

Appendix G:

[DRAFT] Sample Agreement for Recordkeeping and Administrative Services

THIS AGREEMENT FOR RECORDKEEPING AND ADMINISTRATIVE SERVICES (“Agreement”) is made and entered into this _____ day of _____, 2019, 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 *[INSERT NAME/ADDRESS/LEGAL STATUS OF CONTRACTOR], a *[INSERT LEGAL STATUS OF CONTRACTOR] (“Contractor”).

WHEREAS, pursuant to 40 ILCS 5/16-204, the System shall offer an optional defined contribution benefit to active members of the System, to be known as the TRS Supplemental Savings Plan (the “SSP”), and

WHEREAS, the SSP shall be a defined contribution plan under Internal Revenue Code (“Code”) Section 457(b) and a governmental plan within the meaning of Code Section 414(d) and Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) and, therefore, ERISA does not apply; and

WHEREAS, the System has need to obtain recordkeeping and administrative services to operate the SSP; and

WHEREAS, the System has determined through the Request for Proposal (RFP) process that Contractor meets all qualifications described in the RFP to perform the services set forth herein; and

WHEREAS, the TRS Board of Trustees resolved on _____ to engage Contractor to perform the services specified in this Agreement;

NOW THEREFORE, Contractor agrees to provide the following recordkeeping and administrative services to the System pursuant to the terms of this Agreement as more fully detailed below:

Services:

- a) Contractor shall provide recordkeeping and administrative services (“Services”) as described in this Agreement, and Exhibits hereto, including the Scope of Services and Service Level Agreement (“SLA”) set forth in Exhibits ____.
- b) Contractor agrees to provide all Services under this Agreement in accordance with (i) the requirements of Article 16 of the Illinois Pension Code, 40 ILCS 5/16; (ii) any applicable rules adopted by the TRS Board of Trustees, 80 Ill. Admin. Code 1650; (iii) the SSP Plan Document; (iv) any policies, guidelines, and interpretations relating to the SSP adopted by the System, as communicated by the System to Contractor in writing; (v) all applicable federal and state laws; and (vi) the terms and conditions of this Agreement, as amended from time to time.

- c) TRS retains the unilateral right to require modification or changes in the Services to be performed by Contractor so long as the changes are within the general scope of the Services to be performed under this Agreement and Contractor receives prior written notice of the changes. If any change or modification requested by TRS causes an increase in Contractor's cost of, or the time required for the performance of any part of the Services under the Agreement, the parties may mutually agree upon an equitable adjustment to the fees payable to Contractor to be memorialized in an amendment to this Agreement.

Approved Investment Options:

- a) Contractor agrees to make available to Participants the investment options that have been selected and approved by the Board of Trustees for inclusion in the SSP set forth in Exhibit ____ ("Approved Investment Options"). Contractor acknowledges that TRS has full authority to add to, remove from, or otherwise revise the Approved Investment Options at any time and in its sole discretion. TRS shall provide 60 days' notice of any such changes to the Approved Investment Options with the expectation that Contractor will begin to provide Services with respect to such Approved Investment Options within said 60-day time frame. Contractor understands and agrees that Contractor (i) may not add, remove, or substitute any investment option under the SSP without the prior approval of TRS, and (ii) may not allow a Participant to elect any investment option not previously selected and approved for the SSP by the Board of Trustees. The parties agree that Exhibit ____ hereto shall be amended to reflect the addition, removal, or substitution of investment options under the SSP. For purposes of this Agreement, "Participant" means any active or retired TRS member as defined in Article 16 of the Illinois Pension Code, an alternate payee under a Qualified Illinois Domestic Relations Order (QILDRO) duly issued in accordance with the Illinois Pension Code, 40 ILCS 5/1-119, or a beneficiary of a deceased member, with an account under the SSP.
- b) Contractor shall be responsible for providing Services under this Agreement solely with respect to the Approved Investment Options set forth on Exhibit _____. TRS retains the right to have assets not within the SSP serviced pursuant to a separate arrangement with a different service provider, but Contractor shall have no responsibilities with respect to recordkeeping or administrative services with respect to such other assets.
- c) If TRS makes changes to the Approved Investment Options from time to time, Contractor shall follow the instructions of TRS in transferring assets held in the eliminated investment option to the replacement Approved Investment Option. Contractor will work with TRS to develop a plan for such transfers and Participant communications regarding the change.

Authorized Individuals: TRS shall designate authorized individuals who may provide Directions to Contractor regarding the Services. For purpose of this Agreement, "Directions" shall mean an instruction from TRS to Contractor to act, or refrain from acting, in a particular manner in providing Services. Directions shall be provided to Contractor in writing. Contractor may refuse to honor a Direction if: (i) it is unclear, or (ii) it conflicts with other Directions, the terms of this Agreement, or applicable law. In any case where Contractor does not intend to honor a Direction, it will promptly inform TRS of the grounds for its refusal in writing.

Additional Obligations of Contractor:

- a) Custodial Agreement. Contractor shall enter into a custodial agreement with [CUSTODIAN NAME] for the SSP, in a form acceptable to and approved by to TRS, pursuant to which Contractor can accept transfers of funds from TRS, Participants, and other service providers, for investment in the Approved Investment Options. Any amendments to the custodial agreement must be in a form acceptable to TRS.
- b) Compliance with Law. Contractor shall comply with all federal and state laws, applicable to it as a provider of Services under this Agreement, as such laws are amended from time to time.
- c) Personnel. Contractor shall provide sufficient personnel and resources as required to successfully implement, manager, and service the SSP. Contractor shall be solely responsible for training and educating its personnel with respect to its recordkeeping system, phone systems, and policies and procedures, the terms of the SSP, applicable law, and the proper operation and administration of the SSP. Contractor's personnel are prohibited from cross-selling other products or services not included in the Approved Investment Options.
- d) Fee Disclosure. If any materials provided by Contractor to Participants that discuss the Approved Investment Options and in any one-on-one counseling session with a Participant, Contractor shall disclose all fees and expenses associated with the Approved Investment Options.
- e) Licenses. Contractor shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement.
- f) Current Information. Contractor shall use its best efforts to ensure that its recordkeeping and phone systems, its equipment, computer programs, forms, procedures, communications, educational materials, and other documents, reflect the current terms of the SSP, Internal Revenue Service requirements, accounting standards, internal control procedures, and any applicable federal and state laws. Contractor shall submit all forms, form letters, voice response scripts, statements, reports, and other written materials, and all revisions thereto, to TRS upon request, and shall make any changes reasonably required by TRS with respect to such materials.
- g) QILDROs. Following the System's determination of validity, Contractor shall be solely responsible for administration of valid Qualified Illinois Domestic Relations Orders (QILDROs) that are sent to Contractor by TRS, including, without limitation, communicating as necessary with the Participant and alternate payee, effectuating a division of assets in the Participant's SSP account as between the Participant and the alternate payee, and processing withdrawals by the Participant and alternate payee in accordance with the valid QILDRO, as described in the Scope of Services and/or SLA attached hereto as Exhibits ____.

- h) Record Requests. If TRS receives a request under the Illinois Freedom of Information Act, 5 ILCS 140 (“FOIA law”) for records maintained by Contractor with respect to the Services provided hereunder, Contractor will cooperate fully and expeditiously to provide any and all records requested by TRS to allow TRS to comply with the FOIA law. Contractor is aware that the FOIA law generally requires records be provided by the System within five business days; accordingly, Contractor agrees to provide the requested records as soon as reasonably possible but no later than two business days after the System requests the records from Contractor. Contractor understands that TRS is solely responsible for making the decision as to whether the requested records are required by law to be released by TRS in response to a FOIA request, and/or whether an exemption to disclosure may be claimed.

TRS Obligations:

- a) Plan Information. TRS has furnished Contractor with a copy of the SSP Plan Document. TRS shall promptly provide notice to Contractor as soon as practicable after any amendment to the Plan Document is adopted.
- b) Records. TRS shall timely furnish to Contractor the records relating to Participants to enable Contractor to perform the services under this Agreement. TRS shall provide such information to Contractor as needed in connection with the provision of the Services. Contractor shall notify TRS of any errors or omissions in the records and information, if any, within three business days of such detection.
- c) QILDROs. TRS shall be solely responsible for receiving, reviewing, and determining validity of Qualified Illinois Domestic Relations Orders (QILDROs) issued in accordance with the Illinois Pension Code, 40 ILCS 5/1-119, that are applicable to individual SSP Participants. TRS will notify Contractor when a QILDRO has been determined to be valid as against an individual Participant’s interests in the SSP by sending the valid QILDRO to Contractor, after which TRS shall have no further responsibility for administration of the valid QILDRO.

Representations of Contractor:

- a) Contractor represents and warrants, on behalf of itself and any subcontractor providing Services under this Agreement, during the term of this Agreement: (i) it and any subcontractor are authorized to do business in the State of Illinois; (ii) it and any subcontractor are qualified, both as a company and as to those individuals assigned to the SSP, to provide recordkeeping and administrative services pursuant to Internal Revenue Code Sections 401(a) and 457(b), as applicable; (iii) it and any subcontractor are not in bankruptcy, conservatorship, receivership, or in the possession of a regulatory agency; (iv) it and any subcontractor, to the extent applicable, if an investment adviser, it is registered as such with the Securities and Exchange Commission under the Investment Advisers Act of 1940, as amended; and (v) it and any subcontractor are not in arrears with respect to any monies due and owing to the state of Illinois or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits.

- b) Contractor acknowledges and understands that the continuing truth and accuracy of the representations, warranties, covenants, acknowledgements, and agreements by Contractor under this Agreement (including all Exhibits hereto) shall be relied upon by TRS during the term of the Agreement. Contractor shall notify TRS if any of the representations, warranties, covenants, acknowledgements, or agreements cease to be true and correct during the term of the Agreement by delivering written notice to TRS no later than three business days after the representation, warranty, covenant, acknowledgement, or agreement ceases to be true and correct. Upon receipt of notice, or if Contractor fails to comply with its representations, warranties, covenants, acknowledgements, or agreements hereunder, TRS shall have the following options: (i) grant Contractor a reasonable period of time within which to take such actions as may be necessary to perform or otherwise cure the violation of such representation, warranty, covenant, acknowledgement, or agreement; (ii) suspend Contractor from performing further Services under the Agreement; (iii) resort to any other rights and remedies available to TRS under applicable law; or (iv) terminate the Agreement as provided herein.

Standard of Care – Fiduciary Status:

- a) TRS and Contractor agree that Contractor shall not provide investment advice to TRS with respect to any of the assets of the SSP in providing Services under this Agreement. Moreover, TRS and Contractor agree that Contractor is not intending or agreeing to act as a fiduciary within the meaning of ERISA Section 3(21)(A) or 40 ILCS 5/1-101.2.
- b) Notwithstanding (a) above, Contractor agrees that Contractor and its subcontractors shall discharge all duties and responsibilities under this Agreement, and shall act with respect to the assets of the SSP, solely in the interest of the SSP Participants and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, unless it is clearly prudent not to do so.
- c) Notwithstanding (a) above, to the extent that Contractor and/or its subcontractors provide investment advice within the meaning of ERISA Section 3(21) and DOL Regulation Section 2510.3-21 to SSP Participants in the provision of the Services under this Agreement, Contractor acknowledges that it is a fiduciary and agrees that the fiduciary standards thereunder shall apply in the provision of such Services. Contractor shall provide such investment advice services to SSP Participants only if expressly allowed by TRS and only if directions provide said advice are contained in the Scope of Services and/or SLA set forth in Exhibits ___ and any amendments thereto. If the parties agree that Contractor is allowed to provide investment advice services that constitute “investment services” within the meaning of 40 ILS 5/1-113.14, that agreement must be provided under a separate agreement that complies with all statutory requirements set forth in 40 ILCS 5/1-113.14 and cannot exceed 5 years in duration.

Term of the Agreement: The term of this Agreement shall be the five-year period beginning on date of execution and ending five years thereafter on [DATE], unless earlier terminated in accordance with this Agreement. At the sole option of TRS, this Agreement may be extended for additional periods upon execution of an amendment reflecting same.

Fees and Method of Payment:

- a) Fees for Services. Contractor shall be entitled to collect fees for services rendered under the Agreement within 30 days of TRS's receipt of Contractor's invoice. Contractor's fees shall be charged against and paid from the Participants' accounts maintained by Contractor, unless such fees are paid by TRS. The fees for Services are identified in Exhibit ____, which Contractor agrees are the only fees payable to Contractor, its affiliates, or to any other party related to the Services provided under this Agreement. Contractor is prohibited from increasing or adding to such fees without approval by the TRS Board of Trustees confirmed in writing.
- b) Fee Disclosure. Contractor shall provide TRS fee transparency reports each calendar quarter in such format and providing such information as reasonably requested by TRS to ensure full disclosure of all fees generated under the SSP and paid to Contractor and its affiliates, including fees generated from open brokerage windows, if approved by TRS under the SSP.

Billing: Contractor shall submit quarterly invoices for services provided hereunder in accordance with terms outlined below:

- a) By submitting an invoice, Contractor certifies that the professional services provided meet 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.
- b) Invoices shall be signed by Contractor and shall set out Contractor's social security number or FEIN.
- c) Invoices submitted by Contractor for the professional services 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.
- d) 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.

Payment: Payments will be paid in accordance with the Prompt Payment Act, 30 ILCS 540. Payment will be made in the amount earned to date of 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 sound accounting standards. TRS shall not be liable to pay for supplies or equipment provided or services rendered, including related expenses, incurred prior to the execution of this Agreement by all parties and the beginning of the term of this Agreement.

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. The System hereby designates all information received or accessed pursuant to this Agreement as confidential unless otherwise designated in writing by the System. Contractor shall not unnecessarily communicate such data or information within Contractor's operations. No such data or 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 must return all such data and information, in an agreed-upon format, 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. The foregoing obligations do not apply to confidential data or information lawfully in the receiving party's possession prior to acquisition under this Agreement, received in good faith from a third party not subject to any confidentiality obligation, that is or becomes publicly known through no breach of confidentiality obligation, or that is independently developed by the receiving party without the use or benefit of the System's data or information.

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.

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.

Applicable Law: This Agreement and Contractor's obligations and services hereunder are hereby made and must be performed 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, Contractor 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.

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.

Building Security: Contractor shall comply with the System's security and contractor policies and procedures during the time Contractor's personnel are on the premises.

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:

- a) **Educational Loan:** Contractor, in accordance with the Educational Loan Default Act, is not in default on an educational loan. **5 ILCS 385.**
- b) **Ethics:** Contractor acknowledge that 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. Contractor agrees to complete ethics training upon request. **5 ILCS 430.**
- c) **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.**
- d) **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.**
- e) **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.**
- f) **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 ILCS 500/50-60.**
- g) **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.**
- h) **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.**

- i) **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 500/50-14(c), 410 ILCS 45.**
- j) **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 500/50-13, 30 ILCS 500/50-15, 30 ILCS 500/50-35.**
- k) **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.**
- l) **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.
- m) **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.**
- n) **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.**
- o) **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.**

- p) **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.**
- q) **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.**
- r) **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.**
- s) **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.**
- t) **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.**
- u) **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.**
- v) **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.**
- w) **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.**

Employment Status: The parties agree that Contractor's employees assigned to perform services pursuant to this Agreement shall be and remain employees of Contractor whether such services are performed at Contractor's facilities or the facilities of TRS. The employees of Contractor are not and shall not for any purpose be considered TRS employees or State employees. Contractor shall be solely responsible for the payment of wages and salaries and all matters related thereto, including the withholding and/or payment of payroll taxes, workers' compensation, unemployment compensation, insurance-related benefits, vacation pay, holiday pay, and any other legal requirements applicable to Contractor's employees. Contractor agrees to indemnify, defend, and hold TRS harmless from and against any and all liabilities arising from or related to Contractor's obligations as an employer related to this Agreement and the services provided hereunder. Nothing in this Agreement shall imply an agency, joint venture, partnership, or joint employment relationship between the parties and the parties agree that they have no intention of creating such a relationship.

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. Any provision of this Agreement officially declared void, unenforceable, or against public policy, shall be ignored and the remaining provisions shall be interpreted, as far as possible, to give effect to the parties' intent. 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.

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.

Exhibits: This Agreement includes and incorporates the additional terms and provisions in the following Exhibits:

Exhibit ____ - _____
Exhibit ____ - _____
Exhibit ____ - _____
Etc.

The Exhibits are attached hereto, incorporated by reference herein, and made a part of the Agreement. If there are any inconsistencies between this Agreement and the Exhibits, the terms of the Agreement shall control. If there are any inconsistencies among the Exhibits, the Exhibits shall control in the following order: _____

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: _____

Legal status of business: _____

Tax classification:
[Check only if legal status is
a limited liability company]

- S = S Corporation
 C = Corporation
 P = Partnership

File Backup; Disaster Recovery: Contractor agrees to regularly perform critical file backups, rotate backup to offsite storage locations on a regular basis, and maintain and update a disaster recovery plan. Contractor shall use its best efforts to ensure that the Records and critical Services, such as trading, account maintenance, and customer service, provided by Contractor under this Agreement will be operational within 24 hours of such disaster or system failure. Contractor agrees to provide TRS with a copy of its disaster recovery plan upon request by TRS, and to inform TRS of any material changes to its disaster recovery plan thereafter.

Finder's Fee: Contractor certifies that no finder's fee or finder's commission, third-party placement, marketing, solicitor's, consulting, contingency fee, or any other consideration has been paid or shall be paid to any individual or organization, other than a bona fide employee working solely for Contractor, resulting from or related to this Agreement

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 services 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 services 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 services set forth in this Agreement, in which event the System, at its own option, may immediately terminate this Agreement upon written notice to Contractor.

Indemnification: Contractor shall indemnify, defend, save and hold harmless the System, its 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, which are the result of an error, omission or negligent act of Contractor or any of its employees or agents arising out of or resulting from the provision of Goods and/or performance of services under this Agreement, except where such is due to the active negligence of the party seeking to be indemnified. 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.

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 services 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 actions of Contractor or its employees under this Agreement and this Agreement is not subject to the State Employee Indemnification Act, 5 ILCS 350.

Information Technology Accessibility, Security/Loss of Data: All electronic and information technology provided under this Agreement must comply with the applicable requirements of the Illinois Information Technology Accessibility Act, 30 ILCS 587, and any standards promulgated thereunder. Contractor shall maintain, enforce, and review at least annually for effectiveness, a comprehensive data security program, and appropriate technical organizational and security measures against the destruction, loss, unauthorized access, use, or alteration of TRS data in the possession or control of Contractor. Contractor will not make any changes that materially weaken any technical, organizational, or security measures in place to safeguard TRS data or result in Contractor's failure to meet any of the minimum standards set forth in this Agreement. In the event of any loss of any TRS data or records where such loss is due to the intentional act or omission or negligence of Contractor, affiliates, or subcontractors, Contractor shall be responsible for recreating such lost data in the manner and on the schedule as mutually agreed to by the parties.

Insurance: Contractor shall, at its sole cost and expense, procure and maintain in full force and effect during the term of this Agreement insurance of the types and amounts specified herein. TRS and the SSP, together with each of its officers, employees, agents, and trustees, shall be listed as an additional insured on commercial general liability, professional/cyber liability, and excess liability or umbrella policies. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide TRS, by certified mail, not less than 30 days' advance notice of any non-renewal, cancellation, or expiration. In the event TRS receives a notice of non-renewal, Contractor shall provide TRS with an insurance policy from another carrier at least 15 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State of Illinois to do business and to provide such policies. Contractor agrees to furnish certificates evidencing the amount of these insurance coverages to TRS upon request. Contractor shall provide prompt written notification should such coverage be canceled or modified. Coverages may not be modified or canceled until at least 30 days' notice has been provided to TRS. Contractor shall require that any subcontractors providing primary Services (as opposed to non-critical, ancillary services) under this Agreement obtain and maintain the same levels of insurance and shall provide TRS with the same documentation as is required of Contractor. Insurance shall not limit Contractor's obligation to indemnify, defend, or settle any claims.

- a) Contractor shall maintain directors and officers (D&O) liability insurance coverage of at least Ten Million Dollars (\$10,000,000).
- b) Contractor shall maintain commercial general liability insurance to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Agreement by Contractor, its agents, servants, employees, or subcontractors, with a limit of Five Million Dollars (\$5,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in aggregate.
- c) Contractor shall maintain errors and omissions/professional liability (including cyber liability) insurance with a minimum limit of Ten Million Dollars (\$10,000,000) per claim and annual aggregate.

- d) Contractor shall maintain crime insurance in the minimum amount of Fifty Million Dollars (\$50,000,000) per occurrence.
- e) Contractor shall maintain adequate workers' compensation and other insurance as required by state and federal law.
- f) Contractor shall maintain cyber security insurance to cover expenses, losses, and/or damages resulting from, or arising out of, data breach or losses involving the SSP and/or Plan Participants with a minimum limit of Five Million Dollars (\$5,000,000).

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 services hereunder, and that the System may engage others to provide the same or similar goods and/or services without any obligation to Contractor.

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: Heidi Darow, Purchasing Officer
2815 W. Washington St., P.O. Box 19253
Springfield, Illinois 62794-9253
Phone: 217-814-2049
Fax: 217-753-0969
Email: Purchasing@trsil.org

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.

Records Retention: 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 Illinois 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 provision.

RFP or Bid: The System's Request for Proposal (RFP), Invitation to Bid, or any similar document soliciting contractors for the work set forth herein, and Contractor's response thereto, 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 or bid document and this Agreement, this Agreement shall prevail.

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.

Subcontracting and Assignment:

- a) This Agreement may not be assigned or transferred in whole or in part without a written amendment duly executed by both parties.
- b) If Contractor intends to utilize one or more subcontractors in 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.
- c) In the provision of Services, Contractor may utilize the services of certain subcontractors as listed below that have been approved by TRS. The TRS approved subcontractors providing Services under this Agreement include:

[LIST HERE]

Termination:

- a) This Agreement may be terminated at any time by the mutual consent of the System and Contractor.
- b) This Agreement may be terminated by either party prior to the end of the term for any reason effective upon 180 days' prior written notice to the other party.
- c) 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 30 days' prior written notice to Contractor.
- d) Upon the end of the term of the Agreement, or upon earlier termination of the Agreement, Contractor shall: (i) continue to provide Services in accordance with the terms of the Agreement through the date of termination; (ii) cooperate with TRS with respect to the transfer to TRS or its designee of all Records owned by TRS in a format mutually agreed upon by both parties; (iii) provide to TRS, at no additional expense to TRS and in the format theretofore regularly provided to TRS, a statement of accounts as of the date of termination of this Agreement, which will provide substantially the same information compiled as of such termination date as the normal quarterly statement of accounts; (iv) if requested by TRS in writing, provide to TRS a statement of accounts for individual Participants or former Participants, beneficiaries, and/or alternate payees as of a date certain to the extent such records are maintained by Contractor for SSP administration purposes including, but not limited to, the administration of Qualified Illinois Domestic Relations Orders (QILDROs) under 40 ILCS 5/1-119; (v) provide SSP Participants with continued access to their individual account statements and other Plan documents, forms, and materials for a period of not less than three months following the date of termination; and (vi) provide to TRS or its designee such other records and information as TRS may reasonably request to effectuate a smooth transition to a new service provider. For purposes of this Agreement, "Records" means all records and information provided by TRS to Contractor pursuant to this Agreement and all data, reports, and information created by Contractor by processing the records and information provided by TRS or as a result of providing Services under this Agreement.
- e) 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.

Use and Ownership: All work performed or created by Contractor under this Agreement, whether written documents or data, goods, or deliverables of any kind, shall be deemed work-for-hire under copyright law and all intellectual property and other laws, and the System is granted sole and exclusive ownership to all such work, unless otherwise agreed to herein. Contractor hereby assigns to the System all right, title, and interest in and to any 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 data or information contained in such work shall be subject to all confidentiality provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

[SIGNATURE BLOCK]

DRAFT