

	<b>State of South Carolina</b> <b>South Carolina Public Employee Benefit Authority</b> <b>Request For Proposal</b>	Solicitation Number: PEBA0282019 Date Issued: 01/03/2020 Procurement Officer: Georgia Gillens, CPPO, CPPB Phone: 803.734.0010 Email Address: <a href="mailto:GGillens@peba.sc.gov">GGillens@peba.sc.gov</a>

DESCRIPTION: **Pharmacy Benefits Management Services**

SUBMIT OFFER BY (Opening Date/Time): **02/27/2020 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:

<b>MAILING ADDRESS:</b> South Carolina Public Employee Benefit Authority P.O. Box 11960 Columbia, S.C. 29211-1960 Attention: Georgia Gillens, CPPO, CPPB	<b>PHYSICAL ADDRESS:</b> South Carolina Public Employee Benefit Authority 202 Arbor Lake Drive Columbia, S.C. 29223 Attention: Georgia Gillens, CPPO, CPPB
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<b>AWARD &amp; AMENDMENTS</b>	Award will be posted on <b>03/20/2020</b> . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <a href="https://procurement.sc.gov/vendor/contract-ops/other-solicitations/peba">https://procurement.sc.gov/vendor/contract-ops/other-solicitations/peba</a>
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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.")

<b>NAME OF OFFEROR</b>  <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.
<b>AUTHORIZED SIGNATURE</b>  <small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small>		
<b>TITLE</b>  <small>(Business title of person signing above)</small>		<b>STATE VENDOR NO.</b>  <small>(Register to obtain S.C. Vendor No. at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a>)</small>
<b>PRINTED NAME</b>  <small>(Printed name of person signing above)</small>	<b>DATE SIGNED</b>	<b>STATE OF INCORPORATION</b>  <small>(If you are a corporation, identify the state of incorporation.)</small>

<b>OFFEROR'S TYPE OF ENTITY: (Check one)</b> <span style="float: right;"><small>(See "Signing Your Offer" provision.)</small></span>		
<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)**

<b>HOME OFFICE ADDRESS</b> (Address for offeror's home office / principal place of business)	<b>NOTICE ADDRESS</b> (Address to which all procurement and contract related notices should be sent.)  <hr/> Area Code - Number - Extension                      Facsimile <hr/> Email Address
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<b>PAYMENT ADDRESS</b> (Address to which payments will be sent.)  <hr/> ___ Payment Address same as Home Office Address ___ Payment Address same as Notice Address <b>(check only one)</b>	<b>ORDER ADDRESS</b> (Address to which purchase orders will be sent)  <hr/> ___ Order Address same as Home Office Address ___ Order Address same as Notice Address <b>(check only one)</b>
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**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

<b>DISCOUNT FOR PROMPT PAYMENT</b> (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 PEBA0282019

**PHARMACY BENEFITS MANAGEMENT SERVICES  
SCHEDULE OF KEY DATES IN THE PROPOSAL PROCESS**

**All dates subject to change**

1.	Distribution of the Request for Proposal	01/03/2020
2.	Questions on the Request for Proposal and Claims Data (requires NDA)	01/23/2020
3.	(a) Pre-Proposal Conference; (b) Final Deadline for Submission of All Questions; and, (c) Final Deadline for Submission of the Non-Disclosure Agreement (If Applicable)	01/30/2020
5.	State’s Written Responses to Questions (tentative)	02/06/2020
6.	Submission and Opening of Proposals (11:00 a.m.)	02/27/2020
7.	Intent to Award Posting Date (tentative)	03/20/2020
8.	Intent to Award Becomes Official (tentative)	03/31/2020
9.	Implementation Plan Due	04/30/2020
10.	Live Test Demonstration	08/31/2020
11.	Contract Performance	01/01/2021

**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.

Brand Prescription Drug means a prescription drug that has a Medispan multisource status of “N”, “M”, or “O” as of the dispense date.

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.

Generic Prescription Drug means a prescription drug that has a Medispan multisource status of “Y” as of the dispense date.

Locally-Owned Pharmacy means a privately-owned pharmacy doing business in a retail setting in South Carolina, with its principal place of business in South Carolina, but does not include:

- a national chain pharmacy (a pharmacy doing business in states other than South Carolina and routinely known in the pharmacy industry as a national chain)
- a pharmacy included as part of a department store or grocery store
- a government-operated pharmacy
- a pharmacy affiliated with a hospital, college/university, doctor’s office, clinic or other institution whose primary business is other than pharmacy, whether publicly or privately-owned

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

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

Participant means an individual who participates in the plan, including all (a) Active employees; (b) Employees on leave of absence; (c) Retirees; (d) Survivors of deceased employees; (e) Survivors of deceased retirees; (f) COBRA participants enrolled in the Plan, (g) Former Spouse of employees or retirees and (h) any enrolled dependents of the individuals identified in (a) through (f) herein. The term Member is used interchangeably with the term Participant.

Prescription means an adjudicated or processed claim for a plan covered expense that originated with a prescription (either written or electronic) from an authorized prescriber.

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

Subcontractor means any person having a contract to perform work or render service to Contractor as a part of the Contractor's agreement arising from this solicitation.

Subscriber means an Active or Retired Employee, Surviving Child/Surviving Spouse, COBRA enrollee of an Employer or Former Spouse.

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 South Carolina Public Employee Benefit Authority (“PEBA”). PEBA 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 calendar day immediately following the seventh business day after such notice is given.

**1.5 PROPOSAL AS OFFER TO CONTRACT:** By submitting Your proposal, You are offering to enter into a contract with PEBA. 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 DEADLINE FOR SUBMISSION OF OFFER:** PEBA will receive sealed proposals until **11:00 a.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 PEBA receives these documents. Offerors mailing proposals should allow a sufficient mail delivery period to ensure timely receipt of their proposal by PEBA. 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 PEBA's mail room prior to the opening. [R. 19-445.2070(G)]

**1.12 DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE:** 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, PEBA 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.

**1.13 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:** Do not include any sales or use taxes in Your price that PEBA 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:** 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 PEBA 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 PEBA during the period beginning eighteen months prior to the Opening Date.* [R. 19-445.2165]

**1.19 PROTESTS (MAY 2019)** If you are aggrieved in connection with the solicitation or award of the contract, you may be entitled to protest, but only as provided in Section 11-35-4210. To protest a solicitation, you must submit a protest within fifteen days of the date the applicable solicitation document is issued. To protest an award, you must (i) submit notice of your intent to protest within seven business days of the date the award notice is posted, and (ii) submit your actual protest within fifteen days of the date the award notice is posted. Days are calculated as provided in Section 11-35-310(13). Both protests and notices of intent to protest must be in writing and must be received by the appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". The grounds of the protest and the relief requested must be set forth with enough particularity to give notice of the issues to be decided. [02-2A085-2]

**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) PEBA 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 PEBA 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 PEBA's ability to enter into the relationship described herein with a selected vendor.

**1.22 REJECTION/CANCELLATION:** PEBA 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. PEBA 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. PEBA 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:** If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the PEBA 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](http://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 email 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](http://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 held at 202 Arbor Lake Drive, Columbia, South Carolina, all questions must be received by the Procurement Officer no later than **January 30, 2020, at 2:30 p.m.** 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 emailed 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 email address. Email is the preferred method for submitting questions, with "Questions: Pharmacy Benefits Management Services RFP" as the subject of the email. Submit questions in an easily copied format such as MS Word.

**Mark envelopes on questions mailed: QUESTIONS**

**Title: Pharmacy Benefits Management Services**

**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

**EMAIL ADDRESS:**

[GGillens@peba.sc.gov](mailto: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 that 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 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)]

**1.33 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.

**1.34 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.

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

**1.36 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, PEBA may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. If improper revisions are submitted during discussions, PEBA may elect to consider only your unrevised initial proposal, provided your initial offer is responsive.

PEBA may also elect to conduct negotiations as provided in Section 11-35-1530.

## **PART 2**

### **SCOPE OF PROPOSAL**

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

Commercial Plan: The Commercial Plan will provide pharmacy coverage for all non-Medicare participants in the State Health Plan, MUSC Health Plan, and all Medicare primary participants who have opted out of the Indirect Employer Group Waiver Plan with Wrap Plan (EGWP). As of December 2019, there are 421,421 participants in the Commercial Plan. Administrative services shall be based on the current prescription drug plan and shall be based on a self-funded, transparent “pass-through” financial pricing arrangement. Under this arrangement, PEBA will receive the guaranteed manufacturer payment amounts as proposed by the Contractor in response to this Request for Proposal, in addition to all monies from pharmaceutical manufacturers that are described as revenue sources by the Contractor and are attributable to the utilization of PEBA’s pharmacy benefit program. The Commercial Plan consists of:

- State Health Plan – Standard Plan and Medicare Supplement Plan. Both the Standard Plan and Medicare Supplement Plan are grandfathered Affordable Care Act (ACA)-compliant plans. The Plans’ prescription drug benefit operates as a “Drug Card,” with the drug program carved out from the major medical provisions of the Plans. Copayments, for the 2020 Plan Year, are as follows: Tier 1 (generic drugs), \$9 copayment per prescription retail (30-day supply); \$22 copayment per prescription mail order (63 to 90-day supply); Tier 2 (Preferred brand drugs), \$42 copayment per prescription retail (30-day supply); \$105 copayment per prescription mail order (63 to 90-day supply); and, Tier 3 (Non-preferred brand drugs) \$70 copayment per prescription retail (30-day supply); \$175 copayment per prescription mail order (63 to 90-day supply). There is a “lesser of three” policy in place, meaning the patient pays the lesser of the copayment, the pharmacy’s Usual and Customary charge, or the calculated allowance. There is no annual deductible for prescription drugs, and there is a \$3,000 per person annual copayment maximum under this program. There is also a pay-the-difference policy in place for the Commercial Plan in which the benefit payable for a brand drug with a generic equivalent is limited to what is payable for the generic; any pay-the-difference amount is not considered in calculating the annual copayment maximum. Application of clinical rules are required for drugs in certain treatment categories under certain conditions.
- State Health Plan — Savings Plan. Prescription drugs are integrated with the medical benefit in the Savings Plan. The Savings Plan is a grandfathered, ACA-compliant plan. Savings Plan participants pay 100 percent of the allowance until the Savings Plan deductible and coinsurance maximum are met. The PBM’s role with this Plan is to calculate the allowance at the point of sale and inform the pharmacy, which would collect the



full allowance from the patient. The PBM transmits, in real time, the allowance to the Plan's medical claims administrator, currently BlueCross BlueShield of South Carolina, for application of deductible and coinsurance credit. Application of clinical rules are required for drugs in certain treatment categories under certain conditions.

- **MUSC Health Plan.** The MUSC Health Plan includes only active employees working at the Medical University of South Carolina (MUSC) and the Medical University Hospital Authority (MUHA) and its owned hospitals, and the active employees' covered dependents. This plan is a non-grandfathered, ACA-compliant plan with inclusion of all covered preventive pharmacy services as mandated by the ACA, and includes the federally-defined MOOP (Maximum Out-of-Pocket) for participants, requiring coordination with the medical claims administrator to accumulate the MOOP in real time. The Plan's prescription drug benefit operates as a "Drug Card," with the drug program carved out from the major medical provisions of the Plans. Copayments, for the 2020 Plan Year, are as follows: Tier 1 (generic drugs), \$9 copayment per prescription retail (30-day supply); \$22 copayment per prescription mail order (63 to 90-day supply); Tier 2 (Preferred brand drugs), \$42 copayment per prescription retail (30-day supply); \$105 copayment per prescription mail order (63 to 90-day supply); and, Tier 3 (Non-preferred brand drugs) \$70 copayment per prescription retail (30-day supply); \$175 copayment per prescription mail order (63 to 90-day supply). There is a "lesser of three" policy in place, meaning the patient pays the lesser of the copayment, the pharmacy's Usual and Customary charge or the calculated allowance. There is no annual deductible for prescription drugs, and there is a \$3,000 per person annual copayment maximum under this program. There is a pay-the-difference policy in place for the Commercial Plan in which the benefit payable for a brand drug with a generic equivalent is limited to what is payable for the generic; any pay-the-difference amount is not considered in calculating the annual copayment maximum. Participants Application of clinical rules are required for drugs in certain treatment categories under certain conditions. Members filling a prescription drug at an MUSC-affiliated pharmacy receive a discounted copay that is applied at point-of-sale and is not reflected in the amounts adjudicated by the Contractor. PEBA will provide the Contractor with the complete plan of covered benefits no later than October 1 prior to the effective plan year. The claims administrator for this plan currently is BlueCross BlueShield of South Carolina.

**Indirect EGWP with Wrap Plan:** The Indirect EGWP with Wrap Plan (EGWP) will provide pharmacy benefits for all Medicare primary participants covered by the State Health Plan. As of December 2019, there are 90,100 participants in EGWP. Administrative services for Medicare eligible participants include the use of an Indirect Employer Group Waiver Plan to provide Standard Medicare Part D benefits and a Wrap plan that will provide coverage such that participants have access to all benefits offered to participants enrolled in the Commercial Plan. Coverage under the Wrap portion should mirror the Commercial Plan including copayment amounts, the pay-the-difference policy, and utilization management and does not apply to the EGWP portion of the Indirect EGWP with Wrap Plan. Both the Indirect EGWP and Wrap products will be self-funded, transparent pricing arrangements (as described above).

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

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

## 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 and the South Carolina Retirement Systems were incorporated into the South Carolina Public Employee Benefit Authority (PEBA).

PEBA is responsible for managing the state of South Carolina's insurance benefits program. Participating entities (all state agencies, school districts, and those eligible local governments who have chosen to participate) must offer to all their eligible employees the entire package of available state insurance benefits, and allow individual employees to refuse all or any part of the benefits package. The health, Basic 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, Basic Dental, Dental Plus, and the State Vision Plan benefits are available to retirees and survivors.

The State Health Plan (or Plan) is a self-funded health plan for active and retired employees of approximately 765 state agencies, school districts, and participating local governments. As of December 2019, there are 277,018 subscribers enrolled in the State Health Plan, with a total of 487,121 participants insured by the Plan, including subscribers, spouses, and children. Of the subscribers in the State Health Plan, 13,413 are enrolled in the Savings Plan. As of December 2019, there are 12,083 subscribers enrolled in the MUSC Health Plan, with a total of 23,402 participants insured by the Plan. Express Scripts currently serves as Pharmacy Benefits Manager for PEBA under a contract that commenced January 1, 2016, and the initial term will expire at 11:59 p.m. on December 31, 2020.

In Plan year 2018, the State Health Plan paid \$1,031,936,264 in prescription drug claims (\$819,338,409 occurred through the retail network and \$212,597,855 occurred through mail service), with another \$128,174,350 in patient liability (copayment, deductible, or coinsurance). The prescription count in Plan year 2018 was 8,358,772. In 2018, the Plan paid \$709,033,657 for retail maintenance prescriptions which is 68.7 percent of total plan expense. The 6,044,324 retail maintenance claims represent 72.3 percent of the total prescriptions.

In Plan year 2019 (paid through September 2019), the State Health Plan paid \$835,186,564 in prescription drug claims (\$647,555,565 occurred through the retail network and \$187,630,999 occurred through mail service), with another \$95,661,065 in patient liability (copayment, deductible, or coinsurance). The prescription count between January 2019 and September 2019 was 6,163,285. In 2019, the Plan paid \$565,745,903 for retail maintenance prescriptions, which is 67.7 percent of total Plan expense through September 2019. The 4,458,165 retail maintenance claims represent 72.3 percent of the total prescriptions.

In Plan year 2018, the MUSC Health Plan paid \$28,885,447 in prescription drug claims (\$24,028,742 occurred through the retail network and \$4,856,704 occurred through mail service) with another \$3,187,399 in patient liability (copayment). The prescription count in Plan year was 203,847. In Plan year 2019 (paid through September 2019), the MUSC Health Plan paid \$28,075,947 in prescription drug claims (\$21,584,911 occurred through the retail network and \$6,491,035 occurred through mail service) with another \$2,580,614 in patient liability (copayment). The prescription count between January 2019 and September 2019 was 191,852.

The following attachments are provided with this Request for Proposal:

- Attachment 3: Service Provider Security Assessment Questionnaire
- Attachment 5: Business Associate Agreement
- Attachment 6: Non-Disclosure Agreement
- Attachment 7: List of Qualified No-Pay Copay Generic Drugs

In order to obtain the confidential data listed below, which contains confidential data that is necessary to complete a Proposal in response to this Request for Proposal, each vendor must print, complete, and return Attachment 6: Non-Disclosure Agreement, to the Procurement Officer, Georgia Gillens, as soon as possible to meet the question deadline of January 23, 2020. A scanned copy with the appropriate signature, transmitted by email, is acceptable. Upon receipt and approval of an executed Non-Disclosure Agreement, vendors will receive credentials for the FTP server. Only those vendors who plan to respond to this Request for Proposal should submit the Non-Disclosure Agreement. PEBA reserves the right, in its sole determination, to withhold the confidential data listed below from any vendor who cannot demonstrate its ability to meet the minimum requirements and/or is not in the business of providing the required services.

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

- Exhibit 1: Pharmacy Disruption based on Volume
- Exhibit 2: Pharmacy Disruption based on Total Amount Paid
- Exhibit 3: Formulary Analysis
- Enrollment data will be provided in a comma delimited format. The database will consist of the following elements:
  - Unique Patient Identifier
  - Contract/Subscriber Identifier
  - Subscriber Type (Active, Retiree, Survivor, COBRA, Former Spouse)
  - Medicare status (Y, N)
  - Patient date of birth
  - Patient gender
  - Patient ZIP code
  - Patient Relationship to the Insured
  - Eligibility Start Date
  - Eligibility End Date
- Claims data will be provided in a pipe delimited format. The database will consist of the following elements:
  - Unique Patient Identifier
  - Pharmacy ID (NPI)
  - Physician ID (NPI)
  - Dispense Date
  - NDC code
  - Days of Therapy
  - Metric quantity
  - DAW Code
  - Drug type (generic, single source brand, multi-source brand)
  - Pharmacy type (retail, mail)
  - AWP as of dispense date

Both enrollment and claims data will be extracted based on claims with a dispense date between January 1, 2018, and December 31, 2019.

## **2.2 OBJECTIVE**

PEBA seeks to obtain Pharmacy Benefits Management Services for up to five (5) years. The initial term will be three (3) years with two (2) additional one (1) year renewal terms.

## **PART 3**

### **SCOPE OF WORK**

The Contractor shall provide Pharmacy Benefit Management services to PEBA, in accordance with all of the requirements outlined in this Request for Proposal (including all attachments) and the Offeror's response thereto. The Contractor shall administer, manage, and provide all goods, personnel, and services necessary to deliver to PEBA complete Pharmacy Benefit Management services in a manner consistent with state and federal laws and in a fiscally sound manner. The contract will be with the Pharmacy Benefit Manager, which shall be responsible for direct communication with PEBA on all aspects of the business.

PEBA is seeking proposals that comply with each of the requirements described in Part 3, Scope of Work, Sections A through M below. In addition, Offeror's business proposal must be provided as a fixed, all-inclusive price per member per month (PMPM) administrative fee which includes the cost of compliance with each of the Scope of Work items for (1) non-EGWP (Commercial plan) and for (2) Medicare primary (EGWP) participants. PEBA considers any proposal that provides any deviations from, or caveats to, Part 3, Scope of Work, Sections A through M, as unacceptable. Anything that any Offeror would like to modify, seek clarifications on, or any other deviation, however modest, must be presented during the question and answer phase and considered and determined by PEBA before the submission date for all proposals, so that all prospective Offerors will have a common and uniform basis upon which to submit its proposals.

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

#### **A. Pricing and Cost Containment Requirements**

1. The Contractor shall establish and maintain a comprehensive drug utilization review program that includes concurrent, prospective, and retrospective therapeutic drug monitoring with the objectives of minimizing the risk of adverse drug interactions or drug-induced illness; increasing use of drug therapies that are medically necessary and most clinically and cost effective; identifying individual prescribers and/or pharmacies that demonstrate patterns of possible misuse; and promoting cost effective drug therapies in accordance with national prescribing guidelines. The drug utilization review program shall include an opioid management program that promotes patient safety by ensuring appropriate prescribing of opioids and is compliant with both federal and state guidelines.

2. The Contractor shall provide a system of coverage reviews for selected medications, including the use of step therapy algorithms based on national prescribing guidelines that require trials on less expensive yet equally clinically effective alternatives prior to prescribing more expensive drug therapies.
3. The Contractor shall provide a closed drug formulary in conjunction with preferred drug list (PDL) that will be made available to the participant. PEBA currently uses the incumbent's National Preferred Formulary for the Commercial Plan.
4. The Contractor shall provide a Maximum Allowable Cost (MAC) pricing, with the most favorable pricing to PEBA, for generic prescription drugs that uses a MAC price list. A generic prescription drug is defined as a prescription drug that has a Medispan multisource status of "Y" as of the dispense date. This MAC price list is subject to review and modification for inclusion of generic drugs representing the greatest cost savings to the Plan based on participant's drug utilization. However, PEBA will determine such pricing for 30-day supply generic prescription drugs filled at PEBA-defined locally-owned pharmacies in conjunction with the Contractor. PEBA will collaborate with the Contractor to determine locally-owned pharmacy pricing for 30-day supply generic prescription drugs in terms of dispensing fees and an effective discount off of Average Wholesale Price (AWP) and communicate to the Contractor no less than 30 days prior to the effective date of such pricing.
5. The Contractor shall propose and implement pricing guarantees for both the Commercial and EGWP plans. Proposed pricing guarantees shall be for both the ingredient cost and dispensing fees for brand and generic prescription drugs filled at all retail, mail, and the Contractor's in-house specialty pharmacy. A brand prescription drug is defined as a prescription drug that has a Medispan multisource status of "N", "M", or "O" as of the dispense date. A prescription is defined as an adjudicated or processed claim for a plan covered expense that originated with a prescription (either written or electronic) from an authorized prescriber. Negative adjustments do not constitute a prescription. Exclusions to the pricing guarantees are as follows:
  - a. Brand and generic 30-day supply prescription drugs filled at South Carolina based, locally-owned pharmacies as defined by PEBA;
  - b. Prescription drugs paid at usual and customary price;
  - c. Veterans Administration and all Military Treatment Facility pharmacy claims;
  - d. Compound prescription drugs;
  - e. Products not-covered by PEBA;
  - f. Reversal and adjustment claims; and
  - g. Claims for which a valid AWP could not be determined.
6. The Contractor shall, on an annual basis, reconcile each element of the pricing guarantee of the cost proposal with actual results. Each element will be evaluated independently and surpluses in one pricing element may not be applied to pricing elements in deficit. The effective discount is calculated at the contractual ingredient cost/AWP and does not consider patient liability as discount. The Contractor shall reimburse PEBA the calculated financial difference between actual performance for the measure and the guaranteed performance for all components of the pricing guarantee that do not meet or exceed the guarantee. This reconciliation, including payment amounts to PEBA, shall occur no more than one hundred-eighty (180) days after the end of each Plan year.
7. The Contractor shall provide 100 percent of all pharmaceutical manufacturer rebate monies attributable to PEBA business, for both the Commercial and EGWP plans, represented by a system of Guaranteed Rebates and based on a guarantee per branded prescription filled at all retail, mail, and specialty pharmacies. Rebate guarantees per branded prescription shall include all diabetic supplies, meters, strips, lancets, syringes, and

any other current or future supplies as defined by PEBA. Negative adjustments do not constitute a prescription. Point-of-sale rebates are not permissible unless there is a change in any applicable law that would require a rebate be applied at point-of-sale. Rebates received by the Contractor, or any subcontractor, in excess of Guaranteed Rebates shall be remitted along with, and in addition to, the Guaranteed Rebates for the quarter in which the excess rebates are received. If the Contractor utilizes a subcontractor for rebate aggregation services, the cost for that subcontractor shall be included in the fixed, all-inclusive, PMPM administrative fee. Guaranteed Rebate amounts must be remitted to PEBA within ninety (90) days of the end of each quarter. Exclusions to the rebate guarantees are as follows:

- a. Generic prescription drugs defined as a prescription drug that has a Medispan multisource status of “Y” as of the dispense date;
  - b. Compound prescription drugs;
  - c. Veterans Administration and all Military Treatment Facility pharmacy claims;
  - d. Products not-covered by PEBA; and
  - e. Prescription drugs with a DAW code “5.”
8. The Contractor shall on an annual basis, perform an annual true-up to the rebate guarantee, including payment amounts, no later than one hundred-eighty (180) days after the end of each Plan year. Each element of the rebate guarantee shall be evaluated independently and surpluses in one element may not be applied to an element in deficit. All branded prescriptions with the exception of the exclusions listed in Parts 3 A.7 are considered rebateable and are therefore subject to the rebate reconciliation.
9. PEBA shall have the right to audit copies of the contract and any supporting materials between the pharmaceutical manufacturers and the Contractor. The audit will include only those portions of the pharmaceutical manufacturer agreements as necessary to determine Contractor compliance with the terms and conditions of this Contract between PEBA and the Contractor and shall include an overview of the processes for reporting data to manufacturers, accounting for rebates earned, and allocating rebates to PEBA. The audit may be conducted once annually from January through September in a mutually agreeable location as scheduled by agreement of the parties but no sooner than sixty (60) days after execution of a confidentiality agreement between PEBA, the Contractor, and other necessary parties. PEBA shall have the exclusive right to select as PEBA's auditor any entity PEBA chooses, provided that any audit of the Contractor's agreements with pharmaceutical manufacturers may be conducted only by entities that:
- a. Have demonstrable experience in conducting pharmaceutical manufacturer revenue audits;
  - b. Carry insurance for professional malpractice of at least \$2,000,000; and
  - c. Have executed a mutually agreeable confidentiality agreement with the Contractor.
10. The Contractor shall provide a transparent financial pricing arrangement in which they disclose all sources of revenues derived by relationships with pharmaceutical manufacturers, from PEBA's utilization at mail order, specialty, and retail, and all pharmaceutical manufacturer fees that offset costs associated with required clinical applications and/or services conducted by the Contractor in order to support the dispensing of certain medications. PEBA must receive all monies from pharmaceutical manufacturers that are attributable to PEBA's utilization. Fees from pharmaceutical manufacturers that are for the purpose of offsetting costs associated with required clinical applications and/or services, while required to be identified, are not required to be passed to PEBA. The items listed below shall be included within the fixed, single, all-inclusive PMPM Commercial Plan administrative fee and within the fixed, single, all-inclusive PMPM EGWP administrative fee offered in Line 1 and Line 2 respectively of Table I of Tab A-10: Financial Proposal. The Contractor shall include, at a minimum, the following services in their proposed administrative fees, whether directly provided or provided through a subcontractor.

- a. Account services and account management
- b. Data management and reporting
- c. Ad hoc reports
- d. Access to web-based reporting
- e. Customer satisfaction survey
- f. Member services and call center
- g. PEBA-specific website
- h. Toll-free number for participants
- i. Toll-free number for pharmacies
- j. Toll-free number for providers
- k. Subscriber enrollment welcome kits
- l. ID Card production and delivery (Commercial and EGWP plan participants)
- m. Complete, unabridged online network listing that includes locally-owned independent pharmacies
- n. Online formulary/preferred drug listings
- o. Participant online account access
- p. Network management
- q. Provider contracting
- r. Network management and provider contracting of locally-owned independent pharmacy network
- s. Network pharmacy audits
- t. Eligibility administration
- u. Electronic and paper claims processing
- v. Mail services claims integration
- w. Mail service program that automatically substitutes a generic for a brand alternative when prescribing physician has authorized generic substitution
- x. Specialty pharmacy claims integration
- y. Prospective specialty drug utilization review
- z. Complete end-to-end E-Prescribing connectivity including transactional activity
- aa. Complete end-to-end E-Prior Authorization connectivity including transactional activity
- bb. Point of Service (POS) messaging
- cc. Generic and customized messaging to Program participants and benefits administrators
- dd. Claims forms
- ee. Appeal determinations with customized letters
- ff. Explanation of benefits (EOB)
- gg. Coordination of Benefits (Medicare Part B, Medicaid, and Participant submitted)
- hh. Designated clinical service team
- ii. Clinical and formulary management
- jj. Clinical initiatives based on national clinical guidelines to assist a physician in optimizing patient care through the identification of potential gaps in care in a patient's treatment
- kk. Quantity Level Limit (QLL) system edits and support
- ll. Prior Authorization (PA) edits and support
- mm. Step Therapy edits and support
- nn. Duration of Therapy edits and support
- oo. Concurrent, Prospective and Retrospective Drug Utilization Reviews (DUR) that ensures appropriate utilization of drugs based on product choice, quantity dispensed, dosing, and duration of therapy
- pp. Abuse/Fraud program development and management
- qq. Evaluation of the appropriateness of controlled substances and other targeted drugs, ensuring safe and appropriate utilization; and communication to physicians via mail as necessary
- rr. Opioid management program

- ss. Rebate management/administration, including rebate aggregation services
- tt. Data processing
- uu. Systems maintenance
- vv. Electronic data transfer to PEBA, data warehouse vendor and other PEBA identified partners
- ww. HIPAA compliance
- xx. Implementation/transition assistance, as necessary
- yy. Printing and mailing costs
- zz. Corporate and other overhead
- aaa. Taxes
- bbb. Other clinical and/or administrative programs the Offeror chooses to provide in excess of the requirements of this contract
- ccc. All costs associated with the ACA real-time MOOP Accumulator
- ddd. All costs associated with infertility benefit coordination with medical benefit
- eee. All costs associated with Savings Plan benefit limit accumulator coordination
- fff. All functions required to support the State's participation in the RDS program
- ggg. All other functions required to fulfill the requirements of this Contract

11. The EGWP administrative fee quoted in Line 2 of Table I in Tab A-10: Financial Proposal shall be a composite fee for Medicare primary participants enrolled in the EGWP plan. The Contractor shall include, at a minimum, the following services in the fixed, single, all-inclusive PMPM EGWP administrative fee for participants who enroll in EGWP.

- a. Monthly cost report submission to CMS, regardless of frequency of submission selected by PEBA
- b. Paper claim submission fee for coordination of benefits for Medicare Part D enrollees
- c. Prior authorizations to categorize Part B covered drugs for exclusion from claim submission in accordance with CMS guidelines and in coordination with PEBA
- d. Storage of data for CMS audit, and participation in CMS audits, as needed
- e. Certificates of Coverage at termination of Creditable Coverage, including postage and mailing
- f. Calculation and submission annually of the final reconciliation cost report to CMS

12. The Contractor must offer a specialty pharmacy program that includes pricing and clinical applications specifically for specialty products. Pricing should include discount guarantees per product per retail and specialty channels of distribution. As part of the specialty pharmacy program, the Contractor needs to administer the specialty pharmacy network as described in Section B.7.

13. The Contractor shall administer PEBA's incentive-based generic prescription drug copay waiver program, No-Pay Copay. In this program, non-Medicare primary subscribers and spouses designated by the third party medical claims administrator, currently BlueCross BlueShield of South Carolina, shall receive generic prescription drugs for selected disease states without the payment of a copay. Disease states currently covered by the program include high blood pressure, high cholesterol, cardiovascular disease, congestive heart failure, coronary artery disease, and diabetes. Test strips and other diabetic supplies are also included in the copay waiver program. A list of products eligible for the copay waiver is included in Part 8 of this RFP. Participants qualify for the program on a quarterly basis. By completing certain activities in one quarter, they can receive certain generic drugs the next quarter. Some qualifying events are required to be completed on an annual basis. Participants need to requalify each quarter to continue receiving the copay waiver. For participants enrolled in the Savings Plan, there is no patient liability at the point of sale. The copay waiver applies at both retail and mail-order pharmacies. Enrollment data for the No-Pay Copay program will be transmitted to the Contractor on a weekly basis from the Plan's third party medical claims administrator or any successor. The Contractor is responsible for loading the eligibility files prior to the effective date of the



copay waiver so that claims will process correctly. Effective dates for the copay waiver must be visible to PEBA Customer Service staff when viewing the Contractor's system. The Contractor shall cooperate with PEBA and the Plan's third party medical claims administrator, or any successor, in the ongoing development, marketing, enhancement, and operation of this program and any new health or wellness initiatives that affect prescription drug benefits offered by PEBA. As of September 2019, there are 7,901 members enrolled in the No-Pay Copay program.

14. The Contractor shall possess the capability to administer the federally-defined member Maximum Out-of-Pocket (MOOP) in an ACA-compliant plan in real time, or at a minimum near-real time, in coordination with the State Health Plan's third party medical claims administrator, currently BlueCross BlueShield of South Carolina, or any successor. This capability shall entail transmitting to the pharmacy the correct patient copayment due, at that exact time, if the patient is a member of a plan with an applicable MOOP. This duty will require real time coordination with the third party medical claims administrator. The MUSC Health Plan is a non-grandfathered ACA-compliant plan with a MOOP currently in force, and the Contractor shall prepare as if the other State-sponsored plans may be non-grandfathered ACA-compliant effective at any time during the term of this Contract.
15. The Contractor may propose any innovative arrangements or programs that promote cost containment, quality, and efficiency in drug utilization. Costs for any such programs are to be included in the fixed administrative fee.

#### **B. Pharmacy Network Management Requirements**

1. The Contractor shall market, develop, organize, implement, operate, and maintain a network of participating pharmacies (the "Pharmacy Network" or "Network"). While PEBA understands that contracts are between the PBM and the pharmacy, the PBM must work towards maximizing participation to ensure a successful and robust network.
2. The Contractor shall contact all retail pharmacy chains, locally-owned independent pharmacies, and nursing home pharmacies operating in South Carolina and solicit their participation in the Pharmacy Network. PEBA desires the maximum participation by all willing pharmacies, whether independent or national chain, and the greatest geographical coverage for the Network within the State, including rural areas.
3. The Contractor shall extend the opportunity of Network participation to any willing retail pharmacies and pharmacy chain stores located in other states to enable State Health Plan participants who work or reside outside the state to have access to the Pharmacy Network.
4. The Contractor shall provide representatives to make personal contact with the pharmacy provider community to communicate Plan rules, benefits, changes, and claims filing procedures, and related pharmacy issues. All material distributed to providers is subject to approval by PEBA Insurance Policy and Communications Departments.
5. The Contractor shall provide mail-order and specialty pharmacy services. Any program to encourage use of the mail or specialty pharmacy shall not be implemented by the Contractor without the express approval of PEBA's Director or designee(s).
6. The Contractor shall offer a Retail Maintenance Pharmacy Network, similar in respects to the retail maintenance networks currently in place, which allows participants in the Commercial and EGWP plans options to purchase 90-day supplies of prescription drugs at local retail pharmacies for the same copayment

available through the mail order pharmacy. Participants in the Savings Plan pay the full allowed amount for prescription drugs. It is permissible to offer existing 90-day network.

7. The Contractor shall offer a Specialty Pharmacy Network for the Commercial Plan only, similar in respects to the specialty pharmacy network currently in place. The specialty pharmacy network should include the Contractor's specialty pharmacy and South Carolina locally-based independent pharmacies that have earned or are in the process of accreditation in specialty pharmacy. Participants in the Commercial Plan are required to purchase specialty medications at a specialty pharmacy network pharmacy.
8. The Contractor shall maintain and apply generally accepted medical standards and practices to determine whether prescribed drug treatments provided to participants are consistent with generally accepted criteria.
9. The Contractor shall demonstrate, on or before October 1, 2020, that the Networks are capable of commencing operation on January 1, 2021.
10. PEBA or its authorized agent shall have the right to review copies of the contract between the pharmacies and the PBM.
11. The Contractor must maintain a positive working relationship with the locally-owned pharmacy community in South Carolina and be accessible and responsive to the pharmacies regarding operational issues that may arise.
12. Contractor shall not prohibit a locally-owned pharmacy from communicating with PEBA regarding issues related to PEBA.

### **C. Claims Processing and Payment Requirements**

1. The Contractor shall process all prescription drug claims incurred by eligible participants on and after January 1, 2021, and during the entire term of the Contract, determine whether the claim is payable, and pay the claim subject to applicable Plan provisions. Provided, however, that following termination of this Contract, the Contractor shall continue for a period of twelve (12) months to process all prescription drug claims for the Plan that were incurred during the term of the Contract at no additional charge.
2. The Contractor, under the Savings Plan, shall calculate the allowance at the point of sale and inform the pharmacy, which will collect 100 percent of the allowance from the patient until the Savings Plan deductible and coinsurance maximum are met. The Contractor shall transmit, in real time, or near-real time, the allowance electronically to the Plan's third party medical claims administrator, currently BlueCross BlueShield of South Carolina, or any successor, for application of deductible credit, and if appropriate, payment of claim to the participant.
3. The Contractor shall implement plan modifications as required under the Medicare Modernization Act (MMA), also known as the Prescription Drug, Improvement, and Modernization Act of 2003 (DIMA), or for compliance with any other federal requirements.
4. The Contractor shall provide an online data link between each participating network pharmacy and the PBM that permits the pharmacist, prior to the completion of the transaction, to:
  - a. Verify patient's eligibility;
  - b. Receive the current pricing information on the prescription drug;

- c. Provide purchase approval to the participating pharmacy by means of an online system;
  - d. Conduct concurrent drug utilization reviews to identify and notify the participant of any drug treatment that is potentially harmful, unnecessary, non-covered, or requires prior authorization;
  - e. Receive information on lower cost alternatives from the preferred drug list maintained by the PBM or lower cost generic alternatives, if appropriate;
  - f. Inform the participant of all information that indicates that the prescription may be inappropriate for the individual; and
  - g. Receive any information maintained by the PBM on therapeutic contraindications or potential problems from use of the drug prescribed.
5. The Contractor shall provide the necessary claim forms that can be submitted directly to the Contractor by State Health Plan participants for processing after making a prescription drug purchase at a network pharmacy in which the pharmacist was unable to verify the participant's eligibility. The drug claim form shall provide a disclaimer statement indicating that reimbursement is not guaranteed and that the Contractor will review the claim, subject to limitations, exclusions, and other provisions of the State Health Plan. Note to Offerors: In Plan Year 2018, there were 4,139 prescriptions adjudicated through the paper claims process. In Plan Year 2019 (paid through September), there 1,668 prescriptions adjudicated through the paper claims process.
  6. The Contractor shall generate and mail a check, as required, and an explanation of benefits or denial notice for participant submitted claims and a remittance advice for provider submitted claims. The form of the Explanation of Benefits (EOB), denial notice and remittance advice are subject to PEBA approval.
  7. The Contractor shall maintain a history of all prescription drug claims paid both at retail and mail order. No less than twenty-four (24) months of claims history shall be maintained online.
  8. The Contractor shall identify areas of potential claims payment discrepancies and take corrective actions. In the case of a plan or member overpayment, refunds should be issued within thirty-one (31) days of discovery. The Contractor shall notify PEBA if participant or provider fraud is discovered and shall pursue all legal means available to recover fraudulent claim payments to a participant or a provider.
  9. The Contractor shall perform reviews such as verification of services billed and notify PEBA if covered person fraud, provider fraud or improper provider billing practices were discovered.
  10. The Contractor shall identify any instance where coordination of benefits applies and take appropriate action to recover claims payments or other costs. The Contractor shall be responsible for capturing and enforcing coordination of benefits at the point of sale, as provided by PEBA. The Contractor shall report Plan savings as a result of coordination of benefits.
  11. The Contractor shall coordinate, at a minimum daily, with the third-party medical claims administrator, currently BlueCross BlueShield of South Carolina, or any successor, in the application of payments for outpatient infertility treatment, and with any other Plan payment limits that include both medical and pharmacy claims payments. Except in isolated instances, the Pharmacy Benefits Manager processes all drug claims. The Plan pays a total lifetime maximum of \$15,000 for infertility treatment. Prescription drugs for treatment of infertility are subject to a 30 percent coinsurance payment under both the Standard Plan and Savings Plan. This expense does not apply to the \$3,000 per person prescription copayment maximum under the Standard Plan. It does apply to the Savings Plan deductible. The 70 percent plan payment for prescription drugs for infertility treatments applies to the \$15,000 maximum lifetime payment for infertility treatments. In

the Savings Plan, the Contractor shall adjudicate prescription claims and transmit them to the third party medical claims administrator, which in turn applies deductible credit.

12. The Contractor shall provide access to pharmacy and medical advisors, and pharmaceutical texts, literature, pharmacy care standards and other materials as needed for consideration and determination of claims, and for review of disputed claims or appeals of denials in whole or in part.
13. The Contractor shall provide an internal appeals process for all claim denials in accordance with Article 12 of the State Health Plan (see Article 12 of the Plan of Benefits, in PDF format, at <https://www.peba.sc.gov/assets/planofbenefits.pdf>). If any part of a claim is denied by the Contractor and the participant requests a review within six months after receiving notice of the decision from the Contractor, the Contractor must provide a first and second review of the decision. If the Contractor continues to deny any part of the claim, the participant will be able to appeal the Contractor's decision to PEBA. The Contractor will cooperate with PEBA's appeals process for disputed claims, providing personnel to supply complete, accurate, timely, and legible documentation as necessary to support the Contractor's decisions and assist PEBA in its review. The documentation shall include at a minimum: (a) the determination, which should reflect sufficient understanding of the information relevant to the claim; reference to the information submitted by the participant; analysis of why the claim is denied; and reference to the applicable Plan language, standards and determinations of the U.S. Food and Drug Administration, and utilization review and management standards established by the Contractor for the Plan; (b) all documentation submitted by the participant regarding the claim; (c) a copy of the Plan language, standards and determinations of the U.S. Food and Drug Administration, utilization review and management standards, and any other standards relied upon by the Contractor; and (d) documentation of contacts with the participant, whether via email, telephone, or letter, regarding the claim. At all times, the Contractor shall provide access to pharmacy and medical advisors for further review of disputed claims or appeals as needed by PEBA. If PEBA denies any part of a claim and the participant appeals to the courts, the Contractor will be responsible for providing independent legal counsel to represent PEBA and defend the denial. The legal representation is subject to PEBA's approval, and PEBA may at any time during the course of the Contract, in its sole discretion, for any reason or no reason at all, reject the offered counsel and require new counsel be retained on its behalf. The legal representation must include attorneys experienced in employee benefits defense or appearance before the South Carolina Administrative Law Court.

#### **D. Customer Service**

1. The Contractor shall provide dedicated customer service representatives trained on the specific features of the benefits of the Commercial and EGWP plans to respond to written and telephone inquiries from participants, providers, and employers, to answer questions, provide assistance with accessing benefits, and to resolve claims payment problems. Customer service representatives must be knowledgeable about all Plans offered by PEBA and able to assist members with questions regardless of the Plan in which they are enrolled.
2. The Contractor shall assist participants, providers, and employers via dedicated toll-free customer service telephone line(s), available during the hours of 8 a.m. to 5:30 p.m. (Eastern Standard Time) and on the same business days as PEBA. The Contractor will be required to demonstrate by September 15, 2020, that it has established and staffed telephone lines.
3. The Contractor shall provide PEBA-dedicated representatives with a manager readily available during business hours (Eastern Standard Time) and on the same business days as PEBA to take calls from PEBA's

customer service representatives and managers. The Contractor's representatives shall be capable of responding to all inquiries and be able to resolve issues of eligibility, enrollment, claims, and any other administrative matter presented to them. The Contractor shall provide an escalation process of problem resolution to PEBA customer service managers. This process shall involve Contractor management representatives who have authority to resolve more complex issues. The Contractor will be required to demonstrate that it has established and staffed telephone lines by September 15, 2020.

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.
5. The Contractor shall ensure the confidentiality of subscriber information in responding to all inquiries.

#### **E. Communications and Training**

1. The Contractor shall furnish communication information on the Prescription Drug Program to participants and benefits administrators. Provide communication information between the Contractor and Prescription Drug Program participants, benefits administrators, providers, the pharmaceutical community, and PEBA that describes the features, operation, and any changes of the Prescription Drug Program and increases awareness of the Program's benefits and changes. Communications with PEBA, Prescription Drug Program participants and benefits administrators will be undertaken to ensure that electronic data transfer, fax, telephone, and hard copy transfer of information are accurate as determined by PEBA.
2. The Contractor shall provide personalized member notification of start dates of new coverage reviews, and Plan changes, including but not limited to prescription drug tier changes and exclusions. Provide personalized member notification of prior authorization expirations and mail order pharmacy expirations. Communications should include at a minimum an initial and a reminder notification. The initial notification should be sent at least 60 days prior to the effective date of the change. The reminder notification should be sent at least 30 days prior to the effective date of the change. Member communication can include but is not limited to personalized letters or emails if the member has elected to receive electronic communication. Provide talking points to PEBA for customer service staff at least 60 days prior to the effective date of clinical rules and Plan changes. Talking points should include at a minimum information about the change, including member impact, what the change means to members and a summary of communications about the change.
3. The Contractor shall work collaboratively with PEBA's Communications Department and Insurance Policy staff to develop an annual marketing plan that includes a variety of targeted and focused marketing content and deliverables, and provide timelines for their development and updates. Marketing plans and all collateral are subject to approval by PEBA prior to actual use. A non-inclusive list of materials to Prescription Drug Program participants and benefits administrators, include, but are not limited to:
  - a. Content for a summary of Prescription Drug Program benefits that shall be provided by the Contractor to PEBA in early June, beginning in June 2020, for inclusion in PEBA's summary of benefits guide produced each year in August. Contractor is not responsible for the production of the guide.
  - b. 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.
  - c. Targeted, digital campaigns to promote Prescription Drug Program benefits, services and initiatives

that include electronic turnkey toolkits for benefits administrators (posters, flyers, postcards, email templates, social media posts, digital banners, employee newsletter article templates, etc.).

- d. Content for multiple media (e-blasts, text messaging, social media, video and traditional publications) describing the benefits and resources available through the Prescription Drug Program.
4. The Contractor shall provide at least one staff member with experience in marketing and communications. This staff member shall be assigned to the Contract. Provide personnel for bi-weekly communications meetings/conference calls at which initiatives, campaigns and progress will be discussed. Recommend specific communications plans and goals in accordance with the overall management of the Prescription Drug Program during these calls. Reporting of general and targeted metrics and status updates, as well as operational updates, will be required as well. Other meetings may be scheduled in addition bi-weekly meetings in order to meet deadlines for campaigns.
5. The Contractor shall work collaboratively with PEBA staff to develop a comprehensive communications plan to promote benefits of the Prescription Drug Program each calendar year. Contractor must proactively, at least annually, recommend marketing plans designed to meet the long-term and short-term goals. PEBA maintains final authority for determining the goals and approving the marketing plans; however, PEBA expects the Contractor to play a proactive role in managing the communications of the Prescription Drug Program.
6. All informational materials, letters, notices and marketing collateral must be cobranded with PEBA's logo and the Contractor's logo according to PEBA's identity 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. The Contractor shall develop and distribute all approved customized communications materials and items. Distribution of informational, general benefits-related and targeted marketing deliverables to active employees may be digital and provided to the employee's benefits administrator via turnkey toolkits (see E.3 above). Information specific to a participant's account shall be printed and mailed to the participant address on file unless the participant has elected a paperless delivery option. These include, but are not limited to: notification of benefits elections and changes to participants; appeal decision letters; explanations of benefits; and welcome packets, which include an identification card for all new participants. 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. The templates for all appeals letters (letters involving the approval or denial of a provider's or member's request) must be customizable and approved by PEBA's Insurance Appeals Division prior to use.
8. The Contractor shall maintain a secure, password-protected, transaction-enabled website specific to the Prescription Drug Program. At a minimum, the site must allow participants to access prescription drug ID cards, locate network pharmacies, price medications and check for clinical review requirements. Work with the third party medical claims administrator, currently BlueCross BlueShield of South Carolina, to implement single sign-on capability from My Health Toolkit website to the Contractor's website.
9. The Contractor shall provide a website that is accessible without entering a password that includes information specific to the Prescription Drug Program benefits and features. The website shall explain the benefits and value of the program and provide a current directory of all network pharmacies. Website content must be reviewed and approved by PEBA's Communications Department prior to use.

10. The Contractor shall provide a mobile app that allows participants, at a minimum, to access prescription drug ID cards, locate network pharmacies, price medications and check for clinical review requirements. Work with the third party medical claims administrator, currently BlueCross BlueShield of South Carolina, to implement single sign-on capability from My Health Toolkit website to the Contractor's mobile app.
11. The Contractor shall not conduct any mass paper or electronic mailings to participants or contact benefits administrators or other State group benefits personnel without the prior express permission of PEBA.
12. The Contractor shall provide materials and an adequate number of its personnel, upon PEBA or benefits administrators' request, to attend promotional events to promote benefits of, and to inform benefits administrators and participants of rules, updates, changes, and the features of the Prescription Drug Program, especially prior to and during the October enrollment period. During the 2018 calendar year, PEBA staff attended approximately 60 benefit fairs or events at employer locations across the state and attended approximately 50 fairs or events January through September 2019. All materials distributed to benefits administrators, participants, and eligible employees are subject to prior approval by PEBA's Communication Department.
13. The Contractor shall 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 2020. 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 Communication Department.
14. 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's Procurement Officer.
15. The Contractor shall research and compile data requested by PEBA's Communications Department for the creation of PEBA developed communication materials.
16. The Contractor must have the capability to use a member's Benefits Identification Number (BIN), that PEBA assigns and provides, to identify Prescription Drug Program members on identification cards, member letters and benefit statements.

## **F. Reporting**

1. The Contractor will be expected to submit regular reports detailing financial, participant services, and administrative data by location and by status. This data will support performance standards and associated guarantee monitoring, internal management reporting, and other benefits activities.
2. The Contractor shall be required to provide, in a format and on a basis acceptable to PEBA, standardized management reports, that shall include, at a minimum, the following reports and measures by plan option (Commercial Plan, EGWP):
  - a. Financial Performance Measures Reports including appropriate benchmarks:
    - Key prescription drug plan cost components

- Key participant demographic cost components
  - Plan savings as a result of formulary management, rebates, EGWP subsidies, clinical programs, coordination of benefits or other cost containment initiatives
- b. Utilization Reports for claims processed by:
    - Drug type (brand, generic, specialty)
    - Formulary status
    - Pharmacy type (retail, mail, specialty)
  - c. Industry trends
  - d. Operational performance:
    - Customer service call statistics
    - Web and other digital-use performance statistics
3. The Contractor shall be required to provide PEBA with access to an online query system for analysis of, at a minimum, prescription drug claims data related to:
    - a. Individual claimants (subscriber type, member type, entity type, etc.);
    - b. Prescription drug information;
    - c. Pharmacy information;
    - d. Therapeutic category;
    - e. Prescriber information;
    - f. Network information; and
    - g. Utilization.

In addition, provide an online management reporting system that offers customization, drill-down capabilities. These reports should include but not limited to:

- a. Benchmark Reports;
- b. Key Performance Metrics;
- c. Specialty Drug Reports;
- d. Utilization Reports;
- e. Billing Reports—Lag reports;
- f. Pharmacy Reports;
- g. Prescriber Reports; and
- h. Prior Authorization Reports.

Data in online query system should be available to PEBA no later than ten (10) calendar days at the end of a reporting period.

4. The Contractor shall provide, at PEBA's request, ad hoc or customized reports that cannot be generated from the online query system to analyze prescription drug claims and benefits in support of PEBA's decision-making activities.
5. The Contractor shall be required by PEBA to provide assistance, as needed, with respect to the estimated cost impact of benefit modifications.
6. The Contractor shall be required to provide to PEBA and/or its designated representative, at least bi-weekly and within ten (10) calendar days of the end of the reporting period, a detailed provider listing file that is transmitted to PEBA or its designee in a secure fashion. The file shall include, at a minimum the following information:



- a. Pharmacy NABP
  - b. Pharmacy FEIN
  - c. Pharmacy NPI
  - d. Pharmacy name
  - e. Address line 1
  - f. Address line 2
  - g. City
  - h. State
  - i. ZIP
  - j. Phone number
  - k. Network participation indicator
  - l. Chain identification (i.e. code that relates all pharmacies to a common ownership or control structure)
  - m. Locally-owned independent pharmacy indicator (as determined by PEBA)
  - n. Specialty pharmacy network indicator
  - o. Compounding pharmacy indicator (“Yes”, if the pharmacy’s primary function is to fill compound prescriptions; otherwise, “No.”)
  - p. Retail maintenance network indicator (Commercial)
  - q. Commercial retail network effective date
  - r. Commercial retail network ending date
  - s. Commercial retail maintenance network effective date
  - t. Commercial retail maintenance network ending date
  - u. Retail maintenance network indicator (EGWP)
  - v. EGWP retail network effective date
  - w. EGWP retail network ending date
  - x. EGWP retail maintenance network effective date
  - y. EGWP retail maintenance network ending date
7. The Contractor shall be required to provide to PEBA and/or its designated representative, at least bi-weekly and within ten (10) calendar days of the end of the reporting period, a detailed claims transaction file that is transmitted to PEBA or its designee in a secure fashion. The file shall include, at a minimum the following information:
- a. Claim ID
  - b. Adjustment type
  - c. Transaction type (paid or rejected)
  - d. Claim media
  - e. Carrier (Commercial/EGWP)
  - f. Plan ID (Savings, Standard, Medicare Supplement, MUSC Health Plan)
  - g. Date claim received
  - h. Date claim processed
  - i. Dispense Date
  - j. NDC code
  - k. Drug name
  - l. Metric quantity
  - m. Days supplied
  - n. Drug strength
  - o. Drug dose description
  - p. Compound Indicator
  - q. Maintenance indicator

- r. Type of drug (brand, generic, brand with generic equivalent)
- s. Drug class
- t. Specialty indicator
- u. Formulary indicator
- v. Prior authorization indicator
- w. DEA class
- x. No-Pay Copay waiver eligible prescription drug indicator (Y/N)
- y. No-Pay Copay waiver participant indicator (Y/N)
- z. Subscriber Social Security Number
- aa. Subscriber's address
- bb. Subscriber's city
- cc. Subscriber's state
- dd. Subscriber's ZIP code (5-Digit)
- ee. Cardholder ID – BIN
- ff. Patient Social Security Number
- gg. Patient name
- hh. Patient date of birth
- ii. Patient gender
- jj. Patient's relationship to the subscriber
- kk. Prescriber's Tax ID
- ll. Prescriber's NPI
- mm. DEA ID of prescribing physician or other physician identifier
- nn. Prescriber's last name
- oo. Pharmacy NABP or other pharmacy identifier
- pp. Pharmacy name
- qq. Pharmacy ZIP code
- rr. Pharmacy affiliation (chain/independent)
- ss. Pharmacy type (Retail, mail order, retail maintenance, etc.)
- tt. Cost basis
- uu. U and C amount
- vv. Dispensing fee
- ww. Patient cost share amount
- xx. AWP amount
- yy. MAC amount
- zz. Ingredient cost
- aaa. Professional fee paid
- bbb. Sales tax paid
- ccc. Plan payments
- ddd. Other coverage payments
- eee. DAW indicator
- fff. Amount charged by pharmacy
- ggg. Average Wholesale Price
- hhh. Pricing methodology (U and C, AWP, MAC)

8. The Contractor shall provide the Performance Guarantee reports that will confirm compliance or non-compliance with each of the proposed performance standards outlined below in Section I. The reports shall be submitted to PEBA's Procurement Officer within forty-five (45) days of the end of the quarter and Plan Year.

9. The Contractor shall be required to provide to PEBA and/or its designated representative within ninety (90) calendar days of the end of the performance guarantee period, any reconciliation datasets it has created for the purpose of reconciling pricing discount, dispensing fee, and rebate guarantees with PEBA. The PBM internal reconciliation file shall contain a logical link to the detailed claims transaction it transmits to PEBA and/or its designee shall be the system of record with respect to pricing discount, dispensing fee and rebate guarantee reconciliations.
  
10. The Contractor shall accept from PEBA a limited medical data set no more frequently than monthly for the purpose of applying clinical rules the Contractor has in place and to assist in utilization management initiatives. The limited medical data set will include:
  - a. Claim ID
  - b. Claim detail line ID
  - c. Reject code
  - d. Adjustment code
  - e. Enrolled health plan (Savings, Standard, Medicare Supplement, MUSC Health Plan)
  - f. Employee status – (Active, Retiree, Cobra, Survivor, Former Spouse)
  - g. Medicare indicator
  - h. Date of service
  - i. Claim received date
  - j. Paid date
  - k. Bill date
  - l. Admit date
  - m. Discharge date
  - n. Service thru date
  - o. Cardholder ID – BIN
  - p. Patient ID – A unique number for each patient
  - q. Patient first name
  - r. Patient middle initial
  - s. Patient last name
  - t. Patient date of birth
  - u. Patient gender
  - v. Patient dependent code – A unique number for each dependent
  - w. Group ID - employer group number
  - x. Provider ID
  - y. Provider NPI
  - z. Provider first name
  - aa. Provider last name
  - bb. Provider specialty
  - cc. Type of service
  - dd. Place of service
  - ee. DRG
  - ff. Revenue code
  - gg. NDC
  - hh. Units of service
  - ii. Procedure code
  - jj. Procedure code modifier

- kk. Second procedure code modifier
- ll. Third procedure code modifier
- mm. Fourth procedure code modifier
- nn. ICD 9/10 indicator
- oo. ICD 9/10 diagnosis code
- pp. Second ICD 9/10 diagnosis code
- qq. Third ICD 9/10 diagnosis code
- rr. Fourth ICD 9/10 diagnosis code
- ss. Fifth ICD 9/10 diagnosis code
- tt. Sixth ICD 9/10 diagnosis code
- uu. Seventh ICD 9/10 diagnosis code
- vv. Eighth ICD 9/10 diagnosis code
- ww. Ninth ICD 9/10 diagnosis code
- xx. Tenth ICD 9/10 diagnosis code

11. The Contractor will be expected to accept from PEBA, at least monthly, an updated list of participating locally-owned pharmacies and will use this updated list for the Contractor to apply the correct MAC pricing for 30-day generic medications.

12. The Contractor shall be required to provide to PEBA's third party medical claims administrator, currently BlueCross BlueShield of South Carolina, at least bi-weekly and within ten (10) business days of the end of the reporting period, a limited claims transaction file. The file should include at a minimum the following information:

- a. Claim ID
- b. Adjustment type
- c. Transaction type (paid or rejected)
- d. Claim media
- e. Carrier (Commercial/EGWP)
- f. Plan ID (Savings, Standard, Medicare Supplement, MUSC Health Plan)
- g. Date claim received
- h. Date claim processed
- i. Dispense Date
- j. NDC code
- k. Drug name
- l. Metric quantity
- m. Days supplied
- n. Drug strength
- o. Drug dose description
- p. Compound Indicator
- q. Maintenance indicator
- r. Type of drug (brand, generic, brand with generic equivalent)
- s. Drug class
- t. Formulary indicator
- u. Prior authorization indicator
- v. DEA class
- w. No-Pay Copay waiver eligible prescription drug indicator (Y/N)
- x. No-Pay Copay waiver participant indicator (Y/N)

- y. Subscriber Social Security Number
- z. Subscriber's address
- aa. Subscriber's city
- bb. Subscriber's state
- cc. Subscriber's ZIP code (5-Digit)
- dd. Cardholder ID - BIN
- ee. Patient Social Security Number
- ff. Patient name
- gg. Patient date of birth
- hh. Patient gender
- ii. Patient's relationship to the subscriber
- jj. Prescriber's Tax ID
- kk. Prescriber's NPI
- ll. DEA ID of prescribing physician or other physician identifier
- mm. Prescriber's last name
- nn. Pharmacy NABP or other pharmacy identifier
- oo. Pharmacy name
- pp. Pharmacy ZIP code
- qq. Pharmacy affiliation (chain/independent)
- rr. Pharmacy type (Retail, mail order, retail maintenance, etc.)
- ss. DAW indicator
- tt. Plan payments
- uu. Patient cost share amount

13. The Contractor must support key based SFTP for all data transfers, unless otherwise pre-approved by PEBA.

### **G. Indirect EGWP with Wrap Requirements**

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

1. The Contractor shall, at a minimum, provide all administrative services and clinical programs required by CMS and other federal entities. The Contractor shall utilize all cost-management tools permissible by, and in accordance with, CMS guidelines under the EGWP plan.
2. The Contractor shall establish and maintain a CMS-approved Medicare Part D formulary and P&T Committee support for the Medicare Part D formulary. The Contractor shall also establish and maintain a list of Wrap drugs and establish a process to automatically allow coverage of non-Medicare Part D drugs covered on the Wrap list in accordance with the Commercial plan.
3. The Contractor shall collect and pass through all federal subsidies, including but not limited to the risk-adjusted direct per member per month subsidy, federal reinsurance payments for catastrophic coverage, Low Income Cost Sharing subsidies (LICS), Low Income Premium Subsidies (LIPS) and Coverage Gap Discount Program (CGDP) to the Plan in accordance to a published, agreed upon schedule. PEBA acknowledges and agrees that the schedule may be subject to change and the timing of payments is at the discretion of CMS; payment delays on the part of CMS will result in payment delays to the Contractor and PEBA. In such cases, the Contractor will have no liability.

4. The Contractor will provide PEBA the CMS Monthly Membership Report (MMR) and Plan Payment Report (PPR) file as subsidy payments are pass through to PEBA.
5. The Contractor shall be responsible for the management of the low-income premium subsidy refunds to beneficiaries.
6. The Contractor shall provide maintenance and support of the CMS Prescription Drug Event (PDE) process.
7. The Contractor shall provide PEBA with files in an agreed upon format containing the submitted Prescription Drug Event (PDE) data within five (5) business days of submission to CMS and subsequent PDE data associated with actual subsidies received.
8. Upon receipt of notification from CMS regarding a participant's decision to opt out prior to their initial enrollment in EGWP or disenrollment during the Medicare Open Enrollment period, the Contractor shall notify PEBA of the action and send a letter informing the participant about his decision to opt out or disenroll from the Plan. A member may re-enroll in EGWP at any time.
9. The Contractor shall track participant True-Out-of-Pocket expenses (TrOOP) in accordance with CMS requirements for the enhanced PDP, including delivery or required reporting and data feeds to communicate TrOOP balances to participants. The Contractor shall also track and supply a participant's Maximum-Out-of-Pocket (MOOP) to all drugs obtained by the member, included Part D and Wrap drugs.
10. The Contractor shall cooperate with CMS audit requests in accordance with CMS regulations.
11. The Contractor shall provide customer service support, including but not limited to open enrollment services, for the State's Medicare primary participants who are enrolled in EGWP. The customer service support should be provided by the same customer service representatives that support the non-Medicare primary participants.
12. The Contractor shall produce and distribute participant identification cards for those participants enrolled in EGWP. The card shall contain each participant's identification number in accordance with CMS guidelines and with final approval from PEBA.
13. The Contractor shall develop and implement, in conjunction with PEBA and its designees, a comprehensive communication and participant education campaign to assure maximum participation in EGWP.
14. The Contractor shall develop CMS required Covered Retiree communication templates, customer service scripting, and other communication tools. The Contractor will be responsible for submission of the materials to CMS for review, in accordance with applicable guidelines and waivers. The Contractor shall distribute such communications to eligible participants and shall also provide standard web site development and maintenance consistent with CMS regulations.

#### **H. Retiree Drug Subsidy Requirements**

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

2. PEBA acknowledges that it is required to submit an application for the Subsidy to CMS on an annual basis. The Contractor's application assistance shall include, at a minimum, the following:
  - a. Reviewing the Retiree Drug Subsidy Plan Sponsor application upon its release by CMS and providing guidance and responsibility determination between the Contractor and PEBA for its completion;
  - b. Providing guidance and support to PEBA concerning appropriate language for use in the application;
  - c. Providing the appropriate claims information or other information required by the application; and
  - d. Providing a template work plan which will include installation and implementation guidelines.
3. CMS requires Plan Sponsors to submit Qualifying Covered Retiree eligibility updates on a monthly basis to keep an accurate account of Subsidy-eligible participant. Upon PEBA's request, the Contractor shall perform the following eligibility and CMS interface functions:
  - a. The Contractor shall prepare the Medicare Part D Subsidy billing package, which shall contain both summary and detailed per retiree information for the Medicare Part D Subsidy. The Contractor shall calculate the allowable gross costs and associated Subsidy amount (net of any rebates and annual financial guarantees paid by the Contractor to PEBA), and provide the information to PEBA via CMS upload for approval and submission to CMS. In addition, the Contractor shall provide PEBA with a file in an agreed upon format containing the per participant costs associated with each cost report.
  - b. PEBA has entered into and uses a VDSA with CMS. The Contractor shall offer PEBA the option of a monthly, quarterly, or interim annual billing cycle (assuming CMS continues to allow these options). PEBA shall advise the Contractor at the time of the application, if it wishes to receive payments from CMS on a monthly, quarterly, or interim annual basis so that the Contractor may prepare submissions accordingly. The monthly and quarterly options shall utilize estimated rebates to calculate the Subsidy amount. As estimated rebates shall be utilized for monthly, quarterly, and interim annual Subsidy filings, the Contractor shall calculate a rebate and annual guarantees deemed to be price concession "true up" to adjust the Subsidy billing according to actual rebates as required by CMS no later than fifteen (15) months after the end of the Plan year. If PEBA wishes to challenge specific CMS eligibility or payment determinations, it shall be responsible for filing an appeal with CMS.
  - c. PEBA shall provide complete and accurate eligibility information, including Qualifying Covered Retiree eligibility, the Subsidy eligibility period applicable to those Retirees, and CMS verifications, to the Contractor. PEBA shall be solely responsible for actual approval and final submission of cost report data uploaded by the Contractor to CMS via the CMS Retiree Drug Subsidy ("RDS") website. The Contractor shall work with PEBA to process CMS formatted covered retiree list file during the final reconciliation process for the plan year.
4. The Contractor shall produce and distribute, via regular mail, Notice of Creditable Coverage letters (upon release of CMS guidance). The Contractor shall provide PEBA with sample of the letter for PEBA approval prior to distribution.
5. The Contractor shall provide PEBA with sample communication language to use with Medicare-eligible populations. The Contractor shall provide template communication language for the following communication materials:

- a. Newsletter articles.
  - b. Frequently Asked Questions (FAQs) and their corresponding responses to be used in communications or CSR training.
  - c. Medicare Part D specific content for benefit materials, “Welcome Kits”, and Open Enrollment campaigns.
6. In compliance with CMS and False Claims Act requirements, the Contractor shall store all of PEBA’s claims, utilization management, and eligibility data for a ten (10) year period.
  7. To the extent requested by PEBA, the Contractor shall submit to the True Out-of-Pocket (“TrOOP”) facilitator, TrOOP costs for the secondary claims of PEBA’s participants enrolled in Medicare Part D.
  8. The Contractor and PEBA shall abide by all applicable Federal and State laws and regulations and CMS guidance related to the Retiree Drug Subsidy Program.
  9. To the extent applicable to the Retiree Drug Subsidy Program, the Contractor shall make its books and other records available to the Department of Health and Human Services, the Office of Inspector General, or their authorized designees, for audits, evaluations, and inspections. PEBA, and to the extent applicable the Contractor, shall maintain the following records for ten (10) years after the expiration of the plan year in which the costs were incurred or longer in the event of (or if PEBA should know that the records are subject to) an ongoing investigation, litigation or negotiation involving civil, administrative or criminal liability: reports and working documents of the actuaries who wrote the attestation submitted in accordance with 42 CFR § 423.884(a); all documentation of costs incurred and other relevant information utilized for calculating the amount of the Subsidy payment including the underlying claims data; any other records specified in applicable CMS guidance.
  10. The Contractor shall cooperate and provide PEBA information and guidance regarding the Retiree Drug Subsidy Program.
  11. The Contractor shall provide CMS with the eligibility file with the Qualifying Covered Retirees. The Contractor shall collect from CMS and remit to PEBA the verifications of eligibility by CMS for the Qualifying Covered Retirees. The Contractor shall provide PEBA with periodic updates to the Qualifying Covered Retiree eligibility file. PEBA is responsible for claims of Eligible Persons, even if it is later determined that such claims are not eligible for the Retiree Drug Subsidy. PEBA reserves the right to determine for which enrollee populations PEBA will apply for the Subsidy. PEBA shall elect for the Contractor to submit the updates to CMS on a monthly or quarterly basis, consistent with applicable CMS directives.
  12. The Contractor, upon approval of PEBA, shall submit to CMS the initial Qualifying Covered Retiree eligibility file for calendar year 2021 and all necessary information. PEBA acknowledges that for subsequent contract years, submission may be due to CMS at least ninety (90) days before the start of the plan year.
  13. PEBA acknowledges that deviation from the requirements in this Section and CMS requirements may result in noncompliance that will affect PEBA’s eligibility for the Subsidy.



14. PEBA shall not delegate to the Contractor the responsibility for filing an actuarial equivalence attestation with CMS, in accordance with CMS directives. PEBA acknowledges that CMS has required the actuarial attestation to be submitted to CMS on the date PEBA's Subsidy application is filed with CMS.
15. PEBA shall reasonably cooperate with the Contractor in providing any information required to be submitted to CMS or necessary for any submission to CMS. PEBA acknowledges that information provided to the Contractor in connection with the Retiree Drug Subsidy Program may affect the calculation of CMS payments to PEBA and that inaccuracies to CMS in such information may result in Federal civil action and/or criminal prosecution. PEBA agrees that all of the information it shall submit to the Contractor in connection with the Retiree Drug Subsidy Program shall be accurate, complete, and truthful.

### **I. Financial Requirements**

1. Fixed administrative fees payable to Contractor
  - a. Administrative fees are specific to PEBA. The administrative fees must be quoted on a fully-loaded basis, i.e., fees must include all direct and indirect costs, general and administrative overhead, purchasing burden, underwriting, actuarial related services, subcontracting, and profit. All administrative fees must be quoted on per member per month (PMPM) basis. Two (2) administrative fees must be quoted: (a) a fixed, single, all-inclusive PMPM administrative fee for the Commercial Plan participants; and, (b) a fixed, single, all-inclusive PMPM administrative fee for EWGP participants. No other fees or charges may be added to the Contract after award, nor will the Contractor be compensated on any basis other than the applicable fully loaded per PMPM rate.
  - b. The administrative fee(s) payable to the Contractor shall be considered full and complete compensation for all goods, services and requirements to provide pharmacy benefits to PEBA.
  - c. The total dollar amount of monthly administrative fees shall be determined by PEBA based upon PEBA enrollment files.
  - d. Administrative fees shall be remitted to the Contractor monthly by the 15<sup>th</sup> 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 S.C. State Treasurer.
  - e. The Contractor shall not provide invoices for administrative fees to PEBA.
2. Claims reimbursements to Contractor
  - a. The Contractor shall accept claims reimbursements either bi-weekly or semi-monthly.
  - b. The Contractor shall provide invoices to PEBA (preferably via secured web-based access). Invoices must clearly identify the claims period and provide itemization of amounts of claims, credits, refunds and offsets by plan for all plans offered by the state (currently Standard, Savings, and MUSC). The Contractor shall record and collect overpayments in a timely manner and offset claims invoices for refunds. The layout of the invoices must be in an acceptable format approved by PEBA.
  - c. The Contractor shall provide a monthly itemized reconciliation of PEBA account activity to claims payment reimbursement, including itemized provider reimbursements, outstanding payments, refunds and other offsets.

- d. PEBA shall remit reimbursement to the Contractor within five business days following receipt of invoices. The Contractor shall not hold PEBA funds, such that interest accrues to the Contractor's benefit. All claims reimbursements shall be processed via Automated Clearing House (ACH) transaction to the financial institution provided by the Contractor. The ACH transaction will be initiated by the S.C. State Treasurer.
3. Pharmacy rebates due to PEBA
    - a. Rebates shall provide complete pass through of all revenue the Contractor receives from outside sources related to PEBA's utilization or enrollment of programs, which includes but is not limited to manufacturer payments, rebates, fees, discounts, grants, or payments of any kind that are associated with the utilization of the PEBA pharmacy benefit program.
    - b. Along with complete pass through of rebates, the Contractor must provide a guaranteed minimum dollar amount per paid brand or generic prescription that PEBA will receive for rebates. The Contractor shall pay rebates quarterly with itemization of amount by plan for all plans (Commercial and EGWP) offered by PEBA. The Commercial Plan reporting should be provided for the State Health Plan (Standard and Savings Plan) and MUSC Health Plan. There must be an annual reconciliation between the guarantee and the actual amount of rebates paid.
    - c. The Contractor shall remit quarterly pharmaceutical rebates to PEBA to be paid 90 days after the end of each quarter. Quarterly rebates shall include no less than the guaranteed per prescription totals for the quarter. The Contractor shall monitor actual rebates received per rebate earning period and remit all rebates in excess of the minimum guarantee with the next scheduled rebate payment. The Contractor shall provide reports for all rebates remitted to identify the basis of the guaranteed rebates. The Contractor shall remit to PEBA all true-up amounts to the guarantees for the Plan year no more than 180 days following the end of the Plan year. Rebates and true-ups should be forwarded to PEBA via ACH/Wire to the financial institution provided by PEBA to the Contractor.
    - d. The Contractor shall provide PEBA with projected rebate totals for each plan year prior to the beginning of each Plan year and provide updates to the estimated plan year rebates no more than every 90 days.
  4. Pharmacy pricing guarantees due to PEBA
    - a. The Contractor shall remit any amounts due which are related to the annual pricing guarantees to PEBA no later than 180 days following the end of the reporting Plan year.
    - b. The Contractor shall provide reporting demonstrating pricing guarantee outcomes to PEBA no later than 150 days following the end of the reporting Plan year. Reporting should demonstrate pricing guarantee outcomes for each pricing guarantee for both the Commercial and EGWP plans.
  5. CMS subsidies due to PEBA
    - a. The Contractor shall remit all available EGWP subsidy dollars promptly to PEBA. The Contractor shall coordinate with CMS to acquire all subsidy funds available to PEBA. The Contractor shall remit subsidy funds to PEBA within thirty (30) days of receipt. The Contractor shall not hold PEBA funds, such that interest accrues to the Contractor's benefit. All subsidies remitted should be forwarded to PEBA via ACH/Wire to the financial institution provided by PEBA to the Contractor. The Contractor shall provide reports that validate any subsidies remitted to PEBA.

- b. The Contractor shall provide PEBA with projected subsidy totals for each plan year no more than 30 days prior to the beginning of each Plan year and provide updates to the estimated Plan year subsidies no more than every 90 days.
6. The Contractor shall provide to PEBA a SOC1 Type 2 report by August 15 each year. The report should cover no less than 50 percent of the period in which the Contractor provided services to PEBA through June 30 of the same year. Contractor shall provide additional financial data as requested.

#### **J. Eligibility of Participants and Computer Support Requirements**

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

Medicare primary participants have the option of opting out of EGWP by contacting the Contractor twenty-one (21) days prior to the participant's initial enrollment in EGWP. Or, the participant can contact PEBA to disenroll during the Medicare Open Enrollment period. Participants may opt back into EGWP at any time. If they choose to opt out of EGWP, they have the option of enrolling in the Commercial Plan, enrolling in another Medicare Part D prescription drug plan outside of PEBA, or refusing prescription coverage. Also, Medicare primary subscribers and Medicare primary dependents that previously opted out of the EGWP plan, can choose to opt back into the EGWP plan.

1. PEBA shall provide the Contractor an initial electronic membership file containing only current subscribers and their dependents for purposes of establishing eligibility. The Contractor will be provided one file feed using the 834 EDI layout which will contain both Commercial and EGWP membership. PEBA can provide code to identify and split the records into EGWP and Commercial membership or the Contractor can determine if a subscriber and/or their dependent should be enrolled in the EGWP or Commercial Plan based on the information provided on the membership file such as participant type (active/non-active) and Medicare status.
2. PEBA shall provide the Contractor, on a daily basis, an electronic file of updates or changes including new enrollments, changes in a participant's enrollment, reinstatement of a participant's enrollment and termination of a participant's enrollment for purposes of verifying eligibility at the point of sale prior to dispensing an eligible participant's prescription. The Contractor shall accept, process, maintain and update eligibility information from the files provided by PEBA within 48 hours of receipt. The Contractor shall refer to PEBA, for consideration and PEBA's final decision, any questions with respect to an individual's eligibility for benefits.
3. PEBA conforms to the Commercial X12 834 data transmission through electronic data interchange. The Contractor must support key based SFTP data transfers, unless otherwise pre-approved by PEBA.
4. The Contractor must support forced TLS for all email communications with PEBA.
5. The Contractor shall provide PEBA with a daily file acknowledgement of files received and entered in the Contractor's system.
6. The Contractor shall maintain in its database occurrences of participant coverage history, as well as

participant opt out history (including effective dates, termination dates, and enrolling in another Medicare Part D prescription drug plan) sufficient to adjudicate claims, reconcile subsidy information and reconcile eligibility data with PEBA. PEBA staff shall be able to access participant history in the Contractor's system.

7. The Contractor shall provide PEBA with a monthly membership file containing only Covered participants in an active status, for comparison to PEBA's database. PEBA will accept the file in an electronic format acceptable to PEBA and PEBA's eligibility database shall be considered the system of record for any questions pertaining to eligibility of benefits.
8. The Contractor shall provide PEBA with a weekly PDP report. The report should include all transactions approved by CMS including, enrollments, disenrollments, deaths, as well as subscribers and dependents that enrolled or disenrolled in another Medicare Part D prescription plan.
9. The Contractor shall provide a secure online connection for purposes of permitting selected PEBA personnel access to make online inquiries of the Contractor's database and the ability to make real-time changes to the Contractor's records regarding a participant's eligibility. The Contractor shall provide different levels of access to the database for employees based on PEBA's specifications. Regardless of the level of access, the data for all State Health Plan and MUSC Health Plan members shall be accessible to the employee through a single sign-on. All changes by PEBA are subject to strict controls including a limited number of persons with access; use of passwords. The Contractor shall provide PEBA documentation of all direct updates by PEBA to the Contractor's database. Data integrity, security requirements, and HIPAA regulations require an encrypted connection for transfer of data. Secure online connections must support the most current best practice version of TLS for encryption, unless otherwise pre-approved by PEBA. Connections other than web connections must use other best practice encryption, such as VPN, as approved by PEBA.
10. The Contractor shall implement and document comprehensive security programs securing all data, informational, and transactional components from unauthorized access from any internal or external source including Contractor and its subcontractors, PEBA employees, third party users, or outside intruders. Contractor shall use, implement, and document reasonable, recognized, and proven appropriate security practices to make information secure. The security system must include the capability of immediate detection and documentation of any security compromise or breach. If the security of the system is compromised or breached in any way, the Contractor shall notify PEBA promptly, but not to exceed two business days following the compromise or breach. The notice shall be in writing, delivered by means establishing actual receipt (i.e. in hand, email with return receipt, etc.) to the Privacy Officer and shall include the time, nature, diagnosis (including cause), actual and potential consequences, and recommendations for corrective action of the breach or compromise. If emergency situations preclude written notice within two business days, notice may be given to the Privacy Officer by other than in writing. Written notice as required under this paragraph shall then be provided as soon as practicable under the circumstances, as agreed to by the Privacy Officer. The Contractor shall be liable to PEBA for any compromise or breach whatsoever and shall be liable for all reasonable and appropriate costs (as determined by PEBA) associated with the compromise or breach. Offerors shall fully describe the methods and means to be deployed to satisfy this requirement (Q-26 of Technical Proposal, Tab A-2j: Service Description Questionnaire). These requirements apply to all activities to be performed hereunder including but not limited to those set out in Part 3.E.8 above.
11. In order to comply with confidentiality policies and applicable laws, the Contractor shall ensure it has the ability to restrict certain subscribers from accessing contact or claim information for dependents with such an indicator on their profile. In addition, the Contractor will ensure that any mailings or communications for restricted dependents are sent to the separate address provided by PEBA. The Contractor will also ensure a

separate authorized representative be documented on restricted dependent profiles and provide that authorized representative with the necessary access to handle the affairs of restricted dependents.

12. The Contractor shall maintain encrypted database backups with such redundancy and in a manner that will eliminate disruption of service or loss of data due to system or program failures.
13. The Contractor shall maintain a disaster preparedness plan that will limit service interruption in case of emergency (force majeure) and will ensure compliance with all requirements under the Contract. At a minimum, the Contractor shall have at least one remote back up and disaster recovery site capable of fully (100 percent) restoring its processing capability within seventy-two (72) hours and all data must be captured and backed up on a continuous basis up to any service interruption. The disaster recovery plan shall include instantaneous failover and recovery without loss of data, information, or transactions. The plan must include a disaster recovery site or sites located outside the effects of a common disaster that would otherwise impact the primary site.
14. The Contractor shall maintain a business continuity plan including provisions for the periodic testing of system failover, disaster recovery, and redundant communication cutover.

#### **K. Implementation Plan (not an evaluated item)**

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's Procurement Officer not later than thirty (30) calendar days following the 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's Final Implementation Plan shall outline, in detail, all the steps necessary to begin full performance of the contract on January 1, 2021. The Final Implementation Plan shall specify expected dates of completion of all necessary tasks, how the tasks will be accomplished, the identity the person(s) responsible for each task and the personnel who may be onsite during the implementation process.
3. Tasks and schedules specific to communications and training to be included in the Offeror's implementation plan include but are not limited to:
  - Benefits at Work conference (August 2020)
  - Review content for the *Insurance Benefits Guide* (June 2020)
  - Provide content for the *Insurance Summary* (June 2020)
  - Review content for the *Benefits Advantage* (June 2020)
  - Open enrollment materials (August 31, 2020)
  - Review content for the *Benefits Administrator Manual* (October 2020)
  - Letters notifying all current members about the transition to a new Pharmacy Benefits Manager (November 1, 2020)
  - Mailing of new identification cards to current members (December 15, 2020)
  - Welcome kit, including identification cards, to be used for new members beginning January 1, 2020 (December 1, 2020)

- Forms to be used beginning January 1, 2021 (December 1, 2020)
  - Letters, including appeal decision letters, to be used beginning January 1, 2021 (December 1, 2020)
  - Onsite training for PEBA's customer service staff (December 1, 2020)
4. Upon request of PEBA, the Contractor shall accept from the incumbent Pharmacy Benefits Manager, a claims file which shall be used to transfer participants' current prior authorization and coverage review status, specialty pharmacy prescriptions and mail order prescriptions. The Contractor shall document the process for receiving a claims file to ensure each participant's current status is transferred. The Contractor shall notify participants' at least 60 days in advance of implementation of any drug tier changes, formulary exclusions, or other changes that may impact a participant's coverage beginning January 1, 2021.
  5. 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 PEBA before the date of the agreed upon time for completion), the Contractor shall pay to PEBA the amount of \$5,000 per day for each day or partial day during which the Contractor is not in compliance with the Final Implementation Plan. If, after fifteen (15) days' notice, the Contractor has failed to pay any amount due hereunder, the amount shall be withdrawn from the security.
  6. Live Test Demonstration. The Contractor shall complete no later than November 30, 2020, a live test demonstration of the processing of test claim scenarios with 100 percent accuracy. The claim scenarios (approximately 30 scenarios) shall be provided by PEBA to the contractor with sufficient detail to support the adjudication process. Production PEBA enrollment will be used for member data and the Contractor shall assume its contracted Pharmacy Networks (retail and retail maintenance). The demonstration must be performed in the presence of PEBA staff and/or designated representatives or using a mutually agreed upon electronic presentation methodology.
  7. PEBA may request the Contractor provide PEBA a dedicated manager onsite at PEBA 30 days prior to implementation and up to 90 days following implementation.

**L. Account Management and Personnel Requirements**

1. The Contractor must provide an Account Management Team which shall include, at a minimum, a designated account manager, a designated financial analyst, a dedicated operations (claims and customer service) manager, a designated registered pharmacist (clinical account manager), and a designated rebate and pricing guarantee reconciliation analyst. These five (5) distinct account personnel shall be knowledgeable about all aspects of the Pharmacy Benefits Management Program and shall be onsite during the implementation process until PEBA is satisfied that all transitional issues have been resolved. PEBA reserves the right to recall the vendor onsite in the event of ongoing problems. The account manager shall serve as the primary contact to respond to PEBA's needs, questions, and/or issues. The operations manager shall serve as primary contact for customer inquiries from PEBA customer service. In addition to the five (5) account personnel, the Contractor must provide a designated marketing/communications account personnel as defined in Section E for a total of six account personnel.
2. The Contractor's Account Management Team shall meet with PEBA as necessary, but not less than quarterly, to review financial performance and service issues and to take corrective action as directed and approved by PEBA. One of the scheduled meetings shall consist of an annual review at PEBA's office in Columbia, SC, to review and summarize financial and clinical issues regarding the claims experience and

financial performance of the Pharmacy Benefit Management program during the previous plan year. The Contractor shall also, during these meetings, assist PEBA in its ongoing review of the Prescription Drug Program, and advise PEBA to the following:

- a. Follow-up to, and status of, any agreed upon corrective action resulting from any preceding meetings;
- b. Developments in the pharmacy benefit management industry as a whole including, but not limited to, new programs, techniques, models, and the like that will reduce PEBA's cost while improving upon the participant's health and satisfaction of the benefit;
- c. Legal developments including, but not limited to, regulatory, administrative, statutory, and judicial developments relating to pharmacy benefit management. However, the Contractor must promptly notify PEBA throughout the year of any changes in the law or regulations affecting pharmacy benefit management activities.
- d. Contractor must be familiar with and fully comply with the PBM Regulation Act of 2019 in the South Carolina Code of Laws.

#### **M. Performance Standards and 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. The Contractor shall propose at a minimum, the following performance standards/measurements as defined in Tab A-9.
  - a. Average speed to answer
  - b. Call abandonment rate
  - c. Paper claims processing time
  - d. Automated claim system availability rate
  - e. Mail order dispensing accuracy rate
  - f. Financial accuracy rate
  - g. Mail order dispensing turnaround time
  - h. Eligibility transaction processing time
  - i. Timeliness of mailing ID Cards for EGWP participants
  - j. Timeliness of standard reporting package
  - k. Member access rate to a network of participating retail pharmacies
  - l. Decrease in size of participating retail pharmacy network
  - m. EGWP subsidies (timeliness and accuracy)
  - n. RDS final reconciliation (timeliness and accuracy)
  - o. RDS monthly cost reports (timeliness and accuracy)
  - p. Timeliness of Notices of Creditable and Non-Creditable Coverage

2. In addition to the proposed guarantees, Offerors must provide the following guarantees:
  - a. The Final Implementation Plan, as described in Tab-A-2k Questionnaire will be submitted to PEBA.
  - b. All guaranteed rebates are provided to PEBA no later than ninety (90) days following the quarter in which rebates are received and any rebates received by the Contractor, or any subcontractor, in excess of guaranteed amounts are provided to PEBA no later than one-hundred eighty (180) days of the end of the Plan Year. Amount at risk: 0.01 percent of the guarantee amount owed to PEBA.
  - c. All pricing guarantees owed to PEBA are provided to PEBA no later than one-hundred-eighty (180) days after the end of the Plan Year. Amount at risk: 1.0 percent of guarantee amount owed to PEBA.
  - d. After-call satisfaction survey results shall be submitted to PEBA within fifteen (15) days of the end of each quarter with a target of a minimum 95 percent overall satisfaction rate with key components identified. An assessment of \$5,000 per month, which may be paid quarterly, shall be levied against the Contractor for each month the Contractor fails to obtain a 95 percent overall satisfaction rate as liquidated damages for Contractor's failure to meet this performance standard.
  - e. A communication sent in violation of Sections 7.21 Advertising Use and Representation: Contact with State Entities or Part 3, Section E.11, Communications and Training. Amount at risk: \$1,000 per person up to a maximum of \$1 million for each violation.
  - f. Contractor shall provide written notification of plan changes to impacted members at least 60 days in advance of the effective date of the change. The Contractor will provide draft letters notifying members of the changes to PEBA at least 90 days in advance of the changes and such letters must be approved by PEBA without unreasonable delays but in no case less than 75 days in advance of such change. Amount at risk: \$5,000 per plan design change for which notification letters are not postmarked at least 60 days in advance of the change provided PEBA has complied with its notification and approval deadlines.
  - g. Contractor shall develop an annual marketing plan by February 1 of each year. The Contractor shall develop a review schedule in collaboration with PEBA to meet the February 1 deadline. The plan must be approved by PEBA ,by February 1 of each year; such approval will not be unreasonably withheld. Amount at risk: \$5,000 for failing to meet the stated deadlines.

## 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](http://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**

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

- a) Offeror must have been in the business of providing Pharmacy Benefit Management Services, including administration of a retail pharmacy network, for a minimum of five (5) years.
- b) Offeror must be currently providing Pharmacy Benefit Management Services of the type and scope outlined herein (excluding discount card programs) for a minimum of 2,500,000 covered managed lives.
- c) Offeror must be currently accredited by the Utilization Review Accreditation Commission (URAC) in pharmacy benefits management.
- d) Offeror must provide proof of an administration of a total drug spend volume (plan payments and patient co-pays and deductibles) of not less than three billion dollars (\$3,000,000,000) in calendar year 2018.
- e) Offeror must have managed, now or in the past, the prescription benefit of at least one (1) state government client or, alternatively, public sector employer, of at least 500,000 lives, (coverage more consistent with the numbers of lives the State Health Plan covers) with membership including both Medicare and non-Medicare eligible participants; and must manage the prescription benefit of at least three (3) additional employer accounts, each including at least 100,000 lives.
- f) Offeror must have filled at least five million (5,000,000) scripts annually in South Carolina in each of the last three years (2016, 2017, 2018).
- g) Offeror must be certified by CMS to administer and adjudicate an Indirect Employer Group Waiver Plan.
- h) Offeror must currently manage an Indirect EGWP with Wrap benefit of at least one (1) public sector employer of at least 30,000 lives.

**Any Offeror not meeting these requirements will not be considered for award, and therefore will not be evaluated. In its proposal, each Offeror shall respond to this section and declare whether it meets the requirement and, if so, provide detailed specifics that satisfy that requirement.**

## PART 5

### **INFORMATION FOR OFFERORS TO SUBMIT**

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

- a. Please include Offeror's name, the solicitation number, and the appropriate title on the label for hard copies and for USBs submitted in response to this RFP. (i.e. Acme Corp., PEBA0282019, Technical Proposal Original; Acme Corporation, PEBA0282019, Business Proposal Original; Acme Corporation, PEBA0282019, Copy 1 of 5, etc.)
- b. One (1) original and five (5) identical paper copies of the Offeror's Technical Proposal. Please label copies, 1 of 5, 2 of 5, etc.
- c. One (1) original marked and five (5) labeled USB flash drives containing a copy of the Offeror's Technical Proposal Response (in MS Word, MS Excel and/or PDF format where appropriate). Please label copies, 1 of 5, 2 of 5, etc.
- d. One (1) original and one (1) paper copy of the Offeror's Business Proposal.
- e. One (1) labeled USB flash drives containing a copy of the Offeror's Business Proposal.
- f. One (1) USB flash drive containing a redacted version of the Offeror's original Technical Proposal.
- g. One (1) USB flash drive containing a redacted version of the Offeror's 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 shall 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 brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. The Executive Summary shall be provided with the Offeror's Proposal. The Executive Summary should bear the name and address of the Offeror, the title of this Request for Proposal, acknowledgement of the receipt of any amendments, and a statement as to whether the Offeror (including any subcontractors) is in good standing with CMS to be able to enroll Medicare primary participants in an Indirect EGWP with Wrap plan.

**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 and Part 8 Attachments to Solicitation by declaring that the Offeror fully understands, agrees to, and will comply with all of the provisions/requirements/terms in each of these Parts. Offerors shall include this Statement of Acceptance in their Executive Summary. Please note that PEBA considers unacceptable 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.

**Mandatory Minimum Qualification:** Offerors shall certify in writing that they meet all the Mandatory Minimum Qualifications outlined in Part 4, Mandatory Minimum Qualifications. Any Offeror not meeting the Mandatory Minimum Qualifications will not be considered for award, and therefore will not be evaluated.

### 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 TECHNICAL PROPOSAL RESPONSE (Excel Document)**

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

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

For the purpose of the Offeror's Technical Proposal Response (Excel Document), please mark confidential information by including the word **CONFIDENTIAL** in bold, red type at the beginning of each confidential response.

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

##### **Tab A-1: Background and Qualifications**

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

##### **Tab A-2: Service Description Questionnaire (encompasses Tabs A-2a through Tabs A-2n)**

Offerors should answer each question in Tab A-2: Service Description Questionnaire completely in the space provided. If additional space is needed, the response can be continued in Tab A-2n: Additional Answers to Questionnaire. Continued responses should be labeled clearly with both the Section number and the corresponding question number. For example, answers carried over from Tab A-2a should read as follows: Tab A-2a, question 2. Answers carried over from Tab A-2c should read as follows: Tab A-2c question 2 and so on for each additional section.

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

##### **Tab A-3: Subcontractor Questionnaire**

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

#### **Tab A-4: Access to Network Pharmacies-Chains**

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

#### **Tab A-5: Access to Network Pharmacies - Independents**

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

#### **Tab A-6: Pharmacy Disruption based on Volume**

Offerors should complete this exhibit by indicating whether the named pharmacy is a member of the network being proposed for the Commercial Plan or EGWP (Medicare primary participants). Valid responses are either “Yes” or “No”. All other responses will be treated as a “No” response.

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

Offerors shall complete this exhibit by indicating whether the named pharmacy is a member of the network being proposed for the Commercial Plan or EGWP (Medicare primary participants). Valid responses are either “Yes” or “No”. All other responses will be treated as a “No” response.

#### **Tab A-8: Formulary Analysis**

Offerors shall submit to PEBA in MS Excel format with read/write capabilities its proposed closed drug formulary in conjunction with preferred drug list (PDL). This list must contain the NDC-11 Code, drug name, and price per metric quantity for each drug in the list. If applicable, a separate PDL shall be submitted for the formulary proposed for EGWP.

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

#### **Tab A-9: Performance Guarantees**

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

### **1. Response Documents**

Offerors shall include response documents requested in Tabs A-1, A-2 (to include A-2a through A-2n) and A-8 in the following order:

- Tab A-1: Certificates of Insurance
- Tab A-1: Financial Statements
- Tab A-1: Financial Ratings

- Tab A-2a: MAC List – Commercial Plan (Assume a dispense date of 12/1/2019 for the price per metric quantity)
- Tab A-2a: Formulary Development Criteria
- Tab A-2a: Detailed Utilization Management Program List
- Tab A-2b: Sample Pharmacy Solicitation Materials
- Tab A-2b: Sample Contract
- Tab A-2b: Sample Refill Order Form
- Tab A-2b: Patient Advisory Information
- Tab A-2b: Specialty Drug List – Commercial Plan (Assume a dispense date of 12/1/2019 for the price per metric quantity)
- Tab A-2e: Sample Communications Materials, including Plan change letters and all appeal decision letters
- Tab A-2f: Sample Standard Reporting Package
- Tab A-2g: MAC List – Indirect EGWP (Assume a dispense date of 12/1/2019 for the price per metric quantity)
- Tab A-2g: Specialty Drug List – Indirect EGWP (Assume a dispense date of 12/1/2019 for the price per metric quantity)
- Tab A-2g: EGWP Sample Communication
- Tab A-2j: Data Security
- Tab A-2j: Service Provider Security Assessment Questionnaire
- Tab A-2k: Implementation Team Organization Chart
- Tab A-2k: Implementation Plan
- Tab A-2l: Account Management Team Organization Chart
- Tab A-2l: Account Management Support
- Tab A-2l: Account Team Biographies
- Tab A-8: Preferred Drug List – Commercial Plan
- Tab A-8: Preferred Drug List – Indirect EGWP

### **5.1.5 Minority Participation Forms**

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

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

### **5.1.6 ATTACHMENTS**

Complete all attachments.

## **5.2 BUSINESS PROPOSAL**

Business Proposal to be clearly marked and submitted under separate sealed cover in accordance with the RFP instructions. See Tab A-10: Financial Proposal.

### **1. Cover Letter**

A cover letter shall be provided with the Offeror's Financial Proposal. This cover letter should bear the name and address of the Offeror, the title of this Request for Proposal, and acknowledgement of receipt of any amendments to this Request for Proposal. In addition, the cover letter should provide a list of the

additional clinical and/or administrative programs that are being offered to PEBA as a part of the Offeror's fixed, single, all-inclusive PMPM administrative fees (please see Part 3, Scope of Work, Section A, #24 (bbb) and #24(ggg)). Do not include any pricing for optional programs not included in the Offeror's fixed, single, all-inclusive PMPM administrative fee for Non-Medicare or Medicare primary participants. The following statement shall be included in the cover letter:

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

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

## **2. Offeror's Financial Proposal Response (Excel Document)**

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

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

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

### **Tab A-10: Financial Proposal**

In Tab A-10, Offerors shall provide guarantees for pricing (as a percent off of AWP utilizing AWP as reported by Medi-Span), dispensing fees (as a dollar amount per script) and rebates (as a dollar amount per prescription). In addition, Offerors shall propose fully loaded administrative fees for the administration of the non-Medicare participant benefits and the administration of Medicare primary participants. Administrative fees must be quoted on a per member per month (PMPM) basis.

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

1. Administrative fees shown in Tab A-10: Financial Proposal are specific to PEBA. Offerors MUST not submit any supplemental pricing information or documents with their proposal. The administrative fees must be quoted on a fully-loaded basis, i.e., fees must include all direct and indirect costs, general and administrative overhead, purchasing burden, underwriting, actuarial related services and profit. Two (2) administrative fees must be quoted: (a) a fixed, single, all-inclusive PMPM administrative fee for Commercial Plan participants; and, (b) a fixed, single, all-inclusive PMPM administrative fee for EGWP participants. All administrative fees must be quoted on per member per month (PMPM) basis. No other fees or charges may be added to the contract after award, nor will the Contractor be compensated on any basis other than the applicable fully loaded per PMPM rate.
2. Your offer for claims processed at retail pharmacies must provide complete "pass-through" pricing. No "spread" pricing is permitted. The Plan shall obtain the benefit of your contractual pricing with pharmacies. In the Commercial Plan, patient liability shall be calculated on "Lesser of 3" logic, meaning the lesser of the copayment, the pharmacy's Usual and Customary charge or the contractual allowance. In the EGWP Plan, because of federal regulation, patient liability shall be calculated on "Lesser of 3" logic, meaning the lesser of the copayment, the pharmacy's Usual and Customary charge, or the contractual allowance. This also applies to mail order and specialty pricing guarantees if the Offeror does not own its mail order and specialty pharmacy. If an Offeror owns its mail order and/or the specialty pharmacy, the Offeror must meet pricing guarantees for those claims but pass through of actual acquisition cost of the pharmacy is not required.
3. The drug ingredient cost guarantees may NOT include consideration for the following:
  - a. Brand and generic 30-day supply prescription drugs filled at South Carolina based, locally-owned pharmacies as defined by PEBA;
  - b. Prescription drugs paid at usual and customary price;
  - c. Veterans Administration and all Military Treatment Facility pharmacy claims;
  - d. Compound prescription drug;
  - e. Products non-covered by PEBA;
  - f. Reversal and adjustment claims;
  - g. Claims for which a valid AWP could not be determined;
  - h. Savings associated with any drug utilization review program, which includes but is not limited to, switching from brands to generics, prior authorization denials or concurrent reviews; overages/savings from meeting guarantees for other pricing terms such as rebates; and
  - i. 70 percent drug discount from pharmaceutical manufacturers for brand drugs in the coverage gap.

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



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

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

- a.) MAC at retail and mail, and
- b) Non-MAC contract rate at retail and mail (generic prescriptions in the evaluation database with a specific MAC price will have the overall generic discount assumed).

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

4. In the event there are changes in the marketplace to the baseline measure used to guarantee the ingredient costs of drugs (e.g. elimination of AWP, change in calculation of AWP, etc.), the discounts will be adjusted accordingly to provide an equivalent price. The Contractor shall provide notice to PEBA and shall provide a means to independently evaluate whether the effective equivalent to the quoted AWP discount rate has been achieved. Any change in the marketplace that would require an adjustment to the pricing would require a contract modification.
5. The guaranteed minimum AWP discount shall be applicable to only the drug-type and place of service quoted. Prescriptions for specialty drugs sent to the mail order pharmacy shall be rerouted to a specialty pharmacy to be filled by the specialty pharmacy and subject to the pricing guarantees provided for specialty drugs. Because each pricing guarantee is independent of the other pricing guarantees, any surplus in one pricing component cannot be applied to a deficit in another pricing category.
6. The guaranteed maximum average annual dispensing fee per claim that is processed at the retail pharmacies shall be based on paid claims NOT claims that are reversed, rejected, or not billed to the client.
7. The guaranteed maximum average annual dispensing fee per claim that is processed at the mail and specialty pharmacies, if any, shall be a fixed amount per paid claim.
8. Rebates for purposes of your offer must provide complete pass through of all revenue you receive from outside sources related to PEBA's utilization or enrollment of programs, which includes but is not limited to manufacturer payments, rebates, fees, discounts, grants, or payments of any kind that are associated with the utilization of PEBA's pharmacy benefit program.
9. Along with complete pass through of rebates, you must provide a guaranteed minimum dollar amount per paid brand or generic prescription that PEBA will receive for rebates. The Contractor shall pay rebates due no less frequently than quarterly. There must be an annual reconciliation between the guarantee and actual amount of rebates paid.
10. With respect to the Indirect EGWP with WRAP, all federal funds, including direct subsidy and catastrophic reinsurance, and the 70% brand discounts from drug manufacturers for claims in the coverage gap shall be passed through to the Plan.

11. Based on the information provided in this Request for Proposal, there will be no increases to quoted fees after the awarded vendor has been announced.
12. All costs that will be charged to PEBA for these services must be included on the exhibits in Tab A-10: Financial Proposal.

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

## **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 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.

- A. **Total Net Cost.** Ranking of financial proposals will be based on a simulated total net cost to PEBA, which will be calculated as the sum of the fixed, all-inclusive PMPM administrative fees and claims net of guaranteed rebates. The estimated claims cost will be based on the repayment of claims incurred during the period January 1, 2019, through December 31, 2019, using each Offeror's pricing guarantees quoted in Tab A-10 and the Offeror's submitted preferred, MAC, and specialty drug lists (the Offeror with the lowest total net cost will receive all of the evaluation points assigned to the criterion of Total Net Cost. Points will be awarded proportionally to each of the other Offerors on the basis of the following formula:  $((\text{lowest net cost amount} / \text{Offeror net cost amount}) * \text{assigned evaluation points}))$ ).
- B. **Service Description.** The information submitted in response to Part 5, Information for Offerors to Submit, Tab A-2 Service Description Questionnaire, will be used to evaluate this criterion.
  - Pricing and Cost Containment (Tab A-2a Service Description Questionnaire; Questions Q-1 through Q-31)
  - Pharmacy Network Management (Tab A-2b Service Description Questionnaire; Questions Q-1 through Q-58)
  - Claims Processing and Payment (Tab A-2c Service Description Questionnaire; Questions Q-1 through Q-25)
  - Customer Service (Tab A-2d Service Description Questionnaire; Questions Q-1 through Q-19)
  - Communications and Training (Tab A-2e Service Description Questionnaire; Questions Q-1 through Q-21)
  - Reporting (Tab A-2f Service Description Questionnaire; Question Q-1 through Q-20)
  - Indirect EGWP with Wrap Options (Tab A-2g Service Description Questionnaire; Questions Q-1 through Q-33)
  - Retiree Drug Subsidy (Tab A-2h Service Description Questionnaire; Questions Q-1 through Q-17)
  - Financial (Tab A-2i Service Description Questionnaire; Questions Q-1 through Q-7)
  - Eligibility of Participants and Computer Support (Tab A-2j Service Description Questionnaire; Questions Q-1 through Q-29)

- Implementation Program (Tab A-2k Service Description Questionnaire; Questions Q-1 through Q-10)
- Account Management and Personnel (Tab A-2l Service Description Questionnaire; Questions Q-1 through Q-6)
- Performance Standards and Guarantees (Tab A-2m Service Description Questionnaire; Questions Q-1 through Q-2)

C. **Formulary Analysis.** The information submitted in response to Part 5, Information for Offerors to Submit, Tab A-8 Formulary Analysis, will be used to evaluate this criterion.

D. **Pharmacy Network Management.** The information submitted in response to Part 5, Information for Offerors to Submit, Tab A-2b Service Description Questionnaire, Questions Q-1 through Q-58, Tab A-4 and A-5 Access to Pharmacies, Tab A-6 Pharmacy Disruption Based on Volume, and Tab A-7 Pharmacy Disruption Based on Total Amount Paid will be used to evaluate this criterion.

E. **Background and Qualifications.** The information submitted in response to Part 5, Information for Offerors to Submit, Tab A-1 Background and Qualifications, will be used to evaluate this criterion.

F. **Performance Guarantees.** The information submitted in response to Part 5, Information for Offerors to Submit, Tab A-9 Performance Guarantees, will be used to evaluate this criterion.

## 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) business 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 PEBA contracts against which final payment has not been made. This notification obligation remains in effect through the twelve (12) month post-termination transition period under this Contract. (b) Termination. This Contract is voidable and subject to immediate termination by PEBA 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:** (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 or discussions of an offer, if applicable, (4) your offer, (5) any statement reflecting the state’s final acceptance (the “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 PEBA, (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:** (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 PEBA 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:** (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 PEBA regarding the Agreement is not a waiver of either PEBA’s or the State of South Carolina’s sovereign immunity or 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:** Any term or condition is void to the extent it requires PEBA 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 PEBA 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 S.C. Code Section 11-35-5300.

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

**7.14 PUBLICITY:** Contractor shall not publish any comments or quotes by PEBA or State of South Carolina employees or include PEBA or the State of South Carolina 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 PEBA, and such sums shall be due and payable to the Contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by PEBA. It shall be solely PEBA'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 PEBA to the Contractor, Contractor shall be liable to PEBA 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):** PEBA 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 PEBA'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 PEBA or the State of South Carolina or is considered by PEBA or the State of South Carolina to be superior to other products or services. PEBA reserves the right to review and approve any commercial advertising to which PEBA's use of Contractor's services and/or supplies under this Contract is referred. Such review shall be timely and approval shall not be unreasonably withheld. The Contractor shall not perform any mass mailings to participants without the permission of PEBA. At no time during the term of the Contract or otherwise, shall any employee of the Contractor use any data, name, address or other information received by the Contractor or Subcontractor pursuant to this Contract for any purpose other than performance of the contract. Any violation of this clause is a material breach of contract. The parties acknowledge the difficulties inherent in determining the damage from any breach of these restrictions. Contractor shall pay PEBA liquidated damages per Section M.2(c) of this Contract.

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

**7.23 BANKRUPTCY – GOVERNMENT INFORMATION (FEB 2015):** (a) All government information (as defined in the clause herein entitled "Information Security - Definitions") shall belong exclusively to PEBA, 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 PEBA within two (2) business days of any determination that it makes to file for bankruptcy protection, and Contractor further agrees to turn over to PEBA, before such filing, all government information that is in Contractor's possession in a format that can be readily utilized by PEBA. (c) In order to protect the integrity and availability of government information, Contractor shall take reasonable measures to evaluate and monitor the financial circumstances of any subcontractor that will process, store, transmit or access government information.

**7.24 CHANGES (JAN 2006):** (1) Contract Modification. By a written order, at any time, and without notice to any surety, the Procurement Officer may, subject to all appropriate adjustments, make changes to the term of the Contract or 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 PEBA 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

PEBA promptly and duly makes 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 PEBA is prejudiced by the delay in notification. (4) Claim Barred After Final Payment. No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

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

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

**7.27 CONTRACT INTERPRETATION:** In the event there are any disagreements between the parties with regards to the application of this Contract or the requirements of PEBA arising from any interpretation of the Request for Proposals, 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.

**7.28 CONTRACT LIMITATIONS (JAN 2006):** No sales may be made pursuant to this Contract for any item or service that is not expressly listed. No sales may be made pursuant to this Contract after expiration of this Contract. Violation of this provision may result in termination of this Contract and may subject contractor to suspension or debarment. [07-7B045-1]

**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 04/13 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 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. Policy should be endorsed with Primary and Non-Contributory-Other Insurance Condition CG 20 01.

(d) Prior to commencement of the work, the Contractor shall furnish PEBA with original industry standard Acord 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 PEBA 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. PEBA 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 PEBA 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 PEBA. PEBA 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) PEBA 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):**

(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) PEBA and its 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 PEBA and its officers, officials, employees, and volunteers of any of them. Any insurance or self-insurance maintained by PEBA and its 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 PEBA 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. PEBA 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 PEBA 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 PEBA a waiver of any right to subrogation which any insurer of said Contractor may acquire against PEBA by virtue of the payment of any loss under such insurance as is required by this clause. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not PEBA has received a waiver of subrogation endorsement from the insurer.
- (m) Any deductibles or self-insured retentions must be declared to and approved by PEBA. PEBA 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) PEBA 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) PEBA'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 PEBA 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 PEBA 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, PEBA may require the Contractor to transfer title and deliver to PEBA, 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 PEBA has an interest.

(f) PEBA 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. PEBA may withhold from these amounts any sum the Procurement Officer determines to be necessary to protect PEBA 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 PEBA in this clause are in addition to any other rights and remedies provided by law or under this contract.

**7.34 DUTIES UPON TERMINATION:** Upon expiration or termination of the Contract for any reason, the Contractor shall provide full cooperation to PEBA and any successor Contractor so that the transition to PEBA or a subsequent Contractor will be efficiently accomplished without any disruption in claims processing, claims payments, or services to participants and providers.

Within ten (10) working days following notice of termination of the Contract, the Contractor shall deliver to PEBA a detailed transition plan, including all information regarding current operations requested by PEBA, that PEBA, in its sole discretion, feels is necessary to effectuate a smooth transition to a successor contractor.

No later than sixty (60) days before the end of the term of the Contract, the Contractor shall provide any and all materials, data, records, databases, software, and all other things in the Contractor's possession to PEBA or the successor Contractor at no additional cost to PEBA, including:

- (1) all participants information received during the term of the contract,
- (2) claims processed during the preceding twenty-four (24) months;
- (3) sufficient information and technical assistance on current operations to assure that the transition can be achieved without disruption of ongoing operations.

For a year following the termination of the Contract, the Contractor shall provide any continuing support and/or information to PEBA and the successor contractor necessary to complete the transition and resolve outstanding claims, accounting, and customer service issues. Performance Guarantees will continue to apply during this period of transition.

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

**7.35 ILLEGAL IMMIGRATION (NOV. 2008):** (An overview is available at [www.procurement.sc.gov](http://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 LAWSUIT NOTIFICATION AND COOPERATION.** The Contractor shall notify PEBA of any lawsuit or legal claim asserted, brought, filed, or served against the Contractor arising out of or in connection with the goods or services acquired hereunder. Notification shall be made within two (2) business days after the date Contractor first learns, by any means, of the legal claim or lawsuit. The Contractor will keep PEBA apprised of all documents filed in the lawsuit, and, to the extent possible, allow PEBA the opportunity to review and provide input on the Contractor's draft documents before they are filed. PEBA will, at all times, retain the right to choose its own counsel and control its own defense. The Contractor also agrees to cooperate with PEBA and provide

data, information, and documentation necessary to pursue litigation filed by or on behalf of PEBA against any party.

**7.37 INDEMNIFICATION – THIRD PARTY CLAIMS - GENERAL.**

- (a) Notwithstanding any limitation in this Contract, and to the fullest extent permitted by law, Contractor will indemnify PEBA for any and all costs, expenses, settlement payments, attorney’s fees, losses, liabilities, and damages from all suits or claims of any character brought by a third party, when the third party’s claims arise out of or are in connection with the goods or services acquired under this Contract, whether caused in whole or in part by any act or omission of Contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, and regardless of whether or not caused in part by PEBA. The Contractor shall be required to indemnify under this section regardless of its own fault, but if PEBA’s negligence is determined by the appropriate court to be the sole proximate cause of the suit or claim, the Contractor will not be required to indemnify PEBA under this paragraph. PEBA will, at all times, retain the right to choose its own counsel and control its own defense.
- (b) PEBA may, at its sole discretion, request Contractor to provide defense of the third party claim or suit. If PEBA elects defense, Contractor will bear full responsibility for any and all costs, expenses, settlement payments, attorney’s fees, losses, liabilities, and damages resulting from the suit or claim. PEBA will give Contractor timely notice of the suit or claim. PEBA’s failure to provide or delay in providing such notice will relieve Contractor of its obligations under this subparagraph only if and to the extent that such delay or failure materially prejudices Contractor’s ability to defend such action. Contractor must provide counsel acceptable to PEBA. Contractor will keep PEBA apprised of all documents filed or sent to the third party in the claim or suit and allow PEBA the opportunity to review and provide input on the Contractor’s draft documents before they are filed or sent. PEBA reserves the right to revoke its request for defense at any point and to undertake responsibility for its own defense, in which case Contractor will be required to indemnify PEBA under subparagraph (a) of this paragraph. Contractor may not, without PEBA’s prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened action, suit, or claim.
- (c) Contractor’s obligations hereunder are in no way limited by any protection afforded under workers’ compensation acts, disability benefits acts, or other employee benefit acts. This clause will not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist at law or in equity. The obligations of this paragraph will survive termination, cancelation, or expiration of this Contract. This provision will be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance.

**7.38 INDEMNIFICATION - THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION:**

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

indemnify PEBA under this section. PEBA will, at all times, retain the right to choose its own counsel and control its own defense.

- (b) PEBA may, at its sole discretion, request Contractor to provide defense of the third party claim or suit. If PEBA elects defense, Contractor will bear full responsibility for any and all costs, expenses, settlement payments, attorney's fees, losses, liabilities, and damages resulting from the suit or claim. PEBA will give Contractor timely notice of the suit or claim. PEBA's failure to provide or delay in providing such notice will relieve Contractor of its obligations under this subparagraph only if and to the extent that such delay or failure materially prejudices Contractor's ability to defend such action. Contractor must provide counsel acceptable to PEBA. The Contractor will keep PEBA apprised of all documents filed or sent to the third party in the claim or suit and, to the extent practicable, allow PEBA the opportunity to review and provide input on the Contractor's draft documents before they are filed or sent. Contractor may not, without PEBA's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened action unless such settlement, compromise, or consent (i) includes an unconditional release of PEBA from all liability related to such commenced or threatened action, and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability, or failure to act by or on behalf of PEBA or otherwise adversely affect PEBA. PEBA's consent is necessary for any settlement that requires PEBA to part with any right or make any payment or subjects PEBA to any injunction. PEBA reserves the right to revoke its request for defense at any point and to undertake responsibility for its own defense, in which case Contractor will be required to indemnify PEBA under subparagraph (a) of this paragraph.
- (c) Notwithstanding any other provision, Contractor's obligations pursuant to this clause are without any limitation whatsoever. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of the contract. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance.

**7.39 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.

#### **7.40 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](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.

**7.41 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.

**7.42 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.

**7.43 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.

**7.44 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.

**7.45 OFFSHORE CONTRACTING PROHIBITED (FEB 2015):** No part of the resulting contract from this solicitation may be performed offshore of the United States by persons located offshore of the United State or by means, methods, or communications that, in whole or in part, take place offshore of the United States. [07-7B122-1]

**7.46 PERFORMANCE BOND REQUIRED:** As a condition of the execution of the Contract, the Contractor shall supply security in the form of cash; cash equivalent; or an unconditional, irrevocable, standby letter of credit on deposit in or issued by, respectively, a federal or state chartered bank with offices physically located in the State of South Carolina in the amount of one million dollars US (\$1,000,000.00) whereby funds are (1) pledged to the benefit of PEBA; (2) are not under the control of the Contractor; and (3) are payable to PEBA upon written demand to the holder.

This security is for the faithful performance of this Contract between PEBA and Contractor and will further protect, indemnify, and save harmless PEBA from all costs and damages by reason of the Contractor's default, breach, or failure to satisfactorily perform the obligations outlined in this Request For Proposal (including Performance Guarantees), the Contractor's response thereto, and any amendments, modifications, or change orders.

In the event of any condition of breach or other circumstance, such as those set forth above, attributable to the Contractor, PEBA shall have the right to draw against the security such sums as are necessary to make PEBA whole, to secure and compensate PEBA for substituted services, to collect damages under a Performance Guarantee, or other forms of relief made necessary. Nothing herein shall be construed to mean that the security provided for herein is exclusive or constitutes any limitation or restriction on any remedies to which PEBA may be entitled.

The Contractor shall establish the security not later than ten (10) days after execution of the contract, and failure to satisfy this requirement will void the Contract. Any interest or other income resulting from the security shall become and remain the property and possession of the Contractor and shall be payable to the Contractor. The Contractor may request a reduction in the security on an annual basis, no earlier than twelve (12) months after the first anniversary date of acceptance of the service, and PEBA's consideration of such request shall take into account performance and likelihood of the need for future protection provided by the security to PEBA. The

security required under this section must extend through the initial Contract term, any renewal terms, and the period of transition described in section 7.34, Duties Upon Termination.

**7.47 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.

**7.48 PRICE ADJUSTMENT - LIMITED:** Premiums and fees shall not be increased during the initial term of the Contract (1/1/2021 through 12/31/2023). Upon approval of the Procurement Officer, premiums and fees may be adjusted for renewal term one (1/1/2024 through 12/31/2024) and renewal term two (1/1/2025 through 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, 2023, for renewal term one and by January 15, 2024, for renewal term two and must be accompanied by sufficient documentation to justify the increase. A price increase must be executed as a change order.

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

**7.50 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.

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

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

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

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

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

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

**7.53 SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE – REQUIRED:**

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 PEBA 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.

**7.54 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.

**7.55 TERM OF CONTRACT - EFFECTIVE DATE:**

Maximum Contract Term: January 1, 2021, through December 31, 2025.

Initial Contract Term: January 1, 2021, 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.

**7.56 TERMINATION FOR CONVENIENCE:** (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 PEBA. 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 PEBA 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 PEBA 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 PEBA 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 PEBA, 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 PEBA's right to require the termination of a subcontract, or (ii) increase the obligation of PEBA 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 — Non-Disclosure Agreement
- Attachment 7 — List of Qualified No-Pay Copay Generic Drugs (Posted to the web)
- Attachment 8 — Clinical Benefit Template (Posted to the web)
- Attachment 9 — Participating Pharmacies (Posted to the web)
- Attachment 10 — EGWP Plan Formulary (Posted to the web)
- Attachment 11 — Commercial Plans Formulary (Posted to the web)
- Attachment 12 — Utilization Management Program List (Posted to the web)
- Attachment 13 — 834 Pharmacy Companion Guide (Posted to the web)
- Attachment 14 — 834 Pharmacy Companion Guide Flex Benefits Addendum (Posted to the web)

**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.

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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.

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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](http://www.sctax.org).

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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**  
**Non-Disclosure Agreement**

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

Offeror warrants and represents that it intends to submit a Technical and Business Proposal in response to the Request for Proposals for Pharmacy Benefits Management Services. In order for the Offeror to submit a Proposal, it will be necessary for the State to provide the Offeror with access to certain confidential information including, but not limited to, demographic and identifying information on eligible individuals and plan utilization data. All such information provided by the State shall be considered Confidential Information regardless of the form, format, or media upon which or in which such information is contained or provided, regardless of whether it is oral, written, electronic, or any other form, and regardless of whether the information is marked as “Confidential Information.” As a condition for its receipt and access to the Confidential Information described in Part 3, Scope of Proposal, Offeror agrees as follows:

1. Offeror will not copy, disclose, publish, release, transfer, disseminate or use for any purpose in any form any Confidential Information received except in connection with the preparation of its Proposal. All Confidential Information and copies thereof shall be protected from disclosure by commercially reasonable means, including without limitation physical separation, security and limited need to know access for any hard copy materials and encryption, password protection, and secure transmission for electronic materials respectively.
2. Each employee or agent (including without limitation subcontractors) of the Offeror who receives or has access to the Confidential Information shall be notified of the confidentiality and nondisclosure requirements of this Agreement and the confidential nature of the Confidential Information. Each employee or agent of the Offeror who is provided access to or a copy of the Confidential Information shall be bound by confidentiality and nondisclosure obligations that are no less restrictive than the obligations set forth herein. The Offeror shall be liable for any violations by any employees or agents who are provided or given access to Confidential Information. The Offeror shall provide a list of all individuals, employees, and agents of the Offeror who have or have had access to the Confidential Information, along with the certification required in Section 3 of this Agreement.
3. Offeror, other than the Contractor, shall return to the State the original and destroy (in a manner designed to prohibit reading of, copying or reconstruction of the data) any copies of the Confidential Information remaining in its possession within five (5) business days of the State’s notice of award in connection with this procurement. If any Offeror does not submit a Proposal, the Offeror shall return the Confidential Information to the Procurement Officer on or before the due date for Proposals. The Offeror, other than the Contractor, shall certify, in writing and signed by an individual with authority to bind the Offeror, to the Procurement Officer that any and all Confidential Information (in whatever format or media) has been destroyed or returned to the Procurement Officer within five (5) business days of the notice of award or by the date the Offeror will not or did not submit a proposal, whichever is earlier. Such certification may be in the form provided below or in another form.
4. Offeror acknowledges that the disclosure of the Confidential Information may cause irreparable harm to the State and agrees that the State may obtain an injunction to prevent the disclosure, copying, or other impermissible use of the Confidential Information. The State’s rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and/or to seek damages for the Offeror’s failure

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

- 5. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Offeror or any employee or agent of the Offeror to comply with the requirements of this Agreement, Offeror shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and/or costs.
- 6. This Agreement shall be governed by the laws of the State of South Carolina.
- 7. Offeror acknowledges that a person may not willfully make a false or fraudulent statement or representation of a material fact in connection with a procurement contract. Offeror further acknowledges that this Agreement is a statement made in connection with a procurement contract.
- 8. The individual signing below warrants and represents that he or she is fully authorized to bind the Offeror to the terms and conditions specified in this Agreement.

OFFEROR: \_\_\_\_\_

BY: \_\_\_\_\_  
Signature

NAME: \_\_\_\_\_  
Print Name

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

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

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

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

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

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

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