

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



**REQUEST FOR PROPOSALS FOR  
SECURITIES LITIGATION MONITORING, EVALUATION, AND  
REPORTING SERVICES**

**Issued March 1, 2023**

**Responses due March 29, 2023, by 2:00 pm CDT**

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## **I. Introduction**

The Teachers' Retirement System of the State of Illinois (the System or TRS) is requesting proposals to provide Securities Litigation Monitoring, Evaluation and Reporting Services. 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 Securities Litigation Monitoring, Evaluation, and Reporting Services 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 434,000 members and had over \$63 billion in assets held in trust for its membership as of August 31, 2022.

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, Illinois.

### III. Services Required

The System is seeking proposals from providers to perform portfolio monitoring, securities litigation evaluation, and reporting services for the System, and/or consult on securities related litigation matters.

Generally, the System anticipates that the selected firm(s) will provide the following consulting services:

- Monitor, report and advise the system regarding potential and pending class action securities litigation settlements (including actions involving securities purchased on foreign stock exchanges located outside the United States, as well as independent securities actions based on state law fraud claims).
- Assist the System in analyzing TRS's interest therein, based upon TRS's holdings and exposure during the relevant periods.
- Suggest action for the System as appropriate, such as opting in/out of settlement.

**NOTE:** The System is *not* seeking securities litigation legal services in connection with this Request for Proposal.

In detail, the selected firm(s) should be able to:

- Obtain the System's periodic portfolio holdings and trading records directly from its custodial bank and maintain them securely as confidential information that is the property of TRS.
- Identify, monitor and provide timely notice to the System of securities litigation filed in the United States and in foreign jurisdictions in which TRS may have an interest, and provide analysis of its estimated losses, if any.
- Monitor securities litigation and settlement claims filed by the System's custodian to ensure maximum recovery.
- Analyze the System's holdings records as necessary to determine class action eligibility.
- Identify, monitor, evaluate, and report to the System on domestic, including anti-trust litigation, as well as international litigation that impacts TRS's portfolio.
- Assist TRS in evaluating cases that would require active participation including assessing risk, confidentiality, and settlement viability. Should TRS approve active participation, provide information regarding options for pursuing the matter further.
- Identify class action settlements and upcoming proof of claim deadlines and similar key dates for those cases in which TRS may have a financial interest.
- Monitor TRS's investment portfolio, to identify any losses that may have occurred because of a violation or potential violation of federal or state securities or other laws, or a potential breach of any duty owed to TRS or its alternative investment vehicles, and notify the System, in a timely manner, of such cases where TRS may have a financial interest.
- Make a preliminary calculation of TRS's investment losses, noting the methodology and transaction data used and the appropriate measure of losses in the action, and calculate estimated recognized loss of recoverable damages, if any.
- Analyze and calculate losses in cases where the loss or potential loss meets a to be determined threshold for potential lead plaintiff status as determined by TRS.

- Timely identify all potential and pending securities class actions and shareholder derivative actions in which TRS may be a class member, based on securities holdings.
- Provide interactive internet access to data, analysis, and reports.
- Maintain the quality and access of data used in the monitoring and analysis of securities litigation, settlement claims, anti-trust litigation, and the impact on the System's portfolio including TRS specific information and any third-party resource utilized in providing services to TRS.
- Provide notices of, and information relating to, the filing of complaints initiating securities class action in the United States and foreign jurisdiction.
- Regularly identify and report newly filed securities litigation in both domestic and international jurisdictions, antitrust litigation, and other litigation cases in which TRS may have losses or a financial interest, including the estimated value of losses.
- Provide personnel resources that are responsive and available on an as needed basis to confer with and provide recommendations to the System on newly filed, pending, and recently settled securities litigation (domestic and international) or other cases in which TRS may have a financial interest.

Optional services may include, at the Proposer's option:

- Providing consulting services to the System in the development of a Securities Litigation Policy and governance model.
- Acting as liaison to litigation counsel, or potential counsel, in domestic and/or international jurisdictions.
- Providing backup to the System's custodian and/or administrator for filing of proofs of claim and making other required filings on an as-needed basis.

Proposers will be expected to familiarize themselves with TRS, its investment policies, the fiduciary duties and responsibilities of the TRS Board, and relevant provisions of the state law, without cost.

The above description of the Services to be provided is intended as a general guide and not as a complete description of all aspects of the services under the RFP.

Services shall begin upon successful execution of a formal written agreement with the System and end no later than June 30, 2028.

#### **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.**

## 1. 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:

- a. 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 Board of Trustees of the Teachers' Retirement System of the State of Illinois, at any time prior to June 30, 2023.
- b. 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.**
- c. 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.
- d. 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.
- e. **A statement that the proposer is willing to enter into an agreement in the form attached to the RFP as Appendix E 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.**
- f. 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 and/or 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 Invitation for Bids will be confidential. No documentation will be provided under FOIA until the contract has been awarded.

- g. 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.

## **2. Vendor Type Verification Form**

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

## **3. Reference Checks**

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

## **4. Questionnaire**

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

## **5. Fee Proposal**

Proposers must submit their fee in the format prescribed in Appendix D. 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 costs and expenses for providing the services to TRS as described in this RFP. Once finalists are selected, fees may be subject to a “best and final” offer process to be determined at the discretion of the System. The fee proposal must expressly state that the proposed fees are guaranteed for the term of any resulting contract.

## **6. Contract**

This Request for Proposal is neither a contract nor meant to serve as a contract. It is anticipated that one or more 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 E, 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 firms 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. CDT on March 29, 2023**. Proposals should be in an Adobe Acrobat format and should be emailed to Heidi Darow at [bidsubmissions@trsil.org](mailto:bidsubmissions@trsil.org). Subject must contain **“Response to Request for Proposals for Securities Litigation Monitoring, Evaluation and Reporting 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. TRS is not responsible for receipt of any proposal which is improperly labeled. An email confirmation will be sent confirming receipt of the proposal.

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, firm, partnership, corporation, or combination thereof, will be considered for this assignment

Except as specifically requested by TRS, submission of proposals or any portion thereof via facsimile transmission, electronic, or magnetic media will not be allowed. 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, firm, partnership, corporation, or combination thereof, will be considered for this assignment.

## VI. Evaluation Process

### 1. 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.

### 2. Proposal Evaluation

Proposals that pass the pre-evaluation review will undergo an evaluation process conducted by TRS staff. TRS will consider the following various elements in the decision process, ranked in no specific order, and will render a decision based on the perceived best value for the engagement. Fees 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:

- Understanding of the services requested
- Soundness of the approach and quality of the proposed services
- Cost

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.



## VII. Anticipated Timeline

*Subject to change at TRS discretion*

Date RFP Issued	March 1, 2023
Deadline for Submitting RFP Response	March 29, 2023
Proposal Evaluation	April/May 2023
Estimated Services Start Date	July 1, 2023

## VIII. General Conditions

### 1. Clarification of the RFP

To maintain the integrity of the RFP process, interested proposers are expected to respond to this RFP to the best of their understanding **without asking questions or requesting clarification**. If a proposer discovers an error in this RFP, the proposer should immediately notify TRS of such error in writing to Heidi Darow at the following email address: [purchasing@trsill.org](mailto:purchasing@trsill.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 website prior to the proposal deadline.

### 2. 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.**

### 3. 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.

### 4. 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.

## **5. No Confidentiality**

Proposals and all materials submitted in response to this RFP cannot be considered confidential. 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.

## **6. Equal Opportunity**

TRS does not discriminate because of race, color, religion, creed, sex, sexual orientation, age, marital status, military status, certain unfavorable discharges from military service, political affiliation, citizenship, ancestry, national origin, physical or mental handicap or disability or any other characteristic protected by law. It is the System's intent to comply with all state, federal, and local equal employment and 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 \_\_\_\_\_

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Representative Signature      Date

## **Appendix B: Reference Authorization Letter**

*[On prospective firm letterhead]*

[Month, Day, Year]

[Reference Name]

[Reference Title]

[Company Name]

[Reference Address]

[City, State, Zip]

Dear [Reference Name]:

*(Prospective Firm Name)* has submitted a proposal to the Teachers' Retirement System of the State of Illinois ("System") with regard to providing securities litigation monitoring, evaluation, and reporting services. The System is conducting its due diligence with regard to *(Prospective Firm Name)*. Through this written authorization, *(Prospective Firm 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 Firm 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 Firm Name)*

*(Authorized Signature and Title)*

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

## Appendix C: 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. Organization

1. Please provide a brief history of your firm and its operations, including the year formed and any ownership interests. Within the past five years, have there been any significant developments in your organization, such as changes in ownership, restructuring, or personnel reorganizations?
2. Describe your future business plans for the firm and identify plans for additions to professional staff in relation to any growth of the business.
3. Within the last ten years, has your organization, any employees, officers, or principals been involved in any business litigation or other legal proceedings related to your consulting/advisor activities?
4. Clearly identify the total staffing size of your organization, broken down between professional and administrative support (or other relevant categorizations).
5. Who are the key people in your organization? Clearly identify how long have they worked for your firm and within the industry.
6. How many employees will be assigned to the proposed product being offered? Please provide contact information for each person including their duties, the number of client relationships supported, and backup resources (as applicable).
7. Does your firm have multiple locations of business? If so, please articulate what functional activities are housed within each location.

8. Provide a listing of clients lost or gained during the past three years. List size of the fund and the reason for ending the relationship(s).
9. Provide a breakdown of your firm's clients: by client type (i.e. public plan DB, public plan DC, corporate DB, corporate DC, endowment, Taft-Hartley, other) and by client size. Please list all public fund clients, including the size of their fund and length of service to them.
10. Please detail any experience your firm may have in working in conjunction, or on behalf of, a state's Office of Attorney General.
11. In addition to the areas of specific interest/need listed elsewhere in this RFP, what are the other strengths or areas of specialty in which your firm could be of assistance to TRS?
12. Please detail your firm's policy related to confidentiality and ability to maintain confidentiality of non-public client data.
13. Please provide five references including at least one public fund client and one corporate client. Include name, title, fund, address, e-mail address and phone number.
14. Please provide the name, address, telephone number and e-mail of the designated person responsible for answering questions regarding the RFP.

### **C. Proposed Services**

1. Describe the Proposer's experience, qualifications, and approach to portfolio monitoring and securities litigation evaluation services to provide the work described in this RFP, including recent instances in which the Proposer has provided similar services to public plans with a fund size comparable to or larger than TRS.
2. Describe the Proposer's overall approach to portfolio monitoring services and provide a detailed description of the Proposer's process for reviewing holdings and analyzing losses.
3. Identify the number of domestic (US-style) and anti-trust securities litigation cases in the past five years in which the Proposer has been involved as a liaison. Describe generally, the issues and procedural posture of those cases, the jurisdiction in which the case was filed, results achieved, and whether Proposer's client was a public pension plan.
4. Identify the number of international securities litigation cases in the past five years in which the Proposer has acted as a liaison. Describe generally, the issues and procedural posture of those cases, the jurisdiction in which the case was filed, results achieved, and whether Proposer's client was a public pension plan.
5. Describe the primary challenges for institutional investors attempting to recover losses in international markets, and Proposer's approach to addressing those challenges.

6. Identify the international jurisdictions in which the Proposer is most experienced, and the basis for that experience.
7. Discuss the Proposer's ability to maintain a secure exchange of the System's confidential holdings and transactional information with custodians (in particular, our current provider State Street) as authorized by TRS. Clearly describe security protocols and internal resources and assurances that may be available.
8. Describe the ability to effectively monitor TRS's portfolio for losses.
9. Describe the ability to effectively monitor potential, new, and pending securities and other litigation matters in which TRS may have a financial interest.
10. Describe the ability to effectively and timely report on securities and other litigation matters.
11. Describe the ability to provide interactive internet access to data, analysis, and reports.
12. Describe the ability to calculate losses, noting the methodology and transaction data used.
13. Indicate Proposer's ability, willingness, and experience providing optional services (or clearly indicate NOT PROVIDED), as follows.
  - a. Consulting in the development of a Securities Litigation Policy and Governance Model.
  - b. Acting as liaison to litigation counsel, or potential counsel, in domestic and/or international jurisdictions.
  - c. If the Proposer is qualified to do so, advise the System to seek litigation counsel in domestic and/or international jurisdictions. Providing backup to the System's custodian and/or administrator for filing of proofs of claim and making other required filings on an as-needed basis.
14. Describe the implementation timeframe and identify key milestones, dependencies, and requirements of TRS and its internal and external stakeholders.

## **Appendix D: Fee Proposal**

Fee proposal shall detail all fees, expenses and costs related to the provision of the required and/or optional services, including any one time or implementation costs, ongoing costs, contingent fee arrangements, fixed costs or any blend of the above.

Please provide fixed, contingent, and/or tiered fee schedule arrangements and options, indicating services included under each arrangement.



## **Appendix E: Sample Agreement for Professional Services (Securities Litigation Monitoring, Evaluation, and Reporting Services)**

This AGREEMENT FOR PROFESSIONAL SERVICES (this “Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2023, 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 securities litigation monitoring, evaluation, and reporting services; 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;

NOW THEREFORE, Contractor agrees to provide the professional services to the System as more fully detailed below:

**Services:** In accordance with the terms of this Agreement and any attachments hereto, the Request for Proposal for Securities Litigation Monitoring, Evaluation, and Reporting Services issued on March 1, 2023 (the “RFP”), and Contractor’s response to the RFP (the “RFP Response”), Contractor shall provide securities litigation monitoring, evaluation, and reporting services. Under the direction of the Board, Executive Director, General Counsel, or a designee, the services to be provided by the Contractor shall include, but are not limited to, the following: [AS AGREED]

**Term of the Agreement:** The Professional services under this Agreement shall be provided between date of execution and June 30, 2028 unless earlier terminated in accordance with this Agreement.

**Compensation:**

- a) [AS AGREED]
- b) Such fee shall include 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.
- c) All out-of-pocket expenses attributable to performance of services 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.

- d) Unless otherwise agreed upon and stated herein, 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.

**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 under this Agreement 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.

**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.

**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.

**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 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. **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 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 500/14.5, 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 105/8.40, 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.**
- x) **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).**

**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.

**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 (i) marked as “Confidential” or “Proprietary;” (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the System; or (iii) 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 (“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 commercially reasonable care and discretion to avoid unauthorized use, disclosure, publication or dissemination of Confidential Information (which shall be no less than the standard of care used by Contractor to protect its Confidential Information of a similar nature and shall require Contractor to satisfy its other obligations under this Agreement). 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 information, personal data, personally identifiable information (and the like) for which there are no exceptions, the foregoing obligations do not apply to Confidential Information: (a) that lawfully in the receiving party's possession prior to acquisition under this Agreement, (b) that was received in good faith from a third party not subject to any confidentiality obligation, (c) that is or becomes publicly known through no breach of confidentiality obligation, or (d) 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.

**Data Security:** To the extent that Contractor stores, hosts, processes, accesses, or otherwise handles System Information (as defined in Exhibit A), then such System Information shall be subject to the Data Security Addendum attached hereto as Exhibit A and incorporated herein by reference as if fully set forth herein.

**Contact Person:** Contractor's principal contact person for all services rendered hereunder shall be \_\_\_\_\_.

**Employment Status:** Contractor and all personnel that Contractor assigns to perform services 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.

**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.

**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

**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 to the extent 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. 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.

**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.



**Insurance:** Contractor shall, during the term of this contract and any renewals or extensions at its sole cost and expense, procure and maintain in full force and effect during the term of this Agreement, a Certificate of Insurance naming the System 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. Contractor shall provide in the following minimum 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.

**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 Manager  
2815 W. Washington St., P.O. Box 19253  
Springfield, Illinois 62794-9253  
Phone: 217-814-2049  
Fax: 217-753-0969  
Email: [Purchasing@trsil.org](mailto: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.

**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.

**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.

**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 conclusion of this Agreement.

**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.

**Third Parties Operating Policy and Technology Use Policy:** Contractor shall also comply with the System's Third Parties Operating Policy and TRS Technology Use Policy which shall be provided to Contractor and their personnel.

**Termination:**

- a) This Agreement may be terminated at any time by the mutual consent of the System and Contractor.
- b) Either party may, without the consent of the other party, terminate this Agreement upon 60 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 15 days' prior written notice to Contractor.
- d) Upon notice of termination, Contractor shall cease 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 services 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 services that were not rendered by Contractor.
- 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 Information and other System Information contained in such work shall be subject to all confidentiality and data security provisions of this Agreement.

**Performance Representation and Warranty:** Contractor represents and warrants that the services and deliverables shall be provided or performed in a good, workmanlike and timely manner by fully qualified personnel in compliance with (i) all applicable laws, rules, and regulations, (ii) Good Industry Practice, and (iii) the RFP. 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

services or deliverables similar to one or more portions of the services or deliverables that Contractor is providing under this Agreement.

**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 dates below.

[SIGNATURE BLOCK]

SAMPLE

## EXHIBIT A

### 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;

(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 services 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 services 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 services performed or deliverables provided 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 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 services, deliverables, 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 services or deliverables, 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.