

**Teachers' Retirement System
of the State of Illinois**



**REQUEST FOR PROPOSALS FOR
INVESTMENT AUDIT SERVICES**

Issued September 11, 2024

Responses due 2:00 p.m. CDT, Tuesday, October 8, 2024

Table of Contents

I. Introduction	3
II. Summary Description of TRS.....	3
III. Services Required.....	4
IV. Proposal Content	5
V. Submission of Proposals	8
VI. Evaluation Process.....	8
VII. Anticipated Timeline	9
VIII. General Conditions	10
Appendix A: Vendor Type Verification Form	12
Appendix B: Statement of Minimum Qualifications	13
Appendix C: Reference Authorization Letter	14
Appendix D: Questionnaire	15
Appendix E: Fee Proposal.....	17
Appendix F: Sample Agreement.....	18

I. INTRODUCTION

The Teachers' Retirement System of the State of Illinois (the System or TRS) is requesting proposals to provide investment audit services to assist the System's internal audit department in conducting a private equity audit and future co-sourced investment audits. The objective of this Request for Proposal is to solicit competitive proposals from qualified vendors in sufficient detail to permit objective evaluation of all proposals which may result in a contract to provide investment audit services to the Teachers' Retirement System.

The objective of this Request for Proposal is to solicit competitive proposals from qualified vendors in sufficient detail to permit an objective evaluation of all proposals which may result in a contract to provide investment audit services, as noted above, to the Teachers' Retirement System.

TRS is committed to increasing racial, ethnic, and gender diversity in all aspects of its utilization of vendors to provide goods and services to the System, to the greatest extent feasible, and within the bounds of financial and fiduciary prudence. To that end, the System strongly encourages qualified minority, female, disabled, and veteran-owned firms to submit proposals to this RFP.

A proposer's preparation and submittal of a proposal or subsequent participation in presentations or contract negotiations creates no obligation on the System to award a contract or to pay any associated costs. All proposals and related materials will be retained by the System and will be subject to disclosure as required in accordance with the Illinois Freedom of Information Act.

II. SUMMARY DESCRIPTION OF TRS

The General Assembly created the Teachers' Retirement System of the State of Illinois (TRS or the System) in 1939. TRS administers a multiple-employer public pension plan to provide its members with retirement, disability, and death benefits. Membership is mandatory for all full-time, part-time, and substitute Illinois public school personnel employed outside the city of Chicago in positions requiring certification by the Illinois State Board of Education. Persons employed at certain state agencies relating to education are also TRS members. The System serves over 448,000 members and had over \$70 billion in assets held in trust for its membership as of March 31, 2024.

The retirement system is administered as a qualified plan under the Internal Revenue Code. TRS benefits and investments are governed by Articles 1, 16, and 20 of the Illinois Pension Code, 40 ILCS 5. Funding comes from member contributions, contributions by TRS-covered employers, the state of Illinois, and investment income. The System's most recent Annual Comprehensive Financial Report as well as a variety of other information about TRS is available on the TRS website at <https://www.trsil.org>.

A Board of Trustees (the Board) is responsible for the general administration of the System, including the duties granted to it under Article 16 of the Illinois Pension Code, 40 ILCS 5/16. Under the direction of the Executive Director employed by the Board, the day-to-day

administration of the System is delegated to the System's staff. The main office is in Springfield, Illinois and there is a satellite office in Lisle and Chicago, Illinois.

III. SERVICES REQUIRED

The System is seeking proposals for a qualified and independent firm to lead and assist the internal audit department in conducting an audit of the System's private equity asset class with an expected audit period of up to two fiscal years. The audit will focus on the front office aspects of private equity with a limited review of risk and investment accounting. The audit will be performed in fiscal year 2025 between December 1, 2024 and June 30, 2025. The audit can be performed through a combination of onsite and virtual work. Responding firms must demonstrate experience and expertise in the areas of investment auditing and the capabilities to successfully perform the engagement. The engagement should be planned as a co-source and "knowledge transfer" process inclusive of the TRS internal audit department. All responding firms must meet the highest standards of professional competence and ethics.

The firm will be expected to plan, conduct fieldwork and report the results of the audit. Services are anticipated to include, but are not limited to, the following:

1. Preparation and completion of a detailed audit program.
2. Preparation and completion of a risk assessment.
3. Review of any potential issue(s) arising out of the risk assessment and/or interviews with staff.
4. Review of TRS policies and procedures related to private equity.
5. Review of private equity internal controls including the review of segregation of duties and reporting.
6. Review of the portfolio oversight procedures including initial and ongoing due diligence for private equity.
7. Review of associated legal documents (limited partnership agreements, subscription documents and side letters).
8. Written audit report addressed to the Board of Trustees describing the results of the engagement.
9. Potentially presenting the final report to the Board of Trustees.

In addition to the services above, the System plans to co-source one investment audit per year during the period of July 1, 2025, through June 30, 2027. A statement of work will be sent out to the selected firm when each audit is decided by the System. The selected firm will then be requested to submit a proposal based on the hourly rates requested in the fee proposal of this RFP.

Using the combined resources of external investment managers, internal staff, and consultants, TRS invests the trust assets in accordance with the general fiduciary rules of both state and federal laws. The market value of the TRS total fund on May 31, 2024 was \$71.0 billion. The asset allocation as of May 31, 2024 was as follows:

Asset Class	Market Value	
	\$	%
Public Equity	25,086.3	35.3%
Private Equity	12,256.0	17.3%
Total Equity	37,342.3	52.6%
Real Estate	10,325.3	14.5%
Other Real Assets	2,045.1	2.9%
Total Real Assets	12,370.3	17.4%
Total Diversifying Strategies	1,723.4	2.4%
Global Income Strategies	16,589.2	23.4%
Short-term	2,981.6	4.2%
Total Income	19,570.8	27.6%
Total TRS Fund	\$71,006.8	100.0%

The private equity asset class consists primarily of buyout funds with a smaller percentage of growth equity, venture and special situation funds. As of May 31, 2024, private equity investments had approximately 175 external investment mandates in buyout strategies in small, middle and global markets as well as in real asset/energy. The remainder of the private equity asset class is comprised of venture capital, growth equity and special situations with approximately 75 external investment mandates. Approximately 60 external investment managers had multiple mandates.

IV. PROPOSAL CONTENT

At a minimum, the proposal must include the following information to be considered for the engagement. For ease of review, each requirement should be addressed in a separate section preceded by an index tab to identify the subject of the section. The proposal should be formatted on consecutively numbered pages and include a table of contents. Failure to provide information in the prescribed format may result in rejection of the proposal. All responses will be subject to verification for accuracy. **Proposals containing false or misleading information will be rejected.**

A. Indexed Table of Contents

The proposal must include an indexed table of contents to facilitate the review process.

B. Cover Letter

A cover letter, which will be considered an integral part of the proposal package, in the form of a standard business letter, must be signed by an individual authorized to bind the proposer contractually. This cover letter must indicate the signer is so authorized, and must indicate the signer's title or position. An unsigned proposal will be rejected. The cover letter must also include:

1. A statement that the proposal meets all requirements of this RFP, and that the offer tendered by the proposal will remain in full force and effect until, and may be accepted by the Teachers' Retirement System of the State of Illinois, at any time prior to December 31, 2024.
2. A statement certifying that the proposer either: (a) it is not required to register or (b) it is registered as a business entity with the State Board of Elections pursuant to the Procurement Code, 30 ILCS 500/20-160 and acknowledges a continuing duty to update such registration pursuant to the Procurement Code; and that proposer acknowledges that any Agreement awarded as a result of this RFP is voidable under Section 50-60 of the Procurement Code if the proposer fails to comply with the business entity registration requirements. **30 ILCS 500/20-160; 30 ILCS 500/50-60.**
3. A statement that the proposal is being made without fraud or collusion; that the proposer has not offered or received any finder's fees, inducements, or any other form of remuneration, monetary or non-monetary, from any individual or entity; and that the proposer has not conferred or promised to confer, on any individual or entity, any payment, loan, advance, services, or any other form of remuneration in connection with the award of this engagement.
4. A disclosure of any current business relationship or any current negotiations for prospective business with TRS, or with any member of the Board of Trustees or TRS staff, or any party currently rendering services to TRS.
5. **A statement that the proposer is willing to enter into an agreement in the form attached to the RFP as Appendix F including all certifications and representations contained therein, and that the proposer acknowledges and understands that certain general provisions in the sample agreement mandated by Illinois state law to be included in contracts with agencies of the State of Illinois are not subject to negotiation.**
6. A statement that the proposer acknowledges that all documents submitted in response to this RFP may be subject to disclosure under the Illinois Freedom of Information Act, 5 ILCS 140, and the Illinois Open Meetings Act, 5 ILCS 120. TRS must comply with the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.) TRS cannot represent

or guarantee that any information submitted in response to this request for proposal will be confidential. No documentation will be provided under FOIA until the contract has been awarded.

7. An attestation by the signer that the information provided in the Proposal is true and accurate, and that the signer is aware that pursuant to the Illinois Pension Code, 40 ILCS 5/1-135, any person who knowingly makes any false statement or falsifies or permits to be falsified any record of a retirement system or pension fund created under this Code (i.e., the System) in an attempt to defraud the retirement system or pension fund is guilty of a Class 3 felony.

B. Vendor Type Verification Form

Proposers must complete and return the Vendor Type Verification form in the form contained in Appendix A.

C. Statement of Minimum Qualifications

Proposers must complete and return the Minimum Qualifications Certification in the form contained in Appendix B.

D. Reference Checks

Reference checks may be conducted for each finalist. Please provide reference authorization letter in the format prescribed in Appendix C.

E. Questionnaire

The questionnaire contained in Appendix D to this RFP must be completed and returned as part of the proposal

F. Fee Proposal

Proposers must submit their fee proposal in the format prescribed in Appendix E. Any deviation from the prescribed format which in the opinion of TRS is material may result in the rejection of the proposal. The proposed fee shall include all expenses for providing the services to TRS as described in this RFP.

The fee proposal must expressly state that the proposed fixed fee is guaranteed for the term of any resulting contract.

G. Contract

This Request for Proposal is neither a contract nor meant to serve as a contract.

It is anticipated that one of the proposals submitted in response to this Request for Proposal may be selected as the basis for negotiation of a contract with the proposer. Such a contract is presently contemplated to contain, at a minimum, the terms and conditions set forth in the sample agreement included as Appendix F, but will also incorporate the terms of the proposal submitted, as finally negotiated and approved by the System. TRS reserves the right to negotiate additions, deletions, or modifications to the sample agreement and/or the terms of proposals submitted.

Certain provisions in the sample agreement are required by the State of Illinois and are therefore not subject to negotiation. **Thus it is critically important that vendors submitting proposals clearly and thoroughly identify any and all contractual concerns in their written proposal.** A proposer that waits until contract negotiation to object to TRS contract terms may be precluded from further consideration.

V. SUBMISSION OF PROPOSALS

All proposals must be received at the address designated below **no later than 2:00 P.M. CST on Tuesday, October 8, 2024. (Late submissions will be rejected as unresponsive).** Proposals should be in an Adobe Acrobat format and should be emailed to Holly Walton at bidsubmissions@trsill.org. Subject must contain **“Response to Request for Proposals for Investment Audit Services – Name of Responder.”** Failure to clearly identify the proposal in the subject line may result in the rejection of the proposal. Only email submissions will be accepted. Paper submissions will be rejected as non-conforming. TRS is not responsible for receipt of any proposal which is improperly labeled. An email confirmation will be sent confirming receipt of the proposal

The proposals become the property of TRS upon submission. All costs for developing proposals and attending presentations and/or interviews are entirely the responsibility of the proposer and shall not be chargeable to TRS.

Only one proposal from an individual, vendor, partnership, corporation, or combination thereof, will be considered for this assignment.

VI. EVALUATION PROCESS

A. Pre-Evaluation Review

All proposals will be reviewed to determine if they contain all the required submittals specified in this RFP. Those not submitting all required information in the prescribed format will be rejected.

B. Proposal Evaluation

All proposals received by TRS on or before the deadline listed above will be reviewed to determine whether they meet the minimum requirements of this RFP.

All proposals that are received by the deadline and pass the pre-evaluation review will undergo an evaluation process conducted by TRS staff. TRS will consider the following factors in the evaluation process, ranked in no specific order, and will render a decision based on the perceived best fit and best value for the engagement. Cost will be one of the determining factors in this decision but will not be the primary determinative. Proposals will be evaluated based on criteria including:

- Firm History
- Staff Turnover
- Experience in performing investment audit services in a co-sourced manner
- Experience in performing private equity audits
- Understanding of the services requested
- Soundness of the approach and quality of the proposed services
- Experience in presenting audit results to a Board of Trustees
- Cost
- Interviews/demonstrations

During the evaluation process, proposers may be requested to provide additional information and/or clarify contents of their proposal. Other than information requested by TRS, no proposer will be allowed to alter the proposal or add new information after the filing date.

Finalists may be scheduled for one or more oral presentations, demonstrations or interviews with TRS staff. Not all proposers may be asked to participate. Finalist interviews may be scheduled in person or virtually at the discretion of TRS. No expenses or costs associated with interviews or presentations will be paid or reimbursed by TRS.

Once finalists are selected, fees may be subject to a “best and final” offer process to be determined at the discretion of TRS.

VII. ANTICIPATED TIMELINE

Subject to change at TRS discretion

Schedule	Dates
RFP Issued	Wednesday, September 11, 2024
Vendor Questions due	12:00 p.m. CDT, Monday, September 23, 2024
TRS response to questions posted	4:30 p.m. CDT, Friday, September 27, 2024
RFP Responses Due	2:00 p.m. CDT, Tuesday, October 8, 2024
Evaluation	October 8-October 25, 2024
Finalist Interviews & Selection	October 25-November 8, 2024
Anticipated Project Start	December 2024

VIII. GENERAL CONDITIONS

A. Questions/Clarification of the RFP

Interested proposers are expected to respond to this RFP to the best of their understanding. Questions from interested proposers should be submitted in writing to Holly Walton at the following email address: Purchasing@trsil.org . Questions must be submitted by 12:00 p.m. CDT on Monday, September 23, 2024. The subject of the email should read: “re Questions-Investment Audit Services.” The System will not respond individually to a submitted question. If a response is deemed necessary or appropriate in the System’s discretion, the System will post questions and responses to our website by 4:30 p.m. CDT on Friday, September 27, 2024. Proposers must not contact TRS staff about this RFP except as outlined above for Q&A. If a proposer discovers an error in this RFP, the proposer should immediately notify TRS of such error in writing to Holly Walton at the following email address: Purchasing@trsil.org. If deemed necessary or appropriate in the System’s discretion, TRS may clarify or modify any part of this RFP by posting notice on the TRS Web site prior to the proposal deadline.

B. Restrictions on Communication

Proposers must not discuss or share the contents of their proposals with other potential proposers. TRS policy and the Illinois state ethics law strictly limit communication during the search process. **Any attempt to initiate contact with TRS staff or TRS Trustees, other than as specifically stated in this RFP, may disqualify the proposer from further consideration.**

C. Prior Deficiencies

A proposer that is or has been deficient in current or recent contract performance in dealing with TRS or other clients may be disqualified unless the deficiency is shown to have been beyond the reasonable control of the proposer. TRS may reject a proposal from any proposer that is in default on any debt owed to, or contract with, TRS or other clients, or that is in default as surety or otherwise, upon any obligation to TRS, or has failed to perform faithfully any previous contract with TRS. Proposers that are newly formed business concerns having substantially the same owners, officers, directors, or beneficiaries as a previously existing non-responsible proposer may be disqualified unless the new organization can prove it was not set up for the purpose of avoiding an earlier declaration of non-responsibility.

D. Reservation of Rights

TRS reserves the right to withdraw this RFP, to accept or reject any or all proposals submitted, and to waive any immaterial deviation, defect, or irregularity, whenever it would be in the best interest of TRS to do so. Waiver of an immaterial deviation shall in no way modify the Request for Proposal or excuse a proposer from full compliance with all RFP requirements.

Proposals that contain false or misleading statements or that provide references which do not support an attribute or condition claimed by the proposer will be rejected. Issuance of the Request for Proposal creates no obligation to award a contract or to pay any costs incurred in the preparation of a proposal. Nothing in this RFP or any resulting contract shall preclude TRS from procuring services similar to those described herein from other sources.

E. No Confidentiality

Proposals and all materials submitted in response to this RFP cannot be considered confidential except as provided below. All proposals and related materials will be retained by TRS and will be subject to disclosure as required in accordance with the Illinois Freedom of Information Act, 5 ILCS 140 (“Illinois FOIA”). Simply marking all or portions of the proposal as “Proprietary” or “Confidential” will not protect it from disclosure in the event that a public record request is received. If a proposer is submitting proprietary information or strategies with the proposal, the proposer should submit, along with the un-redacted proposal, a redacted copy that removes only that material considered to be a trade secret, competitively sensitive, proprietary, privileged, or confidential such that disclosure would cause competitive harm to the proposer. By submitting a redacted copy, the proposer affirmatively represents that all redacted material falls within one or more applicable exemptions under the Illinois FOIA (5 ILCS 140/7). If TRS becomes subject to administrative or legal challenge concerning the redactions, it shall be the sole responsibility of the proposer to justify its redactions and provide TRS with written explanation concerning how each redaction falls within an applicable exemption. TRS shall not be responsible for assisting the proposer in making any determinations regarding the applicability of any exemptions available under the Illinois FOIA.

F. Equal Opportunity

TRS does not discriminate because of actual or perceived race, color, religion, sex, sexual orientation, age, marital status, pregnancy, order of protection status, military status, certain unfavorable discharges from military service, political affiliation, citizenship, ancestry, national origin, physical or mental disability, genetic information, or any other characteristic protected by law. It is the System’s intent to comply with all state, federal, and local equal employment opportunity laws and public policies.

APPENDIX A: VENDOR TYPE VERIFICATION FORM

Please complete the information below as it applies to you/your company. This form must be included with your proposal.

Female Owned Business - Must be 51% independently owned by female(s) _____

Minority Owned Business - Must be 51% independently owned by minority(s) _____

Persons with Disability Business - Must be 51% independently owned by disabled person(s) _____

Combination of Above – Any combination of one or more of the three classes above which collectively represents at least 51% ownership _____

Veteran Owned Business - Must be 51% independently owned by veteran(s) _____

None of the above _____

Representative Signature Date

APPENDIX B: STATEMENT OF MINIMUM QUALIFICATIONS

(Firm Name) _____ certifies that it meets the following minimum qualifications.

Please initial each as applicable.

- 1. _____ The firm and/or its principals have a minimum of five years of experience in providing investment audit services.
- 2. _____ As of June 30, 2024, the firm has had at least three institutional pension fund clients for which it is providing investment audit services in the last two years.
- 3. _____ As of June 30, 2024, the firm has conducted investment auditing of private equity portfolios.

Signed: _____ Date: _____

Title: _____

APPENDIX C: REFERENCE AUTHORIZATION LETTER

[On prospective vendor letterhead]

[Month, Day, Year]

[Reference Name]

[Reference Title]

[Company Name]

[Reference Address]

[City, State, Zip]

Dear [Reference Name]:

(Prospective Vendor Name) has submitted a proposal to the Teachers' Retirement System of the State of Illinois ("System") with regard to providing investment audit services. The System is conducting its due diligence with regard to *(Prospective Vendor Name)*. Through this written authorization, *(Prospective Vendor Name)* hereby authorizes any individual, business, corporation, retirement system, state agency, or other entity to release any facts and information it may have concerning *(Prospective Vendor Name)*, its principals, employees and agents, to the System.

A copy of this authorization may be used as if it were an original. Thank you for your assistance.

Sincerely,

(Prospective Vendor Name)

(Authorized Signature and Title)

cc: R. Stanley Rupnik, CFA, Executive Director and CIO, TRS

APPENDIX D: QUESTIONNAIRE

The following questionnaire must be completed and included with your response to this RFP. Type your responses in the same order as the questionnaire, listing the question first followed by your answer.

A. Vendor Information

Name of Vendor: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Fax: _____

Federal Employer Identification Number: _____

Contact Person(s):

Name: _____ Phone: _____

Title: _____ Fax: _____

Email: _____ Website: _____

B. General Vendor Information

1. Please provide a general description and history of the firm, its operations (please include any history of mergers and/or acquisitions), year founded, ownership structure, biographies of the principals and percentage ownership by current employees.

C. Clients

1. Provide the name, address, phone number, contact name of two clients (including at least one public pension fund client) within the last two years that had services provided similar to those in this RFP. Include a brief summary of the project that was completed for each. Also indicate whether those vendors may be contacted as references.

D. Proposed Services

1. Briefly describe your firm's background and history of performing private equity investment related audits.
2. How many professionals are employed by your firm and what are their levels of experience and professional credentials?
3. Please list the firm's professional staff that you perceive to be assigned to this engagement and an estimated timeframe for audit completion .
4. Describe the turnover of the firm over the past five years.

5. How many investment consulting engagements did you/your firm conduct in 2023 and 2024? Please indicate if any were specifically related to private equity and provide a brief description of the services provided.
6. Please describe your experience in performing investment audits in a co-sourced manner with internal audit departments.
7. Please describe your experience presenting audit results to a Board of Directors or Board of Trustees.
8. Explain your ability to complete the project as required in this RFP and the anticipated timeframe.

APPENDIX E: FEE PROPOSAL

Fee proposal shall include all fees, expenses and costs related to completion of this project. A fixed cost proposal is required and should include all out-of-pocket expenses attributable to the performances of services, i.e. all travel expenses including but not limited to lodging, transportation, meals, telephone, facsimile, Internet, or other communication devices, postage, delivery, copying, clerical time, and overtime.

Fixed Fee Proposal for private equity asset class audit - \$_____

For co-sourced investment audit services during the period of July 1, 2025, through June 30, 2027, please provide an hourly fee schedule and include all team members hourly rates.

Hourly Fee Proposal for future investment co-sourced audit services:

Team Member/Position	Hourly Rate 7/1/2025-6/30/2026	Hourly Rate 7/1/2026-6/30/2027

APPENDIX F: [SAMPLE] MASTER SERVICES AGREEMENT (Investment Audit Services)

This MASTER SERVICES AGREEMENT (this “Agreement”) is made and entered into this [] day of [], 202[] by and between the Teachers’ Retirement System of the State of Illinois (“TRS” or the “System”), a retirement system established under and pursuant to the laws of the State of Illinois, and *[NAME], (“Contractor”), a *[LEGAL STATUS], with offices at *[ADDRESS].

WHEREAS, the System has need to obtain Investment Audit Services; and

WHEREAS, the System has determined through the RFP process that Contractor meets all qualifications described in the RFP to perform the Work set forth herein;

NOW THEREFORE, In accordance with the terms and conditions of this Agreement, Contractor agrees to provide the Work to the System as more fully detailed below:

1. **Definitions:** Capitalized terms used in this Agreement that are not defined in context shall have the meanings ascribed to such terms in Exhibit A (Definitions).
2. **Services:**
 - 2.1. **Generally:** In accordance with the terms of this Agreement and any attachments hereto, the Request for Proposal for Investment Audit Services ,issued on September 11, 2024 (the “RFP”), and Contractor’s response to the RFP (the “RFP Response”), Contractor shall provide to the System the Work described in the RFP, the RFP Response, and this Agreement. Notwithstanding anything to the contrary, if any services, functions, deliverables, or responsibilities not specifically described in this Agreement or the RFP are an inherent, necessary, or customary part of the Work, or are required for the System’s use and enjoyment of the Work, then such services, functions, and responsibilities shall be deemed to be included within the scope of the Work and shall be delivered to the System without cost, as if such services, functions, deliverables or responsibilities were specifically described in this Agreement and the RFP.
 - 2.2. **SLAs and Maintenance:** If the Work contains Deliverables that are software, then [the RFP] shall set out support and maintenance obligations and service level agreements (if applicable) for such Deliverables.
3. **Term of the Agreement:** The professional services under this Agreement shall be provided between date of execution and December 31, 2027.
4. **Compensation:**
 - 4.1. The System shall pay the fees as set forth in [the RFP Response] (the “Fees”). Contractor shall not be entitled to increase the Fees unless the System provides prior written approval, and such approval may be withheld for any reason and at any time.

- 4.2. The Fees shall be inclusive of all normal business expenses, including all overhead expenses associated with Contractor's business, such as clerical time and overtime, computer usage, telephone calls, tele-facsimiles, photocopying, and mailing an express delivery expenses.
- 4.3. All out-of-pocket expenses attributable to performance of the Work under this Agreement and attendance of Contractor's personnel at all regular meetings of the System's Board of Trustees and the Investment Committee thereof, including without limitation, transportation, lodging, and meals during the period of travel, shall be at Contractor's own expense, and the System shall have no obligation to reimburse Contractor for any such out-of-pocket expenses.
- 4.4. Unless otherwise agreed by the System and stated in this Agreement, this Agreement does not allow for reimbursement of any expenses incurred by Contractor, including but not limited to telephone, facsimile, Internet, or other communications device, computer, postage, delivery, copying, travel, transportation, lodging, food and per diem, clerical time, and overtime.
5. **Billing:** Contractor shall submit quarterly invoices for the Work provided hereunder in accordance with terms outlined below:
 - 5.1. By submitting an invoice, Contractor represents, warrants, and certifies that the Work provided meets all requirements of the Agreement, that the amount billed is as allowed in the Agreement, and that any expenses billed are reimbursable under this Agreement.
 - 5.2. Invoices shall be signed by Contractor and shall set out Contractor's social security number or FEIN. All invoices shall include reasonable detail explaining the basis for the invoiced amounts, and Contractor shall provide additional supporting material upon the System's reasonable request.
 - 5.3. Invoices submitted by Contractor for the Work performed prior to July 1 must be presented to the System no later than July 15 of that year in order to ensure payment under this Agreement. Failure by Contractor to seek payment of invoices prior to July 15 may require Contractor to seek payment in the Illinois Court of Claims.
 - 5.4. Contractor shall not bill for any taxes unless accompanied by proof that TRS is subject to the tax. If necessary, Contractor may request the applicable Illinois tax exemption number and federal tax exemption information.
6. **Payment:** Payments will be paid by the System in accordance with the Prompt Payment Act, 30 ILCS 540. Payment will be made by the System in the amount earned to the date of the applicable invoice, less previous partial payments. Final payment may be adjusted by the System if such adjustment is supported by a System audit. All recordkeeping shall be in accordance with generally accepted accounting principles (GAAP). TRS shall not be liable to pay for supplies or equipment provided or Work rendered, including related expenses incurred, prior to the Effective Date of this Agreement.

7. **Amendment and Changes:** This Agreement may be amended in writing from time to time by mutual consent of the parties. All amendments to this Agreement must be in writing and fully executed by the parties.
8. **Applicable Law:** This Agreement and Contractor's obligations and Work hereunder are hereby made, and Contractor must perform its obligations under this Agreement and the Work, in compliance with all applicable federal and state laws. This Agreement shall be construed and governed in accordance with the laws of the State of Illinois to the extent that such laws are not pre-empted by the laws of the United States of America. By entering into this Agreement, each party agrees to submit to the exclusive jurisdiction of the state and federal courts of Illinois and agrees that any action or proceeding against the System arising out of or in connection with this Agreement shall be instituted in the Illinois Court of Claims. The System shall not enter into binding arbitration to resolve any dispute arising out of this Agreement. The System does not waive sovereign immunity by entering into this Agreement.
9. **Authorization:** Each party to this Agreement represents and warrants that: (a) it has the right, power, and authority to enter into and perform its obligations under this Agreement; (b) it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery, and performance of this Agreement; and (c) this Agreement constitutes a legal, valid, and binding obligation upon itself in accordance with its terms.
10. **Representations and Warranties:** Contractor represents, warrants, and covenants to the System as follows:
 - 10.1. **Qualified Personnel:** That (a) the Work shall be performed in a good, workmanlike and timely manner, by fully qualified personnel; (b) while on the System premises, Contractor personnel shall conduct themselves in a professional and businesslike manner; and (c) Contractor will not act in a manner, which, in the System's opinion, has or is likely to have a material adverse effect on the System's business, operations, or reputation.
 - 10.2. **General Performance:** That the Work shall be performed and be in compliance with all applicable laws, rules, regulations, Good Industry Practice, the RFP, the RFP Response, related Documentation, and the System's reasonable expectations.
 - 10.3. **Non-Infringement:** The Work does not and shall not infringe or misappropriate any third party's Intellectual Property Rights.
 - 10.4. **Reciprocal or Copyleft Open Source Software License:** Unless otherwise agreed to in this Agreement, the RFP, or the RFP Response, the Work does not, and shall not, include open source software. Contractor represents, warrants, and covenants that in no event shall the Work include any open source software licensed under a "reciprocal" or "copyleft" open source license (such as the GPL or MPL) that would require the System to subsequently license or otherwise make available source code to a third party.

- 10.5. **Surreptitious Code:** With respect to any Deliverables that comprise or contain software or other computer-readable files, such Deliverables shall be free of viruses, material defects, worms, Trojan horses, destructive mechanisms, hidden or locked files, code that would cause any of the Deliverables to replicate, transmit or activate itself without control of a person operating the computer equipment on which it resides, code that would alter, damage or erase any data or computer programs without control of a person operating the computer equipment on which it resides (except to the extent expressly contemplated in the RFP), any key, node lock, time-out, “back door,” “trap door,” “booby trap,” “drop dead device,” “data scrambling device,” or other similar illicit code. Contractor covenants that no software or other files will be installed, executed or copied on the System’s equipment without the prior written approval of the System.
11. **Bankruptcy:** Contractor shall promptly notify the System if Contractor becomes insolvent, files a petition in bankruptcy, becomes a party to an involuntary bankruptcy proceeding, or makes an assignment for the benefit of creditors. In such an event, the System may immediately cancel all or any portion of this Agreement upon written notice.
12. **Building Security** Contractor shall comply with the System’s security procedures and other written policies related to the System’s premises made available to Contractor during the time Contractor’s personnel are on the premises.
13. **Certifications and Conflicts:** Contractor certifies that it is not legally prohibited from contracting with TRS or the State of Illinois, has no known conflicts of interest, and further specifically certifies as follows:
- 13.1. **Educational Loan:** Contractor, in accordance with the Educational Loan Default Act, is not in default on an educational loan. **5 ILCS 385.**
- 13.2. **Ethics:** Contractor acknowledges that the employees and trustees of TRS are subject to the State Officials and Employees Ethics Act, that TRS has adopted a gift ban more restrictive than required by state law, and agrees to refrain from bestowing or offering gifts of any monetary or non-monetary value to TRS employees or trustees. **5 ILCS 430.**
- 13.3. **Bribery:** Contractor has not been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other state, nor made an admission of guilt of such conduct that is a matter of record. TRS shall declare this Agreement void if this certification is false. **30 ILCS 500/50-5.**
- 13.4. **Felony:** If Contractor has been convicted of a felony, at least five years has passed after the date of completion of the sentence for that felony, unless no person held responsible by a prosecutorial office for the facts upon which the conviction was based continues to have any involvement with the business. TRS shall declare this Agreement void if this certification is false. **30 ILCS 500/50-10.**

- 13.5. **Sarbanes-Oxley:** If Contractor has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, 815 ILCS 5, at least five years has passed from the date of conviction. Contractor is not barred from being awarded a contract under 30 ILCS 500/50-10.5, and acknowledges that TRS shall declare this Agreement void if this certification is false. **30 ILCS 500/50-10.5.**
- 13.6. **Debt Delinquency:** Contractor and its affiliates are not delinquent in the payment of any debt to the State, or if delinquent, have entered into a deferred payment plan to pay off the debt. Contractor further certifies that it is not barred from being awarded a contract under 30 ILCS 500/50-11, and acknowledges that TRS may declare this Agreement void if this certification is false, or if Contractor later becomes delinquent and has not entered into a deferred payment plan to pay off the debt. **30 ILCS 500/50-11; 30 ILCS 500/50-60.**
- 13.7. **Illinois Use Tax:** Contractor is not barred from being awarded a contract under 30 ILCS 500/50-12, and acknowledges that TRS may declare this Agreement void if this certification is false. Contractor shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with the provisions of the Illinois Use Tax Act, and acknowledges that failure to comply can result in this Agreement being declared void. **30 ILCS 500/50-12.**
- 13.8. **Environmental Protection:** Contractor has not committed a willful or knowing violation of the Environmental Protection Act (EPA) relating to civil penalties within the last five years, and is therefore not barred from being awarded a contract. If this certification is later determined to be false, Contractor acknowledges that the System may declare this Agreement void. **30 ILCS 500/50-14.**
- 13.9. **Lead Poisoning:** Contractor is not in violation of the Illinois Procurement Code provision prohibiting owners of residential buildings who have committed a willful or knowing violation of the Lead Poisoning Prevention Act from doing business with the State until the violation is mitigated. **30 ILCS 500/14.5, 410 ILCS 45.**
- 13.10. **Conflict of Interest:** Contractor does not have any public or private interest, direct or indirect, and shall not acquire directly or indirectly any such interest which does or may conflict in any manner with Contractor's obligations under this Agreement. Contractor has disclosed, and agrees it is under a continuing obligation to disclose to TRS, financial or other interests, public or private, direct or indirect, that may be a potential conflict of interest or which would prohibit Contractor from entering into or continuing to perform under this Agreement. Contractor further certifies that, in the performance of this Agreement, no person having any such interest shall be employed by Contractor. If any elected or appointed State officer or employee, or spouse or minor child of same has any ownership or financial interest in Contractor or this Agreement, Contractor certifies that it has disclosed that information to TRS, and any waiver of the conflict has been issued in accordance with applicable law and rule. Membership in the Teachers' Retirement System of the State of Illinois does not constitute a conflict of

interest within the meaning of this paragraph. **30 ILCS 105/8.40, 30 ILCS 500/50-13, 30 ILCS 500/50-15, 30 ILCS 500/50-35.**

- 13.11. **Inducement:** Contractor has not offered or paid any money or valuable thing to induce any person not to bid for a State contract, and has not accepted any money or valuable thing, or acted upon the promise of same, for not bidding on a State contract. **30 ILCS 500/50-25.**
- 13.12. **Non-Solicitation:** Contractor has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement, and has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award of making of this Agreement.
- 13.13. **Revolving Door:** Contractor is not in violation of the “revolving door prohibition” on procurement activity relating to a State agency. **30 ILCS 500/50-30.**
- 13.14. **Anticompetitive Practices:** Contractor will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anticompetitive practice among any bidders, offerors, contractors, proposers, or employees of the State. **30 ILCS 500/50-40, 30 ILCS 500/50-45, 30 ILCS 500/50-50.**
- 13.15. **Business Entity Registration:** Contractor certifies either: (a) it is not required to register or (b) it is registered as a business entity with the State Board of Elections pursuant to the Procurement Code, 30 ILCS 500/20-160 and acknowledges a continuing duty to update such registration pursuant to the Procurement Code. Contractor acknowledges that this Agreement is voidable under Section 50-60 of the Procurement Code if Contractor fails to comply with the business entity registration requirements. **30 ILCS 500/20-160; 30 ILCS 500/50-60.**
- 13.16. **ERI:** Contractor has informed the System in writing if Contractor was formerly employed by the System and received an early retirement incentive prior to 1993 under 40 ILCS 5/14-108.3 or 16-133.3 of the Illinois Pension Code, and acknowledges that contracts made without the appropriate filing with the Auditor General are not payable from the “contractual services” or other appropriation line items. Contractor has not received an early retirement incentive in or after 2002 under 40 ILCS 5/14-108.3 or 40 ILCS 5/16-133.3 of the Illinois Pension Code, and acknowledges that contracts in violation of Section 15a of the State Finance Act are not payable from the “contractual services” or other appropriation line items. **30 ILCS 105/15a.**
- 13.17. **Drug Free Workplace:** Contractor will provide a drug free workplace and will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the performance of this Agreement. This certification applies to contracts of \$5,000 or more with individuals, and to entities with 25 or more employees. **30 ILCS 580.**

- 13.18. **International Boycott:** Neither Contractor, nor any substantially owned affiliate, is or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or applicable regulations of the U.S. Department of Commerce. This certification applies to contracts that exceed \$10,000. **30 ILCS 582.**
- 13.19. **Forced Labor:** In accordance with the State Prohibition of Goods from Forced Labor Act, no foreign-made equipment, materials, or supplies furnished under this Agreement have been or will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction. **30 ILCS 583.**
- 13.20. **Child Labor:** In accordance with the State Prohibition of Goods from Child Labor Act, no foreign-made equipment, materials, or supplies furnished under this Agreement have been or will be produced in whole or part by the labor of any child under the age of 12. **30 ILCS 584.**
- 13.21. **Bid Rigging/Rotating:** Contractor has not been convicted of bid rigging or bid rotating or any similar offense of any state or of the United States. **720 ILCS 5/33E-3, E-4.**
- 13.22. **Nondiscrimination/Equal Employment Opportunity:** Contractor will comply with applicable provisions of the State and Federal constitutions, laws, and regulations pertaining to unlawful discrimination, harassment, and equal employment opportunity, including but not limited to the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act, the Public Works Employment Discrimination Act, and the Illinois Human Rights Act. **42 USC 12101 et seq., 775 ILCS 5, 775 ILCS 10.**
- 13.23. **Discriminatory Club:** Contractor does not pay dues or fees, or subsidize or otherwise reimburse its employees or agents for any dues or fees to any discriminatory club. **775 ILCS 25.**
- 13.24. **Affiliates:** Contractor shall disclose the names and addresses of (i) itself; (ii) any entity that is a parent of, or owns a controlling interest in Contractor; (iii) any entity that is a subsidiary of, or in which a controlling interest is owned by, Contractor; (iv) any persons who have an ownership or distributive income share in Contractor that is in excess of 7.5%; or (v) who serves as an executive officer of Contractor. **40 ILCS 5/1-113.14(c)(5).**
14. **Compliance with Law:** Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders, federal circulars, and all license and permit requirements in the performance of this Agreement. Contractor shall, at all times during the Term of this Agreement, maintain compliance with all applicable tax requirements and be current in payment of such taxes.
15. **Confidential Data and Information:** Contractor, including its personnel, agents, and subcontractors, may have access to, collect, or receive confidential data, member records, or other information owned or maintained by the System in the course of carrying out its responsibilities under this Agreement that is (a) marked as “Confidential” or “Proprietary;” (b)

is otherwise reasonably identifiable as the confidential or proprietary information of the System; or (c) should reasonably be understood to be the confidential or proprietary information of the System given the nature of the information and the circumstances surrounding its disclosure (collectively, "Confidential Information"). The System hereby designates all information received or accessed by Contractor pursuant to this Agreement as Confidential Information unless otherwise designated in writing by the System. Contractor shall not unnecessarily communicate such Confidential Information within Contractor's operations. No such Confidential Information shall be used for competitive purposes nor disclosed or disseminated except as authorized by law and with the written consent of the System, either during the period of this Agreement or thereafter. Contractor shall only access and use the Confidential Information of the System as required to and for the limited purpose of performing its obligations under this Agreement; *provided, that* Contractor may disclose the Confidential Information of the System to its employees, contractors, and professional advisors who need to know such information in order to perform their obligations related to this Agreement and who are contractually bound by confidentiality obligations that are at least as protective as those in this Agreement. Contractor shall use at least the same degree of care in safeguarding the System's Confidential Information as it uses in safeguarding its own Confidential Information, but shall not use less than reasonable care and diligence. Contractor must return all such Confidential Information, in whatever form it is maintained, promptly at the end of the Agreement or earlier at the request of the System, or shall notify the System in writing of its destruction. Except with respect to Personal Data for which there are no exceptions, the foregoing obligations do not apply to Confidential Information: (i) that is lawfully in the receiving party's possession prior to acquisition under this Agreement, (ii) that was received in good faith from a third party not subject to any confidentiality obligation, (iii) that is or becomes publicly known through no breach of confidentiality obligation, or (iv) that is independently developed by the receiving party without the use or benefit of the System's data or information. Contractor shall be responsible for any breach of this Agreement by its employees, representatives, and agents, and any third party to whom it discloses Confidential Information in accordance with this Agreement.

16. **Data Security:** To the extent that Contractor stores, hosts, processes, accesses, or otherwise handles System Information (as defined in Exhibit B), then such System Information shall be subject to the Data Security Addendum attached hereto as Exhibit B and incorporated herein by reference as if fully set forth herein.
17. **Contact Person:** Contractor's principal contact person for all Work rendered hereunder shall be [_____].
18. **Employment Status:** Contractor and all personnel that Contractor assigns to perform the Work under this Agreement are not employees of the System and amounts paid pursuant to this Agreement do not constitute compensation paid to any employee of the System. The System assumes no liability for actions of Contractor or its personnel under this Agreement and this Agreement is not subject to the State Employee Indemnification Act, as amended, 5 ILCS 350.
19. **Entire Agreement:** This Agreement, together with any exhibits or attachments hereto, constitutes the entire agreement between the parties concerning the subject matter of this

Agreement, and supersedes all prior proposals and contracts between the parties concerning the subject matter of this Agreement. All provisions that by their nature would be expected to survive, shall survive termination. In the event of a conflict between the System's and Contractor's terms, conditions, and attachments, the System's terms, conditions, and attachments shall prevail.

20. **Execution of Originals:** This Agreement may be executed in two or more counterparts, any one of which shall be an original without reference to the others.

21. **FEIN Certification:** Under penalties of perjury, Contractor certifies that the legal name of business, taxpayer identification number, and legal status listed below are correct.

Contractor's legal name of business: _____

Taxpayer Identification Number: _____

Tax classification:

- S = S Corporation
- C = Corporation
- P = Partnership
- Individual/Sole Proprietor
- Limited Liability Company

22. **Inability to Perform:** Contractor agrees that if, due to death, illness, departure, or any other occurrence, any principal or principals of Contractor become unable to perform the Work set forth in this Agreement, neither Contractor nor the surviving principals shall be relieved of their obligations to complete performance hereunder. Contractor may substitute other professionals to perform such Work only upon approval of the System. Contractor shall immediately notify the System of any occurrence resulting in the inability of any principal or principals of Contractor to perform the Work set forth in this Agreement, in which event the System, at its own option, may immediately terminate this Agreement upon written notice to Contractor.

23. **Indemnification:** Contractor shall indemnify, defend, save and hold harmless the System, its affiliates, and their board members, trustees, officers, agents and employees, in both individual and official capacities, from and against any and all suits, actions, claims, demands, damages, losses, costs, and expenses, including attorney's fees and all expenses, arising out of or resulting from: (a) any claim that the Work, the Pre-Existing Contractor Materials, or any other items provided, delivered, or made available by Contractor infringe upon or misappropriate the Intellectual Property Rights or other proprietary rights of a third party; (b) a breach by Contractor of Section 14 (Compliance with Law); Section 15 (Confidential Data and Information); or Section 16 (Data Security); (c) personal injury or property damage caused by the acts or omissions of Contractor; or (d) the fraud, gross negligence, or intentional misconduct of Contractor. This paragraph is applicable to the full extent allowed by the laws of the State of Illinois and not beyond any extent that would render this paragraph void or unenforceable. In accordance with Article VIII, Section 1(a),(b) of the Constitution of the State of Illinois, the State may not indemnify private parties absent express statutory authority permitting the indemnification.

24. **Independent Contractor:** Contractor is an independent contractor in the performance of this Agreement, and is not an agent, employee, partner, or in joint venture with the System. All payments by the System shall be made on that basis. Contractor and its employees are not employees of the System and amounts paid pursuant to this Agreement do not constitute compensation paid to an employee of the System. All personnel performing Work pursuant to this Agreement are employees of Contractor, are treated as employees of Contractor for tax reporting purposes, and are provided all benefits of such employment that are provided or accrue to Contractor's employees, including, without limitation, health insurance, life insurance, disability insurance, workers' compensation, vacation, paid holidays, sick leave, and the like. The System assumes no liability for the actions of Contractor or its employees under this Agreement and this Agreement is not subject to the State Employee Indemnification Act, 5 ILCS 350.
25. **Insurance:** Contractor shall, during the Term of this Agreement and any renewals or extensions, at its sole cost and expense, procure and maintain in full force and effect, a Certificate of Insurance naming the System as an additional insured for all required bonds and insurance. Certificates may not be modified or canceled until at least 30 days' notice has been provided to the System by Contractor. Contractor shall carry the following minimum coverage amounts: (a) General Commercial Liability-occurrence form in the amount of \$1,000,000 per occurrence (Combined Single Limit Bodily Injury and Property Damage) and \$2,000,000 Annual Aggregate; (b) Auto Liability, including Hired Auto and Non-owned Auto, in the amount of \$1,000,000 per occurrence (Combined Single Limit Bodily Injury and Property Damage); and (c) Worker's Compensation Insurance in the amount required by law. Insurance shall not limit Contractor's obligation to indemnify, defend, or settle any claims.
26. **Nonexclusive Agreement:** Contractor understands, acknowledges, and agrees that Contractor does not have an exclusive agreement with the System to provide the supplies, equipment, and/or Work hereunder, and that the System may engage others to provide the same or similar goods and/or Work without any obligation to Contractor.
27. **Notices:** Notices and any other communication provided for herein shall be given in writing to the contacts designated below by registered or certified mail, return receipt requested, by receipted hand delivery, by courier (UPS, Federal Express, or other similar and reliable carrier), by email, or by fax showing the date and time of successful receipt. Each such notice shall be deemed to have been provided at the time it is actually received. By giving notice, either party may change the following contact information:

Contractor: [Company Name]
Attention:
[Mailing Address]
[City, State Zip Code]
Phone:
Fax:
Email:

TRS: Teachers' Retirement System of the State of Illinois

Attention: Holly Walton, Purchasing Manager
2815 W. Washington St., P.O. Box 19253
Springfield, Illinois 62794-9253
Phone: 217-814-2203
Fax: 217-753-0969
Email: Purchasing@trsil.org

28. **No Waiver:** Except as specifically waived in writing, failure by either party to exercise or enforce a right or obligation under this Agreement shall not affect any subsequent ability to exercise or enforce a right or obligation.
29. **Record Retention – Right to Audit:** Contractor and its subcontractors agree to comply with Section 20-65 of the Illinois Procurement Code, 30 ILCS 500/20-65, and shall maintain adequate books and records relating to the performance of this Agreement and necessary to support amounts charged to the System under this Agreement. Books and records, including information stored in databases or other computer systems, shall be maintained by Contractor and its subcontractors for a period of three years from the later of the date of final payment under the Agreement or completion of the Agreement. Such three-year period shall be extended for the duration of any audit in progress at the time of that period's expiration. Such books and records shall be available for review or audit by the Auditor General, other governmental entities with monitoring authority, and the System, upon reasonable notice and during normal business hours. Contractor and its subcontractors shall cooperate fully with any such review or audit. Failure to maintain such books and records shall establish a presumption in favor of the System for the recovery of any funds paid by the System under this Agreement for which adequate books and records are not available. Contractor shall not impose a charge or pass on fees or costs for review or audit of such books and records. Contractor shall take reasonable steps to ensure that its subcontractors are in compliance with this Section.
30. **RFP or Bid:** The System's RFP, and the Contractor's RFP Response, are hereby incorporated by reference into this Agreement as though fully set forth herein. To the extent that there are any conflicts between the RFP the RFP Response, and this Agreement, this Agreement shall prevail.
31. **Severability:** Any provision, covenant, or condition of this Agreement which is held by a court of competent jurisdiction to be invalid or not enforceable in any jurisdiction, shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
32. **Solicitation of Employees:** Contractor agrees not to recruit, solicit, employ, or induce TRS personnel, directly or indirectly, to apply for employment with Contractor, during and for one year following the termination or expiration of this Agreement.
33. **Subcontracting and Assignment:**

- 33.1. This Agreement may not be assigned or transferred by Contractor, in whole or in part, without the prior written consent of the System. This Agreement shall be binding on the parties and their respective successors and permitted assigns. Any assignment in contravention of this Section shall be null and void and of no further effect.
- 33.2. If Contractor intends to utilize one or more subcontractors in the performance of this Agreement, Contractor shall provide prior written notice to the System identifying the names and addresses of all such subcontractors to be utilized by Contractor in the performance of this Agreement, together with a description of the Work to be performed by the subcontractor and the anticipated amount of money that each subcontractor will receive from Contractor for such Work. This Agreement shall apply to and bind all subcontractors utilized by Contractor in the performance of this Agreement as fully and completely as Contractor is hereby bound and obligated. For purposes of this Section, subcontractors are those specifically hired to perform all or part of the Work or to provide equipment or supplies covered by the Agreement.

34. Termination:

- 34.1. This Agreement may be terminated at any time by the mutual consent of the System and Contractor.
- 34.2. If either party is in material breach of any obligation under this Agreement, the non-breaching party may terminate this Agreement for cause upon written notice after (a) first providing the other party with written notice of the breach (a "Notice of Breach"), and (b) providing thereafter a thirty (30) day opportunity to cure beginning on the date of receipt by the alleged breaching party of the Notice of Breach (the "Cure Period"). If, the System determines that such material breach is not curable, then the System may exercise such termination right immediately without providing Contractor with the Cure Period.
- 34.3. Notwithstanding any contrary provision in this Agreement, this Agreement may be terminated at the option of the System whenever the System determines that such termination is in its best interests, upon 15 days' prior written notice to Contractor.
- 34.4. Upon notice of termination, Contractor shall cease provision of the Work under this Agreement, except Work that TRS directs in writing to be completed, and take all necessary or appropriate steps to limit disbursements and minimize costs, and cooperate in good faith with TRS during the transition period between notification of termination and substitution of any replacement contractor. Contractor shall be entitled to payment for satisfactory supplies, equipment and/or Work provided under the Agreement. In the event the System and Contractor cannot agree to the amount of payment due Contractor, Contractor will receive a percentage of payment provided under the Agreement equal to the percentage of Work completed prior to termination of the Agreement. Contractor shall immediately return to TRS any payments for supplies, equipment, or Work that were not rendered by Contractor.

34.5. Termination of this Agreement shall not relieve either party of any obligations hereunder which were incurred prior to the date upon which the termination is effective.

35. Use and Ownership:

35.1. **System Ownership of Deliverables:** Unless otherwise specified in this Agreement, and except for Pre-Existing Contractor Materials, Contractor acknowledges and agrees that, as between the parties, the System is the sole and exclusive owner of all the right, title, and interest, in and to the Work, including all associated Intellectual Property Rights. Contractor hereby assigns and transfers to the System all right, title, and interest in and to such Work including any related Intellectual Property Rights, and/or waives any and all claims that Contractor may have to such Work including the so-called “moral rights” in connection with the Work. Confidential Information and other System Information contained in the Work shall be subject to all confidentiality and data security provisions of this Agreement.

35.2. **Grant of Rights to the System in Pre-Existing Contractor Materials:** To the extent that Contractor incorporates Pre-Existing Contractor Materials into the Work, Contractor, under its Intellectual Property Rights, hereby grants to the System a perpetual, irrevocable, worldwide, non-exclusive, transferrable, sublicensable, fully paid-up, royalty-free license to access, use, and exploit as it sees fit the Pre-Existing Contractor Materials as incorporated into the Work.

35.3. **Bankruptcy Code Section 365(n):** The licenses granted to the System herein are rights to “intellectual property” for purposes of Section 365(n) of the U.S. Bankruptcy Code, and the System shall be entitled to exercise all rights provided by Section 365(n). Contractor agrees that it shall not interfere with the System’s exercise of such rights, and further agrees that the System shall maintain the licenses under the terms of this Agreement, even if Contractor ceases operations or is purchased or merges into another entity.

35.4. **No Implied Rights:** Nothing in this Agreement shall be construed to grant either party any rights other than those expressly provided herein. Any rights granted to a party under this Agreement must be expressly provided herein, and there shall be no implied rights pursuant to this Agreement, based on any course of conduct or other construction or interpretation thereof. All rights and licenses not expressly granted herein are reserved.

36. **Non-Publicity:** Contractor agrees that (a) it shall not use the System’s (and its affiliates’) names, logos, tag lines, or any other identifying information in any manner, including, but not limited to, in advertisements, publications, press releases, articles, websites, or social media, without the System’s prior written approval (the “Publicity Prohibition”), which may be withheld, conditioned, or withdrawn for any reason, and (b) the Publicity Prohibition applies to the System and all of its related or affiliated entities.

37. **Remedies Cumulative:** No right or remedy in this Agreement conferred upon or reserved to either party is intended to be exclusive of any other right or remedy, and each and every right

and remedy shall be cumulative and in addition to any other right or remedy under this Agreement, or under applicable law, whether now or hereafter existing. The election by a party of any remedy provided for in this Agreement or otherwise available to such party shall not preclude such party from pursuing any other remedies available to such party at law, in equity, by contract or otherwise.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

[SIGNATURE BLOCK]

SAMPLE

EXHIBIT A

DEFINITIONS

1. **Deliverables.** The term “Deliverables” means those deliverables that Contractor is obligated to provide pursuant to this Agreement (including the RFP and RFP Response). By way of clarification, and not limitation, all Documentation that Contractor provides to the System pursuant to this Agreement shall constitute Deliverables.
2. **Documentation.** The term “Documentation” means all printed, electronic, or verbally provided: (a) user manuals and training materials; (b) product descriptions and other specifications (including performance standards); (c) requirements in the RFP; (d) technical and operating manuals; and (e) specifications.
3. **Good Industry Practice.** The term “Good Industry Practice” means the exercise of the skill, care, due diligence, prudence, foresight, and judgment in relation to any undertaking or any circumstances that would be expected from an expert provider of work similar to one or more components of the Work that Contractor is providing under this Agreement.
4. **Intellectual Property Rights.** The term “Intellectual Property Rights” means any rights (whether owned or licensed) existing now or in the future under patent law, copyright law, trademark law, data and database protection law, trade secret law, and any and all similar proprietary rights. The term “Intellectual Property Rights” means those rights as they exist as of the Effective Date, and all such rights subsequently acquired.
5. **Personal Data.** The term “Personal Data” means any information: (a) relating to an identified or identifiable natural person; (b) that could be used to: (i) identify a natural person; (ii) authenticate such natural person; or (iii) commit identify theft or impersonation; or (c) that is classified as “personal data,” “personal information,” “PII,” or the like under applicable law. The term Personal Data expressly includes all information relating to the System’s customers, employees, and clients.
6. **Pre-Existing IP.** The term “Pre-Existing IP” means, collectively: (a) Intellectual Property Rights that, as between the parties, Contractor owns prior to the Effective Date; and (b) Intellectual Property Rights that Contractor develops independently of its obligations under this Agreement after the Effective Date.
7. **Pre-Existing Contractor Materials.** The term “Pre-Existing Contractor Materials” means work or materials that: (a) are identified with specificity as such in this Agreement; and (b) embody Pre-Existing IP.
8. **Services.** The term “Services” means those services that Contractor provides to the System pursuant to this Agreement.
9. **Work.** The term “Work” means, collectively: (a) Deliverables; and (b) Services.

EXHIBIT B

DATA SECURITY ADDENDUM

In addition to the security requirements set forth in the terms and conditions of the Agreement, to the extent that Contractor stores, hosts, processes, accesses or otherwise handles System Information, Contractor shall ensure that it, and all third parties providing services or deliverables or otherwise accessing System Information (as defined below), provide, implement, sustain, and regularly examine the more onerous of either (i) any data safeguards required to comply with Good Industry Practices (including recognized standards, such as NIST and ISO) and applicable law, and (ii) the following minimum security controls. Capitalized terms not defined in this Addendum have the meaning set out in the terms and conditions of the Agreement.

1. Contractor shall develop and employ administrative, technical and physical access control procedures, restrictions and safeguards including the appropriate use of multi-factor authentication for remote connections, to protect its computer and communication environment, including any System Information stored thereon, against unauthorized access, use, alteration or destruction. “System Information” shall mean any data or information transferred, made available, or provided to Contractor by or on behalf the System in connection with this Agreement. Contractor agrees that System Information shall be deemed “Confidential Information” and shall be used by Contractor only in connection with its performance under this Agreement.

2. Without limiting any other obligations hereunder, Contractor represents and warrants to the System that it has implemented and shall maintain an information security program that includes reasonable and appropriate physical, technical and administrative measures to safeguard System Information consistent with Good Industry Practice and applicable law, including but not limited to:

- (a) Written information security policies and procedures that are compliant with applicable law and Good Industry Practice;
- (b) Access controls consistent with Good Industry Practice that limit access to System Information and systems containing System Information only to those who need such access to perform its obligations under this Agreement;
- (c) User identification and password standards, including length and configuration attributes (character composition, expiration term, no sharing of accounts, separate privileged user accounts from non-privileged user accounts, etc.) consistent with Good Industry Practice;
- (d) Methods of secure encryption of System Information in transit over public networks and of data storage and backups of System Information at rest consistent with Good Industry Practice;
- (e) Maintaining regular data backup and recovery systems of System Information and any other data or systems;
- (f) Secure logging of all access to System Information;

- (g) Regular vulnerability scans and a managed patch management process to redress any identified vulnerabilities; and
- (h) Maintaining and updating all systems, hardware and software for which Contractor is responsible in the performance of its obligations under this Agreement such that they remain under support by the applicable manufacturer or provider.

3. For the Term of the Agreement, Contractor shall operate, monitor, review and continually improve a written information security program in accordance with the ISO 27001 standard as the same may be amended, supplemented, or restated from time to time. Contractor shall implement, maintain, assess, monitor, and enforce compliance in all material respects with Contractor's information security program.

4. Contractor shall develop and employ disaster recovery and business continuity plans to ensure that Contractor will continue to provide the Work as contemplated under this Agreement. Contractor shall comply in all material respects with all applicable laws and Good Industry Practice relating to privacy, the protection of personal information and data protection (including, without limitation, applicable security breach notification obligations).

5. Contractor shall not transfer, store or process any System Information in any location outside of the United States of America except as expressly agreed to in writing by the System.

6. Contractor will implement personnel and administrative controls to mitigate security risks, including but not limited to (a) background checks on the Contractor's employees with access to Contractor's hosting platform or the System's Confidential Information, and (b) limiting access to Contractor's hosting platform to authorized individuals.

7. Contractor shall not permit any subcontractor to access System Information except for the uses otherwise provided in this Agreement, and Contractor shall prohibit such subcontractors from using System Information for any other purpose. Contractor remains fully and directly liable and responsible for its subcontractors' compliance with for all obligations under this Agreement as though no such subcontracting has occurred. Contractor shall require any subcontractors to whom Contractor transfers System Information or permits access to the System Information on Contractor's computer or communications environment to enter into a written agreement with Contractor requiring the subcontractor to abide by terms no less protective than this Agreement for protection of the System Information.

8. Security Audits.

- (a) No less than annually, Contractor shall cause an audit to be conducted of all Contractor infrastructure used in connection with its (and its subcontractor's) performance of the Work under this Agreement, by a certified public accountant based on the Statement of Standards for Attestation Engagements (SSAE) No. 18 or another reasonable information security commensurate with the size of Contractor's organization and scope of information processed by Contractor (an "Annual Security Audit").

(b) Contractor shall provide a copy of the report from each such Annual Security Audit to the System (each, a “Security Audit Report”) and its independent auditors as soon as reasonably possible after the conclusion of such Security Audit, and in all events within thirty (30) calendar days of completion. Further, Contractor shall provide any updates to any Security Audit Reports to the System promptly after they are received by Contractor. Contractor shall promptly correct any deficiencies identified in any Security Audit Report. At the System’s request, Contractor shall confirm in writing that there have been no changes in the relevant policies, procedures, and internal controls since the completion of a Security Audit other than the correction of any deficiencies as provided above. Contractor shall not redact the Security Audit Reports unless the redacted information (i) does not relate to the Work performed under this Agreement, or (ii) would compromise or threaten to compromise the security of Contractor’s systems.

9. Security Incidents. Contractor shall inform the System of the occurrence of any suspected or actual unauthorized, accidental, or unlawful destruction, loss, alteration, disclosure or use of, or access to, any System Confidential Information (including System Information) within Contractor’s possession or control (a “Security Incident”) with the exception of (i) pings on Contractor’s firewall, (ii) port scans, (iii) unsuccessful attempts to log onto a Contractor system or enter a Contractor database with an invalid password or username, or (iv) unsuccessful denial-of-service attacks that do not result in any Contractor’s system downtime or being taken off-line.

(a) Incident Response. Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries, and seeking external expertise as mutually agreed upon. Unless otherwise required by applicable law, Contractor shall not have any such communications without the System’s prior written approval. If Contractor becomes aware of any Security Incident, then Contractor shall promptly notify the System to determine the appropriate incident response procedures in accordance with this Agreement and applicable law.

(b) Breach Reporting Requirements. If Contractor has actual knowledge of a Security Incident that affects the security of the Work or any System Information that is subject to applicable data breach or security incident notification law, Contractor shall (i) promptly notify the appropriate System contact within forty-eight (48) hours or sooner, unless shorter time is required by applicable law, and (ii) take commercially reasonable measures to address the Security Incident in a timely manner.

(c) Security Incident Notification. Contractor shall promptly notify the System by telephone, if Contractor confirms that there is, or reasonably believes that there has been a Security Incident. Contractor shall: (i) cooperate with the System as reasonably requested by the System to investigate and resolve the Security Incident and to provide the System with detailed information about the Security Incident; (ii) take reasonable steps to mitigate the effects of, and minimize any damage resulting from, the Security Incident, including promptly implementing necessary remedial measures; (iii) document responsive actions taken related to the Security Incident, including any post-incident review of events and

actions taken to make changes in business practices in providing the Work, if necessary; and (iv) reasonably cooperate with the System to provide information in connection with any notice required to be sent to any third parties in connection with such Security Incident.

- (d) Security Incident Remedial Measures. To the extent that a Security Incident was caused by Contractor, or Contractor's breach of its obligations under this Agreement (including this Data Protection Addendum), Contractor shall bear all costs, expenses, or fees incurred by either party in connection with: (i) investigating and implementing resolutions to the Security Incident; (ii) preparing and sending notifications to individuals, regulators, or others required by applicable law; (iii) providing credit monitoring services to individuals affected by the Security Incident in accordance with Good Industry Practice; (iv) completing all corrective actions based on root cause analyses; and (v) paying all regulatory or other fines. For the avoidance of doubt, the remedies provided in this paragraph are without prejudice and not exclusive to the System's other remedies contained in this Agreement.

10. In addition to the foregoing, Contractor shall indemnify the System for actual, direct damages or costs incurred by the System related to the unauthorized access, disclosure or use of System Information due to the Contractor's violation of its information security obligations hereunder, including (i) governmental fines and/or penalties imposed on the System, (ii) costs of remedial actions required of the System by law and (iii) costs reasonably incurred by the System relating to required notice of data breach to affected members, beneficiaries, and/or other affected parties.