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|  |  **State of South Carolina** **Request for Proposal****Amendment Number Three** | Solicitation Number: Date Issued: Procurement Officer: Phone: E-Mail Address: | PEBA0202018RFP9/26/2019 David H. Quiat803.737.0562dquiat@mmo.sc.gov |

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| DESCRIPTION: **Benefits Administration System** USING GOVERNMENTAL UNIT: **South Carolina Public Employee Benefit Authority** |

 SUBMIT OFFER BY (Opening Date/Time):   **10/23/2019 11:00 AM**

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

 SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:

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| --- | --- |
| MAILING ADDRESS:SFAA, Div. of Procurement Services, MMOPO Box 101103Columbia SC 29211  | PHYSICAL ADDRESS:SFAA, Div. of Procurement Services, MMO1201 Main Street, Suite 600Columbia SC 29201 |

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|  AWARD & AMENDMENTS | Award will be posted on **12/10/2019.**  The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <https://procurement.sc.gov/vendor/contract-opps/other-solicitations/peba>  |

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| You must submit a signed copy of this form with Your Offer. By submitting a proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of one hundred twenty (120) calendar days after the Opening Date.    (See the clause entitled “Signing Your Offer.”) |
|  NAME OF OFFEROR   (Full legal name of business submitting the offer) | Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc. |
|  AUTHORIZED SIGNATURE  (Person must be authorized to submit binding offer to contract on behalf of Offeror.) |  |
|  TITLE  (Business title of person signing above) |  STATE VENDOR NO.  (Register to obtain S.C. Vendor No. at www.procurement.sc.gov) |
|  PRINTED NAME  (Printed name of person signing above) |  DATE SIGNED |  STATE OF INCORPORATION  (If you are a corporation, identify the state of incorporation.) |

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|  OFFEROR’S TYPE OF ENTITY:   (Check one)                                                                   (See “Signing Your Offer” provision.)     \_\_\_ Sole Proprietorship                                  \_\_\_ Partnership                                  \_\_\_ Other\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    \_\_\_ Corporate entity (not tax-exempt)          \_\_\_ Corporation (tax-exempt)            \_\_\_ Government entity (federal, state, or local) |

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**PAGE TWO**

 **(Return Page Two with Your Offer)**

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

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| --- | --- |
| PAYMENT ADDRESS (Address to which payments will be sent.)           \_\_\_\_Payment Address same as Home Office Address\_\_\_\_Payment Address same as Notice Address   **(check only one)** | ORDER ADDRESS (Address to which purchase orders will be sent)          \_\_\_\_Order Address same as Home Office Address\_\_\_\_Order Address same as Notice Address   **(check only one)** |

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| ACKNOWLEDGMENT OF AMENDMENTSOfferors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See the clause entitled “Amendments to Solicitation”) |
| Amendment No. | Amendment Issue Date | Amendment No. | Amendment Issue Date | Amendment No. | Amendment Issue Date | Amendment No. | Amendment Issue Date |
|   |   |   |   |   |   |   |   |
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| DISCOUNT FOR PROMPT PAYMENT(See the clause entitled “Discount for Prompt Payment”) | 10 Calendar Days (%) | 20 Calendar Days (%) | 30 Calendar Days (%) | \_\_\_\_\_Calendar Days (%) |

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**REQUEST FOR PROPOSAL (RFP)**

**SOLICITATION NUMBER PEBA0202018RFP**

**RESPONSES TO QUESTIONS**

The following questions were submitted prior to the pre-proposal conference but were not answered in Amendment Number Two (2).

1. RFP, Section 6.4.4 Contractor Caused Delay, page 150. Would PEBA consider the following revision: Contractor caused delays caused solely by Contractor will, in no circumstances, last for more than ten (10) consecutive Business Days. If a delay caused solely by Contractor caused delay exceeds ten (10) consecutive Business Days, PEBA will have the right to terminate this Contract for default subject to the issuance of a Notice to Cure pursuant to 6.11.5 in addition to all other remedies available to it. All delays caused solely by Contractor Contractor-caused delays will be the responsibility of Contractor and no Change Orders will be approved by PEBA for such Contractor delays.

**Response: No. The requested change is not accepted.**

1. RFP, Section 6.7.18 (a) Warranties, page 155. Would PEBA consider the following revision:

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS CONTRACT OR REFERENCED HEREIN, EACH PARTY DISCLAIMS ALL WARRANTIES RESPECTING PEBA, ALL SERVICES PROVIDED UNDER THIS CONTRACT AND THE PARTIES’ OBLIGATIONS, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OF ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

**Response: No. The requested change is not accepted.**

3. Attachment 8 Functional Req. 5.05

Please provide more specific information regarding the need to store a configurable legend of third party administrator (TPA) correspondence with details on key content or messaging that can be utilized when referencing the inbound correspondence listing data from the TPAs.

**Response: This requirement is removed. A list of all requirements removed from Attachment 8 and Attachment 9 can be found in the Excel document entitled: Removed Requirements – Updates to Attachment 8 and Attachment 9. The Excel document can be found at** [**https://www.procurement.sc.gov/vendor/contract-opps/other-solicitations/peba**](https://www.procurement.sc.gov/vendor/contract-opps/other-solicitations/peba) **Benefits Administration System RFP.**

4. Attachment 8 Functional Req. 5.01

Will the capability to view third party administrator (TPA) summary data through the member portal be real-time or via a data feed?

**Response: This requirement is removed.**

5. Attachment 8 Functional Req. 5.03

Are the data elements that are required to be received and stored in the subscriber record, inbound data from health, dental, and vision third party administrators (TPAs) and display this information for internal use and through the member portal claims related data?

**Response: This requirement is removed.**

6. Attachment 8 Functional Req. 5.07

Please elaborate on the process of communicating with MoneyPlus?

**Response: Response: This requirement is removed.**

7. Attachment 9 Technical Req. T8.6

Can PEBA share the list of their current batches and associated run times.

**Response: PEBA has gathered the currently available information. After excluding obsolete batch jobs, PEBA has identified 625 batch jobs. Most of these jobs run in 1 minute or less. Batch jobs that have not been recently executed do not have run times available. Filtering for batch jobs that ran for 10 minutes or more, where run times are available, there are 79 batches. A list of the batch job information for the 79 batches that ran for 10 minutes or more can be found in the Excel document entitled: Batch-Jobs-Sept-17-2019 Subset. The Excel document can be found at** [**https://www.procurement.sc.gov/vendor/contract-opps/other-solicitations/peba**](https://www.procurement.sc.gov/vendor/contract-opps/other-solicitations/peba) **Benefits Administration System RFP.**

The following questions were submitted prior to the final deadline for questions, September 9, 2019 (11:00 am).

8. **RFP Section No. 2.1.3.1 Retirement IT Systems Pg.# 19 / 2.1.3.2 – Insurance Systems Pg.# 27***RFP language: 2.1.3.1 - Core retirement functionality exists in the Retirement/UNIX legacy application. The application is built using Natural programming language with data stored in an ADABAS database. 2.1.3.2 - The Insurance/UNIX application is legacy Natural language, green screen, character-based system that supports the majority of all PEBA insurance business activities.*

Can PEBA provide additional information regarding the number of programs and the number of lines of code for both the Retirement/UNIX and Insurance/UNIX applications?

**Response: For Retirement and Insurance combined, PEBA currently supports an Adabas/Natural environment consisting of approximately:**

 **2 Adabas Databases**

 **241 Adabas FDTs**

 **9,121 Natural Programs**

 **3,929 Natural Subprograms**

 **236 Help Routines**

 **4,142 Natural Maps**

 **5.33M Lines of Code (Line counts include commented and blank lines). Retirement has 3.1M lines. Insurance has 2.2M lines.**

9. **RFP Section No. 2.1.3.1 Pg.# 21 / Attachment 9: T4.7***RFP language: The System must seamlessly integrate with the existing ECM solution or the solution proposed by the Contractor. The System must offer single sign-on.*

The matrix in Section 2.1.3.1 of the RFP states the ECM is "In Scope of this RFP" however, the Technical Requirements states it is acceptable to integrate with the existing ECM solution versus replace the Team IA system, can you confirm your preference to either replace or integrate the existing ECM solution?

**Response: The Offeror is expected to propose a solution that meets all requirements. For the ECM solution, PEBA does not have a preference. PEBA has no preference for keeping the existing Team IA software and expects the Offeror to propose a solution that will meet the requirements of the ECM and ECM integration with the BAS.**

10. **RFP: Section No. 2.2.1, Pg.# 36**

*RFP language: Workstream 3: Data Conversion & Bridging will be delivered under a separate contract with the Data Services Contractor. This contract is in progress.*

Can PEBA provide more specifics regarding the delineation of responsibilities between the Data Services Contractor, the BAS contractor, and PEBA? Can PEBA describe how you envision the data conversion process flow? Would the Data Services Contractor align their delivery of services to the approved project work plan?

**Response: Please refer to the PEBA response to 2019 PEBA New BAS RFP-Amendment #2, Questions 15. 17, and 18. For additional information see Part 3 – Scope of Work in the Data Conversion & Bridging Services RFP:**

**[**[**https://procurement.sc.gov/files/2018%20Data%20Services%20Vendor%20RFP%20-%20PEBA0222018.docx**](https://procurement.sc.gov/files/2018%20Data%20Services%20Vendor%20RFP%20-%20PEBA0222018.docx)**]**

11. **RFP: Section No. 2.2.1, Pg.# 36***RFP language: PEBA will consider recommendations for breaking the Project into three similarly sized releases rather than the two originally included in the Operational Assessment.*

Can PEBA provide a copy of the Operational Assessment discussed in Section 2.2.1 of the RFP?

**Response: The results from the Operational Assessment were reviewed by PEBA at the start of the procurement process. Over two years had elapsed between the end of the OA and the release of the RFP. Several significant assumptions and conclusions have changed in that time. Everything relevant from the OA was included in the RFP. Offerors should focus on the RFP content for developing their proposals.**

12. **RFP: Section No. 3.1, Pg.# 38 / 6.2.3 Maintenance and Support, Pg.# 139**

*RFP language: 3.1: It is also PEBA’s intent to assume the operational responsibility for the new system and be substantially self-sufficient at the end of the implementation period. 6.2.3 After implementation of the BAS System, Contractor will provide the Maintenance and Support Services from the end of the Warranty Period to the end of the Contract Term.*

These sections appear to have some contradiction. Can PEBA clarify whether the vendor should include in their pricing the costs to provide the full maintenance and support services, for the entire solution, until the end of the Contract term, or some assumptions regarding PEBA’s staffing and ability to take on M&O responsibility?

**Response: The Offeror should include full maintenance and support services for the entire solution until the end of the contract term. Over time PEBA will look for opportunities to strategically transition support where it is feasible.**

13. **RFP: Section No. 3.2, Pg.# 78***RFP language: [All]*

In our experience, cloud services organizations are not subcontractors, but vendors, and therefore do not allow for flow downs, transfers, etc. Several of the requirements in RFP Section 3.2, and other provisions of the RFP related to the Government Cloud Services, would not be possible, such as assigning a third-party beneficiary, assumption, maintenance, access requirements that require access to physical locations at the cloud hosting facility, data ownership, incident response, access to security logs and security information, contract audits, and change control and advance notice. Additionally, in our experience, cloud service providers require their customers to agree to specific requirements or compliance obligations that need to be included in a resulting contract. Would the State be willing to enter into the contractual agreement with the cloud service provider directly or leverage the cloud services contracts provided by the Department of Administration’s Division of Technology Operations (DTO)?

**Response: PEBA expects to proceed with one single prime contractor with the hosting provider as a sub-contractor. DTO does not currently have a cloud services offering to leverage.**

14. **RFP: Section No. 3.2, Pg.# 78***RFP language: PEBA is interested in an off-site government cloud services hosting option for the new BAS.*

Can PEBA confirm, if a vendor does propose an off-site government cloud hosting option (contingent upon response to Q13 addressing concerns), there is no need for the vendor to also include an on-premise hardware configuration option in the Third-Party-Equipment tab of Attachment 6 – Business Proposal Template? Otherwise, if the concerns in Q13 cannot be addressed in this response to align the procurement of cloud hosting services with the RFP terms and conditions, should vendors provide costs for both hosted and on-prem options in Attachment 6 – Business Proposal Template?

**Response: The Third-Party Equipment Tab need only be used for equipment outside of the cloud hosting solution. For example, if the Offeror proposed local scanning equipment as part of the solution, this would be listed on the Third-Party Equipment Tab.**

15. **RFP: Section No. 3.14.3, Item d, Pg.# 90**

*RFP language: d) The Contractor will fully test all software that is proposed to ensure that it meets the Project requirements and to demonstrate the functionality and performance characteristics before the start of User Acceptance Testing. The system tests will actively use all the functions, test all interfaces, process all types of input, and produce all reports, correspondence, and notices. The Contractor will include additional types of cases and transactions in the test, as specified by PEBA.*

Will PEBA be responsible for the coordination of interface testing with third parties?

**Response: Yes. PEBA will be responsible for the coordination with third parties. The Contractor will be responsible for testing.**

16. **RFP: Section No. 3.14.4, Item b, Pg.# 91**

*RFP language: (b) The Capacity and Performance Test will include a stringent stress test that includes a simulation of workload and volume testing, which will be used to test and monitor the limits of the System in a simulated production environment.*

Can PEBA provide the expected volume which will be used to test and monitor the limits?

**Response: PEBA expects the Contractor to use their experience with similar projects as well as the information provided by PEBA for expected performance, number of users, data volumes, etc. For example, please refer to Attachment 8 Technical requirements, sub-category Performance and sub-category Sizing.**

17. **RFP: Section No. 3.14.5.d, Pg.# 92**

*RFP language: UAT Plan will include 'realistic time frames for completion of testing by PEBA staff'.*

Can PEBA provide any estimations or assumptions that PEBA has regarding the timeframe/capacity that PEBA will be able to execute scripts so that the Contractor can appropriately estimate the cost to support the effort?

**Response: The Offeror is expected to propose the duration and staffing levels required for PEBA to complete UAT. PEBA would anticipate that the Offeror would use their experience and industry benchmarks (such as UAT duration as a percentage of overall project delivery) in helping to determine realistic time frames. PEBA has planned for project staffing necessary to support the project based on assumptions that will be compared to the Offeror’s proposal.**

18. **RFP: Section No. 3.17.1, Item b & 3.17.2, Item b, Pg.# 103 & 104**

*RFP language: 3.17.1 (b) The Contractor will provide system maintenance and technical support for all products/services provided, including ongoing, unlimited, 24/7/365 telephone technical support problem determination and resolution, with response times as specified in Section 3.18, to be provided by personnel located within the United States. (c) System maintenance and support includes, but is not limited to patching, updating, upgrading, system and data backup and recovery, security monitoring, performance monitoring, incident identification and resolution, problem resolution, and system documentation.
3.17.2 (b) The Contractor will provide system maintenance and technical support for all products/services provided, including ongoing, unlimited, 24/7/365 telephone technical support problem determination and resolution, with response times as specified in Section 3.18, to be provided by personnel located within the United States. System maintenance and support includes making software patches and updates available, and supporting incident and problem resolution.*

Sections 3.17.1 and 3.17.2 of the RFP states that System Maintenance (includes problem incident identification determination and resolution) must be provided by personnel located in the United States. Typically, an off-shore development model includes leveraging off-shore resources to address system defects in the code they have developed. Can PEBA confirm your position on the ability to use off-shore resources for incident resolution including addressing system defects?

**Response: PEBA does not wish to restrict the Contractor from being able to resolve incidents in the most effective manner. However, PEBA’s member information, especially HIPAA data and PII must be carefully secured. HIPAA data and PII must be restricted to only the access that is necessary. PEBA maintains that member data must not be located or accessed outside of the United States.**

19. **RFP: Section No. Part 4, Pg.# 112**

*RFP language: …The redacted copy must (i) reflect the same pagination as the original, (ii) show the empty space from which information was redacted, and (iii) be submitted on a USB flash drive. File format will be Microsoft Word 97 or later. Except for the redacted information…*

Could PEBA allow the redacted soft copy to be submitted in Adobe PDF? This will keep the document intact as the original, avoiding data shifting and pagination changing while keeping capabilities such as word search or copy available?

**Response: Yes, as long as the document is searchable.**

20. **RFP: Section No. 4.1.8.3, Pg.# 133**

*RFP language: Provide your company’s most recent audited financial statement.*

For a privately held partnership that does not have audited financial statements, will the Agency accept financial statements provided by our CFO or other publicly available reports (such as a D&B report) to demonstrate financial viability?

**Response: Offerors should provide their company’s most recent audited financial statement. If an Offeror does not have audited financial statements, the Offeror should provide information the Offeror thinks will be relevant for PEBA to evaluate the Offeror’s financial stability.**

21. **RFP: General Question – PEBA Project Staffing Commitments**

What staff is PEBA committing full-time to the BAS project? Can PEBA describe their roles, responsibilities and time commitment?

**Response: PEBA is committed to providing the necessary business and technical staffing that is needed for a successful project. PEBA expects the Offeror to submit a detailed workplan and staffing plan, including the Offeror’s projection for PEBA staffing. PEBA intends to include business subject matter experts, business analysts, IT, and oversight resources on the project.**

22. **RFP: General Question – Image Conversion**

Can PEBA describe the roles of the Data Services Contractor with regard to the conversion of images? Will they extract metadata? Will they convert images to a standard format? Will they convert annotations to a standard format as well?

**Response: PEBA and the Data Services Contractor (ICON) are responsible for image conversion to a standard format. This includes the images as well as annotations determined necessary for conversion.**

23. **RFP: General Question –** **Legacy Systems Changes**

Will PEBA and/or the Data Conversion vendor be responsible for making all programming changes to Legacy systems to support integration or incorporation of temporary bridges with the new Benefits Administration System?

**Response: Yes. PEBA IT will make any necessary changes to the current PEBA systems.**

24. **Attachment 6 – Business Proposal Template**

*RFP language: Government Cloud Services Tab*

One of the primary benefits of cloud computing is on demand pricing.  If the Contractor is required to provide fixed pricing (for six years), assumptions will have to be made regarding size and scale to minimize this fixed price risk – meaning the State may be paying for capacity that is not utilized, including not gaining the advantage of rate decreases as worldwide adoption increases. Would the State consider the vendor not include a fixed price for hosting in their bid, but instead provide estimated costs as a budgetary item for the State so that the State can take advantage of on demand pricing throughout the contract?

**Response: Offeror should submit their proposal with the fixed pricing approach. PEBA is amenable to a pass-through cost model that includes a maximum cost.**

25. **Attachment 8 – Functional Requirements: Req. No. 17.43***RFP language: The system will provide self-service capabilities to include but not be limited to:
- view information about their PEBA benefits
- initiate a defined set of processes per a Business Rules Engine and
- communicate with PEBA staff via a secure messaging system, including uploading/downloading documents.
PEBA currently has a heavily used system; the vendor’s product must offer ALL of the current functionality, in addition to enhancing these features and adding new ones.*

Functional requirement 17.43 states with regard to self-service, “the vendor’s product must offer ALL of the current functionality”; Does the functionality described in Section 2.1.3.1(b) Member Access (pg. 22 of RFP) and 2.1.3.2.(c) MyBenefits (pg. 31 of RFP) include a listing of ALL current functionality? If not, can PEBA provide a complete the list of all the functionalities/capabilities?

**Response: Section 2.1.3.1(b) was created as a comprehensive list of the key functionality. Similarly, Section 2.1.3.2 (c) was created as a comprehensive list of the key functions. Offerors may interpret the language in functional requirement 17.43 to be met by implementing all the key functionality. One small addition was made to the list** **that will need to be incorporated into the functionality: MyBenefits 2.1.3.2 (c) Enrollment - New hire elections. New members can now complete their own enrollment using self-service after employer registers the member (new hire). PEBA intends to continue to update current systems until development for the new BAS system is underway.**

26. **Attachment 8 – Functional Requirements: Req. No. 18.02***RFP language: The system will provide employer self-service capabilities including but not be limited to:
- View information about PEBA benefits
- Initiate a request for a defined set of processes per PEBA business rules and check the status of the request
- View documents and notifications
- Upload supporting documentation
- Communicate with PEBA via a secure messaging system
PEBA currently has a heavily used employer portal and the vendor's product must offer all current functionality in addition to enhancing these features and adding new functionality.
Functional requirement 17.43 states with regard to self-service, “the vendor’s product must offer ALL of the current functionality”; Could PEBA share the list of all the functionalities/capabilities?*

Functional requirement 18.02 states with regard to employer self-service, “the vendor's product must offer all current functionality”; Does the functionality described in Section 2.1.3.1(c) Electronic Employer Self-Service (pg. 24 of RFP) and 2.1.3.2.(b) Employer Benefit Services (EBS) (pg. 29 of RFP) include a listing of ALL current functionality? If not, can PEBA provide a complete the list of all the functionalities/capabilities?

**Response: Section 2.1.3.1(b) was created as a comprehensive list of the key functionality. Similarly, Section 2.1.3.2 (c) was created as a comprehensive list of the key functions. Offerors may interpret the language in functional requirement 18.02 to be met by implementing all the key functionality. One small addition was made to the list that will need to be added to the functionality: EBS 2.1.3.2 (b) Manage Menu - Enrollment - New Hire Elections and New Hire File Upload. Employers can upload a file for new hires with functionality to register the member so the member can then do their own enrollment through self-service. PEBA intends to continue to update current systems until development for the new BAS system is underway.**

27. **Attachment 8 – Functional Requirements: Req. No. 22.31**

*RFP language: 22.31 The system will calculate the appropriate trust fund subsidies based on a summary of Subscribers' status and generate transaction records to transfer those funds from the trust fund according to designated procedures.*

Can PEBA provide additional information regarding this business process such as how subsidies are calculated and what accounting transactions get generated?

**Response: Monies are collected from state funded employers participating in the Insurance program through the retirement payroll contribution reporting cycle specifically designated for an OPEB trust account. The money is transferred from retirement to the OPEB trust account, then the employer portion is transferred to the SHP trust fund.**

28. **Attachment 8 – Functional Requirements: Req. No. 22.44**

*RFP language: 22.44 The system will provide the means by which a population's benefit program allowance may be globally adjusted, such as in the case of the total Adoption Allowance budget amount having been exceeded.*

Can PEBA provide additional information regarding the Adoption Allowance budget, specifically around the benefit program allowance and management of this benefit?

**Response: Through the State Employee Adoption Assistance Program, financial assistance is provided to eligible state employees to help pay some of the expenses with adopting a child. Assistance is limited to the amount of funds authorized each year for the program.**

**Each year, the General Assembly appropriates the total amount available for all adoption claims. PEBA completes the set-up for all approved claims based on the amount appropriated before the final budget is approved. Once the budget is approved, the total amount available may change (increase or decrease). PEBA needs the ability to adjust all claims that have been set-up based on the new total amount available. Note: The adjustment will happen prior to any payment of claims.**

29. **Attachment 9 – Technical Requirements: Req. No. T8.2, T8.7, T8.26**

*RFP language: T8.2 - The System must provide the ability for scheduling batch jobs using a PEBA approved batch scheduling software. T8.7 - The Contractor must use a PEBA approved automated tool for job scheduling. T8.26 Batch jobs must be able to be started, restarted, and terminated using a PEBA approved batch scheduling/management tool.*

What are the PEBA approved batch/job scheduling software products?

**Response: PEBA expects the Offeror to recommend batch scheduling software to meet PEBA’s requirements. There is not a pre-selected or preferred tool.**

30. **Attachment 9 – Technical Requirements: Req. No. T8.10 & T8.11**

*RFP language: T8.10 - The System must allow for print jobs to be limited by page size.
T8.11 - The System must allow for print output to be viewed online.*

Does PEBA already have a print management tool? Does the BAS vendor need to propose one?

**Response: PEBA expects the Offeror to recommend print management software to meet PEBA’s requirements. There is not a pre-selected or preferred tool.**

31. **Attachment 9 – Technical Requirements: Req. No. T10.9**

*RFP language: The System must conform to PEBA's policies for access control (AC), credentials, auditing/logging, and data security across all components.*

Are PEBA's policies for access control, included in Exhibit 2, the complete set of policies?

**Response: No. PEBA’s access controls are documented in an internal use only policy, which may not be shared publicly. Access to this may be granted by PEBA only after the completion of a non-disclosure agreement between you and PEBA. Contact David Quiat if you wish to complete a non-disclosure agreement.**

32. **Attachment 9 – Technical Requirements: Req. No. T10.25 – T10.36**

*RFP language: [Various security/password related requirements]*

Can the vendor assume that any single-sign on applications will be able to use the PEBA security policies to handle the requirements (existing Active Directory rules) listed in T10.25 through T10.36? Additionally, is PEBA interested in moving their Active Directory to the cloud?

**Response: Yes. Those are correct assumptions for PEBA employees (internal users).**

33. **Attachment 9 – Technical Requirements: Req. No. T10.39**

*RFP language: The System must provide industry-standard security for the display of Personally Identifiable Information (PII) for electronically submitted documents.*

Can PEBA share the specific standards for PII being referenced?

**Response: Please refer to NIST SP 800-122 Guide to Protecting the Confidentiality of Personally Identifiable Information (PII).**

34. **Attachment 9 – Technical Requirements: Req. No. T11.8**

*RFP language: Video chat/conference features must integrate with and utilize Cisco Remote Expert.*

Do the video chat/conferences need be stored in the BAS for future reference?

**Response: This requirement is removed.**

35. RFP (1) Part 3 – Scope of Work, (2) Part 6 – Terms and Conditions, (3) Part 9 – Appendix A Definitions, (4) Attachment 4 – Business Associate Agreement

We request the changes to the RFP requirements, terms and conditions, as identified in the attached documents, and should these changes not be acceptable we would welcome the opportunity for vendors to have discussions to reach mutually agreeable terms and conditions. The following documents are attached with redlines tracked:

* Part 3 – Scope of Work
* Part 6 – Terms and Conditions
* Part 9 – Appendix A Definitions
* Attachment 4 – Business Associate Agreement

The requested changes/redlines can be found at <https://www.procurement.sc.gov/vendor/contract-opps/other-solicitations/peba> Benefits Administration System RFP. They are labeled as follows:

* Part 3 – Scope of Work “RFP Section 3 Redlines (9.9.19)(Question 35)”
* Part 6 – Terms and Conditions “RFP Section 6 and Conditions Redlines (9.8.19)(Question 35)”
* Part 9 – Appendix A Definitions “PEBA SC RFP Definitions (9.6.19)(Questions 35)”
* Attachment 4 – Business Associate Agreement “SC Attachment 4 Business Associate Agreement (9.6.19)(Question 35)”

**Response: PEBA rejects all the proposed changes to Part 3 – Scope of Work, Part 9 – Appendix A Definitions, and Attachment 4 – Business Associate Agreement. The following changes are made to Part 6, Terms and Conditions. Any proposed changes not reflected below have been rejected.**

**6.2.3 Maintenance and Support.** After implementation of the BAS System, Contractor will provide the Maintenance and Support Services from the end of the Warranty Period to the end of the Contract Term (“Initial Term”). After the initial term for Maintenance and Support Services, PEBA will have the option to renew the Maintenance and Support Services indefinitely in three (3) year terms by so notifying Contractor prior to the expiration of the then current term for such Maintenance and Support Services. The terms and conditions of the Contract will carry forward into the Maintenance and Support Services renewals.

Maintenance and Support Services may be terminated for convenience pursuant to Section 6.11.4 by PEBA at any time by providing sixty (60) days advance written notice to Contractor. If the Maintenance and Support Services are terminated at any time or are not renewed by PEBA, PEBA will pay for all Maintenance and Support Services performed through the effective date of termination or expiration and Contractor will cooperate with PEBA to transition responsibility for the Maintenance and Support from Contractor to PEBA Personnel, at Contractor’s then current hourly rates to the extent the actual time spent is outside of the scope of the current services provided in this Contract. No adjustment in any fee or rate set forth in the Contractor Proposal for Maintenance and Support Services will be made unless specifically agreed to by PEBA in a Change Order.

**6.2.5 Unencumbered Personnel.** All persons assigned by the Contractor to perform services for PEBA under this Contract, whether they are employees, agents, Subcontractors, or principals of the Contractor, will not be subject to, or will not have enforced against them, any employment contract or restrictive covenant provisions which would preclude those persons from performing the same or similar services for PEBA after the termination of this Contract, either as an employee, an independent contractor, or an employee, agent, Subcontractor, or principal of another contractor with the State. If the Contractor provides PEBA with the services of any person subject to a restrictive covenant or contractual provision in violation of this provision, any such restrictive covenant or contractual provision will be void and unenforceable, and the Contractor will pay PEBA and any person involved all of its expenses, including attorneys’ fees, caused by attempts to enforce such provisions.

**6.2.7** **Compliance with Laws.** During the term of the Contract, Contractor will comply with all provisions of laws, codes, ordinances, rules, regulations, and tariffs applicable to Contractor in the performance of it services under this Contract.

**6.3.7 Purchase Orders.** Contractor will not perform any Work prior to the receipt of a purchase order from PEBA. Purchase orders may be used to elect optional professional services available under this Contract for which scope and pricing is already defined under this Contract, if any, 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.

**6.7.7 Service Warranty.** Contractor represents and warrants that it complies with, at all times during the term of the Contract will continue to comply with all federal, state, and local laws, statutes, rules, regulations, and ordinances applicable to Contractor in the performance of its services hereunder, including, but not limited to, professional services and Maintenance and Support Services. Contractor represents and warrants that it will perform all services, including, but not limited to, professional services and Maintenance and Support Services, and provide the Deliverables required by this Contract in a timely, professional and workmanlike manner, and in accordance with prevailing industry practices and standards; provided, however, that where this Contract specifies a particular standard or criteria for performance, this warranty is not intended to and does not diminish that standard or criteria for performance.

**6.7.10 Scalability**. The Contractor represents and warrants that the BAS System has the capacity to scale up to meet PEBA’s anticipated and mutually agreed processing load.

**6.7.11 Hardware Sizing**. The Contractor represents and warrants that the Equipment and any related technological infrastructure that the Contractor provides or recommends is of sufficient capacity and capabilities to meet the anticipated and mutually agreed requirements of the Contract.

**6.7.15 New Equipment.** Contractor represents and warrants that all Third Party Equipment and replacement or repair parts delivered by Contractor to PEBA hereunder, if any, will be new (i.e., unused and not reconditioned or refurbished). To the extent that the passage of time, prior to Contractor’s purchase of hardware of software, results in improved products being available for the same cost to Contractor as the Third Party Equipment originally proposed by Contractor, Contractor will provide the improved product to PEBA at no additional charge.

# 6.10.4 Safeguarding Requirements.

. . .

**(b) Safeguarding requirements and procedures.**

. . .

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

**6.10.6 Use and Disclosure.**

. . .

(b) **Legal mandates.** Contractor will 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 will provide PEBA 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 will impose by agreement the requirements as least as secure as those of this clause on, any other person or entity that contractor authorizes to take action related to Government Information.

. . .

(g) **Privacy Policy & Applicable Laws.** Without limiting any other legal or contractual obligations imposed by this Contract or the law, Contractor will (a) comply with its own privacy policies and written privacy statements relevant to the performance of its services under this Contract, and (b) comply with (1) all laws applicable to Contractor in the performance of its services under this Contract regarding Government Information, and (2) all laws and standards identified in the clause, if included, entitled Information Use and Disclosure – Standards applicable to Contractor in the performance of its services under this Contract.

(h) **Actions Following Disclosure.** Immediately upon discovery of a compromise or improper use of Government Information, Contractor will take such action as may be necessary to preserve forensic evidence and eliminate the cause of the compromise or improper use. As soon as practicable, but no later than two business days after discovery, Contractor will notify PEBA of the compromise or improper use, including a description of the circumstances of the use or compromise. As soon as practicable after discovery, Contractor will undertake a thorough forensic investigation of any compromise or improper use and provide PEBA all information reasonably necessary to enable PEBA to fully understand the nature and extent of the compromise or improper use.

1. Attachment 9 Technical requirements, Requirement ID T8.14 – If the system meets your sizing requirements, will this requirement be considered met. If not, please elaborate on this requirement so that we can propose the system footprint accordingly.

**Response: The system must meet the performance and service level requirements under the concurrent load assumptions stated in requirements T8.22 through T8.25.**

1. Attachment 9 Technical requirements, Requirement ID T9.8 – Most of the commercially available ad-hoc reporting and BI tools do not support JSON export. Will you accept an ad-hoc reporting tool that exports to CSV, MS Excel, and PDF formats? Does PEBA have a preferred tool?

**Response: The list of formats was given as examples. Support for CSV, MS Excel, and PDF formats is acceptable. PEBA does not have a preferred tool.**

1. Attachment 9 Technical requirements, Requirement ID T10.13, and T10.14 – Can you please explain the need for having two registration methods? In our recent experience, T10.13 is consistent with current industry practices.

**Response: PEBA currently uses both methods and wishes to retain this flexibility.**

1. RFP, Section 4.1.5 Offeror’s Approach, Section 4.1.5.1 Approach & Methodology (f) – Can you please elaborate on the expectations needed to ensure coordination between proposed system’s release management and PEBA computing environment? Is this something more than communication and coordination?

**Response: The first sentence in Section 4.1.5.1.f requests the Offeror to describe its process.**

1. RFP, Section 3.15.2.3 – Before PEBA’s technical IT or ORD resource can be trained on the contractor’s tools, techniques, and methodologies, the resources must have certain pre-requisite industry products/skills training. Will PEBA be responsible for procuring and scheduling pre-requisite skills training based on the BAS contractor’s provided list? If the contractor is responsible, can we budget for that training on a Time and Materials basis following a skills assessment of your staff?

**Response: PEBA will be responsible for assigning staff with the appropriate pre-requisite skills.**

1. RFP, Section 3.15.2.3 – Can you please elaborate on PEBA’s preferred approach to technical knowledge transfer during the project? For example:

 a. Per Section 3.4.4., PEBA’s technical IT and ORD staff could be involved in low-mid level complexity co-development for which they are accountable and responsible, but where they are not assigned to critical path activities.

b. Alternatively, PEBA’s technical IT and ORD staff can be trained on the tools, techniques, and methodology and work in a sandbox environment where they can practice the newly acquired skills, but have no direct project responsibility or accountability.

We understand PEBA’s goal of self-sufficiency. But we’re curious about PEBA’s preferences for achieving that goal (e.g., training versus project emersion). If PEPA prefers to emerse its technical/ORD team into the project, do you prefer to do it immediately, at the transition of first release, at the transition of the final release, during warranty?

**Response: PEBA is interested in both approaches, training in a sandbox environment and immersion, if the work assigned is carefully targeted to avoid risk.**

Attachment 9 Technical requirements, Requirement ID T8.2, T8.26, and T8.27 – Can you please tell us the name and version for the PEBA batch scheduling software / PEBA approved batch scheduling software? Please also let us know the functional capability and interface/integration capabilities needed from the batch scheduling tool.

**Response: See response to question 29.**

RFP, Section 4.1.4.1 Proposed Solution (f) – Can you please elaborate PEBA FOIA requirements and provide some business examples/use case, so that we can understand the extent of this requirement and can scope it better.

**Response: FOIA requests may require reports to be generated from the BAS to provide summarized information. PEBA is required to follow the SC Freedom of Information Act, found at section 30-4-10 et seq., of the SC Code of Laws.**

RFP, general question – is PEBA open to the submission of value add services or cost saving ideas? If so, where should these services / costs be provided in the proposal?

**Response: Yes.**

RFP, Section 3.15.2 pg. 98 states, “The Contractor will utilize multiple methods of training, including, but not limited to, web training, classroom training, and computer-based training (CBT).” Please clarify what PEBA defines as web training vs. computer-based training and how you see these methods fitting into a train the trainer program.

**Response: Computer-based training includes any training that is completed on a computer. It is generally more interactive in nature and guides the learner through a series of screens to teach and confirm that the topics have been successfully learned. Web training is a subset of computer based where the training is available on the internet. PEBA expects the Offeror to suggest effective training methods. Contractor will develop the content for training and PEBA will make the training available to the appropriate audiences.**

RFP, general question, what role, if any, will Linea play in the testing activities throughout the project?

**Response: PEBA expects to have a very active role in testing throughout the project. Offerors should recommend anticipated staffing levels based on PEBA working with the Offeror. Linea will primarily be involved in testing with coordination and oversight.**

RFP, Section 2.2.1 Workstream Status – this section states that “Organizational Change Management and Workstream 5: Program Management will be managed by PEBA under a separate contract with the Client Services Contractor. This contract is in progress.” Other areas of the RFP seem to suggest the Contractor may have responsibilities for change management activities. Please clarify what, if any, responsibilities the Contractor will have in regard to change management.

**Response: PEBA and the Client Services Vendor will manage the activities in Workstream 5. The Contractor may be asked to provide suggestions, ideas, input, and expertise that they believe would aid in the successful adoption of the new BAS system.**

RFP, Project Objectives, Page 38 – it states “PEBA intends to be an active partner and co-implementor of the proposed BAS solution. PEBA intends to be operationally self-sufficient post final Phase Go Live and be capable of supporting and enhancing all components of the solution with minimal Contractor involvement.” Please clarify PEBA’s vision for co-development to include when you would expect co-development to start and what role(s) you envision your team playing?

**Response: See response to question 41. PEBA expects co-development to occur throughout the duration of the project.**

RFP, Project Objectives, Page 38 – in regard to PEBA’s intention to be an active partner and co-implementor, should you expect co-development to start prior to the final implementation of the system, please describe your vision for how co-development would be managed to avoid the risk of staff in training making mistakes or errors that could negatively impact the quality of the system or the project schedule and the potential delays that could be created through co-development.

**Response: See response to question 41. Any work targeted for co-development must be carefully selected to minimize risks.**

RFP, Project Objectives, Page 38 – in regard to PEBA’s intention to be operationally self-sufficient post final Phase Go Live and be “capable of supporting and enhancing all components of the solution with minimal Contractor involvement” please provide your vision on if and how this will work in conjunction with a warranty period? We suggest to update the language and requirements to indicate that the co-development staff should be self sufficient at the end of the Warranty period to ensure a clear distinction of responsibilities between Contract and PEBA. If PEBA intends to enhance and change the system post final Phase Go Live, should the contractor plan on providing resources to review and approve all work performed by PEBA co-development staff?

**Response: While the objective is to achieve PEBA self-sufficiency by the final Phase Go Live, the Offerors proposal should anticipate the BAS Contractor having responsibility for maintenance and support until the end of the contract period.**

For requirement 15.57, please elaborate on the 'advancement of a social security option'. Who is eligible for this option? What are the provisions of this option? Under what circumstances would a recoupment of benefits occur?

**Response: The advancement of a social security option was a payment option previously offered to PEBA retirees. Under the program, a member was advanced a portion of his/her social security until reaching age 62. At 62, the retirement benefit s reduced by the amount he/she would have received for social security. The benefit reduction is the amount based on an estimate given by social security at the time the retirement was processed. This option was discontinued in 2001. For the remaining population (approximately 6,000 retirees), all benefit reductions have been applied.**

**Requirement 15.57 refers specifically to retirees that undergo a qualifying life event that allows them to change their payment option. Before the payment option change can be processed, the social security advancement needs to be paid in full. For this scenario, the system would need to provide the capability to create and track a receivable if the advancement has not been recouped at the time of the payment option change.**

Does PEBA require a separate Vendor Portal for the DC administrators or the Insurance providers?  If yes, please provide counts of number of users on these portals so we provide reasonable sizing estimates.

4 DC Investments fund TPA

1 Insurance TPA

1 ORP TPA

1 SCDC TPA

**Response: The employer portal should contain all functionality that vendors need. Through security permissions, vendors would be restricted to a sub-set of all functionality available through the employer portal. The details of this functionality and the related permissions would be discussed and decided during the Design phase. PEBA is willing to consider vendor recommendations on the best practice for supporting these vendor functions.**

1. For requirement 22.31, please elaborate on the trust fund subsidies. Who is eligible for these subsidies? How are the amounts of these subsidies determined?

**Response: Monies are collected from state funded employers participating in the Insurance program through the retirement payroll contribution reporting cycle specifically designated for an OPEB trust account. The money is transferred from retirement to the OPEB trust account, then the employer portion is transferred to the SHP trust fund.**

1. What employee and employer contributions are transmitted to PEBA for the 401(a) plan as compared to contributions sent to PEBA for the SCRS benefit program?

**Response: For SCRS, all employee and employer contributions are sent to PEBA. For State ORP, 5% of the employer contributions are sent to the State ORP vendor and the remaining amount is sent to PEBA. All employee contributions for participating members are sent to the State ORP vendor. These amounts are set by statute.**

1. For requirement 15.28, “The system will provide the ability to reverse payroll transactions per PEBA business rules.” Please elaborate on the payroll transactions that are to be reversed.

**Response: While not an exhaustive list several examples of reversals are defined below:**

**• Money goes to wrong deduction provider or shouldn’t have been withheld for deductions,**

**• Reversing of allocations/payments (deposit) against an overpayment (receivable),**

**• Reversing established overpayments/receivables,**

**• Reversal of a stop-payment (stop-payment issued on the wrong check),**

**• Reversal of a voided payment (check voided in error),**

**• Reversal of payments with a net value of zero.**

1. RFP section 3.20.1(c), Proof of Concept – please describe in detail the roles and responsibilities PEBA and any other PEBA vendors plan to have in regard to the following: “PEBA intends to conduct the Proof of Concept in tandem with the selected Contractors.”

**Response: This statement was intended to relay that there may be two different Contractors each working on their own the Proof of Concept during the same 12-week period. Each would be on-site every other week (for a total of six weeks each) so their participation with PEBA is on alternating weeks. In addition, just as in the entire project, the BAS Contractor will work collaboratively with PEBA staff (business, IT, and ORD), the Data Conversion Contractor, and the Client Services Vendor.**

1. As of this submission, we did not recieve responses to round one questions yet. Can we ask followup questions once we receive them?

**Response: Yes. The State will only accept follow-up questions. If submitting a follow-up question you must provide the original question (indicate if the question is from Amendment Number Two or Amendment Number Three), the State’s response to the original question, and your specific follow-up question.**

1. RFP, Section 3.16 Implementation Plan (b) – it states the implementation plan should contain a “list of objective criteria from which PEBA will determine the sequence of implementation”. Please confirm this means that PEBA will determine the order in which the functionality will be implemented. If this is correct, what is the process for how and when PEBA will decide the order of implementation for the project? Assuming this decision will not be made until after the proposals are due, what assumptions should we make in regard to implementation order to ensure the project tasks, schedule and resource allocations are relative and accurate for the project. Please note that the sequence of the implementation could potentially have a large impact on the schedule, resources and cost of the implementation.

**Response: The Contractor will provide its plan, assumptions, and recommendations. PEBA anticipates that the Implementation Plan will be finalized through a collaborative process between PEBA and the Contractor.**

1. RFP, Section 3.1.1(a) Maintenance and Support during System Implementation “from date of contract award until the final Phase Go Live, the Contractor will provide all Maintenance and Support Services to PEBA at no additional cost to PEBA.” Please define the scope of services to be provided and your expectations in regard to “maintenance and support” during system implementation.

**Response: Please refer to section 3.17 for PEBA’s expectations for Maintenance and Support.**

1. General

Would PEBA consider the opportunity for a Vendor-only one-on-one Q&A call for no more than 2 hours to help each vendor better understand PEBA’s position on key constructs and better shape the vendor solution for PEBA?

**Response: No.**

1. 3.2 and 3.2.1.(c)

Assuming a contractor has an existing agreement in place with a public cloud provider (e.g. AWS) and that public cloud provider meets FedRAMP High requirements, would PEBA accept a contract with the contractor that includes provisions for transferring the assets that the contractor establishes in the public cloud as part of the implementation to PEBA upon on contract termination? This provision implies that PEBA would then have to establish (or use its existing) an account/agreement with the same public cloud provider.

**Response: PEBA requires Government Cloud Services.**

1. 3.2.1 (a)

Is PEBA looking for a fully managed services solution in which the contractor bills PEBA for the contractor’s managed services separately from the usage of the public cloud infrastructure, platforms and services?

**Response: See response to question 61.**

1. 3.2.1 (d), (e)

Assuming the use of a public cloud provider such as AWS is acceptable to PEBA, said public cloud provider’s structure and approach to product development and delivery is fundamentally different than other IT contractors. Said public cloud provider has decentralized, autonomous development teams that are working directly with customers and are empowered to develop and launch based on what they learn from interactions with customers. Said public cloud provider iterate products continuously and the newest/latest is instantly available to customers. No need to upgrade, deploy or to migrate. When a feature or enhancement is ready, it is “pushed” out and it is instantly available to any customer that uses that service. Is this acceptable to PEBA?

**Response: See response to question 61.**

1. 3.2.5 (c), (f), (h)

As is standard with the leading cloud providers (AWS, Azure), there is a shared responsibility model (see diagram below) in which the cloud provider is responsible for Security Of The Cloud and the customer is responsible for Security In The Cloud. This model conflicts with requirements 3.2.5 c, f (SOC reported limited to Security, Availability, and Confidentiality), and h. Can PEBA please provide clarity or updates to these items?



**Response: PEBA does not recognize that there would need to be a conflict between the language in Section 3.2.5 and the approach shown in the table. The scope of section 3.2.5 applies to what the Government Cloud Services Subcontractor is responsible for. Items marked blue may or may not be the responsibility of the Government Cloud Services Subcontractor dependent upon how the Offeror has constructed the proposed solution. Additionally, the intent of section 3.2.5 is to require that these requirements, which are requirements of the Contractor, are passed through to the Government Cloud Services Subcontractor and are incorporated into the Contractor’s agreement with the Government Cloud Services Subcontractor where the Government Cloud Services Subcontractor has PEBA’s data within its control.**

1. 3.2.9 Contract Audit

Public cloud providers, e.g. AWS, will provide Service Organization Controls 2, Type 2 report or such alternative industry standard reports or certifications that are substantially equivalent as reasonably determined by the public cloud provider. Will this be acceptable to SCPEBA for this requirement?

**Response: The requested change is not accepted. Contract audits should be available to PEBA to confirm contractual compliance.**

1. 3.2.10 Change Control and Advance Notice

Public cloud providers, e.g. AWS, preserve the right to change any of their services offerings without notice. Will this be acceptable to SCPEBA for this requirement?

**Response: The requested change is not accepted. PEBA has a reasonable expectation of advanced notice of changes that may impact service availability and performance.**

1. Attachment 8 Functional Req. 5.07

Please elaborate on the process of communicating with MoneyPlus? We are looking for clarification about the inbound flexible spending account summary data. How and when is this data received? Is the communication with the third-party vendor a web service call or interface file(s)? Additionally, for interface files, what is the frequency of that data? Daily, weekly, Monthly. And is it changes or full file?

**Response: This requirement is removed.**

1. Attachment 8 Functional Req. 14.12

Does PEBA envision such outside parties (Disability determination provider, medical board, consultants, etc.) to have access to application that PEBA staff will access, with specific access rights related to their functions or a separate and specific portal for these outside parties is expected.  If separate, please list all such outside parties and their related functions."

**Response: Currently, outside parties such as the disability determination provider and the medical board have access to PEBA’s imaging application to view documents needed to complete their review and recommendation(s). In the future, PEBA envisions this function would take place through the Employer Portal with the additional functionality for medical board members to input, track and store the results of their independent medical reviews and for disability determination providers to record determinations. Workflow capabilities, such as notifications, would be used to alert the vendor when action is needed through the portal, as well notifying internal staff when a vendor has completed a review or input.**

**The employer portal should contain all functionality that vendors need to complete required actions. Through security permissions, vendors would be restricted to a sub-set of all functionality available through the employer portal. The details of this functionality and the related permissions would be discussed and decided during the Design phase. PEBA is willing to consider vendor recommendations on the best practice for supporting these vendor functions.**

1. Attachment 9 Technical Req. T7.8

Does PEBA currently use a tool (such as Informatica) for creating new file formats for input/output or for mapping and translating one file format into another?

**Response: No. PEBA expects the Offeror to recommend the software to meet PEBA’s requirements. There is not a pre-selected or preferred tool.**

1. Attachment 9 Technical Req. T7.9

Can PEBA elaborate on who the 3rd parties are and what type of imaging access they would need? Will they be accessing all images or only some type of images? Will they be accessing images associated to members? Will they be accessing images associated to employers? Will they be access images associated to any other type of entity? Will they be performing operations such as annotations or image printing?

**Response: See response to question 68.**

1. Attachment 9 Technical Req. T7.10

Does PEBA currently use a 3rd party address validation provider?

**Response: PEBA currently utilizes USPS services.**

1. Attachment 9 Technical Req. T11.7

Does the version of Cisco ECE used by PEBA support service-based integration?

**Response: Yes.**

1. Attachment 9 Technical Req. T11.8

Does the version of Cisco remote expert used by PEBA support service-based integration?

**Response: This requirement is removed.**

1. Attachment 9 Technical Req. T11.24

What browsers has PEBA standardized on?

**Response: This requirement is related to self-service portal access. PEBA has no control over the browsers used by employers and members. The Self-Service Web Portal must support the top five browsers (IE, Edge, Chrome, Safari, and Firefox).**

1. Attachment 9 Technical Req. T5.2 & T5.3

The requirement as stated appears to be asking for multiple government cloud service contractors. Can vendors assume that the use of a single government cloud service contractor that provides multiple, geographically disparate regions be acceptable for these two requirements?

**Response: Yes. That is correct.**

1. Attachment 9 Technical Req. T8.28

PEBA requires the proposed software to integrate with PEBA's scheduling tool. Is PEBA's expectation that the jobs will still be scheduled in the proposed software to be executed based on time of day, the day of the week, calendar day, and/or successful completion of preceding events?

**Response: Yes. That is correct.**

1. Attachment 9 Technical Req. T9.3

Does PEBA wish to participate in configuration that might require using writing code?

**Response: Yes. That is correct.**

1. Attachment 9 Technical Req. T5.7

This requirement contradicts with requirement T5.4 in which environments are to be physically or logically isolated.  Could PEBA please clarify.

**Response: Requirement T5.4 is a more general requirement than T5.7. Requirement T5.7 requires the Pre-Production environment to be physically separate.**

1. Attachment 9 Technical Req. T8.26

What are PEBA's approved batch scheduling/management tools? Would PEBA accept the use of batch tool that is a fully integrated component of the proposed solution?

**Response: See response to question 29.**

1. Attachment 9 Technical Req. T11.5

Does linking to PEBA's existing website require integration via Single-sign-on or is the link a hyperlink?

**Response: A hyperlink would meet this requirement.**

1. Attachment 9 Technical Req. T11.22

Does PEBA consider the use of 'Back' button on the browser a requirement for both internal and external users?

**Response: Yes.**

1. Attachment 9 Technical Req. T11.24

What browsers has PEBA standardized on for internal and external users? If none, then is there a preferred browser that PEBA likes its users to use?

**Response: For external users, please see response to question 74. For internal users, please refer to technical requirement T1.17. Offerors should propose their preferred browser(s) for internal users.**

1. Attachment 9 Technical Req. T11.25

What browsers has PEBA standardized on for internal and external users? If none, then is there a preferred browser that PEBA likes its users to use?

**Response: For requirement T11.25, please see response to question 74. For internal users, see response to question 82.**

1. Part 3, Scope of Work

“Any deviations, modifications, or clarifications to the technical and/or functional requirements in Part 3, Scope of Work, Section 3.2 through Section 3.20 below, or the terms and conditions in Part 6, Terms and Conditions, however modest, MUST be presented during the question and answer phase. PEBA will provide responses before the submission date for all proposals so that all prospective Offerors will have a common and uniform basis upon which to submit their proposals.” Contractor respectfully notes that there are several sections in the terms and conditions that Contractor cannot accept as is, including, but not limited to, those related to scope of license, acceptance, suspension of work, intellectual property rights, limitation of liability, and indemnification. Additionally, some components of our offering require the use of our base contracts.

Thus, would our proposal be valid if we take exception to the terms and conditions and assume that the parties negotiate in good faith Contractor’s standard license, Contractor’s Hosting Service subscription and services agreements should Contractor get awarded the contract?

**Response: No.**

1. Part 3, Scope of Work

“Within 10 days of the start of the Project, the Contractor will deliver to PEBA a copy of the Government Cloud Services Subcontract, as executed by the Contractor and Government Cloud Services Subcontractor.” Contractor is unable to provide.

**Response: The vendor did not ask a question. The Contractor must comply with this provision.**

1. 4.1.2 Executive Summary

The RFP states, “Single Statement of Acceptance: Offerors will reply to Part 1 General Contracting Information, Requirements, and Instructions to Offerors; Part 2 Scope of Proposal; Part 3 Scope of Work; and Part 6 Terms and Conditions by declaring that the Offeror fully understands, agrees to, and will comply with all of the provisions/requirements/terms in each of these Parts. Offerors must include this statement of acceptance in their Executive Summary. Please note that the State considers any Proposal containing deviations, exceptions, or caveats to the RFP that have not been submitted for consideration during the question and answer phase and adopted by PEBA as unacceptable.”

We respectfully note that there are several sections in the terms and conditions that we cannot accept as is, including, but not limited to, those related to scope of license, acceptance, suspension of work, intellectual property rights, limitation of liability, and indemnification. Additionally, some components of our offering require the use of our base contracts. Thus, would our proposal be valid if we take exception to the terms and conditions and assume that the parties negotiate in good faith Contractor’s standard license, Contractor’s Service subscription and services agreements should Contractor get awarded the contract?

**Response: No.**

1. 4.1.2 Executive Summary (b)

Contractor takes exception to the following “The Offeror will act as the prime contractor and retain responsibility for all services provided by the Subcontractor(s)”.

**Response: The vendor did not ask a question. The Offeror must comply with this provision.**

1. Part 6, Terms and Conditions

Contractor assumes that the parties will negotiate in good faith an agreement based upon Contractor’s standard form services, license, and hosting agreements which shall contain customary and standard legal terms, including mutual limitations on liability.

Notwithstanding the above, Contractor has removed those sections to which it cannot agree and has provided sample language for PEBA’s consideration.

Note that Contractor has not included its form hosting agreement language.

**Response: PEBA rejects all stated assumptions. Except for the removal of Section 6.1.2 Source Code, PEBA rejects all proposed changes.**

**6.1.1** **Scope of License.**

Subject to Customer’s payment of the license and upgrade fees, Contractor hereby offers to grant and Customer accepts a term license to the executable code form of Version 10 of the V3 Software for the modules listed on the License Order Form as well as those Upgrades and configurations as may be provided by Contractor (“Licensed Software”) on the terms and conditions set forth in the License Agreement.

For as long as Customer pays the applicable License and Upgrade Fees, and subject to the terms, conditions and restrictions set forth in the License Agreement, Contractor grants to Customer a revocable, non-exclusive, non-transferrable (except assignments permitted by the License Agreement), and non-sublicensable license as set forth above to permit: (a)(i) LOB Named Users to load and install the modules of the Licensed Software set forth on the License Order Form, on Approved Database Technology operated by Customer or an Approved Host and to display the graphical user interface components thereof for use in processing data as part of Customer’s business; (ii) LOB Named Users to use the features and functions of the Licensed Software solely in connection with Customer’s internal operations; (iii) permit LOB Named Users to use the Licensed Software, provided that with respect to those LOB Named Users who are Approved Hosts, their rights extend only to the limited extent required for them to make the Licensed Software available to Customer and Users; and (iv) End Users to display screens, data and reports applicable to the accounts and to use other services, features and functions of those portions of the Licensed Software that are limited to enabling the End User to perform self-service functions; and (b) LOB Named Users to download, print, display, and reproduce any Licensed Software Manuals, if applicable, as reasonably required in connection with the Licensed Software (collectively “License”).

As an express condition of the License grant set forth above, Customer and its Users are at all times prohibited from using the Licensed Software for any purpose not expressly permitted by the License. Customer will not provide or otherwise make available the Licensed Software or any parts thereof in any form, to any person or entity other than its Users. Furthermore, Customer will not, and will ensure that its Users will not, directly or indirectly, whether through Customer or any third party do any of the following: (a) license, sublicense, assign, sell, rent, resell, lease, distribute or otherwise transfer Customer’s or Users’ rights hereunder or use or permit the use of the Licensed Software to provide service bureau, timeshare for a third party, outsourcing or other similar services or otherwise market the Licensed Software; (b) copy, reproduce, publish, reverse engineer, disassemble, reverse assemble, decompile, create derivative works from, or attempt to create human readable source code from the Licensed Software or Licensed Software Manuals; (c) modify or replicate any features, functions, integrations, or interfaces of the Licensed Software or any portion thereof; (d) remove, modify, or obscure proprietary rights notices placed on the Licensed Software, Licensed Software Manuals, screens or pages with any copyright notices or confidential legends placed upon or contained within the Licensed Software or Licensed Software Manuals, or any other related materials; (e) export the Licensed Software (actually or under the doctrine of deemed export), and in such instances Customer is solely responsible for compliance with applicable export laws; (f) circumvent, interfere with, disrupt or disable any security or other technological features or measures of the Licensed Software; or (g) other than through the standard functionality of the Licensed Software, modify or alter the tables or files therein relating to license restrictions, or any usage statistics access. If Customer is required to provide a government or regulatory body with access to the Licensed Software, such access is subject to this Section and Customer’s confidentiality obligations as well as Customer’s obligations and the ContractorContractor’s rights under FARS and DFARS (and their state analogs and all of their successor regulations). Customer shall allow Contractor to remotely access the then-current Licensed Software usage statistics screen of the production instance once annually, on not less than thirty (30) calendar days’ prior written notice, or when Contractor reasonably suspects noncompliance with license restrictions as set forth in this Section, but in no event more than once every ninety (90) calendar days.

Each LOB Named User must have an individually identifiable LOB Named User account with user credentials. An LOB Named User may only access the Licensed Software using his, her or its own user account. Each LOB Named User shall be subject to the provisions as set forth in this Section and any applicable confidentiality provisions set forth in this Agreement. Customer is limited to the total number of LOB Named User accounts set out in the Fees and Usage Metrics section of the License Order Form. The total number of LOB Named User accounts at any point in time is deemed to be the total, cumulative number of enabled LOB Named User accounts that existed within the past thirty (30) days whether or not a LOB Named User accessed the Licensed Software during such period. Customer may and shall permit solely individuals who are employees of Authorized Organizations to be LOB Named Users.

In order for an End User to use the portions of the Licensed Software limited to performing self-service functions, Customer represents and warrants that each End User will be required to accept user terms containing terms (a) regarding confidentiality and license rights and restrictions that are materially similar to those contained in the License Agreement, including those set forth above, and any applicable confidentiality provisions set forth in this Agreement; (b) that each End User acknowledge and agree that (i) its use of the portions of the Licensed Software made available to End Users under the License Agreement is solely as a [customer][policy holder][participant account holder] of Customer and pursuant to its contractual terms with Customer; (ii) there is no recourse by End User against Contractor created by the use of the portions of the Licensed Software made available to End Users; and (iii) providing that Contractor shall not be liable for any direct, indirect, special, incidental, punitive, exemplary, or consequential damages relating to any End User claim, either via a click-through agreement on the applicable website or by other means. The End User terms will not contradict any terms set forth in the License Agreement and will be no less restrictive than those set forth in the License Agreement. The terms of the License Agreement will control regardless of any contradiction, conflict, or inconsistency between it and the End User terms. Each End User must have an individually identifiable self-service user account with user credentials. An End User may only access the Licensed Software using his or her own user account and user credentials.

Customer’s commitment to maintaining the strict confidentiality of user credentials is a material condition of the License. Customer must not allow unauthorized individuals to gain access to user credentials or the Licensed Software and must immediately notify Contractor of unauthorized use of user credentials and any known or suspected security breach or incident related to the Licensed Software. Customer is responsible and liable for all acts and omissions that occur under user credentials. Customer will assure the confidentiality and security of the Licensed Software to prevent the unauthorized copying, reproduction, publication, or utilization thereof. Customer will be responsible and liable for the acts and omissions of all Users to the same extent as if performed by Customer. The rights granted to Users may not be further passed-through, sublicensed, transferred or assigned. Customer shall, upon reasonable written notice from the Contractor, permit the Contractor, or its representatives, to inspect any location on which Customer is using the Licensed Software including an Approved Host. Customer shall promptly notify Contractor in writing of any change in the location of the Approved Host’s servers. To the extent an Approved Host is a third-party cloud provider, Customer shall inform Contractor of the location of the Approved Hosts server to the extent it knows it, but in no event less than by state where located.

This Section will survive any expiration or termination of the License Agreement.

**Response: Section 6.1.2 Source Code is removed.**

**6.1.3 Escrow.**  For the duration of this Contract and for as long as PEBA purchases Maintenance and Support Services from Contractor, Contractor will maintain an “*Escrow Agreement*” with a third-party escrow agent (the “*Escrow Agent*”) that is mutually agreed to by the parties and attached hereto as Attachment 7 Escrow Agreement. Such Escrow Agreement will designate PEBA as a third-party beneficiary and meet all the requirements of this Section. Upon the execution of this Contract, Contractor will provide the Escrow Agent with the then current versions of Source Code of the Licensed Programs, all proprietary tools used with the Licensed Programs under this Contract, all Documentation, all Open Source code utilized with the Licensed Programs, and all operation documents, including but not limited to documents describing the third-party tools and the methods and procedures utilized for the installation, configuration and operation of the Licensed Programs and Third Party Software, to the extent the same currently exist (“*Deposit Materials*”). Contractor will update the Deposit Materials at least once per year and as frequently as a Release is made available by Contractor. PEBA will bear the cost of putting the Deposit Materials in escrow

Under the Escrow Agreement, PEBA will be able to obtain a copy of the Deposit Materials if: (i) Contractor ceases supporting the Licensed Programs for its customer base; (ii) Contractor fails to provide Maintenance and Support Services for the Licensed Programs to PEBA in accordance with Contractor’s obligations under this Contract; or (iii) Contractor files a petition for bankruptcy or insolvency, has an involuntary petition under bankruptcy laws filed against it, commences an action providing for relief under bankruptcy laws, files for the appointment of a receiver, or is adjudicated a bankrupt concern, ceases to do business or dissolves (collectively, a “*Release Event*”). Upon a Release Event, Customer may request that the Escrow Agent delivers the Deposit Materials to Customer, with the additional right to maintain the Deposit Materials, such delivery to be Customer’s sole and exclusive remedy and the Contractor’s only liability for the Release Events and the License Agreement will automatically terminate thereupon. Upon a release of the Deposit Materials Customer shall have the right to make copies of the Deposit Materials for the purpose of program execution, back up, support, maintenance and development solely for the Customer’s internal use of the Licensed Software as permitted by the License Agreement. Release of the Deposit Materials does not relieve Customer of its obligation to pay license fees, due under the License Agreement or to expand the scope of use of the Licensed Software. Customer will be responsible for all fees due to the Escrow Agent under the Escrow Agreement

**6.1.4** **Documentation and Training.** In connection with its installation of the BAS System, Contractor will provide PEBA with Documentation and training for PEBA Personnel. Documentation that is Work Product will be owned by PEBA.

**6.1.5 Ownership and Software Licenses.**

As between Customer and the Contractor, the Licensed Software, the Licensed Software Manuals, the Contractor Service and Documentation, including all IPR therein, and all Improvements of or to the foregoing as well as any and all work product, deliverables and other items, and all Improvements of or to the foregoing, are owned or licensed by, and are proprietary to, the Contractor. As between Customer and the Contractor, the Customer Data, including all IPR therein, is owned by Customer provided that Contractor may, and Customer hereby grants Contractor and its subcontractors the right to host, access, display, modify, and use the Customer Data solely for purposes of performing the Contractor’s obligations under an Agreement and/or on an aggregated, de-identified basis to improve the Licensed Software, and the Contractor’s hosting Service offerings or for marketing purposes. Customer hereby expressly represents and warrants to Contractor that it has all right and authority, including all IPR and all third party consents necessary to provide the Customer Data to Contractor and grant Contractor the foregoing license.

**6.2 CONTRACTOR’S RESPONSIBILITIES**

**6.2.1** **Contractor’s Obligations.** Subject to the performance by PEBA of its responsibilities hereunder and the satisfaction of any applicable assumptions, Contractor shall provide to PEBA: (i) all the Deliverables set forth in this Agreement and meeting in all material respects all of the System Specifications in the time frames required under this Contract; and (ii) all services set forth in this Contract in the time frames required under this Contract. The Contractor will be considered the sole point of contact with regard to all situations. No subcontracting will release Contractor from its responsibility or obligations under the contract.  With the exception of a Government Cloud provider, Contractor will remain liable and responsible for any of its subcontractors’ work and activities, including its subcontractors’ compliance with and breach of the terms of the contract, and for all acts and omissions of such subcontractors. Contractor will be solely responsible for the payment of all fees and expenses to its subcontractors.

**6.2.2** **Licenses and Permits.** During the term of the contract, the Contractor will 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.

**6.2.3 Maintenance and Support.** After implementation of the BAS System, Contractor will provide the Maintenance and Support Services from the end of the Warranty Period to the end of the Contract Term (“Initial Term”). After the initial term for Maintenance and Support Services, and provided that PEBA is in compliance with the terms and conditions of this Agreement, PEBA will have the option to renew the Maintenance and Support Services indefinitely in three (3) year terms by so notifying Contractor prior to the expiration of the then current term for such Maintenance and Support Services. The terms and conditions of the Contract will carry forward into the Maintenance and Support Services renewals and Maintenance and Support Services shall be subject to annual increases.

Maintenance and Support Services may be terminated by PEBA at any time by providing one hundred twenty (120) days advance written notice to Contractor. If the Maintenance and Support Services are terminated at any time or are not renewed by PEBA, Contractor will reasonably cooperate with PEBA to transition responsibility for the Maintenance and Support from Contractor to PEBA Personnel, at Contractor’s then current hourly rates to the extent the actual time spent is outside of the scope of the current services provided in this Contract. No adjustment in any fee or rate set forth in the Contractor Proposal for Maintenance and Support Services will be made unless specifically agreed to by PEBA in a Change Order.

**6.2.4 Software Upgrades, New Releases and Versions**.

Upgrades.

Provided that Customer has paid to Contractor the License and Upgrade Fees, Contractor shall offer to Customer the license rights to all Upgrades to the Licensed Software to be delivered to Customer on such media, under such terms and in such manner as Contractor customarily delivers the same to its customers. For the avoidance of doubt, any services required in connection with an Upgrade shall be requested and charged in accordance with Section 2 below and pursuant to a statement of work under the Services Agreement. Such Upgrades, when delivered, shall become part of the Licensed Software. Customer acknowledges that if it elects not to adopt particular Upgrade(s) but desires to adopt a subsequent Upgrade, it will be required to adopt and install such earlier Upgrade(s) if the functionality or installation of the subsequent Upgrade depends upon the prior implementation and installation of the earlier Upgrade(s). The Upgrades which may be provided pursuant to this Section shall not include improvements and modifications to the Licensed Software in the nature of upgrades, updates and fixes made necessary due to (i) statutory changes, (ii) changes in governmental regulations, or (iii) any other modification required or desired by Customer due to Customer’s needs, requirements, and/or operations. Any improvements and modifications to the Licensed Software in the nature of upgrades, updates and fixes made necessary due to (i) - (iii) above may be requested by Customer pursuant to the Services Agreement between the parties at the Contractor’s then-current rates and when delivered shall become part of the Licensed Software.

Support Services.

Provided that Customer has paid to Contractor the License and Upgrade Fees, Customer will be provided a bank of Support Hours as set forth in the License Order Form during each Annual Period which may be used by Customer for support (including, after any applicable warranty period, to correct Defects), enhancements of and/or training services for the Licensed Software, the installation, implementation and/or testing of releases of the Licensed Software during the applicable Annual Period. Unused hours may not be rolled over to the following Annual Period. Telephone and remote support access will be provided Monday to Friday from 9:00 am to 5:00 pm Eastern Time (except for legal holidays in New York State). If a bona fide Defect affecting Customer’s production environment cannot be resolved by the Contractor’s telephone and remote support personnel at the time it is reported, then the Contractor’s support representative will allocate the call to one of the three call categories described below. The criteria used in this allocation and the resulting support sequences are set forth below. After Customer has used the bank of hours of Support Services for an Annual Period, additional Support Services will be billed at the Contractor’s then-current rates. Customer agrees to eliminate redundant or unnecessary requests for Support Services by (i) permitting only Technical Contacts (as set forth in the License Order Form) to contact Contractor for Support Services; and (ii) ensuring that a subject of a request for Support Services is only reported to Contractor once. The contact information of the Technical Contacts may be updated by Customer upon written notice to the Contractor. In providing Support Services, Contractor may not find resolution to the extent that an issue is caused by (a) Customer’s misuse, improper use, mis-configuration, or damage to the Licensed Software; (b) Customer’s use of the Licensed Software with any hardware or software not supported by the Contractor; (c) Customer’s failure to install an Upgrade to the Licensed Software if such Upgrade would have resolved the issue; or (d) uses of the Licensed Software in a manner not in accordance with the License Agreement. Support Services may require Customer’s use of Tools. Any such Tools may require Customer execution of related agreements. Contractor shall have the right to upgrade any Tool at any time without notice to Customer.

General.

Support Services may require Customer’s use of Tools. Any such Tools may require Customer execution of related agreements. Contractor shall have the right to upgrade any Tool at any time without notice to Customer, provided Customer shall not incur any migration or upgrade cost.

Customer shall not electronically provide into the Contractor’s computer systems (including via email and ftp) any PII in connection with this License Agreement. If there is a Contractor security breach and/or other incident involving possible unauthorized disclosure of or access to Confidential Information and such breach includes PII that was provided by Customer in contravention of this Section, under no circumstances shall Contractor be liable for disclosure of such information and Customer shall fully release, indemnify and hold harmless Contractor from and against any liability, loss, claim, demand, cost and expense arising out of any such breach of information.

SUPPORT CATEGORIES AND RESPONSE SEQUENCE

Contractor shall respond to Customer’s requests for remediation of Defects in accordance with the schedule below only for Licensed Software in production. For the avoidance of doubt, the response/support sequence will not apply to modifications and/or configurations of the Licensed Software by Customer or any other person or entity (other than Contractor or the Contractor’s subcontractors acting at the Contractor’s express direction). Response times specified will be measured from the point, within the times of coverage, that Customer reports a defect with reasonable detail describing such Defect. To the extent a Defect is reported outside of the times of coverage, for the purposes of measuring the Contractor’s response time, it shall be considered reported as of the start of the next covered support period.

All response times referenced below are understood to be within the times of coverage contracted for by Customer above in this Section. Accordingly, in cases where Defects are reported and the required response time falls outside of Customer’s times of coverage, response will be made in the required timeframe on the next day falling within Customer’s times of coverage.

It is agreed that Defects that Customer has knowingly agreed to put into its production environment as part of any go-live or software release shall not be eligible to be deemed Defects for support purposes and that such Defects will be addressed via a release schedule to be separately agreed by the parties.

| CALL CATEGORY | CRITERIA AND SUPPORT SEQUENCE |
| --- | --- |
| **Critical Defect** | **Criteria:**Critical Defects are failures or errors of or in the Licensed Software, caused by Defects, that cause: * The Licensed Software to be fully inaccessible
* The Licensed Software to hang indefinitely, causing indefinite delays for response
* The Licensed Software to be unable to create benefit checks or electronic payments which are imminently due for a majority population of Customer’s [customers][policy holders][participant account holders] (if applicable)

Critical Defects impact the immediate operations of Customer and Customer cannot operate via any other measures until the failure is corrected.**Support Sequence:**Reasonable efforts will be made to respond to Critical Defects within one (1) hour and in all cases Critical Defects will be responded to within two (2) hours. Support personnel will be assigned to work continuously, within Customer’s times of coverage, on bona fide Critical Defects until the issue is resolved or until the severity level is reduced. Contractor will provide, within Customer’s times of coverage, updates on Critical Defects every two hours until such issue is resolved or reduced in severity. Critical Defects will generally be resolved either by a patch Licensed Software release outside of Customer’s normal Licensed Software release schedule or modifications introduced directly to Customer’s production environment or other similar methods as may be agreed by the parties. |
| **General Defect** | **Criteria:**General Defects are failures or errors of or in the Licensed Software , caused by Defects, that materially impair one or more functions set forth in the accepted specifications or Solution Design Document, with the consequence that Customer’s operations are materially adversely impacted. **Support Sequence:**Reasonable efforts will be made to respond to General Defects within four (4) hours and in all cases General Defects will be responded to within eight (8) hours. Contractor will use reasonable efforts to provide fixes to Customer’s designated testing environment for General Defects within one of Customer’s next two regularly scheduled Licensed Software releases. In the event that Contractor has no forthcoming regularly scheduled releases or if such releases are scheduled more than ninety (90) days out then, at the Contractor’s option, Contractor will use reasonable efforts to schedule a release to Customer’s testing environment within ninety (90) days. Contractor will provide updates on General Defects every week until such issue is resolved or reduced in severity. |
| **Minor Defect** | **Criteria:**Minor Defects are failures or errors of or in the Licensed Software , caused by Defects, that do not materially impact Customer’s day-to-day operations, but the performance or efficiency of Customer’s operations might improve if such Defect were to be corrected.**Support Sequence:**Reasonable efforts will be made to respond to Minor Defects within forty-eight (48) hours and in all cases Minor Defects will be responded to within one week. Contractor will use reasonable efforts to provide fixes for Minor Defects within a regularly scheduled Licensed Software release of Customer that will occur within one hundred and twenty (120) days of such issue being reported or within the next regularly scheduled release if no release is scheduled within such timeframe. Contractor will provide updates on Minor Defects every month until such issue is resolved. |

**6.2.5 Unencumbered Personnel.** All persons assigned by the Contractor to perform services for PEBA under this Contract, whether they are employees, agents, Subcontractors, or principals of the Contractor, to the Contractor’s knowledge, will not be subject to any employment contract or restrictive covenant provisions which would preclude those persons from performing the same or similar services for PEBA after the termination of this Contract, either as an employee, an independent contractor, or an employee, agent, Subcontractor or principal of another contractor with the State.

**6.2.6 Assignment, Novation, and Change of Name, Identity or Structure.**

(a) Neither party will assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the other party; with the exception of an assignment to a company with which Contractor is merged, consolidated or acquired, or which acquires all or substantially all of the assets of Contractor, provided that the acquiring party accepts in writing Contractor’s obligations hereunder. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g., bankruptcy; corporate reorganizations and consolidations, but not including partial asset sales). Notwithstanding the foregoing, Contractor may assign monies receivable under the contract provided that the state will have no obligation to make payment to an assignee until thirty (30) days after Contractor (not the assignee) has provided the Procurement Officer with (i) proof of the assignment, (ii) the identity (by contract number) of the specific state contract to which the assignment applies, and (iii) the name of the assignee and the exact address or account information to which assigned payments should be made.

**6.3.1 Payment Types and Fixed-Fees.** The parties will recognize the following (5) types of payments for this Contract:

(a) **Payments for BAS System term License Fees**

These payments are for Contractor’s term license fees for the Licensed Programs.

**6.3.3 Payment of Invoices**. All invoices must be accompanied by a copy of such Certificate of Acceptance for processing of the payment. PEBA will process payment for each undisputed portion of the invoices in a manner consistent with the policies and procedures of PEBA, with a target for payment for each accepted invoice no more than thirty (30) days after the receipt of the invoice unless Contractor and PEBA agree to longer payment terms. In the event PEBA withholds payment of any disputed portion of an invoice, PEBA will not be deemed in default of its payment obligations hereunder, provided that it notifies Contractor of the reasons for such dispute in writing. It is anticipated that funding, will be made available over the course of several years on a year-by-year basis and funding may be subject to legislative authorizations

**6.3.8 Change Orders.**

1. **Requested by PEBA.** In the event PEBA requests a change to the scope of the Project, the PEBA Project Manager will deliver such request in writing to the Contractor’s Project Manager. Within ten (10) Business Days of the receipt of such a request, Contractor will provide a written change order proposal (a “Change Order Proposal”) that will include: (i) a description of the change, the tasks involved in completing the work requested, and the level of effort involved in implementing the change; (ii) the estimated date by which such change will be completed; (iii) any consequential changes that will need to occur in the Project Work Plan; (iv) the total flat fee or estimated time and materials cost for implementing such change; and (v) the latest day by which written approval can be given to Contractor so that Contractor can implement the change in line with Contractor’s Change Order Proposal.

(c) **Change Order Process.** Contractor will bear all reasonable costs in preparing a Change Order Proposal. PEBA will have no obligation to accept or agree to any Change Order Proposal, provided that Contractor may invoke the Dispute procedures set forth in Section 6.14 in the event PEBA rejects a Change Order Proposal that Contractor reasonably believes is justified. A Change Order Proposal that is acceptable to PEBA and Contractor will become a Change Order under this Contract when it is signed by the PEBA Executive Director (or his designee) and the Contractor Account Executive (or his designee). Prior to preparing a Change Order Proposal, Contractor will first determine whether the proposed change can be reasonably accommodated within the existing level of Contractor resources, not including overtime work, then being used by Contractor in performing its obligations hereunder, and if so the charges payable by PEBA for the Project will not be increased. To the extent a change proposed by either party will reduce the Contractor’s cost to fully perform its obligations hereunder, Contractor will not be required to reduce its fee but will issue a credit memo that reflects the fees and costs associated with the services and Deliverables that will not be provided. PEBA will be permitted to apply such credits against future Change Orders. Contractor will maintain a change request reporting mechanism and provide a change control plan/methodology for the duration of the Project. The fees specified in a Change Order Proposal will be tied to the payment points set forth in Attachment 6 Business Proposal Template and be subject to the Hold-Back Amount.

**6.3.9**  **Change Directives.**

(a) Contract Modification.  By a written mutually agreed upon order, at any time, and without notice to any surety, the parties may, subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:

(b)   Adjustments of Price or Time for Performance.  If any such change increases or decreases the Contractor’s cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment will be made in the Contract price, the delivery schedule, or both, and the Contract modified in writing accordingly.

**6.4.3 PEBA Caused Delay and Concurrent Delay.** Contractor acknowledges that from time to time PEBA may not be able to meet the time frames specified in the Project Work Plan or that PEBA may determine that it is necessary to delay and/or modify the timing and sequencing of the implementation as provided in the Project Work Plan. Contractor acknowledges and accepts that reasonable delays may occur. PEBA may, at its option and expense, suspend the Project or any part thereof if necessary to perform its mission or future funding is not available. Contractor and PEBA agree to adjust the applicable Project Work Plan to take into account any PEBA-caused delays or suspensions; provided, however, that Contractor will continue to perform any and all activities not affected by such PEBA-caused delay. PEBA may require Contractor to re-prioritize or re-sequence certain functions, and in the event an adjustment to a Project Work Plan causes Contractor scheduling conflicts or personnel unavailability and Contractor promptly notifies PEBA of such conflicts or unavailability, PEBA and Contractor will prepare a revised, mutually agreeable Project Work Plan, which may delay the commencement and completion dates of the Project and will take into consideration the readjusted time frames and any necessary resequencing of the activities

**6.5 FORCE MAJEURE**

**6.5.1 Event of Force Majeure.** Except for PEBA’s obligations to pay fees and expenses pursuant to this Agreement, neither party will be liable for any costs or damages due to nonperformance under this Contract arising out of any cause or event not within the reasonable control of such party and without its fault or negligence, including, but not restricted to, severe weather, earthquakes, labor disputes, failure of equipment, fire, flood, internet or other service disruptions involving hardware, software or power systems not within such party’s possession or reasonable control, and denial of service attacks, explosion, act of God, terrorist attack, war, insurrection, riot, government regulation or act, vandalism, strike or quarantine (such causes or events hereinafter referred to as “*Events of Force Majeure*”).

**6.7 WARRANTIES; REMEDIES**

**6.7.1 Warranty Period.** The Warranty Period will be the period of time commencing with the Go Live of each Phase used by PEBA in an operational, non-test environment, utilizing actual production data and terminating [twelve (12) months] after that Go Live. Each Phase will have its own Warranty Period as described in this section.

**6.7.2 Warranty of Conformity to Specifications.** During the Warranty Period, Contractor represents that the BAS System (i) will operate without material Defect; and (ii) will operate in material conformity with the System Specifications. Contractor, at its own expense, upon receipt of written notice from PEBA, will use commercially reasonable efforts to make corrections and modifications necessary to the BAS System and each component or portion thereof, so that the BAS System will so operate.

**6.7.3 Correction of Warranty Period Defects.** Contractor represents that it will use commercially reasonable efforts to correct Defects in the BAS System discovered during the Warranty Period, when reported to Contractor in writing or discovered by Contractor within the Warranty Period. Contractor will use its commercially reasonable efforts to perform all warranty services during the Warranty Period in a manner which minimally disrupts PEBA’s daily operations.

Without limiting the parties’ ability to agree to a different timeframe as circumstances warrant, the parties acknowledge the following to be Contractor’s target timeframes for initiating verification of a Defect, identification of potential workarounds, identification of potential resolutions, identification and assignment of Contractor Personnel to address Defects and the commencement of work to resolve such Defects:

(i) for Critical Defects, two (2) hours after they are reported to Contractor during Business Hours and 4 hours for Critical Defects reported after Business Hours;

(ii) for Major Defects, four (4) hours after they are reported to Contractor during Business Hours and 6 hours for High Defects reported after Business Hours; and

(iii) for Moderate Defects, five (5) Business Days after they are reported to Contractor.

**6.7.5 Warranty of Right to License; Noninfringement.** Contractor represents and warrants that it is the owner or licensor of the Licensed Programs and that it has the right to convey the licenses set forth in this Contract, and that PEBA’s use of such Licensed Programs, and the execution of the Licensed Programs on Contractor approved Equipment do not infringe, misappropriate, or otherwise violate any third-party rights, including but not limited to any United States patent rights, copyrights, trade secret rights, trademark rights, or other proprietary rights; provided, that PEBA’s sole and exclusive remedy for breach of this warranty of non-infringement shall be the infringement indemnification provided by Contractor under this Agreement.

**6.7.6 No Claims.** Contractor represents, as of the date of this Contract, there is no action, suit, claim, investigation or proceeding pending, or to the best of Contractor’s knowledge, threatened against, by or affecting Contractor or the BAS System or any component thereof in any court, or by or before any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before any arbitrator of any kind which, if adversely determined, might materially adversely affect the use of the BAS System or any component thereof or restrict Contractor’s ability to consummate the transactions contemplated hereby or provide the services under this Contract.

**6.7.7 Service Warranty.** Each party represents that it complies with, at all times during the term of the Contract will continue to comply with, all applicable federal, state, and local laws, statutes, rules, regulations, and ordinances in performance of the services hereunder, including, but not limited to, professional services and Maintenance and Support Services. Contractor represents that it will perform all services, including, but not limited to, professional services and Maintenance and Support Services, and provide the Deliverables required by this Contract in a timely, professional and workmanlike manner, and in accordance with prevailing industry practices and standards; provided, however, that where this Contract specifies a particular standard or criteria for performance, this warranty is not intended to and does not diminish that standard or criteria for performance.

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**6.7.12 [Open Source Code.** Contractor covenants that it will not use any Open Source code as part of the License Programs or any other component of the BAS System unless it specifically identifies the Open Source code in Attachment 6 Business Proposal Template, provides a copy of the applicable Open Source code license agreement to PEBA, and secures PEBA’s written consent to provide such Open Source code.]

**6.7.16 Legal Requirements.** For changes to the BAS System required to comply with federal law or other legal requirements, Contractor will make all necessary changes to the BAS System when notified in writing by PEBA. When the necessity of such changes are known by Contractor Key Personnel, Contractor will promptly notify PEBA of changes to the legal requirements that may impact the BAS System, but Contractor will not provide legal advice.

**6.7.18 Limitation of Liability.**

(a) **Warranties.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW: (A) CONTRACTOR EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY (INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR PURPOSE, NONINFRINGEMENT, SYSTEM INTEGRATION AND/OR DATA ACCURACY); AND (B) CONTRACTOR DOES NOT WARRANT THAT THE Contractor’s Hosting SERVICE, THE LICENSED SOFTWARE, OR DOCUMENTATION MEET CUSTOMER’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, OR ARE ERROR FREE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CONTRACTOR, ITS AGENTS, ITS THIRD PARTY SERVICE PROVIDERS, SUBCONTRACTORS, OFFICERS OR EMPLOYEES SHALL CREATE ANY WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY, AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE WITH RESPECT TO CONTRACTOR. THE LICENSED SOFTWARE OR THE Contractor’s Hosting SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT TO THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. CONTRACTOR IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR DAMAGES INCURRED BY CUSTOMER IN CONNECTION WITH THE MIGRATION OF THE LICENSED SOFTWARE FROM ONE APPROVED HOST TO ANOTHER APPROVED HOST. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, RELIANCE, OR PUNITIVE DAMAGES OR LOST OR IMPUTED PROFITS OR LOST OR INACCURATE OR CORRUPTED DATA OR LOST USE, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, FORCE MAJEURE EVENTS, OR (IN THE CASE OF CONTRACTOR) OTHER ACTS OR OMISSIONS RELATED TO THIRD PARTY PROVIDERS, OR (IN THE CASE OF CONTRACTOR) FOR THIRD PARTY CONTENT, MODIFICATIONS AND/OR CONFIGURATIONS OF THE LICENSED SOFTWARE MADE BY CUSTOMER OR ANY OTHER PERSON OR ENTITY (OTHER THAN CONTRACTOR OR CONTRACTOR’S SUBCONTRACTORS ACTING AT CONTRACTOR’S EXPRESS DIRECTION), OR ANY HARDWARE, SOFTWARE OR OTHER MATERIALS NOT PROVIDED BY CONTRACTOR (OR THE USE THEREOF) OR (IN THE CASE OF CONTRACTOR) UNAVAILABILITY OF THE LICENSED SOFTWARE OR THE Contractor’s Hosting SERVICE AND, OTHER THAN WITH RESPECT TO FEES PAID AND PAYABLE BY CUSTOMER UNDER AN AGREEMENT AND WITH RESPECT TO EACH PARTY’S INDEMNIFICATION OBLIGATIONS OR CUSTOMER’S BREACH OF IPR OR LICENSE RIGHTS AND RESTRICTIONS, EACH PARTY’S TOTAL LIABILITY UNDER AN AGREEMENT FOR ALL CLAIMS ARISING IN CONNECTION WITH AN AGREEMENT WILL BE LIMITED TO DIRECT DAMAGES IN AN AMOUNT EQUIVALENT TO THE FEES PAID OR PAYABLE TO CONTRACTOR WITH RESPECT TO AN AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING ASSERTION OF THE CLAIM. Customer must bring all claims and causes of action within twelve (12) months of their being discovered. Customer agrees that (a) it will not make duplicate claims based on the same breach or the same factual occurrence, event or transaction under an Agreement and any other agreement between Customer and the Contractor; and (b) no remedy sought under an Agreement may be duplicative or cumulative to any remedy sought under any other agreement between Customer and Contractor. The limitations and exclusions in this Section 6 apply to all claims or causes of action under whatever theory brought and regardless of whether a party was advised of the possibility of the claim.

**6.7.19 No Withholding of Services.** **Due to the serious impact and irreparable harm any suspension or termination of this vital and critical services Contract would have on the continuing operations of PEBA and the State entities, employees and retirees relying on PEBA, in which case an adequate remedy at law is highly unlikely to be available, PEBA’s failure to perform its responsibilities set forth in the Contract will not be grounds for suspension or termination by Contractor. CONTRACTOR ACKNOWLEDGES AND AGREES THAT PEBA WOULD NOT BE WILLING TO ENTER INTO THIS CONTRACT WITHOUT CONTRACTOR’S COVENANT AND ASSURANCES THAT THE (1) CONTRACTOR’S SERVICES AND PERFORMANCE WILL NOT BE SUSPENDED OR TERMINATED BY CONTRACTOR EXCEPT FOR MATERIAL BREACHES OF LICENSE RESTRICTIONS AND/OR CONFIDENTIALITY AND AS REQUIRED BY THE GOVERNMENT CLOUD PROVIDER. Notwithstanding the foregoing, Contactor’s promise not to terminate or suspend its performance will not relieve PEBA from its obligations to pay Contactor for acceptable goods and services provided pursuant to this agreement. Contractor’s remedy shall be to initiate proceedings for recovery of payments pursuant to the Disputes provision of this agreement (6.14) and shall continue to perform during the pendency of any disputes. Contractor agrees that it will use its commercially reasonable efforts to flow down this provision in any subcontract including without limitation the Government Cloud Service Provider Subcontract. PEBA acknowledges and agrees that Contractor shall not be in breach of its failure to include such a flow down provision to the extent it has used its commercially reasonable efforts.**

**6.8 INDEMNIFICATION**

**6.8.2 Third Party Claims – General.**

Contractor will (a) defend Customer and its affiliates, and each of their respective employees, officers, directors, and representatives (collectively, “Customer Indemnified Parties”) from all third-party claims or causes of action, lawsuits, demands, litigations, and arbitrations alleging that the Licensed Software infringes or violates a third party’s United States copyright rights, United States trade secret rights, or United States trademark rights; and (b) indemnify and reimburse Customer Indemnified Parties from all damages, losses, liabilities, settlements, costs, expenses, or fines (including reasonable attorney’s fees and legal costs) arising therefrom. If the Licensed Software is found to be infringing, or if at any time Contractor reasonably believes that the Licensed Software may be subject to a claim of infringement, then Contractor may choose to: (i) modify the applicable portions of the Licensed Software to be non-infringing; (ii) obtain a license for Customer to continue using the infringing portions of the Licensed Software; or (iii) if neither of the foregoing is commercially practicable, terminate an Agreement, and upon Customer’s return or destruction of the Contractor’s Confidential Information (including the Licensed Software), Contractor shall refund a pro-rata portion of any pre-paid fees for services Customer not yet received. the Contractor’s indemnity obligations will not apply to damages, losses, liabilities, settlements, costs, expenses, or fines (including reasonable attorney’s fees and legal costs) to the extent caused by or arising out of: (A) Customer’s use of the Licensed Software outside the scope of or in violation of the License Agreement; (B) infringement arising from Customer Data, Third Party Content or any other hardware, software or other materials not provided by the Contractor; (C) any infringement not reported by Customer within ten (10) days of it first becoming aware of such proceeding or claim (but only to the extent Contractor is actually prejudiced by Customer’s delay or failure to report); (D) any modifications and/or configurations to the Licensed Software made by Customer or any other person or entity (other than Contractor or the Contractor’s subcontractors acting at the Contractor’s express direction); or (E) any combination of the Licensed Software with hardware, software or other materials not provided by the Contractor. This Section sets forth Customer’s sole and exclusive remedy and the Contractor’s only liability with respect to infringement or other violations of intellectual property rights. Customer will indemnify, defend and hold the Contractor, its affiliates and subcontractors, and each of their respective employees, officers, directors, and representatives harmless from all third party claims or causes of action, lawsuits, demands, litigations, and arbitrations and any resulting damages, losses, liabilities, settlements, costs, expenses, or fines (including reasonable attorney’s fees and legal costs) arising from (1) Customer Data, any alleged infringement or misappropriation of any third party rights, including IPR, by Customer Data, or by the use, development, design, production, advertising or marketing of Customer Data, Third Party Content or any other hardware, software or other materials not provided by the Contractor; and/or (2) any infringement listed in (A)-(E) above.

The obligations of the indemnifying party under this Section are conditioned upon: (x) indemnifying party receiving written notice of each such actual or threatened proceeding or claim within ten (10) days of indemnified party first becoming aware of such proceeding or claim (provided, the indemnifying party shall be relieved of its obligations hereunder only to the extent such indemnifying party is actually prejudiced by the indemnified party’s delay) and (y) indemnified party reasonably cooperating with indemnifying party in the investigation and defense of each such proceeding or claim. Indemnifying party shall have the sole right to control and direct the investigation, defense and settlement of each such proceeding or claim, provided, however, that any such settlement shall not impose any liability on indemnified party.

6.9 INSURANCE

6.9.1 Umbrella Excess Liability.

Subject to approval by our brokers.

6.10 INFORMATION SECURITY

To be updated to conform with responses to security questionnaire.

**6.11 TERM AND TERMINATION**

**6.11.1** **Term of Contract; Effective Date.**

**Maximum Contract Term: January 1, 2020 through December 31, 2026.**

The effective date of this Contract is the first day of the Maximum Contract Term as specified on the final statement of award. At the end of the initial term, one Contract will be extended for the balance of the Maximum Contract Period.

**6.11.2 Contract Services Transition.** Upon termination of this Contract for whatever reason (expiration, termination, or transfer), the Contractor will:

(a) Assist PEBA, at PEBA’s expense, to provide for an orderly transfer of responsibility and continuity of those services required under the terms of the Contract to an organization designated by PEBA, if requested in writing;

(b) Advise PEBA of the extent to which performance has been completed through the date of expiration or termination and deliver to PEBA whatever Work Product and deliverables then exist;

(c) Promptly refund, on a pro rata basis, any fees and expenses paid in advance to Contractor;

(d) For so long as PEBA continues to make payments, continue to provide access to all Software, Licenses, and the BAS System until notified by PEBA the access is no longer needed; and

(e) Coordinate with PEBA to return property belonging to PEBA, including, without limitation any information that is confidential to PEBA.

Customer will have the right to terminate the License Agreement for convenience upon one hundred and twenty (120) days’ written notice to Contractor. If an obligation under the License Agreement is materially breached, the non-breaching party may provide written notice specifying the nature of the breach and the breaching party will have thirty (30) days from receipt of notice to cure such breach; provided however that Customer will have one hundred twenty (120) days to cure any breach other than material breaches of license restrictions and/or confidentiality. If not so cured, the non-breaching party may terminate the License Agreement by providing a second written notice of immediate termination. In addition, each party will have the right to terminate the License Agreement immediately upon the other party’s insolvency or any attempt by the other party to obtain protection from creditors or wind down operations, unless otherwise agreed by the terminating party in a written notice.

Effect of Termination. If the License Agreement is terminated by either party or the License Term expires pursuant to its terms, then (a) Customer must pay all outstanding amounts due to Contractor; (b) the License and all other licenses granted by a party to the other party will immediately terminate, and all copies and embodiments of each party’s Confidential Information must be returned, destroyed or erased by the other party (including the Licensed Software) with assurances (signed by an officer of such party) to the other party that it has done so upon the written request of such party; other than as required by law or for automatically generated back-up purposes; provided that each party will continue to be bound by the confidentiality obligations hereunder, including restrictions on the disclosure and use of the Confidential Information retained by such party. This Section will survive any expiration or termination of the License Agreement.

**6.12 BANKRUPTCY**

**6.12.1 General.**

(a) **Notice**. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to PEBA.  This notification will be furnished within ten (10) days of the initiation of the proceedings relating to the bankruptcy filing.  This notification will include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made.  This obligation remains in effect until final payment under this Contract and all subsequent Maintenance and Support Services contracts.

(b) **Termination**. This Contract is subject to immediate termination by the State upon the Contractor’s insolvency, including the filing of proceedings in bankruptcy. Termination under this clause triggers the provisions in section 6.1.2, Escrow.

**6.14 MISCELLANEOUS**

**6.14.1 Choice of Law.** The Contract, any dispute, claim, or controversy relating to the Contract, and all the rights and obligations of the parties will, 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.

**6.14.10 Survival of Obligations.** The Parties’ rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this Contract will survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses:  Section 6.8.2, Third Party Claims – General; Section 6.8.4, Intellectual Property; Section 6.9.3, Contractor’s Liability Insurance –Information Security and Privacy; Section 6.10.6, Use and Disclosure; Section 6.10.8, HIPAA Compliance/Confidentiality; Section 6.15.2, Contract Documents and Order of Precedence; and any provisions regarding payment, warranty or audit.

**6.14.15 Pricing Data; Audit; Inspection**

(b) **Records Retention.** You will 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 no more than once per year. 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 will retain all records and allow any audits provided for by 11-35-2220(2).

(d) **Instructions Certification.** When you submit data pursuant to subparagraph (a), you will (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).

1. **PART 9, APPENDIX A DEFINITIONS**

**Response: PEBA rejects all changes below.**

1. **“Acceptance”** means the issuance of a Certificate of Acceptance by PEBA.
2. **“Affiliates”** means those business entities that (a) for corporate entities, Contractor has ownership of 20% or more of the stock or shares entitled to vote for the election of the board of directors or other governing body of the entity; (b) for non-corporate entities, Contractor has ownership of 20% or greater of the equity interest; and (c) for any entity, Contractor has control of any entity through voting agreements or covenants.
3. **“Applications Software”** or **“Applications”** means those software application programs and programming (and all modifications, replacements, Upgrades, Enhancements, documentation, materials, media, on-line help facilities and tutorials related thereto) that perform user or business related information processing functions. Applications Software will include all such programs or programming required to meet Contractor’s obligations in providing PEBA with the BAS System.
4. “Approved Host” means AWS or a hosting service provider approved by the Contractor, such approval not to be unreasonably withheld or delayed, which is not a Competitor of the Contractor, whose infrastructure is located within the continental United States.
5. **“Authorized User”** means PEBA Personnel, members of the PEBA Board, participating employers, TPAs, and other third-party contractors and agencies providing services to PEBA, PEBA plan participants, members and beneficiaries.
6. **“BAS System”** means the System being provided hereunder by Contractor, including the Licensed Programs, Documentation, Third Party Equipment, Third Party Software, Work Product, Deliverables, and modifications and updates.
7. **“Base Program”** means the standard software without Customizations in both source and object code form belonging to Contractor or one of its Affiliates and that is identified in the Contractor Proposal, including all Releases therefor, and all documentation relating thereto.
8. **“Business Day”** means Monday through Friday, excluding holidays observed by PEBA.
9. **“Business Hours”** means PEBA’s normal business hours, which are 8:30 AM to 5:00 PM Eastern Time, Monday - Friday.
10. **“Certificate of Acceptance”** means a written certification signed by an authorized representative of PEBA indicating that PEBA is satisfied that a Deliverable, Phase or the System, as applicable and completed, materially performs in accordance with the System Specifications.
11. **“Certification of Contractor Testing Completion”** will have the meaning set forth in Section 3.14.
12. **“Confidential Data”** means sensitive information that is used or held by PEBA. Loss or harm could occur as a result of unauthorized access, use, or disclosure of this information. Statutory or regulatory penalties, notification provisions, or other mandates could result if the information is accessed, used or disclosed in an unauthorized manner.
13. **“Contractor Personnel”** means all of Contractor’s employees, Contractor individual contractors hired for staff augmentation purposes and Subcontractors performing services under the Contract, whether considered a Key Personnel or not. Contractor Personnel also includes the Government Cloud Services Subcontractor and its Subcontractors.
14. **“Contractor Proposal”** means Contractor’s Technical Proposal made in response to the Solicitation, as amended by Section 1.4.
15. **“Contractor Technology”** means the Licensed Programs and any improvements, modifications, Enhancements thereto or Derivative Works thereof, including but not limited to Enhancements thereto, and Documentation and any other works of authorship, materials, information created by Contractor or its Subcontractors prior to or independently of the performance of the services hereunder including improvements, modifications, Enhancements thereto or Derivative Works thereof, or created by Contractor or its Subcontractors as a general consulting tool for their use in performing the services hereunder, plus any modifications or Enhancements thereto and Derivative Works based thereon.
16. **“Contractor Testing”** means the test of the Licensed Programs, Third Party Software, and Deliverables to be conducted by Contractor, to demonstrate that the applicable Phase of the BAS System and the BAS System as installed on the Equipment at the Government Cloud Services Subcontractor hosting facilities or PEBA Premises, conform to the application System Specifications in all material respects, as further described in the Solicitation.
17. **“Customer”** means the South Carolina Public Employee Benefit Authority.

1. **“Customizations”** means the source code and object code of any modification or addition to the Base Programs required for the BAS System to comply with the System Specifications or to implement an Enhancement.
2. **“Data Breach”** means the unauthorized access by a non-Authorized Person that results in the use, disclosure, or theft of PEBA’s Confidential Data or Restricted Data.
3. **“Defect”** means any failure by the BAS System to conform in any material respect with applicable System Specifications, including but not limited to any failure of Licensed Programs to conform with the System Specifications in any material respect. However, any nonconformity resulting from PEBA’s material misuse, improper use, alteration, or damage of Licensed Programs or PEBA’s combining or merging Licensed Programs with any hardware or software not supplied by, authorized, or identified as compatible by Contractor, will not be considered a Defect.
4. **“Defect Correction”** means either a modification or addition that, when made or added to the System or any component thereof, establishes material conformity of the System or any component thereof to the functional System Specifications therefor, or a procedure or routine that, when observed in the regular operation of the System or any component thereof, eliminates the practical adverse effect on PEBA of such nonconformity or Defect.
5. **“Deliverables”** means each deliverable, Licensed Program, Interface, Document Deliverable, or Work Product provided as part of a Phase of the Project.
6. **“Derivative Work”** means a work based on one or more preexisting works, including a condensation, transformation, translation, modification, expansion, or adaptation, that, if prepared without authorization of the owner of the copyright of such preexisting work, would constitute a copyright infringement under applicable Law, but excluding the preexisting work.
7. **“Development Tool”** will mean all software programs and programming (and all modifications, replacements, Upgrades, Enhancements, documentation, materials and media related thereto) that are used in the development, testing, deployment and maintenance of Applications and products selected and/or developed by or for PEBA.
8. **“Document Deliverable”** means the Documentation and any other report or document required to be delivered by Contractor under this Contract.
9. **“Documentation”** means all specifications, manuals, documents, drawings, demonstrations, presentation materials, and other tangible items pertaining to a System or a particular Phase of the System that have been provided by Contractor to PEBA, whether during or before this Contract, as well as the documentation and functional requirements required by the Solicitation, the requirements set forth in the Requirements Traceability Matrix, and the documentation for the Licensed Programs generally made available by Contractor to its customers. In the event of any conflict or inconsistency between the items identified in the Contract and the documentation for the Licensed Programs made generally available, the items in the Contract will control. When requested by PEBA, Documentation will be provided in electronic form.
10. **“Electronic Protected Health Information (“EPHI”)”** means Protected Health Information that is transmitted or maintained by or in electronic media, as defined by 45 CFR § 160.103.
11. **“Embedded Software”** means the following third-party software products that are embedded in the Licensed Programs as listed in Attachment 6 – Business Proposal Template.
12. **“Enhancement”** means any modification or addition that, when made or added to the Licensed Programs, materially changes its utility, efficiency, functional capability, or application, but that does not constitute solely a Defect Correction and that goes beyond what is required under the System Specifications.
13. “End User” means any individual who is a customer, policy holder or Participant account holder of Customer who accesses the Licensed Software either directly or through another system (via database access, service layer access, messaging, html access or other means of systems integration).
14. **“Equipment”** means all networking, communications, and related computing machines and hardware procured, provided, operated, supported, or used by PEBA, Contractor, or Government Cloud Services Subcontractor in connection with the Services, including PEBA Equipment and Third Party Equipment.
15. **“Individually Identifiable Health Information”** means Information that is a subset of health information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
16. **“Key Personnel”** will mean the following Contractor personnel assigned to this Agreement:
	* + - Project Manager/Project Director
			- Deputy Project Manager/Project Director
			- Lead Functional/Business Analyst
			- Lead Technical Analyst
			- Quality Assurance/Testing Manager
			- Account Executive
17. **“LAN”** means PEBA’s limited-distance distributed processing network (local area network) that comprises PEBA Equipment and supporting communication facilities interconnected by a transmission medium in order to facilitate the inter-exchange of data through the Internet, as further described in the Solicitation.
18. **“Licensed Programs”** means the executable code form of Version 10 of the V3 Software for the modules listed on the License Order Form as well as those Upgrades and configurations as may be provided by the Contractor, as may be installed by Customer in accordance with the License Agreement or hosted by Contractorpursuant to a Subscription Agreement.
19. “LOB Named User” means any (i) individual accessing any of the Licensed Software’s functions, features, services, screens, other components of the Licensed Software (other than self-service functions) or data within the Licensed Software either directly or indirectly through another system (via database access, service layer access, messaging, html access or other means of systems integration); and (ii) system accessing the Licensed Software, or any or all of its functions, features, services, screens, other components or data within the Licensed Software. For the avoidance of doubt, in the case of a system being used as an indirect means of providing access to the Licensed Software’s non self-service functions, features, services, screens, other components or data within the Contractor’s Hosting Service to “individuals”, each individual user accessing such system shall be counted as an LOB Named User.
20. **“Go Live”** means the date that the applicable software of a Phase or the entire System is first used by PEBA in an operational, non-test environment, utilizing actual production data.
21. **“Milestone”** means a mutually agreed upon point of Contractor or Subcontractor delivery of Deliverables, Implementation Services, Maintenance and Support Services, and Government Cloud Subcontractor Services under the terms of this RFP.
22. **“Materials”** will mean, collectively, Software, literary works, other works of authorship, specifications, designs, analyses, processes, methodologies, concepts, inventions, know-how, programs, program listings, programming tools, documentation, user materials, reports, drawings, databases, spreadsheets, machine-readable text and files, financial models and Work Product, whether tangible or intangible.
23. **“Open Source”** means any Software, library, utility, tool or other computer or program code that is licensed or distributed as “free software,” “freeware,” “open source software” or under any terms or conditions that impose any requirement that the Open Source Materials or any Software using, linked with, incorporating, distributed with, based on, derived from or accessing the Open Source Materials: (i) be made available or distributed in source code form; (ii) be licensed for the purpose of making Derivative Works; (iii) be licensed under terms that allow reverse engineering, reverse assembly or disassembly of any kind; or (iv) be redistributable at no charge. Open Source Materials include without limitation any Software or Materials licensed or distributed under any of the following licenses or distribution models or similar licenses or distribution models: the GNU General Public License (GPL), GNU Lesser General Public License or GNU Library General Public License (LGPL), Mozilla Public License (MPL), BSD licenses, the Artistic License, the Netscape Public License, the Sun Community Source License (SCSL) the Sun Industry Standards License (SISL) and the Apache License).
24. **“PEBA Confidential Information”** will mean confidential information of PEBA provided to Contractor or accessed by Contractor under the Contract, including, but not limited to: (i) Personally Identifiable Information (PII), and (ii) information related to PEBA’s operations, such as investment strategies, audit findings, business methodologies, personnel information, technical information; employer information, beneficiary information, survivor information, member information, or any other information deemed by federal or state law, rule or regulation as proprietary or confidential.
25. **“PEBA Data”** means all data created or in any way originating with PEBA, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with PEBA, whether such data or output is stored on PEBA’s hardware, the Government Cloud Services Subcontractor’s hardware, or exists in any system owned, maintained, or otherwise controlled by PEBA or by the Government Cloud Services Subcontractor.
26. **“PEBA Equipment”** means the LAN central processing units (CPUs), including all terminals, personal computers (“PCs”), servers, SAN and other components thereof, situated at PEBA’s Premises as of the Project Start Date and more fully described in the Solicitation.
27. **“PEBA Identified Contact”** means the person or persons designated in writing by PEBA to receive security incident or breach notification.
28. **“PEBA Personnel”** means all persons engaged from time to time as officers, employees, agents, consultants, or independent contractors of PEBA.
29. **“PEBA Premises”** means those premises occupied by PEBA, including but not limited to those at 202 Arbor Lake Drive, Columbia South Carolina, together with any other premises owned or leased by PEBA.
30. **“Personal Data”** means data that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver’s license, passport); financial account information, including account number, credit or debit card numbers; or protected health information (PHI) relating to a person.
31. **“Personally Identifiable Information”** means any information about an individual person that uniquely identifies a person, including but not limited to (a) any information that can be used to distinguish or trace an individual’s identity, such as name, address, social security number, telephone number, IP address, financial account number, credit card number, debit card number, driver’s license number, date and place of birth, mother’s maiden name, or biometric records; and (b) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. Personally Identifiable Information includes, but is not limited to, Individual Personal Information, Medical Records, Protected Health Information, and Electronic Protected Health Information.
32. **“Phase”** means a particular portion of the implementation, as set forth in the Solicitation and in the Project Work Plan, or as may be modified in accordance with this Contract.
33. **“Project”** will mean the planned undertaking to provide the products and services pursuant to the Solicitation and the terms of this Contract.
34. **“Project Start Date”** will mean the mutually agreed upon date on which the Project will begin. After the Project Start Date has been agreed to, it will be identified in the Project Work Plan.
35. **“Project Work Plan”** will have the meaning set forth in Section 3.8.
36. **“Protected Health Information (“PHI”)”** will have the same meaning as the term “protected health information” at 45 CFR § 160.103.
37. **“Releases”** means new versions and releases of the Licensed Programs, which may include both Defect Corrections and Enhancements and which Contractor generally makes available at no additional to customers of the Base Program who have paid their Upgrade Subscription and Maintenance and Support fee.
38. **“Requirements Traceability Matrix”** means the requirements traceability matrix described in the Solicitation.
39. **“Restricted Data”** means highly sensitive information that is used or held by an agency. For PEBA this primarily represents medical data and information pertaining to specific protected classes of individuals (i.e., children).
40. **“SAN”** means the PEBA storage area network.
41. **“Security Incident”** means the potentially unauthorized access by non-Authorized Persons to Personal Data, Restricted Data, or Confidential Data that could reasonably result in the use, disclosure, or theft of PEBA’s unencrypted data. A Security Incident may or may not turn into a Data Breach.
42. **“Software”** means all computer software programs and programming(and all modifications, replacements, Upgrades, Enhancements, documentation, materials and media related thereto), including Applications, Development Tools, Open Source and Systems Software.
43. **“Source Code”** computer software in human-understandable form of source statements, including electronic and printed human-readable, mnemonic or English-like statements.
44. **“Source Code Materials”** means then current versions of Source Code, all proprietary tools required for use of the Licensed Programs under this Contract, all Source Code-related documentation to the extent the same exists at the time, a list of all Open Source code utilized with the Licensed Programs, and all operation documents, including but not limited to documents describing the third-party tools and the methods and procedures utilized for the installation, configuration and operation of the Licensed Programs.
45. **“System”** means an interconnected grouping of manual or electronic processes, including business flow charts, logic diagrams, Equipment, Software, Documentation, source codes, object codes, and Materials of any type whatsoever (tangible or intangible and machine or human readable) which incorporate or reflect the design, specifications, or workings of a System or its Software and associated attachments, features, accessories, peripherals and cabling, and all additions, modifications, substitutions, Upgrades or Enhancements to such System, including all Systems in use or required to be used as of the contract commencement date, and all Systems, Materials, Work Product and Deliverables installed or developed by or for PEBA following the contract commencement date as required by this contract including Contractor’s BAS System. The term “System” may refer to more than one System, despite the use of the singular. A System, or components thereof, may operate on mainframe Equipment or a microprocessor workstation platform or server platform (“Server Platform”) or web-based service enabled components (“Internet Components”) or any combination of the same.
46. **“Systems Software”** means all software programs and programming (and all modifications, replacements, Upgrades, Enhancements, documentation, materials and media related thereto) that perform tasks basic to the functioning of the Equipment and are required to operate the Applications Software or otherwise support the provision of the BAS System and hosting Services by Contractor and the Government Cloud Services Subcontractor, including operating systems, systems utilities, data security software, compilers, performance monitoring and testing tools and database managers.
47. **“System Specifications”** means those technical and functional requirements relating to the design and performance of the BAS System or a particular Phase of the BAS System, as set forth in the Contract. The System Specifications may from time to time be amended by Change Orders.
48. **“Test Phase”** means a scheduled block of testing with a primary focus. Test phases will include, at a minimum, Functional Test, Integration and System Test, and User Acceptance Test.
49. **“Test Specifications”** means those specifications set forth in the Solicitation.
50. **“Test Type”** means the type of testing being performed within a scheduled Test Phase or at any other applicable time during Project execution. Test types include Contractor Testing, User Acceptance Testing, and Performance Testing
51. **“Third Party Equipment”** means the third-party equipment that is required for the System to comply with the System Specifications, as listed in Attachment 6 – Business Proposal Template, which is to be purchased by Contractor on behalf of PEBA, and owned or licensed by PEBA upon delivery to PEBA and PEBA’s payment of the applicable Third Party Equipment fees.
52. **“Third Party Software”** means any software not licensable by Contractor that will be provided by Contractor, but excluding Embedded Software.
53. “Licensed Software Manual” means any written, printed, electronic or other format user manuals published or otherwise that Contractormay make available to its licensees which describe the features and functions of the Licensed Software so that it may be used by a reasonably trained user.
54. **“Maintenance and Support Services”** means the post-implementation maintenance and support services described in Attachment 6 – Business Proposal Template.
55. **“Upgrade”** and its derivatives means the updates, renovations, Enhancements, additions and/or new versions or releases of Software or Equipment by Contractor or its subcontractors. Unless otherwise agreed, financial responsibility for the costs, fees and expenses associated with an Upgrade of Software or Equipment will be Contractor’s responsibility.
56. **“Use”** means the right to load, execute, store, transmit, display, copy, maintain, modify, enhance, and create Derivative Works.
57. “Users” means LOB Named Users and End Users, as applicable.
58. **“User Acceptance Testing”** means the tests to be conducted by PEBA, to demonstrate that the Phase, Deliverable, or the System, as installed on the Equipment at the Government Cloud Services Subcontractor hosting facilities or PEBA Premises, conform to the applicable System Specifications in all material respects, as further described in the Solicitation.
59. “V3 Software” means a proprietary software authored and owned by Contractorthat serves as an administrative platform.
60. **“Warranty Period”** means the period of time commencing with the Go Live of a Phase used by PEBA in an operational, non-test environment, utilizing actual production data and terminating twelve (12) months after the Go Live of the Phase used by PEBA in an operational, non-test environment, utilizing actual production data.
61. **“Work Product”** will mean all Deliverables (excluding the Licensed Programs, Contractor Technology, Third Party Software, and Third Party Equipment) that (i) do not alter the product level code of the Licensed Programs, (ii) contain PEBA specific information and processes, and (iii) are created or first reduced to practice by Contractor and Subcontractors, alone or with others, in performance of Contractor’s obligation hereunder.
62. **RFP, Section 4.1.4.4 Technical Questions, (e) Infrastructure, pgs. 120-122**

We understand from section 3.2 of the RFP document that SC PEBA is looking for Government Cloud deployment provided by SmartRAMP certified Cloud Service Provider subcontractor. In section 4.1.4.4, (e) Infrastructure, the level of details requested for the servers physical specifications (e.g.: number of racks, processor speed, etc.)  are more typical of clients looking for an on-premise installation, colocation hosting, and/or dedicated infrastructure.

Please confirm the deployment options PEBA is requesting

**Response: PEBA is requesting a Government Cloud hosted solution. There are no plans for an on-premise installation. Please answer the question given that assumption and include any on premise required components.**

1. **RFP, Section 6.7.18 Limitation of Liability, (b) Damages, pgs. 150-151**

Except for (i) damages that arise from Contractor’s breach of its confidentiality obligations or resulting from Contractor’s bad faith or willful misconduct; or (ii) Contractor’s indemnification obligations set forth in Sections 6.8.2, 6.8.3 and 6.8.4, the Parties agree the Contractor’s liability under this Contract will be limited to an amount equal to two (2) times the awarded Contract value, including the amount posted on the Intent to Award and any modifications due to Change Orders. For damages that arise from Contractor’s breach of its confidentiality obligations, the Parties agree the Contractor’s liability under this Contract will be limited to an amount equal to three (3) times the awarded Contract value, including the amount posted on the Intent to Award and any modifications due to Change Orders. In no event will this section limit the liability of the Contractor for intentional torts, criminal acts, or fraudulent conduct.

Please confirm if PEBA will accept the changes in red above

**Response: PEBA accepts this language.**

1. **RFP, Section 6.1.2 Source Code, pg. 136**

~~Upon delivery of each Phase of the BAS System, Contractor shall provide PEBA with the then current Source Code Materials.  Contractor hereby grants to PEBA a nonexclusive, fully paid up, royalty free, perpetual, and non-terminable license to install, execute, modify, configure, reproduce, and use the Source Code Materials.  As part of such license, PEBA shall be permitted to allow its third party designees to do any of the foregoing on behalf of PEBA.  During the term of this Agreement, Contractor shall update the Source Code Materials at least once per year and as frequently as a Release is made available by Contractor~~.

Please confirm if PEBA will accept the changes in red above

**Response: Section 6.1.2 is deleted.**

1. **RFP, Section 3.2.4 Data Location, pg. 80**

**RFP, Section 6.10.5 Data Location, pg. 160**

**3.2.4 Data Location.** The Contractor will require, as a condition of entering into the Government Cloud Services Subcontract, that all data, including data stored in all databases, environments, and data backups, will be stored on-shore within the United States of America and that the data will be accessed only by personnel located within the United States of America or authorized by PEBA. System access will be limited to PEBA-assigned access and only those Contractors’ staff required performing services under this Contract. Contractor will ensure Government Cloud Services Subcontractor staff with data access will sign a nondisclosure agreement and a security agreement. The Contractor will use the data only as necessary to perform services hereunder and not share or sell the data in any way.

Please confirm if PEBA will accept the changes in red above

**Response: PEBA accepts this language.**

**Amendments to the Request for Proposal**

**Benefits Administration System**

**PEBA0202018RFP**

**Amend the Schedule of Key Dates in the Proposal Process by deleting it in its entirety and replacing it with the following:**

|  |  |
| --- | --- |
| 1. Distribution of the Request for Proposal
 | 7/23/2019 |
| 1. Questions on the RFP
 | 8/6/2019 |
| 1. Pre-Proposal Conference

        | 8/12/2019 |
| 1. Deadline for Questions on the RFP (11:00am)
 | 9/9/2019 |
| 1. State’s Written Responses to Questions submitted
 | 9/26/2019 |
| 1. Deadline for follow-up questions (11:00 am). The State will only accept follow-up questions. If submitting a follow-up question you must provide the original question (indicate if the question is from Amendment Number Two or Amendment Number Three), the State’s response to the original question, and your specific follow-up question.
 | 10/1/2019 |
| 1. State’s Written Responses to Follow-up questions (tentative)
 | 10/8/2019 |
| 1. Submission and Opening of Proposals
 | 10/23/2019 |
| 1. Oral Presentations (tentative)
 | Week of 11/18/2019 |
| 1. Intent to Award Posting Date (tentative)
 | 12/10/2019 |
| 1. Intent to Award Becomes Official (tentative)
 | 12/20/2019 |
| 1. Contract Performance (tentative)
 | 1/22/2020 |

**Amend Part 2 Scope of Proposal, 2.1.3.2 (b) EBS, (1) Key Functions, by adding the following to the list that will need to be incorporated into the functionality:**

|  |  |
| --- | --- |
| 3 | Manage Menu* Enroll new employees
* Make changes to coverage due to special eligibility situations or during Open Enrollment
* Terminate employees
* Enrollment-New Hire Elections and New Hire File Upload
 |

**Amend Part 2 Scope of Proposal, 2.1.3.2 (c) MyBenefits, (1) Key Functions, by adding the following to the list that will need to be incorporated into the functionality:**

|  |  |
| --- | --- |
| 4 | Enrollment* Open enrollment available during October
* Comprehensive enrollment available for life events
	+ - Birth, Adoption, Marriage, Divorce
		- New Hire Elections
 |

**Amend Part 3 Scope of Work, 3.2 Government Cloud Services, 3.2.4 Data Location, by deleting it in its entirety and replacing it with the following:**

**3.2.4 Data Location.** The Contractor will require, as a condition of entering into the Government Cloud Services Subcontract, that all data, including data stored in all databases, environments, and data backups, will be stored on-shore within the United States of America and that the data will be accessed only by personnel located within the United States of America or authorized by PEBA. System access will be limited to PEBA-assigned access and only those Contractors’ staff required performing services under this Contract. Contractor will ensure Government Cloud Services Subcontractor staff with data access will sign a nondisclosure agreement and a security agreement. The Contractor will use the data only as necessary to perform services hereunder and not share or sell the data in any way.

**Amend Part 6 Terms and Conditions by deleting the stricken language and adding the highlighted language as follows:**

**Delete 6.1.2 in its entirety.**

**~~6.1.2 Source Code.~~** ~~Upon delivery of each Phase of the BAS System, Contractor shall provide PEBA with the then current Source Code Materials. Contractor hereby grants to PEBA a nonexclusive, fully paid up, royalty free, perpetual, and non-terminable license to install, execute, modify, configure, reproduce, and use the Source Code Materials. As part of such license, PEBA shall be permitted to allow its third party designees to do any of the foregoing on behalf of PEBA. During the term of this Agreement, Contractor shall update the Source Code Materials at least once per year and as frequently as a Release is made available by Contractor.~~

**6.2.3 Maintenance and Support.** After implementation of the BAS System, Contractor will provide the Maintenance and Support Services from the end of the Warranty Period to the end of the Contract Term (“Initial Term”). After the initial term for Maintenance and Support Services, PEBA will have the option to renew the Maintenance and Support Services indefinitely in three (3) year terms by so notifying Contractor prior to the expiration of the then current term for such Maintenance and Support Services. The terms and conditions of the Contract will carry forward into the Maintenance and Support Services renewals.

Maintenance and Support Services may be terminated for convenience pursuant to Section 6.11.4 by PEBA at any time by providing sixty (60) days advance written notice to Contractor. If the Maintenance and Support Services are terminated at any time or are not renewed by PEBA, PEBA will pay for all Maintenance and Support Services performed through the effective date of termination or expiration and Contractor will cooperate with PEBA to transition responsibility for the Maintenance and Support from Contractor to PEBA Personnel, at Contractor’s then current hourly rates to the extent the actual time spent is outside of the scope of the current services provided in this Contract. No adjustment in any fee or rate set forth in the Contractor Proposal for Maintenance and Support Services will be made unless specifically agreed to by PEBA in a Change Order.

**6.2.5 Unencumbered Personnel.** All persons assigned by the Contractor to perform services for PEBA under this Contract, whether they are employees, agents, Subcontractors, or principals of the Contractor, will not be subject to, or will not have enforced against them, any employment contract or restrictive covenant provisions which would preclude those persons from performing the same or similar services for PEBA after the termination of this Contract, either as an employee, an independent contractor, or an employee, agent, Subcontractor, or principal of another contractor with the State. If the Contractor provides PEBA with the services of any person subject to a restrictive covenant or contractual provision in violation of this provision, any such restrictive covenant or contractual provision will be void and unenforceable, and the Contractor will pay PEBA and any person involved all of its expenses, including attorneys’ fees, caused by attempts to enforce such provisions.

**6.2.7** **Compliance with Laws.** During the term of the Contract, Contractor will comply with all provisions of laws, codes, ordinances, rules, regulations, and tariffs applicable to Contractor in the performance of it services under this Contract.

**6.3.7 Purchase Orders.** Contractor will not perform any Work prior to the receipt of a purchase order from PEBA. Purchase orders may be used to elect optional professional services available under this Contract for which scope and pricing is already defined under this Contract, if any, 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.

**6.7.7 Service Warranty.** Contractor represents and warrants that it complies with, at all times during the term of the Contract will continue to comply with all federal, state, and local laws, statutes, rules, regulations, and ordinances applicable to Contractor in the performance of its services hereunder, including, but not limited to, professional services and Maintenance and Support Services. Contractor represents and warrants that it will perform all services, including, but not limited to, professional services and Maintenance and Support Services, and provide the Deliverables required by this Contract in a timely, professional and workmanlike manner, and in accordance with prevailing industry practices and standards; provided, however, that where this Contract specifies a particular standard or criteria for performance, this warranty is not intended to and does not diminish that standard or criteria for performance.

**6.7.10 Scalability**. The Contractor represents and warrants that the BAS System has the capacity to scale up to meet PEBA’s anticipated and mutually agreed processing load.

**6.7.11 Hardware Sizing**. The Contractor represents and warrants that the Equipment and any related technological infrastructure that the Contractor provides or recommends is of sufficient capacity and capabilities to meet the anticipated and mutually agreed requirements of the Contract.

**6.7.15 New Equipment.** Contractor represents and warrants that all Third Party Equipment and replacement or repair parts delivered by Contractor to PEBA hereunder, if any, will be new (i.e., unused and not reconditioned or refurbished). To the extent that the passage of time, prior to Contractor’s purchase of hardware of software, results in improved products being available for the same cost to Contractor as the Third Party Equipment originally proposed by Contractor, Contractor will provide the improved product to PEBA at no additional charge.

**6.7.18 Limitation of Liability.**

(b) **Damages.** Except for (i) damages that arise from Contractor’s breach of its confidentiality obligations or resulting from Contractor’s bad faith or willful misconduct; or (ii) Contractor’s indemnification obligations set forth in Sections 6.8.2, 6.8.3 and 6.8.4, the Parties agree the Contractor’s liability under this Contract will be limited to an amount equal to two (2) times the awarded Contract value, including the amount posted on the Intent to Award and any modifications due to Change Orders. For damages that arise from Contractor’s breach of its confidentiality obligations, the Parties agree the Contractor’s liability under this Contract will be limited to an amount equal to three (3) times the awarded Contract value, including the amount posted on the Intent to Award and any modifications due to Change Orders. In no event will this section limit the liability of the Contractor for intentional torts, criminal acts, or fraudulent conduct.

# 6.10.4 Safeguarding Requirements.

. . .

**(b) Safeguarding requirements and procedures.**

. . .

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

**6.10.6 Use and Disclosure.**

. . .

(b) **Legal mandates.** Contractor will 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 will provide PEBA 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 will impose by agreement the requirements as least as secure as those of this clause on, any other person or entity that contractor authorizes to take action related to Government Information.

. . .

(g) **Privacy Policy & Applicable Laws.** Without limiting any other legal or contractual obligations imposed by this Contract or the law, Contractor will (a) comply with its own privacy policies and written privacy statements relevant to the performance of its services under this Contract, and (b) comply with (1) all laws applicable to Contractor in the performance of its services under this Contract regarding Government Information, and (2) all laws and standards identified in the clause, if included, entitled Information Use and Disclosure – Standards applicable to Contractor in the performance of its services under this Contract.

(h) **Actions Following Disclosure.** Immediately upon discovery of a compromise or improper use of Government Information, Contractor will take such action as may be necessary to preserve forensic evidence and eliminate the cause of the compromise or improper use. As soon as practicable, but no later than two business days after discovery, Contractor will notify PEBA of the compromise or improper use, including a description of the circumstances of the use or compromise. As soon as practicable after discovery, Contractor will undertake a thorough forensic investigation of any compromise or improper use and provide PEBA all information reasonably necessary to enable PEBA to fully understand the nature and extent of the compromise or improper use.

**Amend Attachment 8 and Attachment 9 by removing all of the requirements listed in the Excel document entitled: Removed Requirements – Updates to Attachment 8 and Attachment 9. The Excel document can be found at** [**https://www.procurement.sc.gov/vendor/contract-opps/other-solicitations/peba**](https://www.procurement.sc.gov/vendor/contract-opps/other-solicitations/peba)