with the Contractor so long as the Contractor lists them not later than the start date of this contract. Failure of the Contractor to list any such materials in which the Contractor asserts a copyright will be interpreted to mean that the Contractor asserts no such ownership interests in any materials.
Any materials in which Contractor copyrighted contents are included, and subject to designation by the Contractor and agreement by the State, will bear the following notice: "Certain portions reprinted under license from _____, the copyright owner."

PRICE ADJUSTMENTS (JAN 2006)

(1) Method of Adjustment. Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed):
(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
(b) by unit prices specified in the Contract or subsequently agreed upon;
(c) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;
(d) in such other manner as the parties may mutually agree; or,
(e) in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 17 of the S.C. Code of Laws.

(2) Submission of Price or Cost Data. Upon request of the Procurement Officer, the contractor shall provide reasonably available factual information to substantiate that the price or cost offered, for any price adjustments is reasonable, consistent with the provisions of Section 11-35-1830.
[07-7B160-1]

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 ninety (90) days 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. [07-7B165-1]

PRICE ADJUSTMENTS -- LIMITED BY CPI "ALL ITEMS" (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), "all items" for services, as determined by the Procurement Officer. The Bureau of Labor and Statistics publishes this information on the web at www.bls.gov
[07-7B170-1]

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.
[07-7B185-1]

PRIVACY -- WEB SERVICES (JAN 2006)

You agree that any information acquired by you about individuals or businesses that is available to you as a result of your performance of this contract shall not be retained beyond the end of the term of the contract without the express written consent of the government. Such information shall never be sold, traded, or released to another entity, including affiliates, and shall not be used for any purpose other than performing this contract. Upon request, contractor shall provide written confirmation of compliance with this clause. [07-7B195-1]

RECORDS RETENTION & RIGHT TO AUDIT

PEBA shall have the right to audit, or have audited, the books and records of the Contractor as they pertain to this contract both independent of and pursuant to S.C. Code §11-35-2220 and other applicable provisions. Such books and records shall be maintained for a period of three (3) years from the date of final payment under the contract, or longer if requested by the Procurement Officer. PEBA, or its authorized representatives, shall have full access to observe and evaluate the performance hereunder with respect to the coverages, claims, reimbursements, profits, reserves, and all other matters pertaining to the performance and experience of this Plan as provided by the Contractor. PEBA may conduct, or have conducted, audits of specific requirements, of this contract as determined necessary by PEBA.

Pertaining to all audits, Contractor shall make available access to its computer files containing history of contract performance and all other documents related to the audit. Additionally, any software used by the Contractor shall be made available for auditing purposes at no cost to PEBA. All such audits, inspections and evaluations shall be performed in such a manner that will not unreasonably delay work.

In the event of any dispute between the parties, the Contractor will preserve all documents and records pertaining to this contract or the Contractor's performance under it, and shall not destroy any such documents, records or materials.

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. [07-7B205-1]

SECURITY FOR PERFORMANCE, DAMAGES

The Contractor shall supply security no later than August 1, 2015. The Contractor shall supply security in the form of cash, cash equivalent or 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 one million dollars US ($1,000,000.00) 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 Request For Proposal, 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, or for such other sums as may become due to the State pursuant to Part VII, Item C., Indemnification, D., Intellectual Property Liability and Indemnification, M., Termination for Cause, N., Duties Upon Termination, and P., Warranty, 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

TERM OF CONTRACT -- EFFECTIVE DATE / INITIAL CONTRACT PERIOD (JAN 2006)

The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is 3 years,0 months,0 days from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B240-1]

TERM OF CONTRACT -- OPTION TO RENEW (JAN 2006)

At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of 1year(s),0month(s), and0day(s), unless contractor receives notice that the state elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B245-1]

TERMINATION FOR CAUSE

PEBA may cancel the Contract in whole or in part for cause in case of the Contractor's breach, default, negligence or other basis for termination for cause. In such instances, PEBA will provide the Contractor with notice of the basis for the termination in advance, if advance notice does not materially affect the interests of the State, and provide the Contractor an opportunity to cure the basis for termination. In instances where notice is provided, the length of the notice shall be determined on a case by case basis. PEBA may also provide suggestions for remedying the cause but this is at the sole discretion of PEBA. Therefore, in the event of a termination for cause there is no specific duty to provide ninety (90) days advance notice. Further, in the event of termination for cause PEBA reserves the right to purchase any or all items/services in default in the open market, charging the Contractor with any costs over and above the costs that would have applied had Contractor not been terminated. SHOULD SUCH CHARGE BE ASSESSED, NO SUBSEQUENT PROPOSALS OF THE DEFAULTING CONTRACTOR WILL BE CONSIDERED UNTIL THE ASSESSED CHARGE HAS BEEN SATISFIED.

Except for cause for termination 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.

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.

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 the State 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 the State, 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 the State or the successor Contractor at no additional cost to the State, including

(1) all participants information received during the term of the contract,
(2) pharmacy 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 thirty (30) days 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.

In the event that the State 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.

Failure to supply such data within the time periods provided herein, shall result in accrual of liquidated damages against the Contractor of $5000 per day for each day the data is delinquent beyond the time period specified, and the State shall be permitted to withdraw funds pursuant to Part VII, Item E. (Security for Performance, Damages).

TERMINATION FOR CONVENIENCE -- INDEFINITE DELIVERY / INDEFINITE QUANTITY CONTRACTS (JAN 2006)

Unless the termination so provides, a termination for convenience shall not operate to terminate any purchase orders issued prior to the effective date of termination. [07-7B255-1]

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 a 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.
[07-7B265-1]

WARRANTY

The Contractor warrants that any services, administration, implementation, and/or related services and all other work performed in connection with this contract shall comply with all specifications and other terms and conditions herein set forth and further warrants and guarantees that all services provided hereunder, and all supplies provided hereunder, shall be in accordance with the defined standards of availability, reliability, and suitability for the use herein intended and as set forth in the Request for Proposal. Any remedies for breach of this warranty shall include, but not be limited to, those specified under Part VII, Item E. (Security for Performance, Damages) and Item M. (Default), and all remedies shall be considered cumulative and non-exclusive.

The Contractor shall be responsible for the full performance hereunder of any subcontractors, equipment, supplies, goods and/or services, and the State shall rely solely upon said Contractor for full, complete, and satisfactory contract performance.

This warranty shall be continuous and survives the termination of the contract.

VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL

BIDDING SCHEDULE (NOV 2007)

PRICE / FINANCIAL PROPOSAL TO BE SUBMITTED UNDER SEPARATE SEALED COVER IN ACCORDANCE WITH THE RFP INSTRUCTIONS. SEE TAB A-10: FINANCIAL PROPOSAL.

PRICE PROPOSAL (JAN 2006)

Notwithstanding any other instructions herein, you shall submit the following price information as a separate document: [08-8015-1]

PART IX

ATTACHMENTS TO SOLICITATION

Important Tax Notice – Nonresidents Only
Offeror's Checklist
Attachment 1 - Non-Disclosure Agreement
Attachment 2 – Business Associate Agreement
Attachment 3 – Service Provider Security Assessment Questionnaire
Attachment 4 – Co-Pay Waiver Drugs

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.

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

If Corporate officer state title: _____

_____
(Name - Please Print)

OFFEROR'S CHECKLIST
AVOID COMMON PROPOSAL MISTAKES

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

- 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 THE STATE'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 THAT 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 PRE-PROPOSAL CONFERENCE AND A QUESTION & ANSWER PERIOD, RAISE YOUR QUESTIONS AS A PART OF THAT PROCESS! PLEASE SEE INSTRUCTIONS UNDER THE HEADING "SUBMISSION OF QUESTIONS" AND ANY PROVISIONS REGARDING THE PRE-PROPOSAL CONFERENCE.

This checklist is included only as a reminder 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.

Attachment One (1)
Non-Disclosure Agreement

This Non-Disclosure Agreement (the "Agreement") is made this ___ day of _____ 201_, by and between _____ (hereinafter referred to as "the Offeror ") and the State of South Carolina, South Carolina Public Employee Benefit Authority (hereinafter referred to as "the State"). Offeror as herein used includes both any entity that submits a proposal and any entity that is considering submitting a proposal but ultimately does not.

Offeror warrants and represents that it intends to submit a Services/Technical Proposal in response to the Request for Proposals for Pharmacy Benefit Management Services for the State Health Plan. In order for the Offeror to submit a Proposal, it will be necessary for the State to provide the Offeror with access to certain confidential information including, but not limited to, demographic and identifying information on eligible individuals and plan utilization data. All such information provided by the State shall be considered Confidential Information regardless of the form, format, or media upon which or in which such information is contained or provided, regardless of whether it is oral, written, electronic, or any other form, and regardless of whether the information is marked as "Confidential Information." As a condition for its receipt and access to the Confidential Information described in Part II, Scope of Proposal, Introduction, Offeror agrees as follows:

1. Offeror will not copy, disclose, publish, release, transfer, disseminate or use for any purpose in any form any Confidential Information received except in connection with the preparation of its Proposal. All Confidential Information and copies thereof shall be protected from disclosure by commercially reasonably means, including without limitation physical separation, security and limited need to know access for any hard copy materials and encryption, password protection, and secure transmission for electronic materials respectively.

2. Each employee or agent (including without limitation subcontractors) of the Offeror who receives or has access to the Confidential Information shall be notified of the confidentiality and nondisclosure requirements of this Agreement and the confidential nature of the Confidential Information. Each employee or agent of the Offeror who is provided access to or a copy of the Confidential Information shall be bound by confidentiality and nondisclosure obligations that are no less restrictive than the obligations set forth herein. The Offeror shall be liable for any violations by any employees or agents who are provided or given access to Confidential Information. The Offeror shall provide a list of all individuals, employees, and agents of the Offeror who have or have had access to the Confidential Information, along with the certification required in Section 3 of this Agreement.

3. Offeror, other than the Contractor, shall return to the State the original and destroy (in a manner designed to prohibit reading of, copying or reconstruction of the data) any copies of the Confidential Information remaining in its possession within five (5) business days of the State's notice of award in connection with this procurement. If any Offeror does not submit a Proposal, the Offeror shall return the Confidential Information to the Procurement Officer on or before the due date for Proposals. The Offeror, other than the Contractor, shall certify, in writing and signed by an individual with authority to bind the Offeror, to the Procurement Officer that any and all Confidential Information (in whatever format or media) has been destroyed or returned to the Procurement Officer within five (5) business days of the notice of award or by the date the Offeror will not or did not submit a proposal, whichever is earlier. Such certification may be in the form provided below or in another form.

4. Offeror acknowledges that the disclosure of the Confidential Information may cause irreparable harm to the State and agrees that the State may obtain an injunction to prevent the disclosure, copying, or other impermissible use of the Confidential Information. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and/or to seek damages for the Offeror's failure

to comply with the requirements of this Agreement. The Offeror consents to personal jurisdiction in the South Carolina State Courts.

5. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Offeror or any employee or agent of the Offeror to comply with the requirements of this Agreement, Offeror shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and/or costs.

6. This Agreement shall be governed by the laws of the State of South Carolina.

7. Offeror acknowledges that a person may not willfully make a false or fraudulent statement or representation of a material fact in connection with a procurement contract. Offeror further acknowledges that this Agreement is a statement made in connection with a procurement contract.

8. The individual signing below warrants and represents that he or she is fully authorized to bind the Offeror to the terms and conditions specified in this Agreement.

OFFEROR: _____

BY: _____
Signature

NAME: _____
Print Name

TITLE: _____

ADDRESS: _____

OFFEROR'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS TO THE CONFIDENTIAL INFORMATION

Printed Name and Address of Individual/Agent	Employee (E) or Agent (A)

I certify, on behalf of _____ ("Offeror") that the original and any and all copies of the Confidential Information provided by the State in connection with the Request for Proposals for Pharmacy Benefit Management Services for the State Health Plan have been returned to the Procurement Officer or destroyed in a manner designed to prevent copying, reconstruction of or reading of the data. Below is a list of the individuals, employees and/or agents to whom copies of or access to the Confidential Information have been provided.

I warrant and represent that I am fully authorized to bind the Offeror to the terms and conditions specified in this Agreement.

OFFEROR: _____

BY: _____
Signature

NAME: _____
Print Name

TITLE: _____

ADDRESS: _____

Date: _____

WITNESS: _____

OFFEROR'S EMPLOYEES AND AGENTS WHO WERE GIVEN ACCESS TO THE CONFIDENTIAL INFORMATION

Printed Name and Address of Individual/Agent	Employee (E) or Agent (A)

Attachment Two (2)
Business Associate Contract

THIS AGREEMENT is entered into as of the ___ day of_____, _____ between **NAME, ADDRESS** (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").

WHEREAS, the Privacy Rule (as defined below) under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") permits group health plans to disclose certain Protected Health Information of a patient to a Business Associate of such plan who performs certain functions or activities on behalf of the plan, provided that the plan enters into an agreement with the Business Associate that limits the use and disclosure of such Protected Health Information to the same extent that such limitations apply to the group health plan;

WHEREAS, the Security Rule (as defined below) established national standards to protect individuals' electronic personal health information; and

WHEREAS, the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), pursuant to Title XIII of Division A and Title IV of Division B, called the "Health Information Technology for Economic and Clinical Health" ("HITECH Act"), provides modifications to the HIPAA Security and Privacy Rule (hereinafter, all references to the "HIPAA Security and Privacy Rule" are deemed to include all amendments to such rule contained in the HITECH Act and any accompanying regulations, and any other subsequently adopted amendments or regulations); and

WHEREAS, Covered Entity is a self-funded group health plan, and Business Associate provides such functions or activities on behalf of the Covered Entity as to constitute a "Business Associate" of the Covered Entity, as defined in the Privacy Rule;

WHEREAS, Covered Entity and Business Associate have heretofore entered into a separate Service Agreement;

WHEREAS, Covered Entity and Business Associate do hereby desire to enter into this Agreement as required under the Security and Privacy Rule and the provisions of the HITECH Act;

NOW, THEREFORE, for the reasons set forth above, and 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) "Business Associate" shall mean **NAME**.

(b) "Compliance Date" shall have the same meaning as the term "Compliance Date" in 45 CFR § 160.103.

(c) "Covered Entity" shall mean the South Carolina Public Employee Benefit Authority.

(d) "Data Aggregation" shall have the same meaning as the term "Data Aggregation" in 45 CFR § 164.501.

(e) "Designated Record Set" shall have the same meaning as the term "Designated Record Set" in 45 CFR § 164.501.

(f) "Electronic Protected Health Information" shall have the same meaning as "Electronic Protected Health Information" in 45 CFR §160.103.

(g) "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.

(h) "Individual" shall have the same meaning as the term "Individual" in 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

(i) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR parts 160 and 164, subparts A and E.

(j) "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.

(k) "Required By Law" shall have the same meaning as the term "Required By Law" in 45 CFR § 164.103.

(l) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

(m) "Security Incident" shall have the same meaning as "Security Incident" in 45 CFR § 164.304.

(n) "Security Rule" shall mean the Security Standards and Implementation Specifications at 45 CFR Part 160 and 164, Subpart C.

(o) "Service Agreement" shall mean the agreement between **NAME** and the South Carolina Public Employee Benefit Authority, whereby **NAME** performs plan management and plan administrative tasks on behalf of the benefit program described herein as Covered Entity.

(p) "Standards for Electronic Transactions Rule" means the final regulations issued by the Department of Health and Human Services concerning standard transactions and code sets under the Administration Simplification provisions of HIPAA, 45 CFR Part 160 and Part 162.

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 Privacy and Security 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 Privacy and Security 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 under the HITECH Act and/or accompanying regulations.

(g) Business Associate agrees to develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the 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 Security Rule and as required by the HITECH Act. Business Associate shall also develop and implement policies and procedures and meet the HIPAA Security Rule documentation requirements as required by the HITECH Act.

(h) Business Associate agrees to ensure that any agent, including a subcontractor, to whom Business Associate provides PHI, agrees to abide by the same restrictions and conditions that apply to Business Associate with respect to PHI in conformance with the Privacy Rule, and to implement reasonable and 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, and within sixty (60) minutes 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 these terms are defined by the HITECH Act and any implementing regulations.

(j) Business Associate agrees to mitigate, to the extent practicable, any harmful effect it knows to have resulted from said Breach. Any such report shall include, to the extent possible, the identification (if known) of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed during such Breach, along with any other information required to be reported under the HITECH Act and any accompanying regulations.

(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 its privacy and security policies.

(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.

(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.

(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.

(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.

Covered Entity and Business Associate recognize and agree that in some instances **NAME** may have compliance obligations as a Health Care Provider under the Privacy Rule and nothing herein shall prohibit, restrict, or otherwise limit compliance with any such obligations by **NAME** under the Privacy Rule.

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 Privacy and Security 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**

(a) 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.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction 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 the Security and Privacy Rules 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 Supplement 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 Privacy Rule 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 HIPAA 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	**SOUTH CAROLINA PUBLIC EMPLOYEE BENEFIT AUTHORITY**
By:_____	By: _____
(Signature)	(Signature)
NAME: _____	NAME: _____
(Type or Print Name)	(Type or Print Name)
TITLE: _____	TITLE: _____
DATE:_____	DATE:_____

Attachment Three (3)
Service Provider Security Assessment Questionnaire

SERVICE PROVIDER SECURITY ASSESMENT QUESTIONNAIRE

Instructions: I. Attach additional pages or documents as appropriate.
II. As used in this Questionnaire, government information shall have the meaning defined in the clause titled "Information Security."

1. Describe your policies and procedures that ensure access to government information is limited to only those employees/Contractors who require access to perform your proposed services.
2. Describe your disaster recovery and business continuity plans.
3. What safeguards and practices do you have in place to vet employees and Contractors who have access to government information?
4. Describe and explain your security policies and procedures related to use of Contractors/sub -contractors.
5. List any certifications that you have that demonstrate that adequate security controls are in place to properly store, manage and process government information (for example, ISO or SSAE certifications). Will these certifications be in place for the duration of the contract? Will you provide the state with most recent and future audit reports related to these certifications?
6. 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.
7. Will government information be encrypted at rest? Will government information be encrypted when transmitted? Will government information be encrypted during data backups?
8. Describe safeguards that are in place to prevent unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access or disclosure of government information.
9. What controls are in place to detect security breaches? Do you log transactions and network activity? How long do you maintain these audit logs?
10. How will government information be managed after contract termination? Will government information provided to the Contractor be deleted or destroyed? When will this occur?
11. Describe your incident response policies and practices.
12. Identify any third party which will host or have access to government information.

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)

Its: _____
(Printed name of person signing above)

Date: _____
(Title of person signing above)

[09-9025-1]

Attachment Four (4)
Co-Pay Waiver Drugs

The following three items comprise Attachment 4. The attachment is posted separately.

Antihypertensive Drug List
Cholesterol-Lowering Drug List
Diabetes Drugs and Testing Supplies