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|  | State of South Carolina South Carolina Public Employee Benefit Authority Request For Proposal | Solicitation Number: PEBA0252019 Date Issued: 03/05/2019 Procurement Officer: Georgia Gillens, CPPO, CPPB Phone: 803.734.0010 E-mail Address: GGillens@peba.sc.gov |
| | | |

DESCRIPTION: Provide Claims Administration Services for the Self-Funded State Dental Plan, and Accompanying Insurance for the State's Voluntary Supplemental Dental Product, Dental Plus

SUBMIT OFFER BY (Opening Date/Time): 04/16/2019 11:00 AM.

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

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:

| | |
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| MAILING ADDRESS: South Carolina Public Employee Benefit Authority P.O. Box 11960 Columbia, S.C. 29211-1960 Attention: Georgia Gillens, CPPO, CPPB | PHYSICAL ADDRESS: South Carolina Public Employee Benefit Authority 202 Arbor Lake Drive Columbia, S.C. 29223 Attention: Georgia Gillens, CPPO, CPPB |
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| AWARD & AMENDMENTS | Award will be posted on 05/07/2019 . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: https://procurement.sc.gov/vendor/contract-ops/other-solicitations/peba |
|-------------------------------|--|

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

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

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| OFFEROR'S TYPE OF ENTITY: (Check one) <small>(See "Signing Your Offer" provision.)</small> | | |
| <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> Partnership | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Corporate entity (not tax-exempt) | <input type="checkbox"/> Corporation (tax-exempt) | <input type="checkbox"/> Government entity (federal, state, or local) |

PAGE TWO
(Return Page Two with Your Offer)

| | |
|--|---|
| HOME OFFICE ADDRESS (Address for offeror's home office / principal place of business) | NOTICE ADDRESS (Address to which all procurement and contract related notices should be sent.) |
| | <hr/> Area Code - Number - Extension Facsimile |
| | <hr/> E-mail Address |

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

ACKNOWLEDGMENT OF AMENDMENTS
 Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See the clause entitled "Amendments to Solicitation")

| Amendment No. | Amendment Issue Date | Amendment No. | Amendment Issue Date | Amendment No. | Amendment Issue Date | Amendment No. | Amendment Issue Date |
|---------------|----------------------|---------------|----------------------|---------------|----------------------|---------------|----------------------|
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| DISCOUNT FOR PROMPT PAYMENT (See the clause entitled "Discount for Prompt Payment") | 10 Calendar Days (%) | 20 Calendar Days (%) | 30 Calendar Days (%) | _____ Calendar Days (%) |
|---|----------------------|----------------------|----------------------|-------------------------|

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REQUEST FOR PROPOSAL (RFP)
SOLICITATION NUMBER PEBA0252019

**PROVIDE CLAIMS ADMINISTRATION SERVICES FOR THE SELF-FUNDED
STATE DENTAL PLAN, AND ACCOMPANYING INSURANCE FOR THE
STATE’S VOLUNTARY SUPPLEMENTAL DENTAL PRODUCT, DENTAL PLUS**

SCHEDULE OF KEY DATES IN THE PROPOSAL PROCESS

All dates subject to change

| | |
|---|------------|
| 1. Distribution of the Request for Proposal (RFP) | 03/05/2019 |
| 2. Questions on the RFP (9:00 a.m.) | 03/14/2019 |
| 3. Pre-Proposal Conference (10:30 a.m.) | 03/18/2019 |
| 4. State’s Written Responses to Questions Questions/Amendment Issued (tentative) | 03/26/2019 |
| 5. Submission and Opening of Proposals (11:00 a.m.) | 04/16/2019 |
| 6. Intent to Award Posting Date | 05/07/2019 |
| 7. Intent to Award Becomes Official | 05/17/2019 |
| 8. Contract Performance Date | 01/01/2020 |

PART 1

INSTRUCTIONS TO OFFERORS-A. GENERAL INSTRUCTIONS

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

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

Authority means the State Fiscal Accountability Authority or its successor in interest.

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.

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

Contract Modification means a written order signed by the Procurement Officer directing the Contractor to make changes which the clause of the contract titled “Changes,” authorizes the Procurement Officer to order without the consent of the Contractor.

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

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

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

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

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

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

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

State means the South Carolina Public Employee Benefit Authority (PEBA).

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

You and Your means Offeror.

1.2 AMENDMENTS TO SOLICITATION: (a) The solicitation may be amended at any time prior to opening. All amendments to this solicitation shall be in writing from the State. The State shall not be legally bound by any amendment which is not in writing. All actual and prospective Offerors should monitor the following web site for the issuance of amendments: <https://procurement.sc.gov/vendor/contract-opps/other-solicitations/peba> (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by acknowledging receipt in the Offeror’s Executive Summary, (4) by letter, or (5) by submitting a proposal that indicates in some way that the Offeror received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified by the amendment(s) remain unchanged.

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

1.4 AWARD NOTIFICATION: Notice regarding any award, cancellation of award, or extension of award will be posted at the location and on the date specified on the Cover Page or, if applicable, any notice of extension of award. 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.

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

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

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

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

- (a) By submitting an Offer, the Offeror certifies that-
- (1) The prices in this Offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Offeror or competitor relating to-
 - (i) Those prices;
 - (ii) The intention to submit an offer; or
 - (iii) The methods or factors used to calculate the prices offered.
 - (2) The prices in this Offer have not been and will not be knowingly disclosed by the Offeror, directly or indirectly, to any other Offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
 - (3) No attempt has been made or will be made by the Offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

- (b) Each signature on the Offer is considered to be a certification by the signatory that the signatory-
- (1) Is the person in the Offeror's organization responsible for determining the prices being offered in this proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; or
 - (2)(i) Has been authorized, in writing, to act as agent for the Offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification [As used in this subdivision (b)(2)(i), the term "principals" means the person(s) in the Offeror's organization responsible for determining the prices offered in this proposal];
 - (ii) As an authorized agent, does certify that the principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; and
 - (iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification.

(c) If the Offeror deletes or modifies paragraph (a)(2) of this certification, the Offeror must furnish with its Offer a signed statement setting forth in detail the circumstances of the disclosure.

1.9 CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (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, or his designee, if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) If Offeror is unable to certify the representations stated in paragraphs (a)(1), Offeror must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror’s responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer, or his designee, may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer, or his designee, may terminate the contract resulting from this solicitation for default without cost to the South Carolina Public Employee Benefit Authority or the State and the Contractor will be charged for the cost of replacement goods and services.

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

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

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

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

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

1.15 ETHICS CERTIFICATE (MAY 2008): By submitting an offer, the Offeror certifies that the Offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment of a former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by Contractor to candidate who participated in awarding of contract. The State may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If Contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, Contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the Procurement Officer at the same time the law requires the statement to be filed.

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

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

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

Carolina Public Employee Benefit Authority during the period beginning eighteen months prior to the Opening Date. [R. 19-445.2165]

1.19 PROTESTS: Any prospective Offeror, Contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest (and it must be actually received) within fifteen days of the date of issuance of the applicable solicitation document at issue pursuant to S.C. Code Section 11-35-4210. Any actual Offeror, Contractor, or subcontractor who is aggrieved in connection with the intent to award of a contract shall protest (and it must be actually received) within ten days of the date notification of the intent to award is posted also in accordance with S.C. Code Section 11-35-4210. 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 the clause entitled “Protest – CPO – MMO Address”.

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

1.21 QUESTIONS FROM OFFERORS: (a) Any prospective Offeror desiring an explanation or interpretation of the solicitation, specifications, etc. (see clause 1.14 above, “Duty to Inspect and Inquire”), must request it in writing. Oral explanations or instructions will not be binding. Any information given a prospective Offeror concerning a solicitation will be furnished promptly to all other prospective Offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective Offerors. We will not identify you in our response to your question. (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer as soon as possible regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. Offerors should advise the South Carolina Public Employee Benefit Authority of any problems they perceive as a result of reviewing this solicitation document, which may bear upon their ability to comply, or submit any other questions, which might ultimately bear upon the State’s ability to enter into the relationship described herein with a selected vendor.

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

1.23 RESPONSIVENESS/IMPROPER OFFERS:

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

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

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

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

(e) Do not submit bid samples or descriptive literature unless expressly requested. Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions of the solicitation. S.C. Code Ann. Reg. 19-445.2077(D).

1.24 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) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (c) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent’s authorization to bind the principal.

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

1.26 SUBMITTING CONFIDENTIAL INFORMATION (FEB 2015): (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 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 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 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 agencies, officers and employees, from

every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from withholding information by the State of South Carolina or any of its agencies, that Offeror marked as "CONFIDENTIAL" or "TRADE SECRET" or "PROTECTED". (All references to S.C. Code of Laws.)

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

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

1.29 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>.)

1.30 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. A proposal may be withdrawn in person by an Offeror or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085.

INSTRUCTIONS TO OFFERORS-B. SPECIAL INSTRUCTIONS

SUBMISSION OF QUESTIONS

Any questions, comments, requests for information or clarifications regarding the RFP must be submitted in writing. Do NOT wait to assert deviations, exceptions, etc. to anything in this RFP until (or in) the submission of your proposal.

In order to have a meaningful discussion at the pre-proposal conference, all questions must be received by the Procurement Officer no later than **March 18, 2019 at 9:00 AM local time**. No further questions regarding the RFP will be accepted after this deadline.

Any written questions, requests for information or request for clarifications will be responded to in the form of a written amendment to the RFP and e-mailed to all prospective Offerors. The amendment will also be posted at the following web address: <https://procurement.sc.gov/vendor/contract-opps/other-solicitations/peba>

All questions, comments, and requests for information or clarifications regarding this RFP must be submitted as indicated below. All questions, comments, and requests for information or clarifications should, to the highest degree possible, cite the specific RFP section and paragraph number(s) to which the question refers. All questions, comments, and requests for information or clarifications regarding this RFP 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: Group Dental Insurance 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: Provide Claims Administration Services for the Self-Funded State Dental Plan, and Accompanying Insurance for the State's Voluntary Supplemental Dental Product, Dental Plus RFP

Attn: Georgia Gillens, CPPO, CPPB

SEND QUESTIONS TO:

MAIL TO:

South Carolina Public Employee Benefit Authority
202 Arbor Lake Drive
Columbia, SC 29223
Attention Georgia Gillens, CPPO, CPPB

HAND DELIVER/EXPRESS

South Carolina Public Employee Benefit Authority
202 Arbor Lake Drive
Columbia, SC 29223
Attention Georgia Gillens, CPPO, CPPB

E-MAIL ADDRESS:

GGillens@peba.sc.gov

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

1.32 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]

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

1.34 PROTEST - CPO - MMO ADDRESS (JUN 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.

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

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

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

PART 2

SCOPE OF PROPOSAL

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 and to contract with a single qualified vendor to Provide Claims Administration Services for the Self-Funded State Dental Plan, and Accompanying Insurance for the State's Voluntary Supplemental Dental Product, Dental Plus (the State's current dental plan offerings).

This Request for Proposal is solely for the provision of Claims Administration Services for the Self-Funded State Dental Plan, and Accompanying Insurance for the State's Voluntary Supplemental Dental Product, Dental Plus.

The State's contract with its current dental administrator, Blue Cross Blue Shield of South Carolina (BCBSSC), will end on December 31, 2019. BCBSSC has served as the State's Dental Benefits Plan Carrier since January 1, 2004. Under its current contract, for the period of January 1, 2016 to December 31, 2019, BCBSSC receives an administrative fee of \$0.50 per subscriber per month for the Basic Dental Plan.

State Dental Plan

The self-funded State Group Dental Plan (Plan, and sometimes referred to as Basic Dental) has operated since 1985. The Plan operates as a traditional indemnity plan with an established schedule of allowed amounts. The Plan currently covers benefits for four classes of services: Class I: Diagnostic and Preventative, Class II: Basic Dental Services, Class III: Prosthetic Dental Services, and Class IV: Orthodontia (for children under 19). There are no contracts with dentists to accept the Plan's allowed amounts and to prevent balance billing to patients.

As of March 2019, 298,068 subscribers (active and retired employees) are enrolled in the Plan, of which 40.0% have dependents enrolled on their policy. As of March 2019, there are 507,860 insured lives. In 2018, the State paid \$62,425,974 in dental claims under the self-funded Plan (paid basis).

The Plan is non-contributory for eligible active and retired subscribers with State-funded benefits, with a current monthly employer contribution of \$13.48.

Dental Plus

The State has offered an enhanced employee pay-all dental product, Dental Plus, since January 1, 2002 as a voluntary buy-up to the State Dental Plan. A participant in Dental Plus is required to participate in the Plan. Any subscriber electing dependent coverage under the Plan and enrolling in Dental Plus must do so at the same level of dependent coverage.

Dental Plus coordinates administratively with the Plan in that benefits are paid on the same schedule for Class I, II, and III dental procedures, except at a higher reimbursement level, based on the 80th percentile of dental charges in the State. The same deductibles and coinsurance apply; however, the combined annual maximum benefit for the Plan and Dental Plus is \$2,000, instead of the Plan's maximum of \$1,000.

The State does not bear risk for claims under Dental Plus. The current dental carrier, Blue Cross Blue Shield of South Carolina, assumes the risk for Dental Plus benefits. Dental Plus claims currently are paid with the State Dental Plan allowance being subtracted from the Dental Plus allowance to determine the amount of payment from Dental Plus.

As of January 2019, there are 164,417 subscribers enrolled in Dental Plus, and 293,316 insured lives. The current contractor reported claims of \$180,824,163 in submitted charges under the Dental Plus program in 2018 (paid basis).

Dental Plus Network. In the interest of mitigating balance billing of Dental Plus enrollees, PEBA uses the contractor’s dental network, offers voluntary agreements to all South Carolina dentists to accept the lesser of their usual charge or the Dental Plus Allowed Amount, and maintains an online list of dentists who have accepted the agreement. If a dentist elects not to participate, Dental Plus still pays and assigns benefits to non-participating dentists and pays at the 80th percentile.

A more detailed description of the current dental plans can be found at <https://www.peba.sc.gov/dental.html>.

The following information can be found at <http://procurement.sc.gov/vendor/contract-opps/other-solicitations/peba>

1. Basic Dental and Dental Plus Subscriber and Dependent Enrollment by Zip Code
2. Dental Plus Top 20 Procedures (**must be returned with your offer**)
3. Provider Services Information
4. 2015-2019 Basic Dental and Dental Plus Enrollment by Month by Tier
5. 2015-2019 Basic Dental and Dental Plus Enrollment by Subscriber Type
6. 2015-2019 Basic Dental an Dental Plus Insured Lives Enrollment by Month
7. 2015-2019 Basic Dental and Dental Plus Premiums
8. 2015-2019 Basic Dental and Dental Plus Rates
9. 2017 Basic Dental Fee Schedule
10. 2017 Basic Dental Procedure Codes
11. 2017 Dental Plus Procedure Codes
12. 2017-2018 Basic Dental by Year and Month
13. 2017-2018 Dental Plus by Year and Month
14. 2018 Basic Dental Plus Class Report
15. 2018 Basic Dental Fee Schedule
16. 2018 Basic Dental Procedure Codes
17. 2018 Dental Plus Class Report
18. 2018 Dental Plus Procedure Codes
19. 2019 Basic Dental and Dental Plus Enrollment by Age and Gender
20. 2019 Basic Dental Fee Schedule

2.1 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 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 State Vision Plan benefits are available to retirees, survivors and former spouses. PEBA administers COBRA for most participants; certain participating entities administer COBRA themselves.

2.2 OBJECTIVE

PEBA seeks to obtain claims administration and supplemental dental insurance for up to six (6) years. The term will be a four (4) year initial term and one additional two (2) year renewal term to Provide Claims Administration Services for the Self-Funded State Dental Plan, and Accompanying Insurance for the State's enhanced employee pay-all dental product, Dental Plus.

PART 3

SCOPE OF WORK

The Contractor shall provide all personnel, goods, and services necessary to provide prompt and accurate claims administrative services to the State Group Dental Plan (Plan) in conformance with all applicable laws and regulations. The Contractor agrees that in the event of any disagreement about PEBA's requirements that might occur at any time during the term of the contract, the Contractor will defer to and be governed by, without additional cost, PEBA's interpretation of its requirements so long as that interpretation is reasonable. This provision applies to all matters, including those arising from disputes concerning scope of work issues and whether particular items or efforts were included in the scope of work agreed to by the parties in this Solicitation.

The Contractor shall provide claims administrative services in accordance with all of the requirements outlined in this Request for Proposal, including all attachments, and the Offeror's response thereto.

A. Account Management

1. The Contractor shall provide an account representative who is knowledgeable about all aspects of the contract and readily available by phone during regular working hours to address issues posed by PEBA. If the Contractor's account representative is not physically located in the same office that pays the dental claims, a second designated account representative shall be identified from the claims office location.
2. The Contractor shall provide representatives to make positive and constructive personal contact with the dental provider community to communicate Plan/Dental Plus rules, benefits or changes and claims filing procedures, and dental care issues. All material distributed to providers is subject to approval by PEBA.
3. The Contractor shall meet with PEBA as necessary, but not less than quarterly, to review the quality and level of services and to take corrective action as directed and approved by PEBA. One (1) of the scheduled meetings shall consist of an annual review to review and summarize financial and clinical issues regarding the claims experience and financial performance of the dental plans during the previous plan year. All meetings shall take place at PEBA's office in Columbia, South Carolina. In addition, the Contractor shall, during these meetings, assist PEBA in its ongoing review of the program, and advise PEBA as to the following:
 - Follow-up to, and status of, any agreed upon corrective action resulting from any preceding meetings;
 - Developments in the dental administrative services industry as a whole including, but not limited to, new programs, techniques, models, and the like: and,
 - Legal developments including, but not limited to, regulatory, administrative, statutory, and judicial developments relating to dental administrative services. However, the Contractor shall promptly notify PEBA of any changes in the law or regulations affecting dental administrative activities.
4. The Contractor shall act as consultant to PEBA in the operation of the dental program by assisting PEBA in the ongoing review of the program, advising of new trends, techniques, and programs, and providing assistance, upon request, with respect to reporting the estimated costs of any contemplated benefit

modifications in the Plan or Dental Plus Program.

5. The Contractor shall advise PEBA, in its review of the Plan Schedule of Dental Procedures and Allowed Amounts, on any dental codes and/or procedures that are new or no longer valid and shall also recommend allowed amounts.
6. 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 Plan or Dental Plus except as necessary to carry out the requirements of this contract.

B. Eligibility Determination and Computer Support

1. PEBA shall determine and maintain eligibility and enrollment information. PEBA shall provide the Contractor, on a daily basis, an electronic file of eligibility updates including adds, terminations, and changes since the last file transmission. The Contractor shall accept, process, maintain, and update eligibility information from the files provided by PEBA on a daily basis. The Contractor shall verify eligibility from eligibility data provided by PEBA. The Contractor shall refer to PEBA for consideration and PEBA's final decision any questions with respect to subscriber or dependent eligibility for benefits.
2. PEBA's eligibility database shall be considered the system of record and eligibility data stored on the Contractor's systems must mirror the eligibility data maintained by PEBA. Any modifications to the Contractor's system needed to accommodate PEBA eligibility data shall be done at the Contractor's expense.
3. PEBA shall provide the Contractor, on a schedule determined by PEBA, a full positive enrollment file. It is anticipated that this type of file shall be provided by PEBA to the Contractor on an annual basis.
4. The Contractor shall comply with HIPAA provisions related to Electronic Transaction Standards.
5. PEBA conforms to the standard X12 834 data transmission. PEBA shall provide the Contractor with file transfers of eligibility through electronic data interchange. Data transfer shall be performed with the use of encryption and in a manner approved by PEBA. The Contractor shall accept and deliver eligibility data through this method. The Contractor shall comply with PEBA's 834 Companion Guide, which has been written to assist in implementing the ASC X12N 834 Benefit Enrollment and Maintenance Transaction Set (a copy of PEBA's 834 Companion Guide will be distributed at the Pre-Proposal Conference).
6. The Contractor shall comply with PEBA's 834 Dental Companion Guide, which has been written to assist in implementing the ASC X12N 834 Benefit Enrollment and Maintenance Transaction Set.
7. The Contractor shall provide PEBA with a daily acknowledgement of files received and entered in the Contractor's system.
8. The Contractor shall provide PEBA with a daily processing report, in a format acceptable to PEBA, of any transactions that did not update when eligibility data sent from PEBA to the Contractor was entered into the Contractor's system.

The Contractor shall provide PEBA with a monthly membership file, containing only members and their dependents in an active status, for comparison to PEBA's database. PEBA will accept the file by SFTP (Push or pull); FTP with PGP, HTTPS.

9. The Contractor shall maintain in its database occurrences of subscriber history, including status changes or a change in coverage level (subscriber only, subscriber/spouse, subscriber/child, full family, child only for COBRA & survivor enrollees) sufficient to adjudicate claims and reconcile eligibility data with PEBA.
10. The Contractor shall provide a secure online connection for purposes of permitting selected PEBA personnel access to make online inquiries of the Contractor's eligibility database. The preferred method of connectivity is through a secure, encrypted VPN tunnel or HTTPS web connection.

The Contractor's system should be accessible by PEBA during all business days from 7:30 a.m. to 6:00 p.m. Eastern Time, Monday through Friday. PEBA may require system accessibility outside the normal time frame mentioned above; i.e., enrollment periods or other unusual circumstances outside the normal scope of everyday operations, and other times required by PEBA.

11. PEBA assigns a Benefits Identification Number (BIN) that is used in lieu of the subscriber's Social Security Number. The Benefits Identification Number is eight (8) numeric digits, randomly generated by PEBA. The Contractor will be required to accommodate the use of BIN numbers.
12. PEBA shall provide to the Contractor the ability to inquire into PEBA enrollment eligibility.
13. The Contractor shall provide its personnel to train PEBA staff on the Contractor's claims processing and specific eligibility systems. Training shall be conducted initially during the Implementation Phase of the contract, and at least annually thereafter, and shall include all updates and changes. The training shall take place at PEBA's office in Columbia, South Carolina.
14. The Contractor shall be responsible for transmitting and maintaining data security and confidentiality as required by state and federal law, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
15. The Contractor shall maintain database backups in a manner that will eliminate disruption of service or loss of data due to system or program failures.
16. 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.
17. The Contractor shall maintain a security breach plan and answer the Security Questionnaire attachment to this RFP.
18. In some cases, PEBA is required by law to provide coverage to dependents of subscribers as ordered by a National Medical Support Notice (NMSN). The Contractor shall ensure that the contact and personal information of custodial parents and dependent children are not to be disclosed to subscribers. This includes maintaining separate mailing addresses, separate authorized representatives for these dependents, restricting subscriber access to claims, coverage and eligibility information, and all other restrictions as deemed necessary.

C. Claims Processing and Payment

PEBA currently provides dental benefits to eligible subscribers according to provisions of the Plan. The terms and conditions of coverage will be the same under the Plan and Dental Plus, except as otherwise specified in this solicitation. It is essential that the same Contractor process claims for the self-funded Plan and Dental Plus.

Dental Plus allows each enrolled employee to elect a higher amount of coverage within the existing Plan. The Contractor will be at risk for an amount not to exceed the aggregate claims liability generated by the difference between the Allowed Amounts by procedure for Dental Plus and the State's liability under the Plan. The Contractor may subcontract with a risk-bearing entity for the aggregate claims liability under Dental Plus, or the Contractor may retain the risk.

The Contractor shall provide all of the services necessary to provide timely, efficient, accurate and complete dental claims processing, for both the Plan and Dental Plus including, but not limited to, the following:

1. Process all dental claims incurred on and after January 1, 2020, and up to and including December 31, 2025, in accordance with this Request for Proposal, statutory provisions and the Group Dental Insurance Benefit Plan Document provisions. Provided, however, that following termination of this agreement, the Contractor shall continue for a period of twelve (12) months to process all claims for the Plan and Dental Plus that were incurred during the term of the contract at no additional charge.
2. Provide access to legal advisors, expert dental, and medical advisors (including: general dentists; orthodontists; periodontists; endodontists; oral surgeons; medical doctors; and dental/medical texts, literature, dental/medical 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.
3. Determine the allowed amounts under the Plan to be paid to all providers by use of the methods specified by PEBA. PEBA is responsible for establishing the State Dental Plan Schedule of Dental Procedures and Allowed Amounts, which may be reviewed and adjusted annually. The Contractor shall have the capability of processing claims according to the Schedule of Dental Procedures and Allowed Amounts. In the absence of existing data to determine the allowed amount, the Contractor shall, through its dental consulting staff and/or medical consultants, dental/medical literature, etc., determine the reasonable and customary amount based upon comparable or similar services or procedures. The allowed amounts shall be changed as directed by PEBA.
4. Provide trained personnel dedicated solely to PEBA's needs to perform complete dental claims processing, consisting of, but not limited to, the following:
 - Receive, date, and control claims within twenty-four (24) hours of receipt;
 - Confirm the claimant's eligibility against the eligibility files supplied electronically by PEBA before authorizing benefits or processing claims;
 - Determine whether a claim is payable as a medically necessary and covered service under the Plan;
 - Apply any applicable Plan exclusion;
 - Check claims history and prevent duplicate payments or payments that exceed contract limits;
 - Identify any claim that is unusual in amount or service rendered and review the claim;
 - Administer the Plan such that the terms and conditions of the Plan are interpreted in a consistent manner within accepted dental standards;
 - Apply deductible and coinsurance, and determine the amount payable under the Plan.

5. Maintain a history of all dental claims paid. No fewer than twenty-four (24) months of claims history shall be maintained on-line.
6. Generate and mail claims payments to providers and Explanation of Benefits (EOBs) or denial notices to providers and enrolled participants when claims are processed.
7. The Contractor's claims processing system must be able to accommodate payment of benefits directly to the subscriber or to the provider to whom benefits may be assigned (Please refer to the 2019 Group Dental Insurance Benefit Plan Document, Article 11, Claims Procedure, Item 11.4 Payment of Claims. The Contractor must be able to pay benefits directly to the Dentist, if the participant has assigned the benefits to that Dentist).
8. The Contractor shall provide an internal appeals process for all claim denials in accordance with Article 11 of the State Dental Plan (see Article 11 of the Plan of Benefits, in PDF format, at <https://www.peba.sc.gov/assets/statedentalplanofbenefits.pdf>). If any part of a claim is denied by the Contractor and the participant requests a review within six (6) 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 American Dental Association, 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 American Dental Association, utilization review and management standards, and any other standards or information 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 legal, dental, 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.

9. Monitor claims processing for accurate and appropriate payment, in accordance with the Plan provisions and payment allowed amounts.
10. Identify areas of potential claims payment discrepancies and take corrective actions.
11. Perform reviews, such as verification of services billed, to identify and report to PEBA improper provider billing practices, and take appropriate action.

12. Identify any instance where coordination of benefits, Workers' Compensation, or subrogation applies and take appropriate action to recover claims payments or other costs.
13. Reimburse or credit PEBA, at PEBA's option, for any payment errors.
14. Review and respond to all requests for pre-treatment estimates or pre-certification of dental benefits for services in accordance with Plan provisions.
15. The Contractor shall provide paid claims history for the Plan and Dental Plus in an electronic format determined by PEBA, to PEBA and its Data Consultant by the tenth (10th) working day of each month. The paid claims history shall include, but may not be limited to, the following data elements:
 - (a) **Group prefix** – A variable to distinguish between a claim on Basic dental or Dental Plus
 - (b) **Employee ID** – The subscriber's SSN
 - (c) **SSN** – The patient's SSN
 - (d) **Subscriber Last Name** – The subscriber's last name
 - (e) **Subscriber First Name** – The subscriber's first name
 - (f) **Subscriber Middle Initial** – The subscriber's middle initial
 - (g) **Group Number** – A number that indicates which group the Subscriber is a member of
 - (h) **Patient Last Name** – The patient's last name
 - (i) **Patient First Name** – The patient's first name
 - (j) **Patient Middle Name** – The patient's middle name
 - (k) **Patient Gender** – The gender of the patient
 - (l) **Patient Subscriber or Dependent Status** – A variable that marks the patient as either the Subscriber or Dependent
 - (m) **Charge** – Submitted charges by the provider
 - (n) **Allowed Amount** – Patient liability plus plan liability
 - (o) **Paid** – How much the plan paid
 - (p) **Claim Type** – A variable that indicates whether a claim is the original payment or an adjustment. If the claim is an adjustment it will identify which adjustment it is. For instance, whether this claim is the second or third adjustment.
 - (q) **Claim Base** – Claim number
 - (r) **Line Number** – Indicates the number of lines associated with a particular claim number
 - (s) **Place of Service** – Indicates the place of service the procedure was done
 - (t) **Provider Name** – Name of the provider group
 - (u) **Provider ID1** – Provider group number
 - (v) **Provider ID2** – Provider practitioner number
 - (w) **Procedure code** – Current procedural terminology code
 - (x) **Modifier 1** – First current procedural terminology code modifier
 - (y) **Modifier 2** – Second current procedural terminology code modifier
 - (z) **COB Code** – Coordination of benefits code
 - (aa) **COB Savings** – Savings due to the Coordination of Benefits
 - (bb) **Deductible** – Amount patient paid to the deductible
 - (cc) **Co-Insurance** – Amount patient paid to the co-insurance
 - (dd) **Units** – number of units for service
 - (ee) **Covered** – Amount covered under the plan
 - (ff) **Billing NPI** – Billed NPI

- (gg) **Rendering NPI** – Rendered NPI
- (hh) **Ocarrier** – Amount of claim paid by the member’s other insurance carrier
- (ii) **ICD 10 code** – ICD 10 diagnosis code
- (jj) **ICD 10 code 1** – ICD 10 diagnosis code 1
- (kk) **ICD 10 code 2** – ICD 10 diagnosis code 2
- (ll) **ICD10 code 3** – ICD 10 diagnosis code 3
- (mm) **ICD 10 code 4** – ICD 10 diagnosis code 4
- (nn) **Patient DOB** – Patient’s date of birth
- (oo) **Incur Date** – Date that the claim was incurred
- (pp) **Paid Date** – Date that the claim was paid
- (qq) **Received Date** – Date the claim was received to be paid

Delivery Method options:

SFTP (Push or pull); FTP with PGP, HTTPS

16. Transmit claims data on a weekly basis with the Third-Party Administrator responsible for administering the MoneyPlus program for those members actively enrolled in a Medical Spending Account or Limited-use Medical Spending Account for the purpose of auto-adjudicating claims.
17. Supply a full provider file in electronic format to PEBA and PEBA’s Data Warehouse Contractor by the tenth (10th) business day of the month following the end of each quarter. The Contractor may be required to modify the contents of this provider file to reflect any changes made by PEBA to the Plan.
 - (a) **Provider ID** – A unique identifiable number for each provider
 - (b) **Billing NPI** – Billed National Provider Identifier
 - (c) **Provider Name** – Name of the provider
 - (d) **Provider Specialty** – Primary specialty of provider
 - (e) **Provider Status** – Status of the provider. For example if the provider is either Active or Inactive
 - (f) **Provider Opened Date** – The date when the provider opened
 - (g) **Provider Closed Date** – The date when the provider closed
 - (h) **Address 1** – The provider physical address
 - (i) **Address 2** – The provider additional address location if needed
 - (j) **City** – The provider city
 - (k) **County** – The provider county
 - (l) **State** – The provider state
 - (m) **Provider Zip Code First 5 digits** – The first five digits of the provider’s zip code
 - (n) **Provider Zip Code Last 4 digits** – The last four digits of the provider’s zip code
 - (o) **Provider Area Code** – The area code of the provider
 - (p) **Provider Phone Number** – The provider’s primary phone number
 - (q) **Rendering ID** – A unique identifiable number for each rendering dentist
 - (r) **Rendering NPI** – Rendered National Provider Identifier
 - (s) **Rendering First Name** – The first name of the rendering dentist
 - (t) **Rendering Last Name** – The last name of the rendering dentist
 - (u) **Rendering Specialty** – The specialty of the rendering dentist
 - (v) **Rendering Status** – The status of the rendering dentist at the provider. For example if the rendering dentist is either Active or Inactive at that provider location
 - (w) **Rendering Dentist Start Date for Provider** – The date the rendering dentist started working at the provider

- (x) **Rendering Dentist End Date for Provider** – The date the rendering dentist stopped working at the provider
- (y) **Dental Plus Network Status** – Indicates whether the provider is Active or Inactive in the Dental Plus Network
- (z) **Dental Plus Network Start Date** – The date the provider started participating in the Dental Plus Network
- (aa) **Dental Plus Network End Date** – The date the provider stopped participating in the Dental Plus Network

Delivery Method options:

SFTP (Push or pull); FTP with PGP, HTTPS

D. Provider Services

PEBA utilizes the Contractor’s direct contracts with dental providers, with the goal of minimizing balance billing of Dental Plus subscribers, and desires the Contractor to make available to PEBA any arrangements and services that will help PEBA achieve this goal, including, but not limited to, the following:

1. Offer reimbursements for Dental Plus based on a Schedule of Allowed Amounts that is updated annually, and is based on amounts at the 80th percentile (inclusive) of prevailing dental charges in the State.
2. Make available to PEBA its agreements with dental providers and specialists (endodontics, periodontics, pedodontics, prosthodontics) that will accept the Dental Plus Schedule of allowable charges, and will not balance bill Dental Plus subscribers for amounts other than non-covered services, applicable deductibles, and coinsurance.
3. Provide PEBA with out-of-network pricing amounts in Dental Plus, including updates. Historical data on Dental Plus out-of-network pricing should be retained in a manner that supports retrospective analysis of claims.
4. Make available the updated State Dental Plan Fee Schedule to each Provider on or before January 1 of each year. At the Contractor’s expense and upon the Provider’s request, reproduce and mail the updated State Dental Plan Fee Schedule to the Provider.
5. Provide an annual directory of Dental Plus Network Providers. Also see Part 5, Item 5.1.6 – Dental Plus Provider Network.
6. Provide representatives to make positive and constructive personal contact with the dental provider community to communicate Plan rules, benefits, or changes and claims filing procedures, and dental care issues. All material distributed to providers is subject to approval by PEBA.
7. Support PEBA policy as to mandatory registration and utilization of the South Carolina Reporting and Identification Prescription tracking System (SCRIPTS) for all opioid prescribers.

E. Customer Service

1. The Contractor shall provide dedicated customer service representatives, with training on the specific features of the benefits of the Plan (not general book of business), to respond to all written and telephone inquiries from subscribers, providers, and employers, to answer questions, to provide assistance with accessing benefits, and to resolve claims payment problems.
2. The Contractor shall assist subscribers, providers, and employers via dedicated toll-free customer service telephone line(s), available during the hours of 8:00 am to 5:30 pm (Eastern Time) and on the same business days as PEBA. The Contractor will be required to demonstrate by December 1, 2019, that it has established and staffed telephone lines.
3. The Contractor shall provide representatives available during the hours of 8:00 am to 5:30 pm (Eastern Time) and on the same business days as PEBA to take calls from PEBA 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. This process must involve Contractor management representatives who have authority to resolve more complex issues.
4. The Contractor shall provide callers with a survey instrument at the end of each call or online inquiry to gauge customer satisfaction (wait time, courtesy of staff, knowledge of product, willingness to assist, problem resolved/question answered) with the contractor's call center. Satisfaction survey results shall be submitted to PEBA within fifteen (15) days of the end of each quarter with a minimum 95% overall satisfaction rate with key components identified. An assessment of \$5,000 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 Contractor's failure to meet this performance standard. The survey instrument shall be subject to review and approval by PEBA.
5. The Contractor shall ensure the confidentiality of subscriber information in responding to all inquiries.

F. Communications and Training

1. Furnish communication information on the Plan and Dental Plus to participants, benefits administrators, and providers. Provide communication information between the Contractor and Plan/Dental Plus participants, benefits administrators, and PEBA that describes the features, operations, and any changes of the Plan/Dental Plus benefits and increases awareness of the Plan(s) benefits and changes. Communications with PEBA, participants, and benefits administrators will be undertaken to ensure that electronic data transfer, fax, telephone, and hard copy transfer of information are accurate, secure, and efficient, as determined by PEBA.
2. Furnish communication information on the State Dental Plan/Dental Plus to providers. Provide communication information between the Contractor, the dental community and PEBA that describes the features, operation and any changes of the State Dental Plan/Dental Plus benefits, and increases awareness of the Plan(s) benefits and changes. Communications with PEBA and providers will be undertaken to ensure that electronic data transfer, fax, telephone and hard copy transfer of information are accurate, secure and efficient, as determined by PEBA.
3. Work collaboratively with PEBA's Communications Department and Insurance Policy staff to develop an annual marketing plan that includes a variety of targeted marketing content and deliverables. PEBA will

produce the final marketing plans with input from the Contractor. All collateral the Contractor produces is subject to approval by PEBA's Communications Department prior to actual use. Materials to Plan/Dental Plus participants and benefits administrators, include, but are not limited to,:

- Content for a two-page summary of dental benefits that shall be provided by the Contractor to PEBA in early June, beginning June 2019, for inclusion in PEBA's summary of benefits guide produced each year in August. The Contractor is not responsible for the production of the guide.
 - Reimbursement claim forms. For situations where a manual/paper form is needed to file for benefits, the Contractor should develop, store, and distribute electronically such a form as necessary and provide upon request. Both PEBA and the Contractor would also house the form in interactive (fillable) format online in a PDF or similar format.
 - Content for multiple, targeted, digital campaigns to promote Plan/Dental Plus benefits, services and initiatives. Content will be used by PEBA to develop electronic turnkey toolkits for benefits administrators (posters, flyers, brochures, payroll stuffers, postcards, email templates, social media posts, employee newsletter article templates, etc.).
4. Provide personnel with experience in marketing and communications for a quarterly communications conference call in which initiatives, campaigns, and progress will be discussed. Recommend specific communications plans and goals in accordance with the overall management of the Plan/Dental Plus during these calls. Reporting of general and targeted metrics and status updates, as well as operational updates, will be required as well. Other calls may be scheduled in addition to quarterly calls in order to meet deadlines for campaigns.
 5. Work collaboratively with PEBA's Communications Department to develop a comprehensive marketing plan to increase participation in the Plan/Dental Plus each calendar year. The Contractor should provide recommendations to meet the long-term and short-term goals for increasing participation in the Plan/Dental Plus. PEBA maintains final authority for determining the goals and will produce the final marketing plans with input from the Contractor.
 6. All informational materials, letters, notices and collateral must be cobranded with PEBA's logo and the Contractor's logo according to PEBA's brand guidelines for vendors. The Contractor's logo should be labeled as "Administered by:" to reflect the relationship between PEBA and the Contractor. The Contractor should follow other guidelines including size of logo, colors, typography and other styles as identified in the identity guidelines and will also adhere to Associated Press style guidelines. All materials must be reviewed and approved by PEBA's Communications Department prior to use.
 7. Develop and distribute approved Plan/Dental Plus communications materials and items.
 8. Develop and distribute approved participant account-specific communications materials and items. Information specific to a participant's account shall be printed and mailed to the employee's address on file unless the employee has elected a paperless delivery option. These include, but are not limited to,; notification of benefits elections and changes to participants; explanations of benefits; and welcome packets, which include an identification card for all new participants of Dental Plus. Welcome packets with the identification card must be printed and mailed. Notices and materials must be reviewed and approved by PEBA's Communications Department prior to use.
 9. Maintain a secure, password protected transaction-enabled website specific to the Plan/Dental Plus that includes claim history and benefit status.
 10. Provide a website that is accessible without entering a password that includes information specific to the Plan/Dental Plus benefits and features. The website shall explain the benefits and value of enrolling in the

Plan/Dental Plus, and provide a current directory of all providers participating in the Plan/Dental Plus. Website content must be reviewed and approved by PEBA's Communications Department prior to use.

11. Not conduct any mass mailings or electronic mailings to enrolled participants, eligible employees, benefits administrators or other State group benefits personnel without the prior express permission of PEBA.
12. Provide materials and an adequate number of its personnel as needed to train State benefits administrators and PEBA personnel about the Plan/Dental Plus and operational procedures of the Contractor. Provide training and education sessions upon PEBA or employer request at PEBA and various employer sites statewide or presented over the internet (e.g., webinars). In the event a new entity joins the State Insurance Benefits Program, the Contractor shall supply its personnel and materials to assist in the entity's setup upon the request of PEBA or the new entity. All materials and training items distributed to benefits administrators by the Contractor are subject to prior approval by PEBA's Communications Department.
13. Provide materials and an adequate number of its personnel, upon PEBA or benefits administrators' request, to attend promotional events to promote enrollment in, and to inform participants of rules, updates, changes and the features of the Plan/Dental Plus, especially prior to and during the October open enrollment period. In the event a new entity joins the State Insurance Benefits Program and its employees become eligible to enroll in the Plan/Dental Plus during the year, the Contractor shall supply its personnel and materials to assist in explaining the Plan/Dental Plus during the initial enrollment, upon the request of PEBA or the new entity. During the 2018 calendar year, PEBA staff attended approximately 93 benefit fairs or events at employer locations across the State. All materials distributed to participants and eligible employees are subject to prior approval by PEBA's Communications Department.
14. Provide personnel at PEBA's annual Benefits at Work Conference, which is typically held over a multi-day period each year in August/September, beginning in August 2019. Approximately 350 benefits administrators and other essential benefits personnel attend each day. Traditionally, the conference has been held in Columbia, South Carolina; however, the Contractor is required to provide personnel at the conference regardless of the in-state location and dates. PEBA's contractors are responsible for hosting a table each day of the conference, providing printed promotional and educational materials, answering questions from benefits administrators and PEBA staff, and engaging with those in attendance at the conference. All information and materials to be distributed by the Contractor at the conference must be approved in advance by PEBA's Communications Department.
15. The Contractor shall conduct an annual Member Satisfaction Survey for participants to gauge satisfaction with the Contractor. The Member Satisfaction Survey must be approved by PEBA prior to distribution. Results must be submitted to PEBA (See G.5. in the Reporting section below).
16. Research and compile data requested by PEBA's Communications Department for the creation of PEBA developed communication materials.

G. Reporting

1. The Contractor shall provide standardized reports, or an on-line reporting system capable of generating such reports, in a format and time schedule acceptable to PEBA, that shall include, at a minimum:
 - enrollment and tier statistics;
 - paid claims;
 - incurred claims;
 - lag reports;
 - incurred but not reported claims;
 - by procedure code;
 - by procedure code classification;
 - claims by subscriber status (active vs. retiree, employer group, age and gender, relationship to the insured, etc);
 - pended claims;
 - plan design effectiveness;
 - provider summaries; and,
 - claims inventory.
2. The Contractor shall provide, within forty-five (45) days of the end of the quarter and Plan Year, reports that will confirm compliance or non-compliance with each of the proposed performance standards outlined below in Section H. The report shall be submitted to PEBA's Procurement Manager.
3. The Contractor shall provide reports, at least quarterly, on cost containment efforts (COB, etc.) provided by the Contractor.
4. The Contractor shall provide a limited number of ad-hoc or customized reports as are reasonably necessary to estimate cost impact of benefit modifications and to monitor performance of the contract, at no additional cost to the State.
5. The Contractor shall annually submit the results to PEBA of a Member Satisfaction Survey. The results of the Member Satisfaction Survey shall be submitted to PEBA's Procurement Manager.
6. The Contractor shall provide any other reports necessary to satisfy local, state, or federal laws and/or regulations.

H. Performance Standards and Associated Guarantees (Liquidated Damages)

1. Performance shall be provided in a first class manner. The Contractor shall be responsible to PEBA and liable for any delay, breach or non-performance of any portion of the contract including, but not limited to, overpayment, underpayment or nonpayment. The Contractor's proposed performance standards and guarantees shall be specific to PEBA and shall not be measured by an aggregate of Contractor's overall book of business. Additionally, the Contractor's proposed performance standards and guarantees shall be measured and assessed during the same period. Multiple periods may not be aggregated to make up for one or more failed periods. The Contractor shall strictly adhere to their proposed performance standards and guarantees for deviation from those standards as agreed to between PEBA and the Contractor.

2. In addition to the proposed guarantees, Offerors must include the following guarantee:

| Communications | | |
|--|---|----------|
| Member Communications/Use of Member Data | A communication sent in violation of Sections 7.21 Advertising Use and Representation: Contact with State Entities or Section F, Communications and Training Item 11. | \$50,000 |

I. Population Health

1. The Contractor shall provide appropriate staff to promote wellness, prevention, and early detection related services/programs to improve the oral health of both adult and pediatric members. Collaborate with the health plan third-party administrator and other PEBA partners to ensure the programming aligns with PEBA’s overall health and wellness initiatives to promote better health outcomes for its members.

J. Financial Arrangements

Basic Dental Administrative Fee

1. The Contractor’s administrative fee per subscriber per month shall be full and complete compensation by PEBA for all administrative services rendered by the Contractor for the Plan.
2. The administrative fee shall be determined by PEBA by multiplying the Contractor’s administrative fee per participant per month times the number of employees eligible for the Dental plan and determined monthly based upon the PEBA Financial Services billing cycle.
3. 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. The Contractor should not provide invoices for administrative fees to PEBA.
4. The first monthly payment of the administration fee will become due and payable by PEBA to the Contractor on the 15th working day of January 2020.

Claims Reimbursement of Dental Claims

1. The Contractor shall accept claims reimbursements no more frequently than weekly and no less frequently than monthly. The Contractor shall provide invoices to PEBA (preferably via secured web-based access). Invoices must clearly identify the claims period and provide itemized amounts of claims, credits, refunds, and offsets for the Plan. An offset represents any credit outside of normal business activity. 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.
2. The Contractor shall provide a monthly itemized reconciliation of PEBA account activity for claims payment reimbursement, including itemized provider reimbursements, outstanding payments, refunds, and other offsets.

3. PEBA shall remit reimbursement to the Contractor within three to five (3-5) business days following receipt of invoices. The Contractor shall not hold the PEBA funds, such that interest accrues to the Contractor's benefit. All claims reimbursements shall be processed via ACH transaction to the financial institution provided by the Contractor. The ACH transaction will be initiated by the SC State Treasurer.

Collection of Dental Plus Premiums/Payment to Insurer

1. PEBA shall bill the employing entities for the premiums required for the Dental Plus insurance plan based on PEBA enrollment files at the end of each monthly cycle. This amount, plus any retroactive adjustments and any journal entries, determine the total premium to be sent to the Contractor. Premiums shall be remitted to the Contractor monthly by the 15th working day of the current month per PEBA's working schedule. All disbursements of premiums shall be processed via ACH transaction to the financial institution provided by the Contractor. The ACH transaction will be initiated by the SC State Treasurer.

Dental Plus Administrative Fee

The Contractor shall pay PEBA a flat fee of three hundred and fifty thousand dollars (\$350,000) each year as its administrative fee for billing and other administrative services performed by PEBA. This fee shall be paid to PEBA and may be remitted in two (2) installments of \$175,000 due January 31 and July 31 of each year.

1. Contractor shall provide additional financial data as requested.
2. The Contractor shall provide a monthly electronic file of all transactions processed through the Contractor's claims processing system for the purposes of reconciling the Contractor's request for funding with the claims processed. This file shall include, at a minimum, the following data elements:
 - Claim Identification;
 - Subscriber Identification;
 - Process Date;
 - Paid Date;
 - Paid Amount;
 - Adjustment Date; and
 - Adjustment Amount.

K. 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 thirty (30) calendar days following final award.
2. The Contractor's Final Implementation Plan shall be based upon the proposed implementation plan submitted in response to this requirement and coordinated through, and developed in conjunction with, PEBA. The Contractor selected as a result of this Request for Proposal will be responsible for being fully prepared to implement all administrative goods and services specified here, as of the Contract Performance Date, along with appropriate activities and communications required prior to that date, by September 2, 2019. The Contractor's Final Implementation Plan shall outline, in detail, all the steps necessary to begin full performance of the contract on January 1, 2020, and shall specify expected dates of completion of all such steps and identify the person(s) responsible for each step.
3. The Contractor's Final Implementation Plan shall be accomplished in a manner to minimize interference with normal operations and services for both PEBA and the current contractor.
4. 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 \$1,000 per day for the Contractor's failure to meet this performance standard. This amount shall be paid directly to PEBA until the Contractor satisfactorily meets the requirements of that deadline. If, after fifteen (15) days' notice, the Contractor has failed to pay any amount due hereunder, the amount shall be withdrawn from the security.

L. Dental Plus Provider Network

Offerors should provide a dental network for Dental Plus participants such that patients will only be billed any applicable deductible and co-insurance for services rendered at a network dentist. Offerors may use their own proprietary network, or may develop a special network for Dental Plus business. Out-of network providers will be paid at the 80th percentile of charges in the state.

PART 4

QUALIFICATIONS

4.1 QUALIFICATIONS OF OFFEROR: (1) To be eligible for award, You must have the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance. We may also consider a documented commitment from a satisfactory source that will provide you with a capability. We may consider information from any source at any time prior to award. We may elect to consider key personnel, any predecessor business, and any key personnel of any predecessor business, including any facts arising prior to the date a business was established. (2) You must promptly furnish satisfactory evidence of responsibility upon request. Unreasonable failure to supply requested information is grounds for rejection. (3) **Corporate subsidiaries are cautioned that the financial capability of an affiliated or parent company will not be considered in determining financial capability;** however, we may elect to consider any security, e.g., letter of credit, performance bond, parent-company corporate guaranty, that you offer to provide. Instructions and forms to help assure acceptability are posted on procurement.sc.gov, link to "Standard Clauses & Provisions."

Provide the following information or documentation for the Offeror. This information, and other information in PEBA's discretion, will be used to determine your responsibility:

- (a) 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.
- (b) A list of failed projects, suspensions, debarments, and significant litigation.

4.2 MANDATORY MINIMUM QUALIFICATIONS

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

- (a) Currently processes a dental claims volume of at least \$100,000,000 annually or a combination of health and dental claims volume of at least \$200,000,000 with a minimum dental claims volume of at least \$50,000,000.
- (b) Has successfully implemented dental claims processing for at least one group of 50,000 subscribers and a total of at least 200,000 subscribers.
- (c) The risk-bearing entity for the Dental Plus claims liability must, as of the date of the proposal opening, be rated in the top five (5) categories by at least one (1) independent bond rating service. If a subcontractor, the risk-bearing entity must satisfy the minimum size, volume, and experience requirements specified above.

Offerors should provide detailed information to establish that they meet each of these mandatory minimum qualifications.

While PEBA believes that an Offeror who does not meet these minimum requirements cannot successfully and fully perform the contract, Offerors are cautioned that the existence of these factors does not constitute a finding that an Offeror is responsible. In evaluating an Offeror's responsibility, the State Standards of Responsibility [R.19-445.2125] and information from any other source may be considered. An Offeror must, upon request of 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. Procurement Code Section 11-35-1810.

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

PART 5

INFORMATION FOR OFFERORS TO SUBMIT

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

- a. One (1) original marked “original” and five (5) identical paper copies of your Technical Proposal. Please label copies, 1 of 5, 2 of 5, etc.
- b. One (1) original marked “original” and five (5) labeled USB flash drives containing a copy of the Offeror’s Technical Proposal Response (in MS Word, MS Excel and/or PDF format where appropriate). Please label copies, 1 of 5, 2 of 5, etc.
- c. One (1) original marked “original” and one (1) paper copy of your Business Proposal.
- d. One (1) labeled USB flash drives containing a copy of the Offeror’s Business Proposal.
- e. One (1) USB flash drive labeled “original redacted” containing a redacted version of your original Technical Proposal.
- f. One (1) USB flash drive labeled “original redacted” containing a redacted version of your original Business Proposal.

Both the Technical Proposal and the Business Proposal should be submitted separately and each marked respectively with: “Section 5.1: Technical Proposal” and “Section 5.2: Business Proposal.” No information from the Business Proposal should be included in the Technical 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 USB flash drive of their offer from which they have removed any information that they marked as exempt, i.e., a redacted copy. The information redacted should mirror in every detail the information marked as exempt from public disclosure. The redacted copy should (i) reflect the same pagination as the original, (ii) show the empty space from which information was redacted, and (iii) be submitted on a USB flash drive. File format shall be Microsoft Word 2007 or later. Except for the redacted information, the USB flash drive must be identical to the original hard copy and accessible for reproduction by PEBA.

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

5.1 TECHNICAL PROPOSAL

The Technical Proposal shall include the following sections and shall be presented in the listed order.

5.1.1 COVER PAGE

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

5.1.2 EXECUTIVE SUMMARY

An Executive Summary should be provided with the Offeror's Proposal. The Executive Summary should include a brief description of the Offeror's understanding of the scope of services and their ability to provide the required services. The Executive Summary should be signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP.

Statement of Acceptance: Offerors shall reply to Part 1 Instructions to Offerors-A. General Instruction, Part 1 Instructions to Offerors-B. Special Instructions, Part 2 Scope of Proposal, Part 3 Scope of Work, Part 4 Mandatory Minimum Qualifications, Part 7 Terms and Conditions-A. General, and Part 7 Terms and Conditions-B. Special, 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 should include this Statement of Acceptance in their Executive Summary. Please note that the State considers any proposal containing deviations, exceptions or caveats to the RFP that have not been submitted for consideration during the question and answer phase, and adopted by PEBA, as unacceptable.

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

Provide a copy of the most recent financial rating and complete the following table.

| Rating Agency | Current Financial Rating | Prior Financial Rating |
|---------------------------|--------------------------|------------------------|
| A.M. Best | | |
| Fitch Ratings | | |
| Moody's Investors Service | | |
| Standard & Poor (S&P) | | |

5.1.3 TABLE OF CONTENTS

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

5.1.4 OFFEROR'S APPROACH

Offerors should describe their approach to providing Administrative Services Only (ASO) under this contract. Offerors, in describing their approach, should, at a minimum, restate each of the items below and provide their response (approach) to that item immediately thereafter.

A. Account Management

- a. Offerors should describe, in detail, their approach to managing PEBA's account. In describing its approach offerors should describe how they would assign personnel to perform all of the obligations of the contract.
- b. Offerors should provide the name, background, qualifications, and location of the account representative who will be assigned to PEBA.
- c. Offerors should describe the location(s) from which services will be delivered under this contract.

B. Eligibility Determination and Computer Support

- a. Offerors should describe their proposed method and frequency of reconciliation.
- b. Offerors should describe how they would provide PEBA with verification of the above reconciliations.
- c. Offerors should describe how they would notify PEBA of enrollment discrepancies.
- d. Offerors should describe how they would coordinate resolution with PEBA.
- e. Offerors should describe their process for making modifications to their system and how long it would typically take for system modification.
- f. Offerors should describe their IT test environment and how long it would typically take to load a test file received from PEBA and analyze the test results.

C. Claims Processing and Payment

- a. Offerors should describe, in detail, their approach to dental claims processing and adjudication. Provide a detailed description of the procedures used to review, verify, and pay a claim. State the average turn-around time for a:
 - Clean claim;
 - Request for pre-certification of dental services;
 - Response to subscriber inquiry;
 - Response to provider inquiry.

State the percentage of all claims processed without error. Describe error prevention procedures used as well as procedures used to classify and correct claims processing errors.

- b. Offeror should describe the claims processing policies and procedures it would utilize in this contract. Offeror should describe how it would notify PEBA if participant fraud, provider fraud, or improper provider billing practices were discovered.
- c. Offerors should provide a detailed description of the Offeror's understanding and approach to identifying any instance where coordination of benefits, Workers' Compensation, or subrogation applies, and what actions are taken to recover claims payments or other costs. Offerors should provide information on cost containment procedures used, including, but not limited to: subrogation, coordination of benefits, pre- and post- claim review, and identification of duplicate claims and high cost procedures or providers.
- d. Offerors should describe its internal appeals process for claims denials. Offerors should describe how it would cooperate with the operation of PEBA's appeals process for disputed claims.
- e. Offerors should describe, in detail, how they will transition subscribers currently undergoing treatment, particularly orthodontia treatment.
- f. Does the Offeror own the adjudication platforms (hardware, software, and communications) used to perform claim processing?
- g. Does the Offeror own the code that is used to build all system platforms that govern the claim adjudication function? These platforms include, but are not limited to, adjudication, eligibility systems, plan design systems, and reporting systems.

D. Provider Services

- a. Offerors should provide all of the information requested in Attachment Two (2), Dental Plus Top 20 Procedures.

E. Customer Service

- a. Offerors should describe, in detail, their approach to customer service. Offerors should describe the number of customer service representatives, with training on the specific features of the benefits of the Plan, they will make available to respond to written and telephone inquiries from participants, providers, employers, and PEBA administrative staff. Offerors should provide an example of how consumer satisfaction is assessed and some recent findings in regard to offeror's customer service.
- b. Offerors should describe the assistance available to participants, providers, and employers via a toll-free telephone line(s), including the average time that a caller must wait to speak to a customer service representative, or other measure of the efficiency of the customer services rendered over the dedicated telephone lines.
- c. Offerors should describe their procedures to ensure a prompt response to all written or telephone inquiries from participants and PEBA staff, including the average time from receipt of a written inquiry from participants or staff, to a written or telephone response.
- d. Offerors should describe, in detail, how insureds will identify themselves for care (ID Card etc.).

F. Communications, and Training

- a. Describe the informational materials that may be used to ensure all eligible employees and retirees are aware of the Plan/Dental Plus. Provide examples of materials, such as brochures, forms, posters, websites, email messages, etc., that may be used to communicate Plan information to ensure that all eligible employees and retirees are aware of and understand the Plan.
- b. Describe your ability to customize communications for PEBA. Provide examples that illustrate cobranding.
- c. Describe your experience in creating and delivering a marketing plan with a large public employer, or multi-employer plan, including the outcomes. Provide an example.
- d. Describe, in detail, how you will work collaboratively with PEBA staff to develop and implement a comprehensive marketing plan to increase participation in the Plan/Dental Plus each calendar year. Describe how you will play a collaborative role in managing the communications for the Plan/Dental Plus to increase participation.
- e. Provide a sample explanation of benefits statement and describe in detail the information contained on the statement, as well as the capability for customization. Describe the methods used by your organization to distribute statements to participants.
- f. Provide a detailed description and screenshots of the secure, password-protected, transaction-enabled website you will use for the Plan/Dental Plus. Detail the capability for customization.
- g. Provide a detailed description of the website you will use that will be accessible without entering a password that explains the features, benefits and value of enrolling in the Plan/Dental Plus. Detail the capability for customization.
- h. Provide a sample of the member satisfaction survey you will use.

G. Reporting

- a. Offerors should describe, in detail, the standard, customized, and ad hoc reports that will be provided, the frequency of those reports, and a detailed description of all the information that will be provided in each of these reports.
- b. Offerors should state if they have an on-line reporting system. If yes, Offerors should describe, in detail, their on-line reporting system.
- c. Offerors should describe the information that will be contained on the detailed claims transaction tape provided to PEBA.
- d. Offerors should describe the typical turn-around time for custom report requests.

H. Performance Standards and Guarantees (Liquidated Damages)

a. Offerors should provide, at a minimum, their metrics for performance goals in the following areas:

Claims Processing, including but not limited to:

- Payment accuracy of claims transactions
- Procedural accuracy of claims transactions
- Turnaround time on claims transactions
- Timeliness of eligibility file updates
- Accuracy of eligibility file updates

Communications with Participants and the State, including but not limited to,:

- Telephone service standards
 - Average speed to answer
 - Call Abandonment
 - 1st Call Resolution
- Written inquiries

Reporting, including but not limited to,:

- Timeliness of reporting
- Accuracy of reports

b. Offerors should describe how performance standards are measured and reported.

I. Population Health

Offerors should provide a detailed description of their methodology to promote population dental health.

J. Financial Arrangements

Offerors should describe, in detail, their process of releasing dental payments, including timeline between requesting claims reimbursement from PEBA and releasing payments to dental providers.

K. Implementation Plan (Not an Evaluated item)

a. Offerors should submit a proposed implementation plan. The proposed implementation plan should outline, in detail, all the tasks necessary to begin full operations and performance of the contract on January 1, 2020. At a minimum, the proposed implementation plan should specify expected dates of completion of all tasks, how the tasks will be accomplished, the identity of the person(s) responsible for each task, and any personnel who will be onsite during the implementation process. The proposed implementation plan will be converted to a Final Implementation Plan and will be strictly enforced. Offeror should provide the names and qualifications of the top three (3) principal individuals who will be responsible for the implementation of this contract. Specific tasks and schedules to be included in the Offeror’s proposed implementation plan include:

- Benefits at Work conference
- Program description, marketing materials and website to be used beginning September 15, 2019, for open enrollment
- Forms to be used beginning January 1, 2020
- Letters to be used beginning January 1, 2020

5.1.5 OFFEROR’S BACKGROUND AND QUALIFICATIONS

Offerors should describe, in detail, their background and qualifications in providing dental third party claims administration services. Offerors, in describing their background and qualifications, should restate each of the items below and provide their response to that item immediately thereafter.

1. Offerors should provide a detailed description of its present organization, including a description of its size and assets, its main business activities, and the length of time it has been in the business of providing dental third party claims administration services.
2. Offerors should provide its last two (2) audited financial statements and/or annual reports.
3. Offerors should complete the following table, identifying the **ten (10) largest group dental plans** (in decreasing order of size based on number of subscribers, not covered lives) for which the Offeror currently provides dental third party claims administration services. Include both insured and self-insured plans. Also, identify each contract for which the Offeror is using a subcontractor.

| Employer | Group Size (subscribers) | 2017 Dental Claim Dollar Value | 2018 Dental Claim Dollar Value |
|-----------------|---------------------------------|---------------------------------------|---------------------------------------|
| | | | |

4. Offerors should state the total dollar volume of dental claims processing for Offeror’s entire book of business during the calendar years 2017 and 2018.
5. Offerors should provide a minimum of three (3) reference accounts (excluding the State of South Carolina), one of whom the Offeror has successfully implemented dental claims processing for at least one group of 50,000 subscribers. Include the length of service of each account, name of person to contact, title, address, e-mail address, and telephone number.

6. Of the Offeror's twenty-five (25) largest dental claims processing contracts of the last three (3) years, provide a list of those that have been terminated, a contact name and phone number, and the reason for termination.
7. How many locations providing claims administration services does your company operate in the United States?
8. How many claims processing locations will be associated with the performance of this contract? For each associated claims processing location, indicate:
 - a. Number of contracts served there;
 - b. Average number of claims processed each month;
 - c. Average number of checks issued each month;
 - d. Person in charge; and,
 - e. Number of claims processors.
9. Offerors should provide any additional information that indicates that they are capable of providing claims administration services for a program of the size and complexity of PEBA's program.

5.1.6 DENTAL PLUS PROVIDER NETWORK

Offerors should list its participating providers under contract as of the date of the proposal submission. Information listed should include provider NPI, provider name, address, county, zip, state of provider, and provider dental specialty.

5.2 BUSINESS PROPOSAL

5.2.1 FIXED ADMINISTRATIVE FEE AND DENTAL PLUS PREMIUMS

1. Fixed Administrative Fee And Dental Plus Plan Premiums

The Fixed Administrative Fee and Dental Plus Plan Premiums shall be submitted in a separate, sealed envelope.

The Fixed Administrative Fee per enrolled subscriber per month and Dental Plus Premiums shall be submitted in the format specified on **Attachment Six (6)**.

Offerors shall provide Claims Administration Services for the State Dental and Dental Plus Plans as described in this Request for Proposal for the fixed administrative fee quoted on Attachment Six (6) for each subscriber enrolled in the State Dental Plan. Offerors' quoted fixed Administrative Fee shall be fixed for the six (6) year term of the contract, which includes the four (4) year initial term and the one additional two (2) year renewal term (January 1, 2020 through December 31, 2025).

PART 6

AWARD CRITERIA

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

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.

- 1) **Composite Monthly Dental Plus Plan Premium:** The Composite Monthly Dental Plus Plan Premium, as contained in Part II of Attachment 6 (Six). (Points for premium cost will be provided to the evaluation panel by the Procurement Officer. The method of determining the points assigned for the Composite Monthly Dental Plus Plan Premium in the evaluation process will be as follows: The first step will be to determine the lowest Composite Monthly Premium. This Offeror will receive the maximum amount of points assigned to the criteria. The next step will be to divide each of the other Offeror's Composite Monthly Premium into the lowest Composite Monthly Premium to arrive with the percentage the low is to each of the other Offeror's Composite Monthly Premium. These percentages will then be multiplied by the number of points available for the assignment of points for the Composite Monthly Premium.)
- 2) **Approach:** Offeror's approach and understanding. (The evaluation panel will use the information submitted in response to Part 5, Information For Offerors To Submit, Section 5.1 Technical Proposal, Item 5.1.4, Offeror's Approach, to evaluate this criteria. Each evaluation panel member will assign points to this criterion subjectively.)
- 3) **Background And Qualifications:** Offeror's background and qualifications. (The evaluation panel will use the information submitted in response to Part 5, Information For Offerors To Submit, Section 5.1. Technical Proposal, Item 5.1.5., Background And Qualifications, to evaluate this criteria. Each evaluation panel member will assign points to this criterion subjectively.)
- 4) **Dental Plus Provider Network:** Offeror's submission for the Dental Plus Provider Network. (The evaluation panel will use the information submitted in response to Part 5, Information for Offerors to Submit, section 5.1 Technical Proposal, Item 5.1.6, Dental Plus Provider Network, to evaluate this criteria. Each evaluation panel member will assign points to this criterion subjectively.)
- 5) **Fixed Administrative Fee:** Offeror's Total Fixed Administrative Fee for the Contract Term, Part I of Attachment Number Six (6). (Points for the fixed administrative fee will be provided to the evaluation panel by the Procurement Officer. The method of determining the points assigned for the Total Fixed Administrative Fee for the Contract Term in the evaluation process will be as follows: The first step will be to determine the lowest Total Fixed Administrative Fee for the Contract Term. This Offeror will receive the maximum amount of points assigned to the criteria. The next step will be to divide each of the other Offeror's Total Fixed Administrative Fees for the Contract Term into the lowest Total Fixed Administrative Fee for the Contract Term to arrive with the percentage the low is to each of the other Offeror's Total Fixed Administrative Fees for the Contract Term. These percentages will then be multiplied by the number of points available for the assignment of points for the Total Fixed Administrative Fee for the Contract Term.)

PART 7

TERMS AND CONDITIONS -- A. GENERAL

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

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

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

7.4 CONTRACT DOCUMENTS & ORDER OF PRECEDENCE (FEB 2015): (a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) the solicitation, as amended, (3) documentation of clarifications [11-35-1520(8)] or discussions [11-35-1530(6)] of an offer, if applicable, (4) your offer, (5) any statement reflecting the state’s final acceptance (a/k/a “award”), and (6) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (5) above shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation, (i) a purchase order or other instrument submitted by the State, (ii) any invoice or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by PEBA. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

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

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

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

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

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

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

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

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

7.13 PAYMENT & INTEREST (FEB 2015): (a) 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 mailed to the payment address on "Page Two." (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, 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, unless otherwise required by Section 29-6-30. (e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding. (f) The State shall have all of its common law, equitable and statutory rights of set-off.

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

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

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

7.17 TAXES (JAN 2006): Any tax the Contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the Contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely the State's obligation, after payment to Contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to Contractor by the taxing authority. In the event that the Contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the State to the Contractor, Contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on the Contractor's net income or assets shall be the sole responsibility of the Contractor.

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

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

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

PART 7

TERMS AND CONDITIONS -- B. SPECIAL

7.21 ADVERTISING USE AND REPRESENTATION: CONTACT WITH STATE ENTITIES: The Contractor agrees not to refer to the award of this contract in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed or preferred by 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.

7.22 ATTORNEY’S 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.

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

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

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

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

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

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

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

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

7.26 CONTRACT INTERPRETATION: In the event there are any disagreements between the parties with regards to the application of this contract or the requirements of PEBA arising from any interpretation of the Invitation for Bids, 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.

7.27 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]

7.28 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.

7.29 CONTRACTOR PERSONNEL (JAN 2006): The Contractor shall enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. [07-7B060-1]

7.30 CONTRACTOR’S LIABILITY INSURANCE-GENERAL (FEB 2015): (a) Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of 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 \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an “insured contract” as defined in the policy.

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

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

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

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

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

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

(g) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to 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.

7.31 CONTRACTOR'S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY

(FEB 2015): [ASK QUESTIONS NOW: For products providing the coverages required by this clause, the insurance market is evolving. Our research indicates that the requirements stated herein reflect commercially-available insurance products. Any Offeror having concerns with any specific requirements of this clause should communicate those concerns to the Procurement Officer during the question and answer phase.]

(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.

7.32 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.

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

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

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

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

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

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

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

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

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the termination had been issued for the convenience of the State. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience

of the State, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under the Disputes clause.

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

7.34 DUTIES UPON TERMINATION: Upon expiration or termination of the contract for any reason, the Contractor shall provide full cooperation to PEBA and any successor Contractor so that the transition to 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) 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.

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

7.36 INDEMNIFICATION - THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION (FEB 2015): (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 - Definitions) caused in whole or in part by any act or omission of Contractor, its subcontractors at any tier, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnatee, 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 Contractor's 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 Indemnitee's 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.

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

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

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

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

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

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

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

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

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

Unrestricted information means (1) public information acquired other than through performance of the work, (2) information acquired by Contractor prior to contract formation, (3) information incidental to your contract administration, such as financial, administrative, cost or pricing, or management information, and (4) any ideas,

concepts, know-how, methodologies, processes, technologies, techniques which Contractor develops or learns in connection with Contractor's performance of the work.

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

7.38 INFORMATION SECURITY - SAFEGUARDING REQUIREMENTS (FEB 2015)

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

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

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

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

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

Voice means all oral information regardless of transmission protocol.

(b) *Safeguarding Information.* Without limiting any other legal or contractual obligations, Contractor shall implement and maintain reasonable and appropriate administrative, physical, and technical safeguards (including without limitation written policies and procedures) for protection of the security, confidentiality and integrity of the government information in its possession. In addition, Contractor shall apply security controls when the Contractor reasonably determines that safeguarding requirements, in addition to those identified in paragraph (c) of this clause, may be required to provide adequate security, confidentiality and integrity in a dynamic environment based on an assessed risk or vulnerability. Contractor shall comply fully with all current and future updates of the information security requirements of PEBA, as outlined in this Contract and as provided during the term of the Contract.

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

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

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

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

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

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

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

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

- (ii) Prompt application of security-relevant software upgrades, e.g., patches, service packs, and hot fixes.
- (7) Transfer limitations. Transfer government information only to those subcontractors that both require the information for purposes of contract performance and provide at least the same level of security as specified in this clause.
- (d) *Subcontracts*. Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement requirements at least as secure as those imposed by this clause on, any other person or entity that contractor authorizes to take action related to government information.
- (e) *Due Diligence*. Contractor shall complete a due diligence process annually or as otherwise requested by PEBA or a PEBA designated third party. This process may include a written questionnaire and in some cases could require an onsite visit from PEBA or a PEBA designated third party.
- (f) *Background Checks*. Contractor shall ensure its staff shall have a criminal background check completed prior to accessing systems and/or applications that contain PEBA data. The background check shall be nationwide and, at a minimum, include federal, state, and county records where the Contractor's staff member has resided for the past seven years. PEBA maintains the right to request a third party vendor or an individual who is involved with PEBA data and/or systems be removed from the further interaction with PEBA's data and/or systems.
- (g) *Training*. Contractor shall provide security and privacy training, at least annually, for all staff members who have access to systems and/or applications that contain PEBA data.
- (h) *Other contractual requirements regarding the safeguarding of information*. This clause addresses basic requirements and is subordinate to any other contract clauses or requirements to the extent that it specifically provides for enhanced safeguarding of information or information systems.

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

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

- (a) *Definitions*. The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions.
- (b) *Legal mandates*. Contractor shall be permitted to use, disclose, or retain government information to the limited extent necessary to comply with any requirement imposed on Contractor by law. If it is necessary for Contractor to use, disclose, or retain government information in order to comply with a law, Contractor shall provide using governmental unit with written notice, including a description of the circumstances and applicable law, in advance of such use, disclosure or retention except to the extent expressly prohibited by law.
- (c) *Flow down*. Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement the requirements of this clause on, any other person or entity that contractor authorizes to take action related to government information.
- (d) *Collecting Information*. Contractor must gather and maintain government information only to the minimum extent necessary to accomplish the work.
- (e) *Rights, Disclosure and Use*. Except as otherwise expressly provided in this solicitation, Contractor agrees NOT to either (1) use or disclose government information, or (2) retain government information after termination or expiration of this contract. Contractor acquires no rights in any government information except the limited

rights to use, disclose and retain the government information in accordance with the terms of this solicitation. To the extent reasonably necessary to perform the work, Contractor may: (i) use (including access, process, transmit, and store) and maintain the government information itself; and (ii) disclose government information to persons having a need-to-know (e.g., subcontractors). Before disclosing government information to a subcontractor or third party, Contractor shall give PEBA detailed written notice of both the reason for disclosure and the identity and location of the recipient. The notice shall be provided no later than fifteen (15) business days in advance of the disclosure.

(f) *Return*. Notwithstanding PEBA's failure to perform or the pendency of a dispute, Contractor agrees to promptly deliver to PEBA (or destroy, at PEBA's option) all government information in its possession as and upon written request of PEBA (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, if included, entitled Information Use and Disclosure – Standards.

(h) *Actions Following Unintended 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 two business days after discovery, Contractor shall notify PEBA of the compromise or improper use, including a description of the circumstances of the use or compromise. As soon as practicable after discovery, Contractor shall undertake a thorough forensic investigation of any compromise or improper use and provide PEBA all information necessary to enable PEBA to fully understand the nature and extent of the compromise or improper use. With regard to any compromise or improper use of government information, Contractor shall: (1) provide any notification to third parties legally required to be provided such notice by Contractor, and if not (e.g., if legally required of PEBA), Contractor shall reimburse PEBA for the cost of providing such notifications; (2) pay all costs and expenses for at least two years of identity theft monitoring services (including without limitation, credit monitoring) and identity theft restoration services for any such affected individuals receiving notice where such services are appropriate given the circumstances of the incident and the nature of the information compromised; (3) undertake any other measures that are customary and reasonable for an entity to take when experiencing a similar disclosure, (4) pay any related fines or penalties imposed on PEBA, and (5) reimburse PEBA all costs reasonably incurred for communications and public relations services involved in responding to the compromise or improper use. Notwithstanding any other provision, contractor's obligations pursuant to this item (h) are without limitation.

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

7.41 INFORMATION USE AND DISCLOSURE – STANDARDS (FEB 2015): To the extent applicable:

(a) Breach of security of state agency data; notification; rights and remedies of injured parties; penalties; notification of Consumer Protection Division, S.C. Code Ann. § 1-11-490.

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

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

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

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

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

7.43 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.

7.44 PRICE ADJUSTMENT - LIMITED: Dental Plus premiums shall not be increased during the first two (2) years of the term of the contract (1/1/2020-12/31/2021). Upon approval of the Procurement Officer, Dental Plus premiums may be adjusted for years three/four (1/1/2022-12/31/2023) and/or years five/six (1/1/2024-12/31/2025) of the term of the contract. Any request for a price increase must be received by the Procurement Officer by January 15, 2021 for years three/four and by January 15, 2023 for years five/six and must be accompanied by sufficient documentation to justify the increase. A price increase must be executed as a change order.

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

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

(a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. Section 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with Contractor which exceeds \$100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the State finds that such price was increased because you furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between parties. (b) Records Retention. You shall maintain your records for three years from the date of final payment, or longer if requested by the Chief

Procurement Officer. The State may audit your records at reasonable times and places. As used in this subparagraph (b), the term “records” means any books or records that relate to cost or pricing data submitted pursuant to this clause. In addition to the obligation stated in this subparagraph (b), you shall retain all records and allow any audits provided for by 11-35-2220(2). (c) Inspection. At reasonable times, the State may inspect any part of your place of business which is related to performance of the work. (d) Instructions Certification. When you submit data pursuant to subparagraph (a), you shall (1) do so in accordance with the instructions appearing in Table 15-2 of 48 C.F.R. Section 15.408 (2004) (adapted as necessary for the state context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR Section 15.406-2(a) (adapted as necessary for the State context). (e) Subcontracts. You shall include the above text of this clause in all of your subcontracts. (f) Nothing in this clause limits any other rights of the state.

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

7.48 RESTRICTIONS ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES (FEB 2015):

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

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

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

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

7.49 SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE – REQUIRED:

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

7.50 SERVICE PROVIDER SECURITY REPRESENTATION (FEB 2015): The following obligations are subordinate to any other contract clause to the extent the other clause specifically provides for enhanced safeguarding of government information, applicable information systems, or applicable organizations. Offeror (i) warrants that the work will be performed, and any applicable information system (as defined in the clause titled “Information Security - Definitions”) will be established and maintained in substantial conformity with the

information provided in Offeror's Response to SPSAQ; (ii) agrees to provide PEBA with prompt notice of any material variation in operations from that reflected in the Response to SPSAQ; and (iii) agrees to comply with all other obligations involving either information security or information use and disclosure imposed by the contract, notwithstanding any inconsistent statement in Offeror's Response to SPSAQ. To the extent Offeror's Response to SPSAQ does not conform to any other contractual requirements, PEBA's lack of objection does not constitute a waiver.

7.51 TERM OF CONTRACT - EFFECTIVE DATE:

Maximum Contract Term: January 1, 2020 through December 31, 2025.

Initial Contract Term: January 1, 2020 through December 31, 2023.

These dates are estimates only. The effective date of this contract is the first day of the Contract Term as specified on the final statement of award. Regardless, this contract expires no later than the last date stated on the final statement of award.

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

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

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

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

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

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

- (i) contract prices for supplies or services accepted under the contract;
- (ii) costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services;
- (iii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c)(ii) of this paragraph;
- (iv) any other reasonable costs that have resulted from the termination. The total sum to be paid the Contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.
- (d) Contractor must demonstrate any costs claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph using its standard record keeping system, provided such system is consistent with any applicable Generally Accepted Accounting Principles.
- (5) Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the state's right to require the termination of a subcontract, or (ii) increase the obligation of the state beyond what it would have been if the subcontract had contained an appropriate clause.

PART 8

ATTACHMENTS TO SOLICITATION

- Attachment 1 — Important Tax Notice – Nonresidents Only
- Attachment 2 — Offeror's Checklist
- Attachment 3 — Service Provider Security Assessment Questionnaire
- Attachment 4 — Minority Participation Form
- Attachment 5 — Business Associate Agreement
- Attachment 6 — Fixed Fee and Dental Premiums

Attachment 1
IMPORTANT TAX NOTICE - NONRESIDENTS ONLY

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

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

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

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

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



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

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

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

1. Name of Nonresident Taxpayer: _____
2. Trade Name, if applicable (Doing Business As):

3. Mailing Address: _____
4. Federal Identification Number: _____
5. _____ Hiring or Contracting with:
 Name: _____
 Address: _____
- _____ Receiving Rentals or Royalties From:
 Name: _____
 Address: _____
- _____ Beneficiary of Trusts and Estates:
 Name: _____
 Address: _____
6. I hereby certify that the above named nonresident taxpayer is currently registered with (check the appropriate box):
 The South Carolina Secretary of State or
 The South Carolina Department of Revenue
 Date of Registration: _____

7. I understand that by this registration, the above named nonresident taxpayer has agreed to be subject to the jurisdiction of the South Carolina Department of Revenue and the courts of South Carolina to determine its South Carolina tax liability, including estimated taxes, together with any related interest and penalties.
8. I understand the South Carolina Department of Revenue may revoke the withholding exemption granted under Code Sections 12-8-540 (rentals), 12-8-550 (temporarily doing business or professional services in South Carolina), and 12-8-570 (distributions to nonresident beneficiary by trusts or estates) at any time it determines that the above named nonresident taxpayer is not cooperating with the Department in the determination of its correct South Carolina tax liability.

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

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

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

If Corporate officer state title: _____

 (Name - Please Print)

Attachment 2
OFFEROR'S CHECKLIST
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 QUESTION & ANSWER PERIOD, RAISE YOUR QUESTIONS AS A PART OF THAT PROCESS!

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 3

Service Provider Security Assessment Questionnaire

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

Access Control

1. Describe your policies and procedures that ensure access to government information is limited to only those employees and contractors who require access to perform your proposed services.
2. What safeguards and practices do you have in place to vet your employees and contractors who will have access to government information?
3. Describe safeguards that are in place to prevent unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access or disclosure of government information.

Data Protection and Disposal

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

Third Party Management

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

Human Resources

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

Audit and Compliance

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

HIPAA Compliance

11. What was the last date of your last HIPAA risk assessment for privacy and security? Who conducted the assessment?
12. Does your company have any policies related specifically to HIPAA? If so please provide more details on the name, date of last update, and general information about the policy.
13. Please provide the last three dates that HIPAA training was provided to staff. Describe the training.
14. Have executive officers been trained on HIPAA?
15. Do you have a dedicated HIPAA Compliance officer and/or department? If so, please describe the department and provide contact information for that department.
16. Do you have a dedicated Security Officer and Privacy Officer? If so please describe who they report to and provide basic information about their job responsibilities and roles.
17. To the best of your knowledge, is your company/entity HIPAA compliant? If not, please provide information explaining why not.

Physical Security

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

Detection and Prevention

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

Incident Response

- 22. Describe your incident response policies and practices.
- 23. Have you had any breaches in the last 3 years which involve more than 500 records? If yes, please provide details. Have you had paid any regulatory fines related to the loss of Personal Health Information and/or Personally Identifiable Information in the last three years? If yes, please describe.

Security Requirements and General Information

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

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

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

By: _____
(authorized signature)

Its: _____
(printed name of person signing above)

(title of person signing above)

Date: _____

Attachment 4
Minority Participation

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

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

If so, please list the certifying governmental entity:

Will any of the work under this contract be performed by a SC certified Minority Business as a subcontractor?

Yes No

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

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

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

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

Traditional minority

Traditional minority, but female Women (Caucasian females)

Hispanic minorities

DOT referral (Traditional minority) DOT referral (Caucasian female)

Temporary certification

SBA 8 (a) certification referral

Other minorities (Native American, Asian, etc.)

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

For a list of certified minority firms, please consult the Minority Business Directory, which is available at the following URL: <http://osmba.sc.gov/index.html>

Attachment 5

Business Associate Agreement

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

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

1. DEFINITIONS

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

- (m) “Required By Law” shall have the same meaning as the term “Required By Law” in 45 CFR § 164.103.
- (n) “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- (o) “Security Incident” shall have the same meaning as “Security Incident” in 45 CFR § 164.304.
- (p) “Security Rule” shall mean the Security Standards and Implementation Specifications at 45 CFR Part 160 and 164, Subpart C.
- (q) “Service Agreement” shall mean the agreement between **NAME OF BUSINESS ASSOCIATE** and PEBA, whereby **NAME OF BUSINESS ASSOCIATE** performs plan administrative tasks on behalf of the benefit program described herein as Covered Entity.
- (r) “Unsecured PHI” shall have the same meaning as the term “Unsecured Protected Health Information” in 45 CFR § 164.402.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- (a) Business Associate agrees to use or disclose PHI only as permitted or required by this Agreement or as Required by Law. Business Associate is permitted to use and disclose PHI or Electronic PHI that it creates for, or receives from, Covered Entity or business associate of Covered Entity and to request PHI on behalf of Covered Entity as described in the Agreement, consistent with the HIPAA Rules. When requesting, using, or disclosing PHI, Business Associate shall restrict the request, use, or disclosure of said PHI to the minimum necessary to accomplish the intended purpose of the request, use, or disclosure.
- (b) Business Associate agrees to provide access to Covered Entity, at the request of Covered Entity, to PHI in a Designated Record Set in order to meet the requirements under 45 CFR § 164.524.
- (c) Business Associate agrees to make available PHI for amendment and incorporate any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity, within thirty (30) days of a written request by Covered Entity.
- (d) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity available to the Covered Entity or the Secretary, within thirty (30) days of a written request by the Covered Entity or the Secretary, for the purpose of permitting the Secretary to determine Covered Entity’s compliance with the HIPAA Rules.
- (e) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528 and to make available to Covered Entity, within thirty (30) days of a written request by Covered Entity, the information required to provide such an accounting to an individual. Business Associate will comply with mandates regarding individuals’ rights under the HITECH Act, including rights to access and accounting of disclosures. Such information shall be made available in an electronic format where directed by Covered Entity. In addition, Business Associate shall include, within its accounting, disclosures for payment and health care operations purposes where such recording or accounting is required by the HITECH Act and as of the effective date for this provision of the HITECH Act. Covered Entity shall provide any additional information to the extent required by the HITECH Act and any accompanying regulations.

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

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

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

(i) Business Associate agrees to notify Covered Entity within two business days of becoming aware of any use or disclosure of PHI not provided for by the Agreement or of any security incident resulting in the successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system, or resulting in any "Breach" of "Unsecured Protected Health Information," as required by 45 CFR 164.410.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. OBLIGATIONS OF COVERED ENTITY

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

5. PERMISSIBLE REQUESTS BY COVERED ENTITY

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

6. TERM AND TERMINATION

(a) Term.

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

(b) Termination for Cause.

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

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

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

(c) Effect of Termination.

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

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

7. MISCELLANEOUS

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

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

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

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

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

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

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

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

NAME OF BUSINESS ASSOCIATE

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 6
Fixed Fee and Dental Premiums**

ADMINISTRATIVE FEE

**Part I: THIRD PARTY CLAIMS ADMINISTRATION
FOR GROUP DENTAL PLANS
OF THE STATE OF SOUTH CAROLINA**

PER
ENROLLED SUBSCRIBER
PER MONTH

FIXED ADMINISTRATIVE FEE: _____

**ADMINISTRATIVE FEE IS TO BE GUARANTEED FOR THE SIX-YEAR TERM OF THE CONTRACT,
JANUARY 1, 2020 – DECEMBER 31, 2025.**

Part II: DENTAL PLUS PLAN PREMIUMS

| | (1) MONTHLY PREMIUMS | | (2) WEIGHTED ENROLLMENT | | | (3) (1) x (2) WEIGHTED MONTHLY PREMIUM |
|----------------------------------|----------------------------|---|-------------------------------|---|----|--|
| TIER | | | | | | |
| SUBSCRIBER ONLY | _____ | X | 0.5653 | = | \$ | _____ |
| SUBSCRIBER /SPOUSE | _____ | X | 0.1846 | = | \$ | _____ |
| SUBSCRIBER/ CHILD(REN) | _____ | X | 0.1217 | = | \$ | _____ |
| FULL FAMILY | _____ | X | 0.1278 | | | _____ |
| FORMER SPOUSE | _____ | X | 0.0006 | | | _____ |
| COMPOSITE MONTHLY PREMIUM | | | | | \$ | |

PROPOSING COMPANY: _____

Dental Plus Premiums are to be guaranteed for the first two years of the contract (January 2020 – December 2021). Contribution rates for years three and four of the contract (January 2022 – December 2023) and for years five and six of the contract (January 2024 – December 2025) may be increased by an amount no greater than the Consumer Price Index (CPI), All Urban Consumers (CPI-U) percentage for “Dental Services” for the most recent 24 month period ending June 30, 2021 (Year 2) and June 20, 2023 (Year 4).