

	<p align="center"><b>State of South Carolina</b></p> <p align="center"><b>EXEMPT REQUEST FOR PROPOSAL</b></p>	<p>Date Issued: 05/15/2023  Procurement Officer: Rebecca Lopez  Phone: (803) 898-7379  E-Mail Address: Rebecca.lopez@scdhhs.gov  Mailing Address: SCDHHS  Attn: Procurement  PO Box 8206  Columbia SC 29202-8206</p>	
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DESCRIPTION: **Internal Audit Services**

USING GOVERNMENTAL UNIT: **South Carolina Department of Health and Human Services**

SUBMIT OFFER BY (Opening Date/Time): **06/09/2023 5:00 PM ET**

QUESTIONS MUST BE RECEIVED BY: **05/26/2023 5:00 PM E** (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: **Offeror must email one (1) copy of the proposal to Procurement Officer.**

<p>CONFERENCE TYPE: <b>Non-Mandatory Pre-Bid Conference</b>  DATE &amp; TIME: 05/24/2023 03:00 PM EST</p> <p>(As appropriate, see "Conferences - Pre-Bid/Proposal" &amp; "Site Visit" provisions)</p>	<p>LOCATION: via TEAMS</p> <p>email rebecca.lopez@scdhhs.gov by May 22, 2023; 3:00 pm EST for call in information.</p>
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<p align="center"><b>AWARD &amp; AMENDMENTS</b></p>	<p>Award will be made on <b>06/23/2023.</b></p>
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**You must submit a signed copy of this form with Your Offer.** By signing, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of sixty (60) calendar days after the Opening Date. (See "Signing Your Offer" provision.)

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

<p>OFFEROR'S TYPE OF ENTITY: (Check one) (See "Signing Your Offer" provision.)</p> <p><input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Other _____</p> <p><input type="checkbox"/> Corporate entity (not tax-exempt) <input type="checkbox"/> Corporation (tax-exempt) <input type="checkbox"/> Government entity (federal, state, or local)</p>
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**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.) (See "Notice" clause)
	_____ Area Code - Number - Extension Facsimile
	_____ E-mail Address

<b>PAYMENT ADDRESS</b> (Address to which payments will be sent.) (See "Payment" clause)	<b>ORDER ADDRESS</b> (Address to which purchase orders will be sent) (See "Purchase Orders and "Contract Documents" clauses)
_____ Payment Address same as Home Office Address _____ Payment Address same as Notice Address <b>(check only one)</b>	_____ Order Address same as Home Office Address _____ Order Address same as Notice Address <b>(check only one)</b>

<b>ACKNOWLEDGMENT OF AMENDMENTS</b>							
Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See "Amendments to Solicitation" Provision)							
Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date

<b>DISCOUNT FOR PROMPT PAYMENT</b> (See "Discount for Prompt Payment" clause)	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	_____ Calendar Days (%)
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**PREFERENCES - do not apply per 11-35-1524(E)(3)**

## Table of Contents

<b>SECTION I</b>	<b>3</b>
ACQUIRE SERVICES (JAN 2006)	3
MAXIMUM CONTRACT PERIOD - ESTIMATED (MODIFIED)	3
<b>SECTION IIA</b>	<b>4</b>
DEFINITIONS, CAPITALIZATION, AND HEADINGS (DEC 2015)	4
AMENDMENTS TO SOLICITATION (JAN 2004)	5
AUTHORIZED AGENT (FEB 2015)	5
AWARD NOTIFICATION (MODIFIED)	5
BID/PROPOSAL AS OFFER TO CONTRACT (JAN 2004)	5
BID ACCEPTANCE PERIOD (JAN 2004)	5
BID IN ENGLISH and DOLLARS (JAN 2004)	5
CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008)	6
CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004)	6
DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (FEB 2015)	7
DRUG FREE WORK PLACE CERTIFICATION (JAN 2004)	7
DUTY TO INQUIRE (FEB 2015)	7
ETHICS CERTIFICATE (MAY 2008)	7
OMIT TAXES FROM PRICE (JAN 2004)	8
OPEN TRADE REPRESENTATION (JUN 2015)	8
PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015)	8
QUESTIONS FROM OFFERORS (FEB 2015)	8
REJECTION/CANCELLATION (JAN 2004)	8
SIGNING YOUR OFFER (JAN 2004)	8
STATE OFFICE CLOSINGS (JAN 2004)	9
SUBMITTING CONFIDENTIAL INFORMATION (FEB 2015)	9
VENDOR REGISTRATION MANDATORY (JAN 2006)	10
WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004)	10
<b>SECTION IIB</b>	<b>11</b>
CONFERENCE - PRE-BID/PROPOSAL (MODIFIED)	11
MAIL PICKUP (JAN 2006)	11
PROTEST - CPO - ITMO ADDRESS (MODIFIED)	12
<b>SECTION III</b>	<b>12</b>
STATEMENT OF WORK (MODIFIED)	12
DELIVERY/PERFORMANCE LOCATION – PURCHASE ORDER (JAN 2006)	12
<b>SECTION IV</b>	<b>12</b>
INFORMATION FOR OFFERORS TO SUBMIT -- GENERAL (MAR 2015)	20
MINORITY PARTICIPATION (DEC 2015)	23
QUALIFICATIONS -- REQUIRED INFORMATION (MAR 2015)	24
<b>SECTION VI</b>	<b>25</b>
AWARD CRITERIA -- FIXED PRICE BIDDING (JAN 2006)	25
AWARD TO MULTIPLE OFFERORS (JAN 2006)	25
<b>SECTION VIIA</b>	<b>26</b>
ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE (FEB 2015)	26
BANKRUPTCY - GENERAL (FEB 2015)	26
CHOICE-OF-LAW (JAN 2006)	26
CONTRACT DOCUMENTS and ORDER OF PRECEDENCE (FEB 2015)	26
DISCOUNT FOR PROMPT PAYMENT (JAN 2006)	26
DISPUTES (JAN 2006)	26
EQUAL OPPORTUNITY (JAN 2006)	27
FALSE CLAIMS (JAN 2006)	27
FIXED PRICING REQUIRED (JAN 2006)	27
NO INDEMNITY OR DEFENSE (FEB 2015)	27
NOTICE (JAN 2006)	27
OPEN TRADE (JUN 2015)	27
PAYMENT and INTEREST (FEB 2015)	27
PUBLICITY (JAN 2006)	28
PURCHASE ORDERS (JAN 2006)	28
SURVIVAL OF OBLIGATIONS (JAN 2006)	28

TAXES (JAN 2006) .....	28
TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006) .....	28
THIRD PARTY BENEFICIARY (JAN 2006) .....	28
WAIVER (JAN 2006) .....	29
<b>SECTION_VIIB</b> .....	<b>30</b>
CHANGES (JAN 2006) .....	30
COMPLIANCE WITH LAWS (JAN 2006) .....	30
CONTRACTOR'S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY (FEB 2015) .....	28
CONTRACTOR PERSONNEL (JAN 2006) .....	30
CONTRACTOR'S OBLIGATION -- GENERAL (JAN 2006) .....	32
CONTRACTOR'S USE OF STATE PROPERTY (JAN 2006) .....	32
DEFAULT (JAN 2006) .....	30
ILLEGAL IMMIGRATION (NOV 2008) .....	32
INDEMNIFICATION-THIRD PARTY CLAIMS - GENERAL (NOV 2011) .....	32
INDEMNIFICATION-THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION (FEB 2015) .....	32
INDEMNIFICATION-INTELLECTUAL PROPERTY (JAN 2006) .....	32
INFORMATION SECURITY – DEFINITIONS (FEB 2015) .....	32
INFORMATION SECURITY - SAFEGUARDING REQUIREMENTS (FEB 2015) .....	32
INFORMATION SECURITY – LOCATION OF DATA (FEB 2015) .....	32
INFORMATION USE AND DISCLOSURE (FEB 2015) .....	31
LICENSES AND PERMITS (JAN 2006) .....	32
OWNERSHIP OF DATA and MATERIALS (JAN 2006) .....	36
PRICE ADJUSTMENTS (JAN 2006) .....	36
RELATIONSHIP OF THE PARTIES (JAN 2006) .....	37
TERM OF CONTRACT -- EFFECTIVE DATE / INITIAL CONTRACT PERIOD (MODIFIED) .....	38
TERM OF CONTRACT -- OPTION TO RENEW (MODIFIED) .....	39
TERM OF CONTRACT -- TERMINATION BY CONTRACTOR (JAN 2006) .....	39
TERMINATION FOR CONVENIENCE (JAN 2006) .....	36
<b>SECTION_VIIC</b> .....	<b>41</b>
AGENCY SPECIFIC- TERMS, CONDITIONS & REQUIREMENTS .....	41
<b>SECTION_VIII</b> .....	<b>41</b>
<b>SECTION_IX</b> .....	<b>45</b>
LIST OF ATTACHMENTS .....	45
NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING .....	46

## I. SCOPE OF SOLICITATION

The South Carolina Department of Health and Human Services (SCDHHS or Agency) is the state agency responsible for administering the South Carolina Medicaid program called Healthy Connections. Medicaid is South Carolina's grant-in-aid program by which the federal and state governments share the cost of providing medical assistance for qualifying needy persons.

The SCDHHS Bureau of Program Integrity and Internal Audits' internal audit area (IA) assists in addressing governance and accomplishing its objectives by bringing a systematic approach to evaluate and improve the effectiveness of risk management and control processes, through performing:

- (i) compliance audits for conformity with federal and state regulations and contractual provisions,
- (ii) performance audits that provide assurance that program goals and objectives are met, and
- (iii) audits of internal controls over the appropriate use of SCDHHS resources and the safeguarding of those resources.

IA seeks to obtain the expertise and additional staffing needed to meet SCDHHS's internal audit plan as outlined below.

### ACQUIRE SERVICES

The purpose of this solicitation is to acquire services complying with the enclosed description and/or specifications and conditions.

### MAXIMUM CONTRACT PERIOD - ESTIMATED

Start date: **07/01/2023** End date: **06/30/2028**. Dates provided are estimates only. Any resulting contract will begin on the date specified in the notice of award.

**SCDHHS seeks to contract with a qualified internal audit firm for a period of one (1) year with the option to renew for an additional four (4) subsequent one (1) year renewal options. The Maximum Contract Period is five (5) years.**

## **II. INSTRUCTIONS TO OFFERORS - A. GENERAL INSTRUCTIONS**

### **DEFINITIONS, CAPITALIZATION, AND HEADINGS**

CLAUSE HEADINGS USED IN THIS SOLICITATION ARE FOR CONVENIENCE ONLY AND SHALL NOT BE USED TO CONSTRUE MEANING OR INTENT. EVEN IF NOT CAPITALIZED, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION, UNLESS EXPRESSLY PROVIDED OTHERWISE.

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

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

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

CHANGE ORDER means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

CONTRACT See 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," if included herein, authorizes the Procurement Officer to order without the consent of the contractor.

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

COVER PAGE means the top page of the original solicitation on which the solicitation is identified by number. Offerors are cautioned that Amendments may modify information provided on the Cover Page.

OFFER means the bid or proposal submitted in response this solicitation. The terms Bid and Proposal are used interchangeably with the term Offer.

OFFEROR means the single legal entity submitting the offer. The term Bidder is used interchangeably with the term Offeror. See bidding provisions entitled Signing Your Offer and Bid/Proposal As Offer To Contract.

PAGE TWO means the second page of the original solicitation, which is labeled Page Two.

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

YOU and YOUR means Offeror.

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

STATE means the Using Governmental Unit(s) identified on the Cover Page.

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

US or WE means the using governmental unit.

USING GOVERNMENTAL UNIT means the unit(s) of government identified as such on the Cover Page. If the Cover Page identifies the Using Governmental Unit as "Statewide Term Contract," the phrase "Using Governmental Unit" means any South Carolina Public Procurement Unit that has submitted a Purchase Order to you pursuant to the contract resulting from this solicitation. Reference the clauses titled "Purchase Orders" and "Statewide Term Contract."

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.

## **REPORTING ENTITY**

SC Code of Laws, Title 44, Chapter 6, requires SCDHHS to continuously review and evaluate programs to determine the extent to which they meet fiscal, administrative, and program objectives and are being operated cost effectively. SCDHHS must also monitor and evaluate all contractual services authorized pursuant to Title 44, Chapter 6 to assure effective performance.

## **EXEMPT SOLICITATION**

This procurement activity is exempt under Section 11-35-1520 of the South Carolina Consolidated Procurement Code, Regulation 19-445.2025, (E), and as documented in the exemptions list published at: <https://procurement.sc.gov/files/20190920%20Legal%27s%20Exemption%20Table%20%28booklet%29.pdf>

Professional Services – Auditors (1982.07.13): The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (b) certified public accountants and public accountants engaged to perform financial and/or compliance audits, subject to approval by the State Auditor's Office, with actuarial audits and other accounting services to be procured under the terms of the Consolidated Procurement Code.

## **AMENDMENTS TO SOLICITATION**

(a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the South Carolina Business Opportunities advertisement for this solicitation for the issuance of Amendments: <https://scbo.sc.gov/search> (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

## **AUTHORIZED AGENT**

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.

## **AWARD NOTIFICATION**

Notice of award will be sent electronically to all Offerors responding to the Solicitation.

## **BID/PROPOSAL AS OFFER TO CONTRACT**

By submitting Your Bid or Proposal, You are offering to enter into a contract with SCDHHS. 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.

## **BID 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.

## **BID IN ENGLISH and DOLLARS**

Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation.

## **CERTIFICATE OF INDEPENDENT PRICE DETERMINATION**

**GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS.**

(a) By submitting an offer, the offeror certifies that-

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

- (i) Those prices;
- (ii) The intention to submit an offer; or
- (iii) The methods or factors used to calculate the prices offered.

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

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

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

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; or

(2)(i) Has been authorized, in writing, to act as agent for the offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification [As used in this subdivision (b)(2)(i), the term "principals" means the person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal];

(ii) As an authorized agent, does certify that the principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification.

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

## **CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS**

(a) (1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-

(i) Offeror and/or any of its Principals-

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.



(ii) Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

(b) Offeror shall provide immediate written notice to the Procurement Officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

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

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

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer may terminate the contract resulting from this solicitation for default.

## **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, the state may withhold award. Before withholding award on these grounds, an offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered. Without limiting the foregoing, you represent that your offer identifies any services that relate to either this solicitation or the work and that has already been performed by you, a proposed subcontractor, or an affiliated business of either.

## **DRUG FREE WORKPLACE CERTIFICATION**

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.

## **DUTY TO 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. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. 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 that Offeror does not bring to the State's attention. See clause entitled "Questions from Offerors."

## **ETHICS CERTIFICATE**

By submitting an offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public

official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover all amounts expended because 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.

## **OMIT TAXES FROM PRICE**

Do not include any sales or use taxes in Your price that the State may be required to pay.

## **OPEN TRADE REPRESENTATION**

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.

## **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 the Using Governmental Unit 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.

(b) You are restricted from making donations to a governmental entity with whom you have or seek to have a contract. ***You represent that your offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the Using Governmental Unit during the period beginning eighteen months prior to the Opening Date.***

## **QUESTIONS FROM OFFERORS**

(a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions regarding the original solicitation or any amendment must be received by the Procurement Officer by the date stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer -- as soon as possible -- regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition.

## **REJECTION/CANCELLATION**

The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part.

## **SIGNING YOUR OFFER**

Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the

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

## **STATE OFFICE CLOSINGS**

If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first workday on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at: <https://scemd.org/closings/>

## **DISCLOSURE OF YOUR BID / PROPOSAL & SUBMITTING CONFIDENTIAL DATA**

(a) Any person submitting a document in response or with regard to any solicitation or other request must "comply with instructions provided in the solicitation for marking information exempt from public disclosure. Information not marked as required by the applicable instructions may be disclosed to the public." IF YOU IDENTIFY YOUR ENTIRE RESPONSE AS EXEMPT FROM PUBLIC DISCLOSURE, OR IF YOU DO NOT SUBMIT A REDACTED COPY AS REQUIRED, THE STATE MAY, IN ITS SOLE DISCRETION, DETERMINE YOUR BID OR PROPOSAL NONRESPONSIVE AND INELIGIBLE FOR AWARD.

(b) By submitting a response to this solicitation or request, Offeror agrees to the public disclosure of every page, or portion thereof, of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page, or portion thereof, was redacted and conspicuously marked "Trade Secret" or "Confidential" or "Protected", (2) agrees that any information not redacted and marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure.

(c) If your offer includes any information that you claim is exempt from public disclosure, you must submit one complete copy of your offer from which you have removed or concealed such information (the redacted copy). Except for the information removed or concealed, the redacted copy must be identical to your original offer.

(d) Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If only portions of a page are subject to some protection, do not redact the entire page. The redacted copy must reflect the same pagination as the original and show the empty space from which information was redacted. The Procurement Officer must be able to view, search, copy and print the redacted copy without a password. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive.

(e) On the redacted copy, you must identify the basis of your claim by marking each redaction as follows: You must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that you redacted and claim as exempt from public disclosure because it is either (1) a trade secret as defined in Section 30-4-40(a)(1) of the Freedom of Information Act, or (2) privileged and confidential, as that phrase is used in Section 11-35-410. You must separately mark with the words "TRADE SECRET" every page, or portion thereof, that you redacted and claim as exempt from public disclosure as a trade secret pursuant to Section 39-8-20 of the Trade Secrets Act. You must separately mark with the word "PROTECTED" every page, or portion thereof, that you redacted and claim as exempt from public disclosure. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text.

(f) In determining whether to release documents, the State will detrimentally rely on your redaction and marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "Protected". By submitting a response, you agree to defend, indemnify and hold harmless the State of South Carolina, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from withholding information by the State of South Carolina or any of its agencies, that you have redacted or marked

as "Confidential" or "Trade Secret" or "Protected". (All references to S.C. Code of Laws.)

## **VENDOR REGISTRATION MANDATORY**

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 Doing Business with Us. Then select 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 and know your User ID & Password, you can update your information by selecting Update Vendor Registration. If you need to update information but do not have your User ID/Password, you must complete a new vendor registration and On Step 9 – Messages to Administration indicate "Update vendor number" with your existing 10-digit vendor number. (Please note that vendor registration does not substitute for any obligation to register with the S.C. Secretary of State Index – Business Entities Online – S.C. Secretary of State (sc.gov) or S.C. Department of Revenue Withholding (sc.gov).

## II. INSTRUCTIONS TO OFFERORS – B. SPECIAL INSTRUCTIONS

### CONFERENCE – PRE-BID/PROPOSAL

Pre-Bid/Proposal Conference Date and Time: See Cover Page One  
Location of Pre-Bid/Proposal Conference: Via TEAMS

Due to the importance of all offerors having a clear understanding of the specifications and requirements of this solicitation, a conference of potential offerors will be held on the date specified on the cover page. Any changes resulting from this conference will be noted in a written amendment to the solicitation. Your failure to attend will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the State. The State assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available at the conference. Nor does the State assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding, or representation is expressly stated in this contract.

**This solicitation includes a NON-Mandatory Pre-Bid Conference. While attendance is not required, Offerors are strongly encouraged to attend and participate. The purpose of the Pre-Bid Conference is to identify items that are in error, unclear, or unduly restrictive.**

**All conference attendees should read the solicitation and develop their questions in preparation for the conference. The pace of the conference will NOT afford individuals enough time to complete an initial review of the document during the conference.**

### CONTENTS OF OFFER

- (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 must 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 are to include this information as a separate appendix to your offer. Offers which include either modifications to any of the solicitation's contractual requirements or an offeror's standard terms and conditions may be deemed non-responsive and not considered for award.

### III. SCOPE OF WORK/SPECIFICATIONS

#### STATEMENT OF WORK

##### Background

Internal Audits (IA) assists in addressing governance and accomplishing its objectives by bringing a systematic approach to evaluate and improve the effectiveness of risk management and control processes, through performing (i) compliance audits for conformity with federal and state regulations and contractual provisions, (ii) performance audits that provide assurance that program goals and objectives are met, and (iii) audits of internal controls over the appropriate use of SCDHHS resources and the safeguarding of those resources. Employee turnover in IA has left the department with many vacated roles. These vacancies leave a human capital need with gaps in skills, competencies, and training.

In 2022, an agency-wide risk assessment was conducted for the purpose of developing a three-year internal audit plan. This plan will be based on the utilization of both internal IA staff and outside contractor assistance.

##### Objectives

The objective of SCDHHS is to develop and perform:

- (1) Internal audits as outlined in this Solicitation in accordance with Government Auditing Standards or the Institute of Internal Auditors standards and Generally Accepted Auditing Standards (GAAS), as applicable.
- (2) Comprehensive training to enhance the competency and knowledge base of existing IA staff, as applicable, as well as any new IA staff hired during the Contract period.

##### Scope

The selected Contractor will be required to perform functions to ensure SCDHHS is meeting the requirements of SC Code of Laws, Title 44, which requires SCDHHS to continuously review and evaluate programs to determine the extent to which they meet fiscal, administrative and program objectives, and are being operated cost effectively, while building the expertise inside SCDHHS to continue to meet these requirements in the future.

The primary fieldwork location will be the SCDHHS Jefferson Square Building, 1801 Main Street, Columbia, SC 29201.

##### Requirements

###### Contractor Must:

- 1) Develop and document internal audit procedures to meet the audits listed for year one (1) in the table below as determined during the Agency's entity-wide risk assessment plus one (1) additional audit whose subject is to be determined at a later date based upon Agency risks identified, including dates for draft and final deliverables, and adhering to Government Auditing Standards and GAAS or the Institute of Internal Auditors standards, as applicable. An outline of the additional audit will be provided by Contractor and approved by SCDHHS before commencement.
- 2) Submit the initial timeline for conducting the requested audits within thirty (30) days of the Contract effective date.
- 3) Work with the Internal Audit Committee (IAC) to develop an audit plan for subsequent years addressing any changing risks and any areas determined by the IAC or during the performance of year one (1) audits. The proposed audit plan and timeline should be submitted to SCDHHS for approval by January 1 of each subsequent year. SCDHHS must approve Contractor's initial audit plan and any subsequent updates to the annual audit plan before Contractor begins the work outlined in the plan. SCDHHS and Contractor will agree upon the internal audit engagements to be completed by Contractor as well as the draft and final deliverable dates based upon the associated cost and timelines in Contract.
- 4) Provide and develop internal audit procedures. These must be documented and repeatable. All internal audit

procedures developed must be approved and accepted by SCDHHS prior to use.

- 5) Meet at a minimum on a bi-weekly basis with internal staff to provide an update of the status of audits.
- 6) Attend in person quarterly IAC meetings and present on the status of the internal audit plan.
- 7) Ensure that audit reports meet Generally Accepted Government Auditing Standards (GAGAS) and International Internal Auditing standards (IIA). Aid SCDHHS in developing and enhancing standardized formats and templates for issuing internal audit reports.
- 8) Complete SCDHHS internal audit engagements listed in the year one (1) audit plan by the dates approved in the timeline approved, as set forth in the Contract.
- 9) Develop a training program and timeline, enhancing the competency and knowledge base of existing SCDHHS internal audit staff, as applicable, as well as any new IA staff hired during the Contract term to include a minimum of eight (8) hours of CPE per quarter.
- 10) Assist with the conducting and planning of internal audits to be conducted by SCDHHS internal audit staff, including providing supervisory review of workpapers and audit reports to be issued to ensure consistency of the internal audit function. A list of engagements to be conducted by internal staff is included in the Year One (1) Audit Plan stated below.
- 11) Assist internal staff with follow-up and monitoring of corrective action plans related to audits conducted.
- 12) Maintain staff on site at least thirty percent (30%) of the time during the Maximum Contract Period.
- 13) Provide a plan and methodology to incorporate the use of enhanced data analytics, as part of the audit testing, as applicable in the various audits included in the audit plan.
- 14) Provide a paperless audit software package that can be utilized by the Contractor and SCDHHS to conduct audits and maintain audit workpapers. Also include a plan for how the audit workpapers will transition to SCDHHS at the end of the Contract. The software package must be approved by SCDHHS' Office of Information Security as a part of the evaluation process and must remain compliant throughout the duration of the Contract.
- 15) Workpapers for this engagement will be subject to the firm's in-house quality review as well as external quality review. If selected for review, copies of comments must be furnished to SCDHHS upon becoming available to the firm.

**Table 1: Year One (1) Audit Plan**

Audit Area	Risk Description
Appeals and Hearings	<p>Address possible risks to ensure that:</p> <ul style="list-style-type: none"> <li>• Key roles and responsibilities within the Appeals process are communicated and understood.</li> <li>• Appeals are addressed in a timely manner.</li> <li>• There is sufficient communication and clear roles and responsibilities within the Department.</li> <li>• Frivolous/unnecessary appeals are identified and dismissed in a timely manner.</li> <li>• Eligibility determination systems do not issue numerous notices to participants, creating unnecessary appeals.</li> <li>• There is an adequate plan to address the conclusion of the Public Health Emergency which may create an abundance of appeals due to ineligible participants being discharged from services upon reevaluations.</li> </ul>

<p>Data Retention and Privacy/ HIPAA</p>	<p>Address possible risks to ensure that:</p> <ul style="list-style-type: none"> <li>• Adequate IT controls (firewalls, data loss prevention software, encryption, etc.) are in place to prevent data loss.</li> <li>• Adequate physical security controls (badge-based access, locked cabinets, visitor access monitoring, etc.) to prevent data loss. All people, systems, and processes that store or transmit PHI re identified.</li> <li>• The Agency sufficiently monitors and enforces data privacy policies for paper-based PHI.</li> <li>• The Agency sufficiently vets new employees, contractors, and vendors to mitigate the risk of internal threats.</li> <li>• Documentation containing PHI is retained for the required time period, to prevent non-compliance.</li> <li>• Documentation containing PHI is disposed of in a timely manner, reducing unnecessary exposure and excess storage costs.</li> </ul>
<p>Coding, Provider Payments, and Retainer Payments</p>	<p>Address possible risks to ensure that:</p> <ul style="list-style-type: none"> <li>• Accurate/correct codes prevent improper and over payments to providers and facilities.</li> <li>• Provider payment arrangements minimize financial exposure for the Agency.</li> <li>• Banking information for providers changed by third-party vendors could result in reputational damage and possible financial loss.</li> <li>• Retainer payments are made to providers or for services that are eligible per Agency policy or CMS guidance.</li> <li>• Calculation of retainer payment amounts is based upon accurate information to prevent under or overpayment.</li> <li>• Retainer payments are correctly coded for payment and are properly authorized prior to entry.</li> <li>• Payments made to providers are complete, accurate, and made in a timely manner.</li> <li>• Retainer payments are processed/paid properly in accordance with Agency policies, procedures, or regulatory requirements.</li> </ul>
<p>Federal Contract and Grant Monitoring</p>	<p>Address possible risks to ensure that:</p> <ul style="list-style-type: none"> <li>• Sufficient and effective communication of program requirements prevents non-compliance.</li> <li>• Accurate tracking of spending results to ensure compliance and ability to receive future funding.</li> <li>• Adequate documentation of expenditures and/or data integrity to ensure sufficient monitoring.</li> </ul>



<p>Finance – Third-Party Data</p>	<p>Address possible risks to ensure that:</p> <ul style="list-style-type: none"> <li>• Third-party information policies and procedures accurately reflect Agency processes and comply with state/federal regulations.</li> <li>• Third-party information and processes are regularly reviewed and overseen by the Agency.</li> <li>• Procedures are in place to prevent the loss of a contract being detrimental to continued operations.</li> <li>• Users are properly and adequately trained to best utilize third-party information and contractor capabilities.</li> <li>• Ownership and oversight of contracts is clearly defined.</li> <li>• Procedures are in place to address contract services that are no longer needed or are not meeting current Agency needs in certain areas.</li> <li>• Fee-for-service payments are being made for members who are covered under capitated or dual enrollment plans.</li> <li>• High Cost No Experience drugs are being logged and monitored.</li> <li>• The Agency is paying an accurate rate for time-of-service pharmacy claims.</li> <li>• The Agency has procedures to prevent paying pharmacy claims as a primary carrier for patients with additional insurance coverage.</li> </ul>
<p>Gross Level Adjustments</p>	<p>Address possible risks to ensure that:</p> <ul style="list-style-type: none"> <li>• Policies and procedures for the use and documentation of gross-level adjustments are adequate and communicated.</li> <li>• Gross-level adjustments are consistently used across the Agency.</li> <li>• Separation of duties between submitters and approvers of gross-level adjustments is adequate.</li> <li>• Contractors assisting with entering gross-level adjustments into the Medicaid Management Information System (MMIS) are adequately supervised and monitored.</li> <li>• Gross-level adjustments are not used when claim-level or system-based adjustments should be made.</li> <li>• Gross level adjustments are properly classified by submitter, provider, and adjustment reason on the Form 115.</li> <li>• Documentation retained in support of gross-level adjustments is adequate, complete, and accurate.</li> <li>• Gross-level adjustments are properly authorized.</li> <li>• Adjustments are entered into MMIS timely and are complete and accurate.</li> </ul>

<p>IT Project and Change Management</p>	<p>Address possible risks to ensure that:</p> <ul style="list-style-type: none"> <li>• Project Plans are complete and detailed to provide clear objectives, requirements, and guidance of the projects.</li> <li>• SLAs, personnel, and formal procedures are defined according to IT project needs.</li> <li>• A comprehensive project management strategy has been established.</li> <li>• Project teams have the necessary skills and training to complete the project and support the application.</li> <li>• Vendor relationships and contracts are reviewed and approved.</li> <li>• Milestone deliverables are sufficiently tracked and compared to the project plan.</li> <li>• Changes to project scheduling, deliverables, and timeline are reviewed and approved by appropriate individuals.</li> <li>• Proper test plans and controls are designed and implemented for product releases.</li> <li>• Maintenance schedule is followed or assigned a timeframe to be implemented.</li> </ul>
<p>Long-Term Care Eligibility and Enrollment</p>	<p>Address possible risks to ensure that:</p> <ul style="list-style-type: none"> <li>• Adequate staff expertise results in timely and accurate eligibility determinations. Eligibility determination goals and objectives are effectively communicated by leadership.</li> <li>• Manual processes which could result in eligibility data integrity issues.</li> <li>• Sufficient documentation that supports the eligibility decision is maintained.</li> <li>• Key performance metrics are sufficiently monitored.</li> <li>• Efficient/effective system interfacing results in a reduction to significant delays in eligibility reviews and reduces the risk of error from manual inputs.</li> <li>• Applicant PHI is properly secured.</li> </ul>
<p>MAGI Eligibility and Enrollment</p>	<p>Address possible risks to ensure that:</p> <ul style="list-style-type: none"> <li>• Adequate staff expertise results in timely and accurate eligibility determinations.</li> <li>• Eligibility determination goals and objectives are effectively communicated by leadership.</li> <li>• There is a plan in place to address the conclusion of the Public Health Emergency do not create a substantial number of participants that require recalculation of eligibility.</li> <li>• Manual processes which could result in eligibility data integrity issues.</li> <li>• Sufficient documentation that supports the eligibility decision is maintained.</li> <li>• Key performance metrics exist and are sufficiently monitored.</li> <li>• Efficient/effective system interfacing results in a reduction to significant delays in eligibility reviews and reduces the risk of error from manual inputs.</li> <li>• Applicant PHI is properly secured.</li> <li>• Reasonable compatibility rules are properly followed resulting in correct eligibility determinations.</li> </ul>

<p>MCO Contract Monitoring</p>	<p>Address possible risks to ensure that:</p> <ul style="list-style-type: none"> <li>• Contract administration planning results in required contract performance and compliance.</li> <li>• Appropriately managing the contract reporting dates results in timely execution of the contract and ensures compliance with federal requirements.</li> <li>• Monitoring contract status dates results in timely execution of the contract and ensures compliance with federal requirements.</li> <li>• Invoices are properly reviewed and processed in accordance with federal requirements.</li> <li>• Compliance with contract budgetary requirements ensures compliance with federal requirements.</li> <li>• Accurate, complete, and timely contract performance reporting results in adequate assessment and management of contract performance.</li> <li>• Processes are in place to detect and correct poor contract performance preventing non-compliance with federal and contract requirements.</li> <li>• Correct, complete, and properly approved contract change documents ensure compliance with federal contract regulations and requirements.</li> <li>• Properly monitoring to identify and act on any new or updated federal regulations and requirements ensures contact compliance.</li> <li>• Properly monitoring federal communication and reporting guidelines ensures compliance with federal contract regulations and requirements.</li> <li>• Properly maintaining file storage may result in enhanced contract performance through efficiencies and timely monitoring of key contract processes.</li> </ul>
<p>Non-MAGI Eligibility and Enrollment</p>	<p>Address possible risks to ensure that:</p> <ul style="list-style-type: none"> <li>• Adequately trained and knowledgeable staff results in timely and accurate eligibility determinations.</li> <li>• Eligibility determination goals and objectives are effectively communicated by leadership.</li> <li>• The conclusion of the Public Health Emergency will not create a significant number of participants that require recalculation of eligibility.</li> <li>• The reliance on manual processes could result in eligibility data integrity issues.</li> <li>• Sufficient documentation that supports the eligibility decision is maintained.</li> <li>• Key performance metrics exist and are monitored.</li> <li>• Efficient/effective system interfacing results reduces delays in eligibility reviews and decreases the risk of error by manual inputs.</li> <li>• Applicant PHI is properly secured due to employee awareness and data loss prevention controls.</li> </ul>

<p>Non-MCO Contract Administration and Development</p>	<p>Address possible risks to ensure that:</p> <ul style="list-style-type: none"> <li>• Complete and properly prepared APDs prevent the loss of federal financial participation.</li> <li>• Complete contract administration planning results in required contract performance and compliance.</li> <li>• Sufficient coordination with the procurement team, Federal Contracts and Vendor Management (FCVM) team, and key business owners results in effective, complete, and compliant contracts.</li> <li>• Key metrics such as performance standards, payment terms, CAP remediation requirements, etc. are sufficiently addressed in the contract.</li> <li>• Vendor contract terms align with the Agency’s policies and/or state/federal regulations.</li> </ul>
<p>Non-MCO Contract Monitoring and Vendor Management</p>	<p>Address possible risks to ensure that:</p> <ul style="list-style-type: none"> <li>• Appropriately managed contract status dates result in timely contract performance and compliance with federal requirements.</li> <li>• Invoices are properly reviewed and processed in adherence to the contract terms and/or federal requirements.</li> <li>• Sufficient monitoring results in compliance with contract budgetary requirements.</li> <li>• Ability to detect and correct poor contract performance prevents non-compliance with contract requirements and/or federal requirements.</li> <li>• Accurate, complete, and timely contract performance reporting results allow staff to assess and manage contract performance.</li> <li>• Correct, complete, and approved contract change documents result in compliance with federal contract regulations and requirements.</li> <li>• Compliance with federal communication and reporting guidelines results in compliance with federal contract regulations and requirements.</li> <li>• Properly monitoring federal communication and reporting guidelines ensures compliance with federal contract regulations and requirements.</li> <li>• Properly maintaining file storage may result in enhanced contract performance through efficiency and timely monitoring of key contract processes.</li> <li>• There is a process in place to properly identify and act on any new or updated federal regulations and requirements to prevent non-compliance.</li> </ul>
<p>Service Level Agreements (Development and Monitoring)</p>	<p>Address possible risks to ensure that:</p> <ul style="list-style-type: none"> <li>• Development of effective SLAs may assist with federal requirements and enable effective management of the relationship between the service provider and the Agency.</li> <li>• Properly trained employees on internal and federal policies and procedures surrounding testing and assessing SLAs, and determining, enforcing, and reporting SLA violations may assist with federal requirements.</li> <li>• Effective or efficient review of SLA testing allows for proper collection of liquidated damages.</li> <li>• Effective and efficient tracking of SLA violations allows for proper collection of liquidated damages.</li> </ul>

Talent Management	<p>Address possible risks to ensure that:</p> <ul style="list-style-type: none"> <li>• Consistent, effective, and proper hiring practices are implemented throughout the Agency.</li> <li>• The Agency is able to attract high-quality candidates.</li> <li>• New hires are sufficiently trained in job responsibilities and performance expectations.</li> <li>• Training objectives and methodologies are applied consistently across the Agency.</li> <li>• Employees are provided adequate ongoing training to ensure they remain effective in their job responsibilities and informed of emerging, relevant issues.</li> <li>• Employee performance is adequately measured and/or monitored.</li> <li>• Employee satisfaction is measured and meets industry standards.</li> <li>• The Agency assesses the impact of employee turnover on Agency operations.</li> </ul>
Area – TBD 2	Additional Audit TBD based on Risk.

Table 2: Audits to be Conducted by Internal Staff

Audit Area
IT General and Access Controls
Procurement
Travel and Expense Monitoring
Physical Safety
Drug Rebate
Area - TBD 1

## Invoicing and Payment

SCDHHS will issue an award letter to the successful Offeror stating the maximum fee to be paid for year one (1). A Purchase Order will be issued after award and prior to any Work beginning. All invoices are to be submitted to [invoices@scdhhs.gov](mailto:invoices@scdhhs.gov) for payment. Services which may increase the fee above the maximum must have written approval of SCDHHS and the Office of State Auditors (OSA) prior to providing the additional service.

Progress invoicing should be based on estimated percent of completion. Final payment will not be made until contractual obligations have been met. SCDHHS reserves the right to hold progress payment should issues arise in the delivery of services or if there is a reason to believe invoicing is submitted in advance of Work completion. A purchase order number must be provided on each invoice.

### DELIVERY/PERFORMANCE LOCATION – PURCHASE ORDER

After award, all deliveries shall be made and all services provided to the location specified by SCDHHS in its purchase order.

## **IV. INFORMATION FOR OFFERORS TO SUBMIT**

### **INFORMATION FOR OFFERORS TO SUBMIT – GENERAL**

You shall submit a signed Cover Page and Page Two. If you submit your offer electronically, you must upload an image of a signed Cover Page and Page Two. Your offer should include all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in Part IX. Attachments to Solicitations. You should submit a summary of all insurance policies you have or plan to acquire to comply with the insurance requirements stated herein, if any, including policy types; coverage types; limits, sub-limits, and deductibles for each policy and coverage type; the carrier's A.M. Best rating; and whether the policy is written on an occurrence or claims-made basis.

Please submit the following information and documentation:

1. A completed page one and page two (cover pages).
2. Response to Section V "QUALIFICATIONS – SPECIAL STANDARDS OF RESPONSIBILITY".
3. Completed Attachments (See Section IX)
4. Minority Participation

### **INFORMATION FOR OFFERORS TO SUBMIT- EVALUATION**

In addition to information requested elsewhere in this solicitation, offerors should submit the following information for purposes of evaluation:

A. Title Page

Show the subject, firm name, contact information and date.

B. Table of Contents

Include a clear identification of the material presented by section and page number.

C. Letter of Transmittal

In one (1) or two (2) pages, provide an understanding of the work to be done and a commitment to the timeline outlined in this Solicitation. In addition:

- 1) Provide the name and contract information of the individual who will be authorized to make representations on behalf of the Offeror.
- 2) State that the person signing the letter is authorized to bind the Offeror.

D. Profile of the Offeror

Provide a profile of the firm to include:

- 1) Identification of the firm as a local, regional, or national/international firm.
- 2) Identification of the location of the office which will have primary responsibility for the work to be done.
- 3) Information regarding the firm size, including the office which will be primarily responsible for the work and/or the size of staff specialized in providing assurance services to state and local government.
- 4) Description of any business litigation brought against the firm or any of its officers or principals by any entity for fraud, malpractice, misrepresentation, negligence, or similar cause of action within the last five (5) years.

- 5) Details of any desk or other reviews of governmental engagements during the last five (5) years which have resulted in correction or reissuance of a report or in disciplinary action.
- 6) A copy of the firm's most recent peer review report, including findings for further consideration, response, and letter of acceptance. This may be included as an appendix.

E. Offeror's Experience and Qualifications

Provide a summary which:

- 1) Outlines the proposed staffing plan and specifically identify the senior members of the proposed engagement team. Include resumes detailing relevant experience for each senior member and include with the resume a list of the governmental Continuing Professional Education (CPE) courses attended in the prior two (2) CPE reporting periods. The resume and CPE listing may be included as an appendix.
- 2) Provides a minimum of three (3) recent engagements similar in scope to the services requested.
  - a. Include entity name, total engagement hours and years audited.
  - b. Identify the members of the proposed audit engagement team who also work on the engagements described and the hours they contributed to each engagement.
  - c. Do not include extensive lists of governmental clients served.
- 3) Provides a minimum of three (3) references for the firm's most relevant audit engagements during the past three (3) years. Each reference should include the entity's name and purpose, address, telephone number and contact information, including email address, of the individual representing the client. Name the members of the proposed engagement team who also work on the engagements of the clients named as references.
- 4) Lists any governmental clients that have terminated the firm's audit service contract in the last three (3) years for reasons other than normal rotation of the auditor. Include the client's name, date of contract termination, and reasons for termination.
- 5) Acknowledge that the firm is aware of current Government Accountability Office (GAO) Yellow Book requirements concerning continuing education and peer review and that the firm will comply with these requirements during the term of this Contract.

F. Audit Approach

Offer must submit:

- 1) An outline which describes proposed objectives to be accomplished during each segment or phase of the engagement, including time estimates by segment or phase by staff level. Provide as much detail as is needed to allow proposal evaluators to understand the firm's approach, staffing levels, and timeline, including critical benchmarks to completing the engagement by approximately May 1st annually. The use of specialists or subcontractors must be specified.
- 2) The firm's commitment to staff continuity and describe how turnover is handled, particularly of more experienced staff members.
- 3) New or innovative approaches the firm has implemented on similar engagements to improve audit quality or efficiency, including utilizing enhanced data analytics and artificial intelligence. Indicate how the firm proposes to work with IA to utilize similar approaches on this engagement.
- 4) A description paperless audit approach, software used and how the firm will implement this with IA to ensure consistency between engagements performed by the Contractor for IA.
- 5) Any additional information considered essential to your proposal.

G. Price Proposal

- 1) Offeror must determine the level of effort, the number of personnel and labor categories needed to adequately address the requested audits as outlined in this Solicitation. Offeror shall include the total number of hours by labor category and hourly rates for year one (1).
- 2) The hourly rate must be a fixed price which includes all costs associated with providing the services as required by this Solicitation for year one (1) of the Contract. The fixed price must include travel expenses and must exclude taxes. No other costs will be allowed if not included in the Price Proposal and reflected in the firm fixed price.
- 3) Subsequent years will be based upon an audit plan agreed upon by SCDHHS and the Contractor to include proposed labor categories and hours. Hourly rates will remain fixed throughout the life of the Contract.

## **SUBMITTING REDACTED OFFERS**

If your offer includes any information that you marked as "Confidential," "Trade Secret," or "Protected" in accordance with the clause entitled "Submitting Confidential Information," you must also submit one complete copy of your offer from which you have removed or concealed such information (the redacted copy). The redacted copy should (i) reflect the same pagination as the original, (ii) show the empty space from which information was redacted, and (iii) be submitted on magnetic media. Except for the information removed or concealed, the redacted copy must be identical to your original offer, and the Procurement Officer must be able to view, search, copy and print the redacted copy without a password.



## MINORITY PARTICIPATION

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

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

If so, please list the certifying governmental entity: \_\_\_\_\_

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

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

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

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

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

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

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

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

## V. QUALIFICATIONS

### QUALIFICATIONS - SPECIAL STANDARDS OF RESPONSIBILITY

This section establishes special standards of responsibility. **UNLESS YOU POSSESS THE FOLLOWING MANDATORY MINIMUM QUALIFICATIONS, DO NOT SUBMIT AN OFFER:**

In order to be qualified to receive award, you must meet the following mandatory minimum qualifications:

- Offeror is a public accounting firm or equivalent entity with a minimum of five (5) years' experience performing services similar to those outlined in the Solicitation.
- Offeror is a properly licensed certified public accountant or certified internal auditor.
- Offeror is currently licensed in South Carolina or is a nonresident properly registered under Section 40-2-245 of the 1976 South Carolina Code of Laws, as amended, and the associated Regulations 1-03, 1-04, 1-05, and 1-10. If Offeror is a nonresident not yet registered as noted above, Offeror affirms it will become properly registered prior to commencing Work.
- Offeror meets the independence standards of Government Auditing Standards issued by the Comptroller General of the United States.

Offeror must provide a detailed narrative statement with adequate information to establish that you meet all the requirements stated in subparagraph (a) above. Include all appropriate documentation.

## VI. AWARD CRITERIA

### EVALUATION CRITERIA

The following factors will be considered during our evaluations:

- 1) Responsiveness of the proposal in clearly stating an understanding of both the work to be performed and the internal audit plan:
  - Audit coverage and approach by segment or phase is appropriate.
  - The proposal demonstrates a clear understanding of the internal audit plan, including providing examples where the firm and/or proposed staff have successfully completed similar services.
  - Time estimates are reasonable for each segment or phase of the internal audit plan.
  - Time estimates by staff reflect an appropriate mix of experience and indicate a high level of involvement by team leadership.
  
- 2) Qualifications and experience of the firm:
  - The size and structure of the firm's governmental practice indicates an ability to maintain continuity of the project.
  - The firm has recent experience with similar work and similar-sized engagements.
  - The reputation of the firm and satisfaction with the firm's services are positive as expressed by references.
  - The firm has demonstrated an ability to implement an approach or introduce new technology to enhance audit quality or improve efficiency.
  
- 3) Qualifications of staff to be assigned:
  - Proposed staff qualifications include relevant experience with state governments.
  - Continuing professional education of proposed team members supports a focus in and commitment to governmental audits.
  - Proposed staff, including partner and manager or equivalent, are committed to being on-site regularly throughout the audit process.
  
- 4) Commitment to a team approach:
  - The proposal conveys through business beliefs and demonstrates practices an approach to the audit that values exceptional communication, knowledge sharing and openness among the audit team in order to complete the internal audit plan efficiently and within expectations.
  
- 5) Price:
  - Price proposal is a consideration but are not the dominant factor. Price will be given more importance when all other evaluation criteria are relatively equal. Proposals believed to be unreasonably low (hours or total cost) will be rejected.
  
- 6) Expansion of Services:
  - Any expansion of services resulting in an increase to the maximum fee must be negotiated by the parties, receive the prior written approval of the Office of the State Auditor, and be documented in a Change Order before any additional services are performed.

## **VII. TERMS AND CONDITIONS -- A. GENERAL**

### **NON-ASSIGNABILITY**

No assignment or transfer of this Contract or of any rights hereunder by the Contractor shall be valid without the prior written consent of SCDHHS.

### **INSOLVENCY**

This Contract is voidable and subject to immediate termination by SCDHHS upon the Contractor's insolvency, including the filing of bankruptcy proceedings. 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 SCDHHS. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed and the identity of the court in which the bankruptcy petition was filed. This obligation remains in effect until final payment under this Contract.

### **CHOICE-OF-LAW (JAN 2006)**

The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. [07-7A010-1]

### **CONTRACT DOCUMENTS and ORDER OF PRECEDENCE**

(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) discussions of an offer, if applicable, (4) your offer, (5) any statement reflecting the State's final acceptance (a/k/a "award"), and (6) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (5) above shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation, (i) a purchase order or other instrument submitted by the State, (ii) any invoice or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

### **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 the state annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

### **APPEALS PROCEDURES**

If any dispute shall arise under the terms of this Contract, the sole and exclusive remedy shall be the filing of a Notice of Appeal within thirty (30) days of receipt of written notice of SCDHHS' action or decision which forms the basis of the appeal. Administrative appeals shall be in accordance with SCDHHS' regulations at S.C. Code Ann. Regs. 126-150, et seq., (2011) and in accordance with the Administrative Procedures Act, S.C. Code Ann. §§1-23-310, et seq. (2005). Judicial review of any final SCDHHS administrative decisions shall be in accordance with S.C. Code Ann. §1-23-380, (2005).

## **EFT INFORMATION**

The Contractor must furnish to the State Treasurer's Office information necessary for making a payment by electronic funds transfer (EFT). You may do this by completing STO Form 4 and filing it with the STO. Additional information is available at the STO's website at <https://treasurer.sc.gov> (.). The Contractor is responsible for the currency, accuracy and completeness of the EFT information. Updating EFT information may not be used to accomplish an assignment of the right to payment, does not alter the terms and conditions of this contract, and is not a substitute for a properly executed contractual document.

## **EQUAL OPPORTUNITY**

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.

## **FALSE CLAIMS**

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.

## **FIXED PRICING REQUIRED**

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.

## **NO INDEMNITY OR DEFENSE**

Any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney's fees to anyone for any reason.

## **NOTICE**

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

## **OPEN TRADE**

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 Ann. §11-35-5300 (Supp. 2022).

## **PAYMENT and INTEREST**

(a) The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract

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

## **PUBLICITY**

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

## **PURCHASE ORDERS**

Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The using governmental unit shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order.

## **SURVIVAL OF OBLIGATIONS**

The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit and the obligations under the Business Association Agreement.

## **TAXES**

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

## **TERMINATION FOR LACK OF FUNDS**

The parties hereto covenant and agree that their liabilities and responsibilities, one to another, shall be contingent upon the availability of federal, state, and local funds for the funding of services and that this Contract shall be terminated if such funding ceases to be available. SCDHHS shall have the sole responsibility for determining the lack of availability of such federal, state, and local funds.

## **THIRD PARTY BENEFICIARY**

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.

**NON-WAIVER OF BREACH**

The failure of SCDHHS at any time to require performance by the Contractor of any provision of this Contract or the continued payment of the Contractor by SCDHHS shall in no way affect the right of SCDHHS to enforce any provision of this Contract; nor shall the waiver by SCDHHS of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

## **VII. TERMS AND CONDITIONS -- B. SPECIAL**

### **BANKRUPTCY – GOVERNMENT INFORMATION**

(a) All government information (as defined in the clause herein entitled “Information Security - Definitions”) shall belong exclusively to the State, and Contractor has no legal or equitable interest in, or claim to, such information. Contractor acknowledges and agrees that in the event Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, government information in its possession and/or under its control will not be considered property of its bankruptcy estate.

(b) Contractor agrees to notify the State within forty- eight (48) hours of any determination that it makes to file for bankruptcy protection, and Contractor further agrees to turn over to the State, before such filing, all government information that is in Contractor’s possession in a format that can be readily utilized by the State.

(c) In order to protect the integrity and availability of government information, Contractor shall take reasonable measures to evaluate and monitor the financial circumstances of any subcontractor that will process, store, transmit or access government information.

### **AMENDMENT TO CONTRACT**

No amendment or modification of this Contract shall be valid unless it shall be in writing and signed by both parties hereto.

### **AMENDMENT DUE TO THE UNAVAILABILITY FUNDS**

SCDHHS shall have the right to amend the total dollar amount reimbursed under this Contract, without the consent of the Contractor, when the amendment is due to the unavailability of funds and SCDHHS is responsible for providing the matching funds. SCDHHS shall have the sole authority to determine the percentage of any reduction in the dollar amount of this Contract. The amendment shall become effective thirty (30) days from the date of written notification from SCDHHS informing the Contractor of the reduction/amendment or upon the signature of both parties thereto, whichever is earlier. SCDHHS shall have the sole authority for determining lack of availability of such funds.

### **COMPLIANCE WITH LAWS**

During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.

### **INSURANCE**

The Contractor shall maintain, throughout the performance of its obligations under this Contract, a policy or policies of Worker's Compensation insurance with such limits as may be required by law, and a policy or policies of general liability insurance insuring against liability for injury to, and death of, persons and damage to, and destruction of, property arising out of or based upon any act or omission of the Contractor or any of its subcontractors or their respective officers, directors, employees or agents. Such general liability insurance shall have limits sufficient to cover any loss or potential loss resulting from this Contract. The Contractor shall be the named insured on the insurance policies required by this Section.

It shall be the responsibility of the Contractor to require any subcontractor to secure the same insurance as prescribed herein for the Contractor. In addition, the Contractor shall indemnify and save harmless SCDHHS from any liability arising out of the Contractor's untimely failure in securing adequate insurance coverage as prescribed herein. All such coverage shall remain in full force and effect during the initial term of the Contract and any renewal thereof.

### **PROOF OF INSURANCE**

Any time, at the request of SCDHHS or its designee, the Contractor shall provide proof of insurance as required in the insurance section of this Article whereby the Contractor shall be the named insured on the insurance policy or policies.

### **CONTRACTOR’S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY**



[ASK QUESTIONS NOW: For products providing the coverages required by this clause, the insurance market is evolving. Our research indicates that the requirements stated herein reflect commercially available insurance products. Any offeror having concerns with any specific requirements of this clause should communicate those concerns to the procurement officer well in advance of opening.]

(a) Without limiting any other obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, a policy or policies of insurance against claims which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees, subcontractors or any other entity for which the contractor is legally responsible.

(b) Coverage must include claims for:

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

(ii) privacy risks, including (A) failure to properly handle, manage, store, dispose of, destroy, or otherwise control non-public personally identifiable information in any format; (B) loss of, unauthorized access to, or disclosure of confidential information; and (C) any form of invasion, infringement or interference with rights of privacy, including breach of security/privacy laws or regulations.

(iii) contractual liability for the contractor's obligations described in the clauses titled "Indemnification - Third Party Claims - Disclosure of Information" and "Information Use and Disclosure;" and

(iv) errors, omissions, or negligent acts in the performance, by the contractor or by any entity for which the contractor is legally responsible, of professional services included in the work.

(c) If the work includes content for internet web sites or any publications or media advertisements, coverage must also include claims for actual or alleged infringement of intellectual property rights, invasion of privacy, as well as advertising, media and content offenses.

(d) If the work includes software, coverage must also include claims for intellectual property infringement arising out of software and/or content (with the exception of patent infringement and misappropriation of trade secrets)

(e) Coverage shall have limits no less than one million (\$1,000,000.00) dollars per occurrence and five million (\$5,000,000.00) dollars aggregate.

(f) If the insurance required by this clause is procured on a form affording "claims-made" coverage, then (i) all limits stated above as "per occurrence" shall be understood to mean "per claim" or "per occurrence," as is consistent with the terms of the "claims-made" policy; and (ii) such claims-made insurance shall provide for a retroactive date no later than the date the contract is awarded.

(g) All terms of this clause shall survive termination of the contract and shall continue until thirty (30) days past the final completion of the work, including the performance of any warranty work. In addition, contractor shall maintain in force and effect any "claims-made" coverage for a minimum of two (2) years after final completion of all work or services to be provided hereunder. Contractor shall purchase an extended reporting period, or "tail coverage," if necessary to comply with the latter requirement.

(h) Every applicable Using Governmental Unit, and the officers, officials, employees, and volunteers of any of them, must be covered as additional insureds on the policy or policies of insurance required by this clause.

(i) For any claims related to this contract, the insurance coverage required by this clause shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees, and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.

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

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

(l) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance as is required by this clause. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.

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

Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

## **CONTRACTOR PERSONNEL**

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.

## **CONTRACTOR'S OBLIGATION -- GENERAL**

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.

## **EQUIPMENT**

Equipment is defined as an article of tangible property that has a useful life of more than one year and an acquisition cost of Five Thousand Dollars (\$5,000) or more. Title to all equipment purchased with funds provided under this Contract shall rest with the Contractor as long as the equipment is used for the program for which it was purchased. When the equipment is no longer required for the program for which it was purchased, SCDHHS shall be notified, and instructions will be issued by SCDHHS pertaining to the disposition of the property.

## **ILLEGAL IMMIGRATION**

(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 subcontractor's 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.

## **INDEMNIFICATION-THIRD PARTY CLAIMS**

Notwithstanding any limitation in this Contract, the Contractor shall defend and indemnify SCDHHS and all its respective officers, agents, and employees against all suits or claims of any nature (and all damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities attributable thereto) by any third party which arises out of, or result in any way from, any defect in goods or services acquired hereunder or from any act or omission of the Contractor, its subcontractors, their employees, workmen, servants, or agents. The Contractor shall be given written notice of any suit or claim. SCDHHS shall allow the Contractor to defend such claim so long as such defense is diligently and capably prosecuted through legal counsel. SCDHHS shall allow the Contractor to settle such suit or claim so long as (i) all settlement payments are made by (and any deferred settlement payments are the sole liability of) the Contractor, and (ii) the settlement imposes no non-monetary obligation upon SCDHHS. The Contractor shall not admit liability or agree to a settlement or other disposition of the suit or claim, in whole or in part, without prior written consent of SCDHHS. SCDHHS shall reasonably cooperate with the Contractor defense of such suit or claim. The obligations of this paragraph shall survive termination of this Contract.

## **INDEMNIFICATION - THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION**

(a) Without limitation, Contractor shall defend and hold harmless Indemnitees from and against any and all suits, claims,

investigations, or fines (hereinafter “action”) of any character (and all related damages, settlement payments, attorneys’ fees, costs, expenses, losses or liabilities) by a third party which arise out of or in connection with a disclosure of government information (as defined in the clause titled Information Security - Definitions) caused in whole or in part by any act or omission of contractor, its subcontractors at any tier, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnatee, and whether or not such action is brought by a third party or an Indemnatee, but only if the act or omission constituted a failure to perform some obligation imposed by the contract or the law.

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

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

(d) “Indemnatee” means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents, and employees.

## **INDEMNIFICATION - INTELLECTUAL PROPERTY**

(a) Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the State, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys’ fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. State shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. State shall allow Contractor to settle such claim so long as (i) all settlement payments are made by Contractor, and (ii) the settlement imposes no non-monetary obligation upon State. State shall reasonably cooperate with Contractor’s defense of such claim. (b) In the event an injunction or order shall be obtained against State’s use of any acquired item, or if in Contractor’s opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either: (1) procure for State the right to continue to use, or have used, the acquired item, or (2) replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by State. If neither (1) nor (2), above, is practical, State may require that Contractor remove the acquired item from State, refund to State any charges paid by State therefor, and take all steps necessary to have State released from any further liability. (c) Contractor’s obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Contractor’s compliance with specifications furnished by the State unless Contractor knew its compliance with the State’s specifications would infringe an IP right, or (ii) that the claim is caused by Contractor’s compliance with specifications furnished by the State if the State knowingly relied on a third party’s IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor. (d) As used in this paragraph, these terms are defined as follows: “IP right(s)” means a patent, copyright, trademark, trade secret, or any other proprietary right. “Acquired item(s)” means the rights, goods, or services furnished under this agreement. “Specification(s)” means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work. (e) Contractor’s obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement.

## **INFORMATION SECURITY - DEFINITIONS**

**Compromise** means disclosure of information to unauthorized persons, or a violation of the security policy of a system in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object may have occurred.

Without limitation, the term “compromise” includes copying the data through covert network channels, or copying the data to unauthorized media, or disclosure of information in violation of any obligation imposed by this contract.

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

**Government information** means information (i) provided to Contractor by, or generated by Contractor for, the using governmental unit, or (ii) acquired or accessed by Contractor because 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 the Using Governmental Unit or a third party pursuant to or as a result of this contract.

**Third party** means any person or entity other than the Using Governmental Unit, the Contractor, or any subcontractors at any tier.

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

**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.

## INFORMATION SECURITY - SAFEGUARDING REQUIREMENTS

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

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

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

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

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

**Voice** means all oral information regardless of transmission protocol.

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

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

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

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

facilities, conditions, and environment. or citizen data. The requirements reflected herein are minimal and should not be relied upon as a default. In compliance with internal agency policies governing information security, each agency must determine for itself whether the services acquired from the contractor warrant the imposition of additional controls by contract. Agencies should be aware that commercial providers of commodity-type services typically organize their business models and services around the concept of shared resources and devices for a broad and diverse customer base. Therefore, unless an organization obtains fully dedicated services from a commercial service provider, there may be a need for greater reliance on compensating security controls by the agency to provide the necessary protections for the information system that relies on those external services. Internal agency assessments of risk and risk mitigation activities are necessary to address this situation.

(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) 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.

## **INFORMATION SECURITY – LOCATION OF DATA**

Notwithstanding any other provisions, contractor is prohibited from processing, storing, transmitting, or accessing government information, as defined in the clause titled Information Security - Definitions, outside the continental United States. For clarity, this obligation is a material requirement of this contract and applies to subcontractors at any tier.

## **INFORMATION USE AND DISCLOSURE**

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 the using governmental unit 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 the using governmental unit's failure to perform or the pendency of a dispute, Contractor agrees to promptly deliver to the using governmental unit (or destroy, at the using governmental unit's option) all government information in its possession as and upon written request of using governmental unit (provided that, if the contract has not expired or been terminated, Contractor shall be excused from the performance of any work reasonably dependent on Contractor's further access to such government information). (g) Privacy Policy & Applicable Laws. Without limiting any other legal or contractual obligations imposed by this contract or the law, Contractor shall (a) comply with its own privacy policies and written privacy statements relevant to the work, and (b) comply with (1) all laws applicable to Contractor regarding government information, and (2) all laws and standards identified in the clause, if included, entitled Information Use and Disclosure – Standards. (h) Actions Following Disclosure. Immediately upon discovery of a compromise or improper use of government information, Contractor shall take such action as may be necessary to preserve forensic evidence and eliminate the cause of the compromise or improper use. As soon as practicable, but no later than twenty-four hours after discovery, Contractor shall notify using governmental unit of the compromise or improper use, including a description of the circumstances of the use or compromise. As soon as practicable after discovery, Contractor shall undertake a thorough forensic investigation of any compromise or improper use and provide the using governmental unit all information necessary to enable the using governmental unit to fully understand the nature and extent of the compromise or improper use. With regard to any compromise or improper use of government information, Contractor shall: (1) provide any notification to third parties legally required to be provided such notice by Contractor, and if not (e.g., if legally required of the using governmental unit), Contractor shall reimburse using governmental unit for the cost of providing such notifications; (2) pay all costs and expenses for at least two years of identity theft monitoring services (including without limitation, credit monitoring) and identity theft restoration services for any such affected individuals receiving notice where such services are appropriate given the circumstances of the incident and the nature of the information compromised; (3) 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 the using governmental unit, and (5) reimburse the Using Governmental Unit 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, the using governmental unit may have, and notwithstanding any other term of this contract, Contractor agrees that using governmental unit may have no adequate remedy at law for a breach of Contractor's obligations under this clause and therefore the using governmental unit shall be entitled to pursue equitable remedies in the event of a breach of this clause.

## **LICENSES AND PERMITS**

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.

## **OFFSHORE CONTRACTING PROHIBITED**

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.

## **OWNERSHIP OF DATA and MATERIALS**

All data, material and documentation prepared for the state pursuant to this contract shall belong exclusively to the State.

## **PRICE ADJUSTMENTS**

(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.

## **PRICING DATA – AUDIT – INSPECTION**

(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.

## **RELATIONSHIP OF THE PARTIES**

Neither party is an employee, agent, partner, or joint venture 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.

## **SOFTWARE LICENSES**

Proprietary Software: Proprietary software is non- custom written, non-made for hire computer software supplied by the contractor and documentation used to describe, maintain and use the software.

License: The State is hereby granted a non-exclusive, fully paid perpetual license to use the proprietary software acquired hereunder.

Title: Title to any proprietary software provided by the Contractor to the State will remain with the Contractor.

Trade Secrets: The State agrees that the proprietary software is a trade secret of the contractor. The State agrees to take reasonable precautions to protect the trade secret nature of the proprietary software and to prevent its disclosure to unauthorized personnel. The license herein granted cannot be transferred, assigned, or made available by the State for use by any other individual, firm, partnership, or legal entity not affiliated, associated, or connected with the State without the prior expressed written consent of the contractor, which consent will not be unreasonably withheld. Such transfer shall also be conditioned upon the execution by the transferee of a written declaration agreeing to be bound by the terms and conditions of confidentiality provided for in this section.

Source Code: Source code includes files used by assembly, basic, c or other language compatibles to produce object modules for linkage into applications programs. The source code media will contain source code, files for compiling and linking software, and any other files and documentation available in machine- readable form to facilitate compiling and linking the code.

In the event the contractor, at any point during the continued installation and operation of the products acquired under this contract, discontinues the conduct of business, or for any reason fails to continue to support its proprietary software, it will either make provision for the continued support under the same terms and conditions or provide the State with a copy of the source code for said proprietary software, at no expense to the State.

Export Control: The State acknowledges that the products acquired hereunder may be licensable by the U. S. Government. It further acknowledges that a valid export license must be obtained from the Department of Commerce prior to export of said products.

Customized Software: Customized software is made- for-hire, custom written and customer specific software or customizations to proprietary software developed for the State by contractor and documentation used to describe, maintain

and use the software.

**Title:** Title to the customized software vests in the State as set forth herein. Contractor shall thereafter have no right, title or interest in any customized software. As herein used, title includes providing to the State all intellectual elements of the customized software including, but not limited to, developmental work product, notes, object and source codes, documentation, and any other items which would aid the State in understanding, using, maintaining, and enhancing said customized software.

**Software Tools:** The contractor shall provide to the STATE, simultaneous with its initial installation, and any subsequent enhancements, upgrades, fixes, etc., software tools (including, but not limited to compilers, editors, etc.) that the STATE would require to maintain or enhance the customized software. The price for said tools and the cost to train State personnel to maintain and/or to enhance the customized software shall be noted separately and included in the contractor's cost proposal submitted to the State in response to the State's solicitation.

**Escrow for Source Code:** In the event the contractor at any point during the continued installation and operation of the software herein acquired discontinues the conduct of business or for any other reason fails to continue to support the software, the state shall be provided a copy of the source code for said software within thirty days at no expense to the State. For the effective term of this contract, contractor will provide, to a mutually agreed upon escrow agent in the United States, the most recent version of the source code on magnetic media.

Proprietary source code shall be deposited into the escrow account within fifteen (15) days of the initiation of the contract, or any major update, non-customized enhancement, version or release of said licensed software.

The source code may be accessed only upon the following conditions:

- a. Contractor refuses to provide software maintenance, bug fixes, upgrades, updates and/or enhancement services under the terms set forth in this contract or as generally provided similarly situated customers; or
- b. Contractor ceases to do business or exist as a valid business entity, as evidenced by an adjudication of bankruptcy or other definitive measure of cessation of operations.

With regards to proprietary software, the state may not sell, assign lease, or otherwise provide said source code(s) to any other person or entity, regardless of modification, without the express written consent of contractor, its successors, and assigns.

## **SOFTWARE LICENSING AGREEMENTS—SINGLE SOLICITATION**

(a) Definitions. As used in this clause, these terms are defined as follows:

“Commercial Off-The-Shelf (COTS) Software” means software used with no customization and for which source code is not made available to licensees.

“Configuration” means any customer-specific modification to software that does not require changes to the software's source code, such as rules-based, rules engine based, or parameter driven modifications to configure the software.

“Customization” means any customer-specific modification to software that requires changes to the software's source code.

“Firmware” means software sold or licensed only in conjunction with machines, designed for execution only on a machine with which it is provided, designed only for machines other than a dedicated computer, and embedded into or installed on the machine by the machine's manufacturer or seller.

“Licensor” means an entity that owns the intellectual property rights for an item of software or has the authority to license or sublicense the software directly to the using governmental unit.

“Piggyback” means the document attached to this solicitation and entitled South Carolina Standard Amendment To End User License Agreements For Commercial Off-The-Shelf Software – Single Agency , which serves as South Carolina's standard amendment to a licensor's standard software licensing agreement (regardless of how denominated, e.g., master software licensing agreement, end user license agreement) for COTS. [Note: While the piggyback is generally indicative of what the State finds acceptable, terms in a Licensor's standard software licensing agreement may need to be negotiated.]

“Software” means a combination of computer instructions and data definitions that enable computer hardware to perform computational or control functions, excluding firmware.

“Software licensing agreement” means any agreement, regardless of how designated, that defines the intellectual property rights for, or the rights to use, any software product. A software licensing agreement must address only terms directly associated with licensing the right to use the software and must not address any of the work governed by the contract or any services (other than warranty services regarding the software code or associated documentation).

“Software maintenance” means the process of modifying software after delivery to correct faults, improve performance or other attributes, or adapt to a changed environment. (Reference ISO/IEC 14764:2006, as amended or superseded.) Software maintenance does not include any customization or configuration.

“Software product” means any COTS which you propose to provide pursuant to the contract.

“Source code” means computer instructions and data definitions expressed in a form suitable for input into an assembler, compiler or other translator.

(b) Contract and Software Licensing Agreement are Separate. The State seeks to establish related but independent agreements,



one with each applicable licensor of COTS and one with the contractor - regardless of whether the licensor and the contractor are the same or different entities. As provided in the clause titled "Bid / Proposal As Offer To Contract," a contract between the State and the contractor results from an award made pursuant to this solicitation. In contrast, the State's acceptance of your offer does not serve as the State's acceptance of any software licensing agreement; rather, software licensing agreements must be separately executed in order to be binding, regardless of whether the license to use the software will be granted by you or a third party. The contract, as defined in the clause titled "Definitions," will address all work (excluding the use rights for any software product) and all terms regarding pricing, payment, and delivery of any software product. Accordingly, the State intends to pay contractor in order to acquire license rights for any software product, but the license rights will be governed by a software licensing agreement with the licensor.

(c) Critical Instructions. (1) Your offer must identify each software product you propose to provide, identify the licensor, and explain which of the following licensing models apply: (i) you intend to license (or sublicense) the item directly to the State, or (ii) you intend to "resell" or distribute the item to the State (with licensing handled directly with the third-party licensor). You should use the Software Table attached to this solicitation to assist you in providing this information. (2) Your offer must NOT include any software licensing agreements; however, for any software product identified in your offer, you must submit a software licensing agreement upon request of the procurement officer. You must be prepared to provide any requested software licensing agreement within one business day of receiving a request. (3) Regardless of your licensing model, your price must include the cost of providing every software product you propose to provide to the State and those terms will form part of the contract.

(d) Pre-Condition of Award. If the work you are offering to perform is dependent upon the licensing of a software product by the State and the State is unsuccessful in negotiating an acceptable software licensing agreement for any software product for which it finds such an agreement necessary, your offer will be rejected. To facilitate the timely and successful negotiation of a software licensing agreement deemed necessary by the State, the State may ask you, after opening but prior to award, to acquire from the licensor an executed copy of the piggyback. You should communicate with the licensors for any major or critical software product well in advance of submitting a proposal, and licensors should be informed that few changes will be made to the piggyback. [The State already has, and continues to enter into, standing, statewide, licensing agreements for a variety of computer programs. Without limiting any of the above requirements, an applicable agreement may already exist for one or more items of COTS you have identified.]

#### **TERM OF CONTRACT -- EFFECTIVE DATE / INITIAL CONTRACT PERIOD**

The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is one (1) year, months, days from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award.

#### **TERM OF CONTRACT -- OPTION TO RENEW**

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

#### **TERMINATION FOR BREACH OF CONTRACT**

This Contract may be canceled or terminated by either party at any time within the contract period whenever it is determined by such party that the other party has materially breached or otherwise materially failed to comply with its obligations hereunder.

#### **TERM OF CONTRACT -- TERMINATION BY CONTRACTOR**

Contractor may terminate this contract at the end of the initial term, or any renewal term, by providing the Procurement Officer notice of its election to terminate under this clause at least one hundred fifty (150) days prior to the state's fiscal year end, June 30.

#### **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 the State. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(3) The Procurement Officer shall pay the contractor the following amounts:

(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 (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 and the contract price of work not terminated.

Contractor must demonstrate any costs claimed, agreed to, or established under 3) this Paragraph using its standard record keeping system, provided such system is consistent with any applicable Generally Accepted Accounting Principles.

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

## **VII. TERMS AND CONDITIONS-- C. AGENCY SPECIFIC**

### **HIPAA COMPLIANCE/CONFIDENTIALITY (SCDHHS)**

- **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) STANDARDS COMPLIANCE**

Contractor agrees that it shall deliver systems and services that are compliant with Title II, Subtitle F, Section 261-264 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, titled "Administrative Simplification" and the rules and regulations promulgated thereunder. In addition, Contractor will ensure compliance with all HIPAA requirements across all systems and services related to this Contract, including transaction, common identifier, and privacy and security standards, by the effective date of those rules and regulations. Contractor will comply with the rules and regulations, and will implement these rules and regulations so as to achieve consistency in data collection, validation, storage, retrieval, and consolidation with all SCDHHS' programs.

- **HIPAA SECURITY (SCDHHS)**

Contractor shall comply with all HIPAA data security requirements that may be necessary during the term of this Contract.

- **HIPAA BUSINESS ASSOCIATE**

Individually identifiable health information is to be protected in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA). By signing your Offer, you certify that you will comply with the applicable requirements of the attached Appendix HIPAA Business Associate document..

### **SAFEGUARDING INFORMATION (SCDHHS)**

All government data, to include Protected Health Information, shall be encrypted in transit (when sent over an unsecured, untrusted network, to include sent over email) and at rest. Any government data or Protected Health Information stored on portable devices must be encrypted. Personally Identifiable information shall be safeguarded in accordance with 45 CFR 155.260. Portable devices include all transportable devices that perform computing or data storage, manipulation or transmission including, but not limited to, portable hard or removable hard drives, diskettes, CDs, DVDs, USB flash drives, laptops, PDAs, smartphones (such as iPhones, Android, Blackberry or other type devices), cell phones, portable audio/video devices (such as iPods, and MP3 and MP4 players), and personal organizers. Safeguarding of information shall be in accordance with applicable state and federal laws and regulations and shall restrict access to, and use and disclosure of, such information in compliance with said laws and regulations.

### **LAWSUIT NOTIFICATION AND COOPERATION (SCDHHS)**

Contractor shall notify the SCDHHS of any class action lawsuits asserted or brought against Contractor, which are pending or known to Contractor as of the date of submission of the Proposal as well as any asserted or brought against the Contractor after the date of submission of the Proposal and prior to the termination of the Contract. Contractor also agrees to cooperate with the SCDHHS and provide data, information, and documentation necessary to pursue or defend litigation involving SCDHHS against any party other than Contractor.

### **DEBARMENT NON-PROCUREMENT/SCREENING REQUIREMENTS (SCDHHS)**

Contractor agrees to comply with all applicable provisions of 2 CFR Part 180 (2021, as amended) as supplemented by 2 CFR Part 376 (2021, as amended), pertaining to debarment and/or suspension and to require its Subcontractors to comply with these same provisions to ensure that no party receiving funds from this Contract are listed on the government-wide exclusions in the System for Award Management (SAM).

### **CONTRACTOR KEY PERSONNEL (SCDHHS)**

Contractor in the performance of the Contract shall provide the individuals designated in its Proposal. No diversion shall be made by Contractor without the written consent of SCDHHS. Replacement of any personnel shall be with personnel of substantially equal ability and qualifications.

Any person employed by Contractor shall, at the written request of SCDHHS, be removed from the Contract within a reasonable time by Contractor (not to exceed thirty (30) calendar days). In the event that an employee of Contractor is removed from the Contract pursuant to a request by SCDHHS, Contractor will have sixty (60) calendar days in which to fill the vacancy with another employee of equal ability and qualifications as evidenced by the SCDHHS' approval.

### **NON-DISCLOSURE (SCDHHS)**

All materials and information provided to Contractor in performance of the Contract, whether verbal, written, recorded magnetic media, cards or otherwise shall be regarded as Confidential Information, and Contractor agrees to take all necessary steps to safeguard the confidentiality of such materials or information in conformance with Federal and State statutes and regulations, and in particular, in accordance with 42 CFR Part 431, Subpart F (2021, as amended), and SCDHHS' regulations, S.C. Code Ann. Regs. 126-170 (2011), as amended. Contractor agrees not to release any information provided by SCDHHS or any information generated by the Contractor without the express written consent of SCDHHS and further agrees not to use the data or materials for any other purpose other than its performance for SCDHHS under this Contract.

Contractor further agrees to have any of its employees, agents, or representatives who may be required to work with such data in the performance of Contractor's work for SCDHHS individually educated about and responsible for compliance with the confidentiality standards, including any personal screening of its personnel by the SCDHHS for security purposes and to execute upon request a non-disclosure agreement in favor of the State and/or the United States Department of Health and Human Services.

### **RESTRICTIONS FOR LOBBYING (SCDHHS)**

In accordance with 31 U.S.C. 1352, funds received under this Contract may not be expended to pay any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. This restriction is applicable to all Subcontractors and shall be included in all subcontracts.

### **SAFETY PRECAUTIONS (SCDHHS)**

The State and U.S. Department of Health and Human Services (U.S. DHHS) assume no responsibility with respect to accidents, illness, or claims arising out of any work undertaken with the assistance of funds paid under the Contract. Contractor shall take necessary steps to insure or protect itself and its personnel.

### **USE AND OWNERSHIP OF INFORMATION AND DOCUMENTATION (SCDHHS)**

#### **REPRODUCTION OF DOCUMENTATION**

All documentation (hardcopy and electronic media) and printed materials provided by Contractor to SCDHHS, other than those materials produced pursuant to this Contract, may be reproduced by SCDHHS, provided that such reproduction is made solely for the internal use of employees of SCDHHS and further provided that no charge is made to anyone for such reproduction except where provided for by law, such as the Freedom of Information Act (FOIA), or as required by auditors.

#### **DOCUMENT INSPECTION AND RETENTION**

During normal business hours, the U.S. DHHS, Government Accountability Office, the Comptroller General, the Office of the Attorney General, South Carolina Fiscal Accountability Authority, the South Carolina State Auditor, and SCDHHS staff, through any authorized representative(s), shall have the right at all reasonable times to enter into Contractor's premises, or other such places where duties under the contract are being performed, to inspect, monitor, assess, audit, or otherwise evaluate the work performed or being performed under this Contract. They shall have the right to audit, examine and make copies, excerpts or transcripts from all records unless otherwise precluded by federal or State law; contact and conduct private interviews with Contractor employees and do on-site reviews of all matters relating to this Contract. This provision is applicable to any Subcontractor and shall be included in any subcontracts. If any inspection or evaluation is made on the premises of Contractor, or Subcontractor, Contractor shall provide and require its Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All such inspections and evaluations

shall be performed in such a manner that will not unreasonably delay work. Any subcontract permitted by SCDHHS must contain a provision that sets forth the Subcontractor's agreement with the terms set forth in this section.

Contractor shall maintain an accounting system with the supporting fiscal records adequate to assure that all claims for funds are in accordance with the Contract and all applicable laws, regulations and policies, both State and Federal. Contractor shall assure that all Contractor and Subcontractor books, documents, papers, accounting records, or other evidence pertaining to costs incurred under this Contract will be maintained for a period of at least five (5) years after the final payment under this Contract and that SCDHHS, the Office of the Attorney General, the South Carolina State Auditor, U.S. DHHS, Government Accountability Office, and the Comptroller General or any of their duly authorized representatives shall have access to any such books for the purpose of making audits, examinations, excerpts, and transcripts for no less than five (5) years after the date of final payment under this Contract or a resolution of audit findings, whichever is later.

Contractor agrees to retain all financial records and programmatic records, supporting documents, and statistical records for a period of five (5) years after the last payment is made under the Contract including any amendments and/or extensions to the Contract. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five (5) year period, the records shall be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the regular five (5) year period, whichever is later. This provision is applicable to any Subcontractor and shall be included in any subcontracts.

### **OWNERSHIP OF DATA (SCDHHS)**

All property rights, including software, data, and other records entered into any data base of the State or supplied to Contractor, publication rights in the interim, draft, and final reports and other documentation (hardcopy and electronic media) produced by Contractor in connection with the work provided for under this Contract, shall rest with the U.S. DHHS and the State.

"Data" shall mean all results, technical information and materials developed and/or obtained in the performance of the services hereunder including but not limited to, all reports, surveys, plans, charts, test data, program documentation, recordings (sound and/or video), pictures, drawings, analyses, graphic representations, printouts, notes and memoranda, and documents whether finished or unfinished, which result from or are prepared in connection with the services performed hereunder.

The State has the right to all working papers, reports, charts, programs, and other material during the course of this RFP.

All documents, reports, manuals, and other data prepared during and/or resulting from the performance of services under this Contract shall include the following statement: "The preparation of this (report or document, and so forth) was financed under an agreement with SCDHHS with funds provided in part by the U.S. Department of Health and Human Services."

Contractor may not publish or copyright any data without prior approval, unless otherwise stated herein. The State and the Federal Government shall have the right to publish, duplicate, use and disclose all such data in any manner, and for any purpose whatsoever, and may authorize others to do so.

Further, in accordance with 42 CFR 495.360 U.S. DHHS shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal government purposes, software, modifications, and documentation developed for and/or obtained through this acquisition. However, proprietary operating/vendor software packages such as software that is owned and licensed for use by third parties, which are provided at established catalog or market prices and sold or leased to the general public shall not be subject to these ownership provisions.

### **NO CONTRACTOR UTILIZATION OF WORKERS OUTSIDE OF THE UNITED STATES (SCDHHS)**

Neither Contractor nor any of its Subcontractors may use workers located outside of the United States of America or its territories to perform Contractor's duties under the Contract.

### **APPLICABLE LAWS AND REGULATIONS (SCDHHS)**

Contractor agrees to comply with all applicable federal laws and regulations including constitutional provisions regarding due process and equal protection of the laws and including, but not limited to:

- (i) All applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970, as amended ([42 U.S.C. §7401](#), et seq.) and the Federal Water Pollution Control Act, as amended ([33 U.S.C. §1251](#), et seq.).

- (ii) Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. §2000d et seq.) and regulations issued pursuant thereto, ([45 CFR Part 80](#), 2021) as amended, which provide that Contractor must take adequate steps to ensure that persons with limited English skills receive free of charge the language assistance necessary to afford them meaningful and equal access to the benefits and services provided under this Contract.
- (iii) Title VII of the Civil Rights Act of 1964, as amended ([42 U.S.C. §2000e](#)) in regard to employees or applicants for employment.
- (iv) Section 504 of the Rehabilitation Act of 1973, as amended, ([29 U.S.C. §794](#)), which prohibits discrimination on the basis of handicap in programs and activities receiving or benefiting from federal financial assistance, and regulations issued pursuant thereto ([45 CFR Part 84](#), 2021, as amended).
- (v) The Age Discrimination Act of 1975, as amended, ([42 U.S.C. §6101](#) et seq.), which prohibits discrimination on the basis of age in programs or activities receiving or benefiting from federal financial assistance.
- (vi) The [Omnibus Budget Reconciliation Act of 1981, as amended P.L. 97-35](#), which prohibits discrimination on the basis of sex and religion in programs and activities receiving or benefiting from federal financial assistance.
- (vii) The Americans with Disabilities Act, ([42 U.S.C. §12101](#) et. seq.), and regulations issued pursuant thereto.
- (viii) Title IX of the Education Amendments of 1972, ([20 U.S.C. § 1681](#) et seq.).
- (ix) The Hatch Act, as amended, (5 U.S.C. § 1501-1508), and regulations issued pursuant thereto.
- (x) Section 6002 of the Solid Waste Disposal Act of 1965 as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6962).

SCDHHS is currently subject to the information security requirements defined by both state and federal statutes. All systems maintained by Contractor that transport, maintain, and/or store data are also subject to some or all of these information security requirements, as determined by the scope of the contracted services.

These include but are not limited to:

Centers for Medicaid and Medicare Services (CMS) Guidance and Standards

- o <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/#MinimumAcceptableRiskStandards>
- o <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Harmonized-Security-and-Privacy-Framework-ERA-Supp-v-1-0-08012012-a.pdf>

FISMA

<http://csrc.nist.gov/drivers/documents/FISMA-final.pdf>

HIPAA

<http://www.hhs.gov/ocr/privacy/hipaa/administrative/combined/index.html>

HITECH OMNIBUS

<http://www.hhs.gov/ocr/privacy/hipaa/administrative/omnibus>

IRS Publication 1075

<http://www.irs.gov/pub/irs-pdf/p1075.pdf>

Patient Protection and Affordable Care Act (PPACA) or (ACA)

<http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/pdf/PLAW-111publ148.pdf>

SCDHHS requires that all Business Associates and partners execute a Business Associate Agreement (BAA) in accordance with the HITECH Act stipulating that they understand these requirements and agree to adhere to them as contractual custodians of data and/or systems for which SCDHHS is responsible. As a part of this solicitation, Contractor agrees to the attached BAA and recognizes that SCDHHS reserves the right to audit information security compliance at will either directly or through a third party of SCDHHS's choosing. Additionally, SCDHHS is required to comply with future Directives and Executive Orders from the South Carolina Governor, state provisos and legislation, rulings from CMS and federal legislation. Due to the dynamic nature of these requirements all Business Associates and Partners must agree to adhere to these changes within sixty (60) days of being notified by SCDHHS. SCDHHS recognizes that compliance with additional requirements may require modification in accordance with Section 7B, AMENDMENT TO CONTRACT.

## **IX. ATTACHMENTS TO SOLICITATION**

### ATTACHMENTS LIST

The following documents are attached to this solicitation:

ATTM 01 – IMPORTANT TAX NOTICE

ATTM 02 - OFFEROR'S CHECKLIST

ATTM 03 – ORGANIZATIONAL CONFLICT OF INTEREST DISCLOSURE

ATTM 04 – HIPAA BUSINESS ASSOCIATE AGREEMENT

ATTM 05 – CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE  
AGREEMENTS

## **ATTM 01 - 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: <https://dor.sc.gov>

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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 803-896-1420.

PLEASE SEE THE "NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING" FORM (FORM NUMBER I-312) LOCATED AT: <https://dor.sc.gov>



## **ATTM 02 - OFFEROR'S CHECKLIST -- AVOID COMMON BID/PROPOSAL MISTAKES**

Review this checklist prior to submitting your bid/proposal.

If you fail to follow this checklist, you risk having your bid/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 bid/proposal to make sure your bid/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 bid/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 bid/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 Bid/proposal includes the number of copies requested.
- Check to ensure your Bid/proposal includes everything requested!
- If you have concerns about the solicitation, do not raise those concerns in your response. If this solicitation includes a pre-bid/proposal conference or a question & answer period, raise your questions as a part of that process! Please see instructions under the heading "submission of questions" and any provisions regarding pre-bid/proposal conferences.

## ATTM 03 – ORGANIZATIONAL CONFLICT OF INTEREST DISCLOSURE

### I. INSTRUCTIONS

Read Part II carefully. If a disclosure statement is required, please provide a narrative statement in Part III. If a representation is submitted, please complete Part IV. Complete Part V in every case.

### II. ORGANIZATIONAL CONFLICT OF INTEREST DISCLOSURE OR REPRESENTATION

It is the policy of State of South Carolina (State) to avoid situations which place an Offeror in a position where its judgment may be biased because of any past, present, or currently planned interest, financial or otherwise, the Offeror may have which relates to the work performed pursuant to this solicitation or where the Offeror's performance of such work may provide it with an unfair competitive advantage. (As used herein "Offeror" means the proposer or any of its affiliates or proposed consultants or subcontractors of any tier.)

Therefore:

- (a) The Offeror shall provide a statement which describes in a concise manner all relevant facts concerning any past, present or currently planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed hereunder and bearing on whether the Offeror has a possible organizational conflict of interest with respect to (1) being able to render impartial, technically sound, and other objective assistance or advise, or (2) being given an unfair competitive advantage. The Offeror may also provide relevant facts that demonstrate how possible organizational conflict of interest relating to other divisions or sections of the organization(s) or its existing organizational structure or system might be avoided or mitigated. This information should be provided in narrative form in Part III.
- (b) In the absence of any relevant interest referred to above, the Offeror shall submit a statement certifying that to its best knowledge and belief no such facts exist relevant to possible organizational conflicts of interest. The Offeror's statement pursuant to this paragraph as well as any statement required to be submitted under (a) above shall include statements from proposed consultants and subcontractors at any tier if relevant. Offeror is responsible for submitting all such information as part of its certification.
- (c) The State will review the statement submitted and may require additional relevant information from the Offeror. All such information, and any other relevant information will be used by State to determine whether an award to the Offeror may create an organizational conflict of interest. If found to exist, State may (1) impose appropriate conditions which avoid such conflict, (2) disqualify the Offeror, or (3) determine that it is otherwise in the best interest of the State to contract with the Offeror by including appropriate conditions mitigating such conflict in the contract awarded.
- (d) The refusal to provide the disclosure or representation of any additional information as required shall result in disqualification of the Offeror for award. The nondisclosure or misrepresentation of any relevant interest may also result in

the disqualification of the Offeror for award, or if such nondisclosure or misrepresentation is discovered after award, the State may terminate the contract for default, disqualify the contractor from subsequent related contracts, or subject the contractor to such other remedial actions as may be permitted or provided by law.

- (e) No award shall be made until the disclosure or representation has been evaluated by State.

III. DISCLOSURE STATEMENT: (attach additional pages if more space is needed)

(Offeror to provide a concise narrative of any potential conflicts)

IV. REPRESENTATION

The Offeror, \_\_\_\_\_, hereby represents that it is aware of no past, present, or currently planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed under the contract resulting from Request for Proposal for Internal Audit Services that would indicate any impingement upon its ability to render impartial, technically sound, and objective assistance or advice or result in it being given an unfair competitive advantage. This representation applies to all affiliates of the Offeror and its proposed consultants or subcontractors of any tier.

V. SIGNATURE

Offeror's Name \_\_\_\_\_

RFP/Contract Name: Internal Audit Services

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

## ATTM 03 - HIPAA BUSINESS ASSOCIATE AGREEMENT

### A. **Purpose**

The South Carolina Department of Health and Human Services (Covered Entity) and Business Associate agree to the terms of this Agreement for the purpose of protecting the privacy of individually identifiable health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in performing the functions, activities, or services for, or on behalf of, Covered Entity as specified in the Contract between the parties.

### B. **Definitions**

#### General Statement

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, protected health information, Required by Law, Secretary, Subcontractor, Unsecured protected health information, and Use.

#### Specific Definitions

(a) Business Associate. "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 \_\_\_\_\_.

(b) Covered Entity. "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 SCDHHS.

(c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

(d) Security incident. "Security incident" shall generally have the same meaning as the term "security incident" at 45 CFR 164.304.

### C. **Obligations and Activities of Business Associate**

Business Associate agrees to:

(a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;

(c) Submit system and program information to the Privacy Official, upon request, to document and verify compliance with federal and state privacy rules and regulations;

(d) Report to the Privacy Official of the Covered Entity any use or disclosure of protected health

information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware within 72 hours of discovery;

(e) Notwithstanding the requirements of 45 CFR 164.410, Business Associate shall notify the Privacy Official of the Covered Entity of potential breaches within 72 hours of discovery and keep the Privacy Official of the Covered Entity informed in their breach determination process;

(f) Unless otherwise directed by Covered Entity, Business Associate shall be responsible for the cost incurred by the Covered Entity for breach notifications to individuals, the US DHHS Office of Civil Rights (OCR), the media, and Consumer Affairs. Information for breach notifications shall be submitted within 15 days of discovery to the Privacy Official of the Covered Entity by email to [privacyoffice@scdhhs.gov](mailto:privacyoffice@scdhhs.gov);

(g) For breaches resulting from the action or inaction of Business Associate, or its subcontractors, surrounding the use, receipt, storage, and/or transmission of PHI and PII under this Agreement, be responsible for any and all costs, damages, liabilities, expenses, fines, and/or penalties;

(h) In accordance with 45 CFR 164.502(e)(1) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements, to include reporting and notification requirements, that apply to the Business Associate with respect to such information;

(i) All reporting or notifications requirements pursuant to letters (d), (e), (f), (g) and (h) above, should be submitted using the “Incident Reporting for Business Associates” form, addressed to the Privacy Official of the Covered Entity, by email to [privacyoffice@scdhhs.gov](mailto:privacyoffice@scdhhs.gov). Additional contact information for the Privacy Official is:

South Carolina Department of Health and Human Services

Privacy Office  
Post Office Box 8206  
Columbia, SC 29202-8206  
Phone: (803) 898-2034  
Fax: (803) 255-8276

(j) Make available protected health information in a designated record set to the Covered Entity as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.524;

(k) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.526;

(l) Maintain and make available the information required to provide an accounting of disclosures to Covered Entity, or an individual if directed by Covered Entity, as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.528;

(m) Notify Covered Entity within five (5) business days of receipt of any request covered under paragraphs (j), (k) or (l) above;

(n) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and

(o) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

**D. Permitted Uses and Disclosures by Business Associate**

(a) Business Associate may only use or disclose protected health information as necessary to perform the services set forth in the Contract to which this Agreement is appended, including, if applicable, authorization to use protected health information to de-identify the information in accordance with 45 CFR 164,514(a)-(c) and follow additional guidance provided by US DHHS in “Guidance Regarding Methods for De-identification of protected health information in accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule” found at <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/index.html>.

(b) Business Associate may use or disclose protected health information as required by law.

(c) Business Associate agrees to limit uses, disclosures, and requests for protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request according to the HIPAA Privacy Rule.

(d) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.

(e) Business Associate may disclose protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the individual to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the individual, and the individual notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(f) Business Associate may not disclose or duplicate protected health information identified by Covered Entity as provided by the Social Security Administration (SSA) without written approval and permission from SSA. If the need for such disclosure and/or duplication arises, Business Associate must notify Covered Entity and work with Covered Entity to obtain approval and permission from SSA.

**E. Term and Termination**

(a) Term. The Term of this Agreement shall be effective as of July 1, 2023 and shall terminate on the effective and termination dates of the Contract to which this Agreement is appended, or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of

the Agreement and Business Associate has not cured the breach or ended the violation within thirty (30) calendar days.

(c) Obligations of Business Associate Upon Termination.

(1) Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity, or, if agreed to by Covered Entity, destroy all protected health information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity that the Business Associate still maintains in any form. Business Associate shall retain no copies of the protected health information.

(2) In the event that Business Associate determines that returning or destroying the protected health information is not practical or possible, Business Associate shall notify Covered Entity of the conditions and reasons return of the protected health information is not practical or possible. Upon concurrence by Covered Entity that return is not practical, Business Associate shall:

- i. Retain only that protected health information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
- ii. Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining protected health information that the Business Associate still maintains in any form;
- iii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as Business Associate retains the protected health information; and
- iv. Not use or disclose the protected health information retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at Section D of this Appendix.

(3) Business Associate shall obtain or ensure the destruction of protected health information created, received, or maintained by any subcontractors.

(4) Business Associate shall transmit the protected health information to another Business Associate of the Covered Entity at termination, upon receipt of a written request from the Covered Entity.

(d) Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

F. **Miscellaneous**

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

(c) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

Authorized Contract Representative (Print): \_\_\_\_\_  
Authorized Contract Representative (Sign): \_\_\_\_\_



## **ATTM 05 – CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS**

### **Instructions**

The attached form must be completed by all Providers/Contractors who receive \$100,000 or more in federal funds through a contractual agreement with the South Carolina Department of Health and Human Services (SCDHHS). The purpose of the attached form is to certify that none of the federal funds received through the contractual agreement will be used for any lobbying activities. This form is required by the Federal Government as a result of 31 U.S.C. 1352. A copy of this form must be completed and returned with all signed contractual agreements exceeding \$100,000.

Additionally, should the Provider/Contractor enter into any Subcontracts in coordination with the contractual agreement with SCDHHS, the Provider/Contractor is required to have on file a signed copy of this form for any and all Subcontracts which exceed the \$100,000 level. This requirement extends to all levels of subcontracting and sub subcontracting.

Should the Provider/Contractor (or any of its Subcontractors/ Sub-subcontractors) use any funds for lobbying activities, an additional form (Standard Form LLL) will be required. (See #2 below). It shall be the responsibility of the Provider/Contractor to notify SCDHHS of this activity and to request from SCDHHS a copy of this form for completion and proper filing.

Should there be any questions concerning this form or the Standard Form LLL, contact should be made with the Division of Contracts at SCDHHS.

### **CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000.00 for such failure.

SIGNATURE: \_\_\_\_\_

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

DATE: \_\_\_\_\_