# APPENDIX A DEFINITIONS

**“Acceptance”** means acceptance of a Deliverable in accordance with Section 6.3.10 of the Contract.

**“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.

**“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 of the BAS System. Applications Software mean all such programs or programming required to meet Contractor’s obligations in providing PEBA with the BAS System.

**“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.

**“BAS System”** means the Benefits Administration System being provided or procured on behalf of PEBA hereunder by Contractor, including the Licensed Programs, Documentation, Third Party Equipment, Third Party Software, Work Product, Deliverables, and modifications and updates thereto.

**“Base Program”** means the Contractor’s proprietary pension administration solution in the version existing as of the effective date of this Contract (i,e, without Customizations) in both source and object code.

**“Business Day”** means Monday through Friday, excluding holidays observed by PEBA.

**“Business Hours”** means PEBA’s normal business hours, which are 8:30 AM to 5:00 PM Eastern Time, Monday - Friday.

**“Certificate of Acceptance”** means a written certification signed by an authorized representative of PEBA indicating that a Deliverable, Phase or the Licensed Program, as applicable and completed, materially performs in accordance with the System Specifications, as confirmed in accordance with Section 6.3.10.

**“Certification of Contractor Testing Completion”** will have the meaning set forth in Section 3.14.

**“Confidential Data”** means confidential sensitive information that is used or held by PEBA and/or Contractor. Loss or harm could occur as a result of unauthorized access, use, or disclosure of this information in breach of the terms of this Contract. Statutory or regulatory penalties, notification provisions, or other mandates could result if the information is accessed, used or disclosed in an unauthorized manner in breach of the terms of this Contract. Confidential Information does not include such information that (A) is or becomes publicly available other than as the result of a disclosure in breach hereof, (B) becomes available to the receiving party on a nonconfidential basis from a source which the receiving party believes is not prohibited from disclosing such information, (C) is already known by the receiving party without any obligation of confidentiality with respect thereto, or (D) is developed by the receiving party independently of any disclosures made to the receiving party*.*

**“****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 shall not include the Government Cloud Services Subcontractor and its Subcontractors.

**“Contractor Proposal”** means Contractor’s Proposal made in response to the Solicitation, as amended by Section 1.4.

**“Contractor Technology”** means the Licensed Programs, Documentation and any other works of authorship, materials, information or other intellectual property created by Contractor or its Subcontractors prior to or independently of the performance of the services hereunder, or created by Contractor or its Subcontractors as a general consulting tool for their use in performing the services hereunder, in all cases plus any modifications or Enhancements thereto and Derivative Works based thereon.

**“Contractor Testing”** means the test of the Licensed Programs, Third Party Software, and Deliverables to be conducted by Contractor under the Contract, 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.

**“Customizations”** means the source code and object code of any modification or addition to the Base Programs required for the Base Program to comply with the System Specifications therefore or to implement an Enhancement thereto.

**“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.

**“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. Notwithstanding the foregoing, Defect does not include any defects in Third Party Software.

**“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 Defect. Notwithstanding the foregoing, Defect Correction does not include any defect correction of defects in Third Party Software.

**“Deliverables”** means each deliverable, Licensed Program, , Document Deliverable, or Work Product provided as part of a Phase of the Project.

**“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.

**“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.

**“Document Deliverable”** means the Documentation and any other report or document created by Contractor on behalf of PEBA and required to be delivered by Contractor under this Contract.

**“Documentation”** means all specifications, manuals, documents, drawings, demonstrations, presentation materials, and other tangible items pertaining to the System or a particular Phase of the System that have been provided by Contractor to PEBA as a Deliverable under this Contract, which includes the functional requirements documentation required by the Solicitation, the Requirements Traceability Matrix document, 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.

**“Electronic Protected Health Information (“EPHI”)”** means Protected Health Information as defined in the Business Associate Agreement, Section 1(g).

**“Embedded Software”** means the third-party software products that are embedded in the Licensed Programs, if any, listed in Attachment 6 – Business Proposal Template.

**“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.

**“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.

**“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.

**“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

**“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.

**“Licensed Programs”** means the Base Programs, and the Enhancements, Defect Corrections, modifications, and changes to the Base Programs as well as all Derivative Works prepared by Contractor therefrom pursuant to this Contract and delivered to PEBA hereunder, all Documentation related thereto, and any other Deliverable provided by Contractor hereunder that is not considered any of the foregoing or Work Product. Licensed Programs will not include Work Product, Third Party Software or Third-Party Equipment.

**“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.

**“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.

**“Materials”** will mean, collectively, Software, literary works, other works of authorship, specifications, designs, analyses, processes, methodologies, concepts, inventions, programs, program listings, programming tools, documentation, user materials, reports, drawings, databases, spreadsheets, machine-readable text and files, financial models and Work Product.

**“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” under any terms or conditions that impose any requirement that the Open Source item or any Software using, linked with, incorporating, distributed with, based on, derived from or accessing the Open Source item: (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 items may 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).

**“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.

**“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.

**“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.

**“PEBA Identified Contact”** means the person or persons designated in writing by PEBA to receive security incident or breach notification.

**“PEBA Personnel”** means all persons engaged from time to time as officers, employees, agents, consultants, or independent contractors of PEBA.

**“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.

**“****Personal Data”** means data PEVA provides to Contactor in its performance of Services under the Contract that includes information relating to a natural 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 that person.

**“Personally Identifiable Information”** means any information about an individual natural person that uniquely identifies that 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.

**“Phase”** means a particular portion of the implementation Services, as set forth in the Solicitation and in the Project Work Plan, or as may be modified in accordance with this Contract.

**“Project”** will mean the planned undertaking to provide the products and services pursuant to the Solicitation and the terms of this Contract.

**“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.

**“Project Work Plan”** will have the meaning set forth in Section 3.8.

**“Protected Health Information (“PHI”)”** will have the same meaning as the term “protected health information” at 45 CFR § 160.103.

**“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/or Maintenance and Support fees, as applicable.

**“Requirements Traceability Matrix”** means the requirements traceability matrix described in the Solicitation.

**“Restricted Data”** means highly sensitive confidential 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). All Restricted Data will be clearly marked as such when provided to Contractor.

**“SAN”** means the PEBA storage area network.

**“Security Incident”** shall have the same meaning as “Security Incident” in 45 CFR §

164.304. .

**“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, that is part of the System.

**“Source Code”** computer software in human-understandable form of source statements, including electronic and printed human-readable, mnemonic or English-like statements.

**“Source Code Materials”** means then current versions of Source Code of the Licensed Programs under this Contract, a list of all Open Source code utilized with the Licensed Programs. Source Code Materials does not include

**“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, Materials, Work Product and Deliverables installed or developed by or for PEBA following the contract commencement date as required by this contract as part of 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. All references in this contract to System mean the BAS System, unless the context expressly says otherwise.

**“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 Applications Software or otherwise support hosting services, including operating systems, systems utilities, data security software, compilers, performance monitoring and testing tools and database managers.

**“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 or as otherwise mutually agreed in writing by the parties (e.g., as part of an approved design Deliverable).

**“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.

**“Test Specifications”** means those test specifications set forth in the Solicitation.

**“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

**“Third Party Equipment”** means any commercially available third-party equipment that is required to run the System to comply with the System Specifications, as listed in Attachment 6 – Business Proposal Template.

**“Third Party Software”** means any commercially available third party software listed in Attachment 6 – Business Proposal Template, but excluding Embedded Software.

**“Maintenance and Support Services”** means the post-implementation maintenance and support services described in Attachment 6 – Business Proposal Template.

**“Upgrade”** and its derivatives means the updates, renovations, Enhancements, additions and/or new versions or releases of the Licensed Programs by Contractor or its subcontractors as part of the Services under this Contract. Unless otherwise agreed, financial responsibility for the costs, fees and expenses associated with an Upgrade of the Licensed Programs will be Contractor’s responsibility.

**“Use”** means the right to load, execute, store, transmit, display, copy, maintain, modify, enhance, and create Derivative Works.

**“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.

**“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.

**“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.